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Karo Kari – a premeditated killing in Pakistan

Noor Ahsan

All Pakistan Women's Association (APWA UK)
noorahsan2012@gmail.com

Abstract: Honor killings in Sindh are known as 'Karo Kari' which in literal sense means 'black man and black woman' who deserves exclusion from the community. In other words, it is a homicide of a family member committed by close relatives such as brother, father, husband or mother of the victim for bringing dishonor upon family or community. Examples of the acts that trigger homicide may include: wanting to marry of their choice, wishing to seek employment, wanting to live according to free will, dressing 'inappropriately' or in general refusing to give in to the normative standards of behavior set by the local tribe or community. This paper seeks to analyze the nature of honor killing, the use of honor killing as a political strategy and cultural defense, further it will also evaluate the legal protection offered to the victims. Part of this paper includes a field research with ex-chairperson of All Pakistan Women Association, UK. Considering there are many Pakistani NGOs with their head office branches in London. Gender sensitive topics are considered a 'taboo' in Pakistan and its uncontrollable rise has deprived Pakistan of a positive global status. This study covers my area of interest and my voice for the people who are committed to achieve equality for women and an attempt to contribute to the mind-set that wishes to make Pakistan a secure place for its citizens regardless of gender, religion or any discrimination.

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Introduction

What is 'Karo Kari' – a premeditated killing

Karo Kari' – a premeditated killing is also commonly known as 'Honor killing of women'. This is the kind of killing that is directed at the victim with keeping their gender as the primary objective in the mind. These violence's have taken many forms and for a woman, it has been witnessed in different phases of life. For example, when a baby girl is born, her 'gender' becomes the main reason or in other words social justification behind the practices of female infanticide, if lucky enough to escape this societal disempowerment, a girl then has to consider whether she is safe walking down the streets from being harassed, raped, tortured with acid or kidnapped and trafficked as a 'commodity'. In most cases women exploitation begins at her own home with let's say domestic violence, dowry violence or with the rising concept of 'honor killing'. WHO recent data confirms that almost 35% of women have faced physical or sexual violence and globally 38% of the murders against women are committed by male partners. This data reflects on the adverse impact of violence on the physical, sexual, reproductive and mental health of women and is not only a major public health concern but also human rights concern. Elizabeth Reed highlighted in her work that these violence's are caused by the excessive desire to dominate women

partners and it functions on the notion of gender inequality. The fact that women had come a long way just to address these problems and have them listed under separate international 'women rights' instruments despite of Universal Declaration of Human Rights (UDHR), unveils that no country can claim that they have protected women from gender violence's entirely. Furthermore, human rights could be seen to have an element of androcentrism that seeks to prioritize masculine interests and is a barrier to women's rights holistically. It also constantly divides public and private rights where domestic violence' or 'violence amounting from the differences' may not be seen as a violence that requires State's immediate attention. According to Jennifer, Universal Declaration of Human Rights is a document that perceives women in limited roles such as that of mothers and wives for example, Article 16 expresses men and women to marry and have a family. It selfishly views mothers and wives as the only two roles which are seen to be vulnerable enough to be protected through the Declaration and require special attention. Thence the idea of safeguarding women against all forms of violence is vague here, this takes us back to the Aristotle's definition of 'discrimination' in his Nicomachean Ethics (Book V).

For a woman to argue that she has been discriminated, she has to first be socially accepted as an 'individual' with a separate voice and in some patriarchal societies such as that of Pakistan, India, Afghanistan, Sudan, Yemen, this status has not yet been achieved. United Nations had enacted different conventions which deals with the issues of gender discriminations: Convention on the Political Rights for Women, The Convention against discrimination of education, the Convention concerning discrimination in respect of Employment and Occupation, the Convention for the Suppression in the Traffic in persons and Exploitations of the Prostitution of the Others and the Convention on the Elimination of Discrimination against Women (CEDAW). Considerable criticism has been raised by academics, lawyers and activists with regards to CEDAW. Article 1 reads discrimination against women in conjunction with human rights, the problem with this interpretation is that it practically fails to acknowledge all kinds of experiences faced by women unless they are experienced by men too. The most recent development is the 'Declaration of the Elimination of Violence against Women' (DEVAW), while a 'declaration' may not be compulsory for the states to follow, it still requires states. to work on their national legislations, in other words, it is up to the states to safeguard and guarantee equal protection to the women from any acts that would promote violence. This could leave women with little or no protection. However, DEVAW has a significance, it defines violence in much detail and perceives it as a historical concept of unequal division of powers between men and women and a social framework that considers women naturally inferior to men. It opposes any cultural relativism theories that would justify inhumane treatment of women.

Honor killing or 'Karo Kari' in Pakistan

Pakistan is a country with the total population of 193 million out of which 48.6% forms the female population. Since 1980's the social, political and legal institutions have contributed to the rise of violence in Pakistan. Although it was the first Muslim country to have democratically elected a female Prime Minister, but in 2016 have been ranked as second worst country for gender inequality. Irrespective of these international legal instruments such as CEDAW, ratified by Pakistan, gender-based violence rooting from gender discrimination' prevails in the country through tribal customs, lack of education, religious and political manipulation of their rights guaranteed in the Constitution along with an inadequate legal scrutiny to these matters. For the women in Pakistan, the exploitative experiences depend on the rural and urban division. A woman living in the city may not be deprived of the sanitation problem as compared to a

woman living in a small village. There is currently no reliable government data on the exact statistics on gender-based violence but it has been reported by the Human Rights Commission Pakistan (HRCP) that in 2004-2016 there have been 15222 cases of honor killings in the country. According to Tazeen S Ali, patriarchal customs and practices predominant in the contemporary Pakistani society are having serious effects on the life of women, she argued that women are not only coerced to obey their intimate partners but are expected to be more compromising and tolerant than men which leads to the continuation of violent behavior towards women. Obviously, this is one of the many case studies that proves gender inequality, it still voiced the consequences and the aftermath of violent mindset that sees women subservient to men and even after 6 years of her study, these issues have been widely neglected by the national authorities that have the pivotal role in modifying country's global reputation for appealing women rights condition. Moreover, Pakistan is one of the countries that is a party to several international instruments like CEDAW as mentioned above, Declaration of the General Assembly of the UN on the Elimination of violence against Women, Universal Declaration of Human Rights, further to the instruments, it also supports the UN Millennium Development Goals (MDGs) that aims to enforce gender equality as well as female empowerment, despite of the international commitments, the government seemed to take ineffective steps locally to achieve equality and just treatment for women.

Methodology

Law being a social sciences subject makes social research very essential. Considering the sensitivity of the topic, I preferred to use a socio-legal approach in the analysis and evaluation of the attitudes of variant mind-set to gender issues such as 'honour killings' in Pakistan. I was eager to expand my understanding on the causes that justify honour killings and for that I divided the paper in 4 chapters. First chapter deals with the understanding of Gender Based Violence, its presence in contemporary Pakistan. Second chapter provides an overview of the current judicial system of Pakistan and the existence of legal pluralism; it is subdivided to the interpretation of some rights under the Sharia Law and the 1973 Constitution. Third chapter consists of one of the prevalent patriarchal practices of 'honour killings', its historical roots and legal loopholes in denouncing the oppressive treatment of women, followed by the current Anti Honour Killing Law passed as an amendment to the existing law. The last chapter deals with the long-term solutions for the victims and the concluding remarks.

Keeping the wide scope of the topic, I decided to conduct a field research on the work of one of the NGOs with respect to Gender based violence and honour killings in the country. Purpose of the short social research was to find out about the possible loopholes and political manipulation of these crimes, investigate the observations, customs and experiences which is interlinked to the functioning of other institutions such as criminal justice system. It also aided in evaluating the literature used in the dissertation. The sample consisted of one female participant, the ex-chairperson of the All Pakistan Women Association, UK. The participant was approached online and via phone. She was also presented with the participant information sheet prior to obtaining consent and had voluntarily consented to become part of the research. Her selection was based on her gender, ethnicity and close observation on women rights issues in Pakistan. She was also presented with the participant information sheet prior to obtaining consent and had voluntarily consented to become part of the research. The data collection method preferred for this paper was qualitative semi-structured interviews as compared to any quantitative method because interview is an opportunity to observe and incorporate feelings, views and knowledge in the research. There were 8 questions which were mainly descriptive such as ‘can you tell the possible causes of GBV in Pakistan?’ and structural ‘how influential has your association been in convincing Pakistani government for the change in legislation related to honor killings?’ or ‘would secularism help to eradicate radicalism and wrong manipulation of religions?’. Interview was recorded on phone as well as noted manually with the participant’s consent. In addition, non- verbal elements like gestures, shrugs, tears were observed as they added depth to the purpose of the topic. Data collected can said to be reliable as it was internally consistent and had involved no deception with the participant, it also permitted the participant to terminate the interview if at any stage she felt that the questions were too intrusive. Apart from consent, another ethical issue that was taken care was participant’s confidentiality. Since the topic required insights into the possible causes, loopholes and alternative methods to deal with GBV and human rights condition in Pakistan, it had the tendency to spark controversies or upset certain sects and institutions in Pakistan. Therefore, participant was made aware of the possible disadvantages and advantages of the research. Interview conducted was at the participant’s home, in private and without the presence of any third party which would have made the participant uncomfortable. While the interview lasted for 40

minutes, in the end the participant was asked to share her experience and was recorded satisfied.

In context of the literature review, I looked at sources like primary sources like statues, court cases and for secondary data, reviewed range of information such as books, academic journals/articles, book reviews accessed via library. I also considered alternatives to social research such as common beliefs, media reports and parliamentary debate. However, the only limitation is that media has the proclivity to overstate issues but with social crimes like honor killings it is important for it’s the ability to put a pressure on government for a legislative action in protecting citizens.

Result & Discussion:

Honor Killings

Honor killings in Sindh are known as ‘Karo Kari’ which in literal sense means ‘black man and black woman’ who deserves exclusion from the community. In other words, it is a homicide of a family member committed by close relatives such as brother, father, husband or mother of the victim for bringing dishonor upon family or community. Examples of the acts that trigger homicide may include: wanting to marry of their choice, wishing to seek employment, wanting to live according to free will, dressing ‘inappropriately’ or in general refusing to give in to the normative standards of behavior set by the local tribe or community. This chapter seeks to analyze the nature of honor killing, the use of honor killing as a political strategy and cultural defense, further it will also evaluate the legal protection offered to the victims.

Bringing shame to the family

Everyone has the right to life and this right applies regardless of one’s gender, caste, creed, nationality or religion under the Universal Declaration of Human Rights as well as Constitution of Pakistan. However, for a woman this right is restrictive and controlled by her submissiveness to the long held traditions. In the cases of ‘Karo Kari’, it is mostly woman versus the whole society that with its silence approves the killing. Each province in Pakistan has its own set of norms and customs. For example, Baluchistan and NWFP may be seen as more ‘feudally militaristic’ than Punjab or Sindh although it does not in any way lowers the threshold of rules that women are expected to abide by, but it does impact on how this crime is perceived by the provincial authorities. For instance, one case of honor killing reported in Baluchistan revealed that the offenders escaped the legal punishment as they were from an influential background, following the public protest, this case was discussed in the parliament where one of the senators from Baluchistan continued to defend honor

killings as ‘centuries old traditions’. Although this case was condemned in the Parliament but the fact it was kept hidden for a long time reveals provincial authorities conflicting mindset related to women and honor.

The word ‘honor’ is derived from the Latin term ‘honor’ which perceives someone with quality of worthiness or respect, in other words, reveals one’s loyalty to moral principles. Naming it as ‘honor killing’ reveals existence of a strong patriarchal structure that considers it as a right to kill someone in order to show loyalty for one’s culture, hence, defending the men srea for this act to be in a positive sense. If it was not for the media’s notice, the act of killing in the name of honor would have been kept hidden in the name of cultural practice.

Nafisa Shah argued that *‘custom may grow to fit the law or law must grow to fit the custom and if it is not possible then repress the custom.* Usually both evolve with one another but in the context of honor killing, the secular side is finding it hard to get rid of this ‘barbaric’ cultural practice developed by certain tribal community that are drenched in illiteracy, poverty, lack of law and order. Man is the leader of the house and the community, it operates on a belief that sees women as an asset that should be controlled to preserve social status which would otherwise cause anarchy. Those subjected to the honor killing suffer a painful unnatural death, they are either tortured then shot dead, burned alive or silently strangled to death.

Fighting the socio-political and legal conditions

Public opinion in 2010 showed that four out of ten people in Pakistan thought that honor killing is justified although this had changed slightly in 2011 where approximately 50% thought that it is never justified. Since then it has been difficult to accept this kind of violence. Why is it that the women’s dressing code, choice of partner or mere admiration for someone brings upon dishonor for her family or wider community? But for a man, standards set are low, it is acceptable for the society to tolerate them stalking girls while going to school, chasing them on the streets and intruding privacy by anonymous missed calls and messages. None of these mentioned actions form part of a culture or glorify one’s honor. This is not to say that men should be subjected to derogatory treatment but to reveal discrimination in the thoughts that leads to discriminatory laws and customs.

As discussed in the previous chapter, Pakistan is a country with plural legal systems where the Islamic Law gets the priority in matters dealing with offenses against property (such as theft and robbery), prohibition of drugs, trafficking, alcohol consumptions, offenses of Qazfie false accusations or bearing false witnesses and offenses of Zina which can include adultery, rape, abduction. Honor Killings

are mostly sub categorized to Zina offenses for which the punishment for an individual guilty of offence as per Islamic jurisprudence is hundred lashes or stoning to death, provided it is evidenced fairly.

Pre 1991, judicial laws in Pakistan dealing with honor killings have been vague, as most of the perpetrators were men, pre-1991 judicial laws permitted them to raise the defense of ‘grave and sudden provocation’ in matters involving sexual concerns or ‘suspected betrayals’ on part of man’s daughter, sister, cousin or wife. State, had classified these killings to ‘culpable homicide not amounting to murder’, therefore, penalty for the culprit was restricted to ten years.

1991 onwards was the turning point in the history of secular judiciary as it had started to empower the religious interventions that had put the country’s legal system in the state of dilapidation. To this period, judiciary had been compelled by the politics and religious parties to bring the criminal laws in accordance with Islamic principles of Qisas and Diyat. Islam denounces the act of killing unless it is done in self defense or for the act that should have been punishable by death in Islam, for example terrorism, treason, murder, adultery. Considering the inconsistency in the application, the Shariat Court in 1995 declared the defense of ‘grave and sudden provocation’ as ‘Un Islamic’ and began the era of retribution which is similar to the concept of retribution found in Western liberal philosophy i.e. to punish offender for the wrong/criminal act.

Furthermore, Qisas and Diyat Ordinances, brought several changes to the country’s criminal laws. Significant ones were that firstly, it had categorized homicide on the proof of murder and relationship of the offender with the victim. Secondly, offence of intentional murder (qatl –e-amd) culpable to qisas required high standard of proof, mainly including voluntary confession by the offender or two eye witnesses of good character. Thirdly, the Ordinance amended section 309 and 310 of the PPC and had authorized legal heirs of the victim to waive qisas and pardon the offender or accept financial compensation. These concepts were widely criticized as they were an easy escape route for the culprits and an abhorring treatment for the departed souls besides the pain that they had already endured. In 2001, Supreme Court of Pakistan for the first time acknowledged honor killings as a violation of the fundamental values of Pakistani society and Art 8(1) of the Constitution. Despite of this acknowledgment, judiciary is seem to be confused and reluctant to impose harsher penalties on the offender. In *Muhammad Akhtar v. the State*, Lahore High Court converted the death sentence of the offender to life imprisonment on the basis that he had ‘suspicion of

illicit liaison' between his wife and the man he murdered, he also killed the son (of the man he thought his wife is having affair) with by pouring acid all over his body. Even though, the nature of the crimes committed were so grave but the court had difficulty in ruling out that the offender had acted to preserve honor, therefore giving shallow justice.

Female empowerment had remained a priority on President Mushraff's agenda, therefore in his tenure attention was given to customary practices that were used to hegemonize vulnerable. During his tenure, Criminal Law (Amendment) Act 2004 was enacted. This had created a separate offence for honor crime. Furthermore, it also debarred the accused to act as a legal heir which was previously permitted under the Qisas and Diyat Ordinance. This subsequent change was made to the Country's Criminal Procedure Code as well. Another effort by the CLA 2004 was the amendment to section 311 of PPC which enables court to punish the offender where the right to qisas has been waived or where there are aggravating circumstances (Fisad fil arz). Other practices such as giving off daughters in marriage as a settlement or compromise was made punishable with 3 to 10 years imprisonment. Nevertheless these amendments reflected on State's refrainment from acting as the primary protector of the women as it considered these crimes private family affair. Although it may start off as a family affair but its consequences are devastating for the entire country.

Post-amendment, series of cases revealed an alarming trend of inadequate legal scrutiny for honor killings and the continued misuse of defense of 'sudden and grave provocation', irrespective of being declared as incompatible. Arguably, even if the defense raised was valid, the cases of honor killings had lacked analytical judgment on the proportionality which was felt as a gimmick to justify unreasonable reactions. This could be seen a practice in 2014 when Sindh High Court accepted the offender's defense for sudden and grave provocation that ultimately resulted in the modification of his punishment from death penalty to life imprisonment.

In order to compensate the inadequacy in safeguarding women, government took the step to improve the situation via Women Rights Bill 2006. This aimed to amend controversial Hudood Ordinance. It introduced changes such as moving few offences from the Ordinance to PPC and having new set of procedures such as for rape trials but is said to have the same effect as the traditional Ordinance and have not been effective in eliminating violence against women.

However, Women Rights Bill 2006 allowed women parliamentarians to take initiative in eradicating discriminatory laws. The struggle with the

approval of this Bill was evinced from the long four hours parliamentary debate session with the right winged opposition members who considered this as an attack on the 'culture' and weakening of 'Islamic ideology'. Beside this, their supporters protested violently leaving the cities in the social chaos.

Current Laws and Protection

In 2014, one of the leading women rights NGO, Aurat Foundation estimated that around 1000 Pakistani women are killed in the name of honor every year. Following the ignominious killing of the social media celebrity Qandeel Balouch by her brother, Pakistani government was coerced by the international community to toughen up the laws, therefore resulting in the passage of a Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act, 2016. This law had its own benefits and limitations for the women. On one hand, this law was a recognition from the State in the increase of private domestic crimes such as honor killings. On the other hand, It should be noted that this is an amendment to the existing legal mechanism rather than a separate law. However, upon evaluation, some of the amendments reveal the disadvantageous side for the victim.

The 2016 amendment Act, inserted the new clause in S 299(e) of the PPC about the nature of 'Fisad fil arz' and the triggers which will now include offender's past conduct, previous conviction, brutal manner in which offence has been committed which is outrageous to the public conscience, offender is a potential danger to the community or if the offence has been committed in the name or pretext of honor.

In the situation where it triggered the reasons mentioned above, the penalty listed in s 302 (a) & (b) 'shall apply'. Similarly, amendments to section 309 and 310(1) about the waiving of qisas is also an open to choice for the judiciary and legal heir of the victim.

Much of the controversy revolved around section 311 of the PPC which expressly stated:

'Notwithstanding anything contained in Section 309 or Section 310, where all the wali do not waive or compound the right of qisas, or [if] the principle of fasad-fil-arz the Court may, having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with [death or imprisonment for life or] imprisonment of either description for a term of which may extend to fourteen years as ta'zir[:]

Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years.'

Now the amendment substitutes the penalty and requires accused to serve imprisonment for life even where pardoned by the family of the victim. 'Provided

that if the offence has been committed in the name or on the pretext of honour, the punishment shall be imprisonment for life.' The language of the entire instrument is loosely drafted. Considering the reports from the media, NGOs and social workers on the growth of honor crimes, the use of 'shall be imprisonment for life' as compared to 'must' indicates an intentional lacuna in the law to be judicially manipulated in the favor of politicians, clergymen and the offender. It also did not entirely abolish the rule of 'pardoning the offender'.

Despite of a hard-pressed struggle by the human rights activists, the situation unfortunately remains the same. The correct understanding of the Sharia, our culture and the Constitution would reveal that honor killing is an unpardonable crime and abhorrent to any civilized society. According to Mehdi, religion in Pakistan is politicized to serve the interests of men and unless correct interpretation is made of the Islamic principles, laws like Hudood Ordinance will continue to be manipulated against women.

Following the conclusions drawn from the field research conducted with Ms Bashan Rafique, I found out that the roots of honor killing lies in the social, political and legal structures. She shared the case of Ms X who has sought refuge in an NGO in the city of Karachi, her father was a political figure in Abbottabad and had killed 17 people because Ms X had decided to marry someone of her choice. Ms Bashan also told that while this girl ran from Peshawar to Karachi to sought refuge, her father would kill security guards working there. Finally she had come to Karachi, changed her identity and is now living with her 3 years old son. She further said that violence is a disease and is constantly growing due to the apathy in people, police, judiciary and government. When a community feels neglected then they start to disrespect their women or religion, for then, physical strength becomes more important than other factors.

Therefore, is difficult to expect that these honor killing cases will comply with the principles of transparency, fairness and accountability with their foundation based on disrespecting the rule of law. Hallaq, Islamic Law Scholar, have contended that the current practices of Sharia is merely a strategical tool for the State to defend its own human rights violations.

Conclusion

This Research has established that honor crimes are a symptom of wider gender based oppression of women and the past legislations and judicial decisions revealed lack of interest to enforce equal protections for women which have been guaranteed in the Constitution of the country. The social and political

framework continues to be manipulative towards vulnerable and is still finding it hard to accept that women deserve equal respect and protection. The current law is also an amendment to the existing laws even though the roots of the existing laws regarding honor killing were gentle towards the offender. The only solution it has provided for now is the penalty of life imprisonment if not death sentence. However, this too is seem to be implemented loosely and may not eradicate the honor from the killings for the future. Furthermore, the paper discussed honor killing as one of the examples of heinous crimes that continue to oppress, intimidate and control women as a property of either family or community. As Pakistan is a legally pluralistic state, the role of religion and religious parties deeply influences country's political, social as well as legal reforms. Only time that Islamic discourse has been used against honor killing practices is where it was declared as 'unislamic' by the country's Council of Islamic Ideology. However, there are rarely any religious awareness campaigning that would safeguard women rights guaranteed under Islam.

To sum up, gender based violence's like honor killings require not only changes in policies but change in mindset of the people that sees honor in killing women. It is imperative that every institution respect women rights as human rights and promote long term strategies to fight the apathy related to women issues.

"No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women".

— Muhammad Ali Jinnah (Founder of Pakistan)

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