

THE NOTION OF HONOUR IN “HONOUR KILLINGS”

– JUSTIFIED OR FALLACIOUS

Written by *Kuntirani Padhan*

Research Associate cum Teaching Assistant, National Law University Odisha

ABSTRACT

The epoch of modernity has not been able to swipe off the age-old practices of barbaric attitude towards the caste system and its allied issues. Honour crimes yet have been one of the most contemporary issues that need immediate attention of the policy makers. This article impresses upon the conceptual fallacy that lies in the use of the word “honour” in this crime that is termed as “honour killing”. Through this article, the author wishes to embark upon the notions of honour in the modern society and the varied yet biased definitions of honour where it sounds positive for a male and on the other hand it echoes in a brutal manner for a woman. The concept of Khap Panchayats is extremely pertinent in this context. Khap Panchayats, who portray themselves as pseudo guardians are quite instrumental in redefining “honour” time and again as per their own convenience but every time they take a vicious stance when the “couples in love” opt for getting married without the consent of their family members. This article also deals with the comparative analysis of the concept of “honour” or Ghairat in Pakistan. Jirgas the adjudicating bodies on matters of honour-based crimes and are tribal councils in Pakistan who are more brutal in nature. The Pseudo Guardian nature, the composition and the unconstitutional nature of these adjudicating bodies is being dealt in this paper more specifically. The author through this paper emphasizes more on institutionalizing the policies laid down by both the Indian policy makers as well as the Pakistani law framers and thereby disapproves these unconstitutional adjudicating bodies.

Keywords: *Honour, Khap Panchayats, Pseudo Guardians, Jirgas*

INTRODUCTION

India has always been a land of tradition and values where women are worshipped in form of Goddesses but the concept which concerns the scope of the research is an oxymoron to the same. Honour killings or honour crimes are crimes done by the family members on a female specifically if she goes beyond the traditions and customs of a so-called patriarchal society. The society has continued to be patriarchal since ages. The rituals which has been held as rules for a woman has not changed its shape despite incarnation of specific codes. Female homicide and its incidences have risen over the years but the reasons for the same have not been known clearly. Male perpetrators continue to threaten the existence of females if they tend to deviate from the general traditional notions and the so-called concept of “honour” of the family.

Honour killings are barbaric acts of vengeance, usually death, which is carried out by the male members of the family on the female members of the family who are allegedly connected to bringing dishonour to the family. It is generally a notion that one bringing shame to the family has to be treated with severe punishments and this punishment generally includes death. Any dishonorable act done by any member of the family calls for a death punishment and it has to be decided by the family members of the person concerned. It is quite a flabbergasting fact that how the notion of honour is related to someone who wishes to marry on his/her own choice. Right to marry is nothing but an extended ambit of Article 21 of the Indian Constitution i.e. Right to Life.

Honour killings or generally known as Honour-based killings are basically offences of nature which are heinous as well as includes psychopathological perspectives. Highly complicated and complex in nature, it includes pre-mediated behavior and often includes a lot of complicity. Honour killings are basically distinct from domestic violence in the context that in a case of domestic violence it does not have a pre-mediated content but killing in the name of honour includes family members as like in the case of domestic violence. But in case of honour killing, it is well decided by the close relatives of the victim that he/she will be killed in the name of honour. Perpetrators of honour killing do not generally face social stigma and are considered by the society as the establishers of culture and tradition unlike the perpetrators of domestic violence who face the wrath of the society on the name of torturing women. Though both the

offences are extremely heinous in nature, the dual face of the society treats both the offences differently.

The main contention in the above paragraphs is the word “honour” which is used in a varied way by different people as per their own convenience. The meaning of the word is not very complicated yet different sections and communities define it in many ways.

While talking about the emergence of the concept called “Honour killing” it dates back to history when fifth wife of Henry VIII was beheaded based on the allegations of adultery. The society had been biased towards men since time immemorial and men have always been punishing women for any act of illicit behavior. Talking about British literature, William Shakespeare’s drama *Othello* also showcases killing in the name of honour. Desdemona, the Venetian beauty was killed by her husband who was enraged and highly disappointed by her infidelity. Desdemona eloped with Othello and after she returned back, her enraged husband killed her alleging her disloyalty and infidelity towards him. Another tragic yet relatable play of the Shakespearean series, *Romeo and Juliet* also is an historic example of the duo being killed because they went against their family’s wish.

Crime and Criminals have always shared the maximum discussion among the criminal justice systems of the world. Dating back to the 16th century or even prior to that, criminologists have been defining the basic characteristics of a criminal in their own ways and with their own perspectives. Cesare Lombroso, the father of Criminology has always defined a criminal from its biological perspectives and features. He shares the view that a criminal is born and not made. He attributes malafide intentions on the biological inceptions that a person is born with. According to him, any person who has identified biological negativities like a sloping forehead, ears of unusual size, asymmetry of the face, prognathism, excessive length of arms, asymmetry of the cranium is a born criminal. He also shared ideas like criminals are less sensitive to pain and touch, more acute sight, lack moral sense, absence of remorse, more vanity, impulsiveness, vindictiveness and cruelty and other pessimistic manifestations. The people those who are concerned with the killing of their connected relatives in relation with the degradation of their honour also come in the category of the criminalized category of Lombrosian criminals.

In Ancient Roman times, the senior male within a household retained the right to kill a related woman if she was engaged in pre-marital or extra-marital relations.ⁱ According to Blackstone, the Roman law justified homicide "when committed in defence of the chastity either of oneself or relations".ⁱⁱ

Augustus, known as the first Emperor of Rome, introduces the *Leges Juliae* (Julian Laws) under which the *Lex Julia de Adulteriis* (adultery as a public and private crime) is enforced. Under this law, the male head of the family can legally kill his wife or daughter on the allegation of adultery.ⁱⁱⁱ In 17 BC, the *Lex Iulia de Adulteriis Coercendis* was created to punish adultery with banishment. Both the guilty parties were sent to different islands (*dummodo in diversas insulas relegentur*), and part of their property was confiscated. Roman law allowed fathers to kill their daughters and their partners in adultery. Husbands could kill the partners under certain circumstances and were required to divorce adulterous wives.^{iv}

Honour is expressed in many other terms, including "vengeance," "avenging," "saving face," etc. However, it is notable that honour-based killings in most Arab and South Asian countries are perpetrated against daughters, sisters or nieces and not against wives. The reason may relate to the distinction between dishonouring as "collective" injury as opposed to dishonouring as "individual" injury.^v In community-based honour systems, a husband's feelings of jealousy, which could be classified as individual hurt pride or honour, are not generally viewed as sufficient grounds for murder. However, the transgressions of a wife can cause a collective injury to her family of origin, which is ultimately responsible for punishing her.^{vi}

“*Karo kari*” is the practice of killing, under the pretext of sexual transgression, those who have disgraced the clan. Its etymology is traced to Sindh, and its first-ever recorded incident is one during the Talpur reign, but instances of *karo kari* have been recorded in areas across the country.^{vii}

Honour Killing, locally known as ‘*karo kari*’ is an act of murder due to the belief that the victim has brought dishonour upon the family. In Sindh, the gender-based violence, is on a

rise. Often women are killed in the name of a '*karo kari*' which is believed to restore honour and reputation of a family.^{viii}

Karo-Kari is a type of premeditated honour killing, which originated in rural and tribal areas of Sindh, Pakistan. The homicidal acts are primarily committed against women who are thought to have brought dishonour to their family by engaging in illicit pre-marital or extra-marital relations. In order to restore this honour, a male family member must kill the female in question. We conducted a systematic review of the published literature other sources on karo-kari and related forms of honour killing or violence against women. Media and non-governmental organization reports were utilized for case studies and analysis. Although legally proscribed, socio-cultural factors and gender role expectations have given legitimacy to karo-kari within some tribal communities. In addition to its persistence in areas of Pakistan, there is evidence that karo-kari may be increasing in incidence in other parts of the world in association with migration. Moreover, perpetrators of 'honour killings' often have motives outside of female adultery. Analysis of the socio-cultural and psycho-pathological factors associated with the practice of karo-kari can guide the development of prevention strategies.^{ix}

UN Special Rapportuer Ms. Radhika Coomaraswamy^x defines the concept of Honour as especially powerful because it exists beyond reason and beyond analysis. But what masquerades as "honour" is really men's need to control women's sexuality and their freedom. Crimes of honour potentially violate the right to life, liberty, bodily integrity, the prohibition against torture or cruel, inhuman, degrading treatment, the prohibition on slavery, the right to freedom from gender-based discrimination and sexual abuse or exploitation, the right to privacy, the duty to modify discriminatory practices against women.

According to Arun Pal^{xi} that the ideology of honour is one which directly results from patriarchal gender roles, wherein conformity to these roles is demanded and a source of status and acceptance within the community; and where deviance is censured. For males, "honour" is gained through exerting dominance and control over females and younger males, and lost through weakness and failure to control; it can be restored through violent and coercive acts. For females, "honour" is preserved through subordinancy, obedience, chastity, endurance and virginity, and it may be lost through any autonomous acts, particularly those relating to

sexuality, and cannot be restored. “Honour” in this sense is often a social quality; it revolves around the public perception of the individuals more than their actual behavior. Causing a scandal or gossip within the community is often the most significant aspect of an offense against “honour”.

Some power is vested with the men and older women who decide what acts are “honorable” and which would be considered “dishonorable”. It prevails in Indian society also. Let us find some of the actions which are related to the honour-based violence which are as follows:^{xii}

- (i) Loss of virginity outside marriage
- (ii) Pre-marital pregnancy.
- (iii) Infidelity.
- (iv) Having unapproved relationships.
- (v) Refusing an arranged marriage.
- (vi) Asking for divorce.
- (vii) Asking for custody of children after children.
- (viii) Leaving the family or marital home without permission.
- (ix) Causing scandal or gossip in the community.
- (x) Falling victim to rape.

Prem Chowdhry^{xiii} opines that to overcome caste and customary rules, some couples run away from the village and get married. Such cases are generally dealt within the close preserve of the family and/or its kinship network. Yet, some of them spill over voluntarily or involuntarily into the public sphere and assume a different form, as issues concerning the sexuality of women, almost entirely confined to the family, are thrown open for judgment such as honour killing.

Killings in the name of honour have been the most contentious issue in the history. May it be the killing of Desdemona, the Venetian beauty or the historical killing of Romeo and Juliet, or the story of the Babylonian era or the story of the Augustus era, everywhere the barbaric practices of killings in the name of honour was in practice. The Venetian beauty Desdemona was killed by her husband Othello on the qualm of infidelity. Desdemona tried to prove her innocence before her husband Othello but he did not listen to her plea and killed her by

smothering her with a pillow. Later he could realize that she was innocent and after realizing the same he killed himself out of grief.

The mere perception that a woman has contravened the code of sexual behavior damages honor. The regime of honor is unforgiving: women on whom suspicion has fallen are not given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their honor by attacking the woman. This can be explained on the basis of the feudal and cultural mind-sets. In the perpetrators' faulty vision, "It is better to eliminate the suspect before the matter blows out of proportion and the talk spreads to the community," even where the suspicion is groundless.^{xiv}

All of the above interpretations depict that whether it was the Roman era, the Babylonian era or the Code of Hammurabi, the concept of honour only hovered around women and basically honour crimes are primarily femicide and not fratricide.

KHAP PANCHAYATS: PSEUDO GUARDIANS OF "HONOUR"

The first and foremost cause for committing an 'honour killing' is nothing but a belief that any member of family has brought dishonour to the family, defamed and the reputation of the family is tarnished. The dishonour can be of different types for different families.^{xv} Also the most obvious reason for this practice to continue in India is because of the fact that the caste system continues to be at its rigid best and also because people from rural areas refuse to change their attitude to marriage. Also, in our country the society is mainly patriarchal. Men are expected to enforce such norms and traditions and protect family and male honour from shame. Women are expected to conduct themselves honourably. This understanding of the notion gives legitimacy to all forms of social regulation of women's behaviour and to violence committed against them.^{xvi}

Thousands of women are murdered by their families each year in the name of family "honor." It's difficult to get precise numbers on the phenomenon of honor killing; the murders frequently

go unreported, the perpetrators unpunished, and the concept of family honor justifies the act in the eyes of some societies.^{xvii} Most honour killings occur in countries where the concept of women as a vessel of the family reputation predominates.^{xviii}

Since these murders/killings perpetrated are more social in nature and people do not attract much legality to it, the intervention of pseudo guardians called as Khap Panchayats is severe and these quasi-judicial bodies pass brutal diktats that are quite orthodox and diabolic in nature.

Contextualizing Khaps and Khap Panchayat, Khap Panchayat is the union of a few villages, mainly in north India though it exists in similar forms in the rest of the country also. Lately they have surfaced as quasi-judicial bodies that pronounce harsh and inconsiderate punishments based on age-old customs and traditions, often bordering on regressive measures to contemporary problems.

Khap Panchayat like the caste system is a traditional institution which is basically engaged in a process of dispute resolution in village communities. Traditionally every village has its own Panchayat or Council. Panchayat literally means assembly of five (Panch) prudent and respected elders chosen and accepted by village community. Usually, some mighty and powerful persons, with the coerced public consensus and without any election, group together and declare themselves the „king of the caste“, thereby constituting the so called „Caste Panchayats“. Traditionally these assemblies settle disputes between individuals and villages. However, these bodies lack any constitutional or legal basis. They should not be confused with Panchayati Raj Institutions. Khap Panchayats are undemocratic in origin. They have unwritten laws and their decisions are clearly illegal and unconstitutional. Without application of law and acting on their whims and wishes, they impose self-created norms backed by sanction in the name of preserving morals and values of the society.^{xix}

Khap Panchayats, working against the Constitution, are being autocratic and less transparent in process. Till the establishment of the judicial system, Khaps were socially famous and relevant to harmonious settlements of disputes. With the passing of time they lost their influence. But from last few years, the issues like demands of ban on same-gotra marriages

strengthened them again. Exact origin of Khap Panchayat cannot be found out but we may broadly consider the period of its development in 600 AD. In the ancient times, when the man was living itinerant life, villages were being formed at a rapid rate and the society was heading towards civilization and better standards of living. Khap Panchayats are understood to have come into existence as a social system for maintenance mechanism in those agrarian societies. They are the legacies of the tribal councils, formed by various tribes with a purpose of facilitating resolution of intra-tribal disputes and inter-tribal inter-course.^{xx}

The Khap Panchayats generally consist of powerful elements of the dominant caste. They are generally senior citizens who claim to be considered as upholders of village norms, custodians of rural cultures and guardians of public morality. They have a great hold both at the local and provincial level.^{xxi}

Khap Panchayats uphold the concept of *bhaichara* on a gotra, caste or territorial basis. This system supports gotra, village and Khap exogamy but caste endogamy. Khaps oppose marriages between those who are related by blood and those who belong to the same gotra because all males and females of a clan are regarded as brothers and sisters. Marriages between members of different gotras are also forbidden if the man and woman belong to the same village or physically adjoining villages. Needless to say, inter-caste marriages are strictly taboo. If prospective brides and grooms or couples who have married in secret decline to comply with the diktat of a Khap, it imposes a social boycott of the lovers or couples and their families. It can also excommunicate them from their caste and clan or even from their village or Khap. However, what has captured headlines in recent times is the violence that has been unleashed on young men and women by their families or communities in the name of Khap verdicts that have taken them to task.^{xxii}

Khap Panchayats are bodies which pronounce diktats based on their own reasoning and interpretation. Though the reasoning and calculative index set by them might not be at par with the societal standards. Such diktats violate the constitutional values and sometimes also might sound as highly unacceptable yet they are implemented just to keep the ego of these unconstitutional bodies intact. Constitutionality is a condition that refers to acting in accordance and at par with the constitutional mandates. Going against the norms of the Constitution attracts unconstitutionality and the validity diminishes. An act or statute enacted

as law either by a national legislature or by the legislature of a subordinate level of government (such as a state or province) , if not acted upon as per the its mandates may attract unconstitutionality. A constitutional violation is thus somewhat different from the breaking of a normal law, both in terms of seriousness and punishment. And the Khap Panchayats are therefore eligible for being encircled as unconstitutional bodies that pass erratic orders in the name of honour and tradition.

SHALISHI SABHAS / KANGAROO COURTS

Many other informal methods of justice disbursement have been seen in different regions of the country where informal community-based justice disbursement mechanisms are adopted to deliver “*so-called*” justice to the masses as well as the victims. Such informal methods of arbitration and mediation are generally practiced in West Bengal as a traditional procedure of dispute resolution. Gram Panchayats generally hold these *sabhas/courts* and the so-called rule framers who are basically the male members with medieval societal attitudes and patriarchal prejudices adjudicate on sensitive matters and pronounce the harshest of pronouncements. The decision taken by or an order passed by a kangaroo court which is led by a village headman proves that some sections of society are still not aware of their constitutional rights and adhere to such inhuman and barbaric cliché. Such so-called quasi- judicial bodies dictate the order of the society and pass orders on the demeanor and probity of women, and such orders include ostracizing them from the community, sometimes imposing capricious monetary fines and sometimes doing sexual violence in lieu of monetary fines.

Outposts of feudalism still thrive in vast swathes of rural India, ranging from khap panchayats in the north to caste-based gatherings of village elders in the south. In 2011, the Supreme Court wanted illegal khap panchayats that encourage ‘honour killings’ or other institutionalised atrocities to be stamped out ruthlessly. Over a year has elapsed since the country voiced its anger against sexual violence targeted at women and seemed to take a collective vow to ensure the protection of all women. The penal law on sexual violence and harassment has been strengthened significantly since then. Yet, India’s cities and villages continue to be unsafe for women. The locus of sexual violence is everywhere: in public spaces and private homes, under

the cloak of darkness and in the open, and perpetrated by well-acquainted persons as also as by strangers. Social attitudes need to change, reflecting liberal and humane values, if the country is to ensure gender equality and protection for all its women.^{xxiii}

The system of *shalishi adalats / kangaroo courts* are of very ancient origin in West Bengal and it is highly prevalent in the central and southern parts of the state. In the state of West Bengal, these courts enunciate judgements and dispense instantaneous and extremely brutal justice for a wide array of offences ranging from rape, murder, offences related to property, corruption related offences, family disagreements etc. Basically, the women, poor, downtrodden and the marginalised sections of the society have to face the wrath of these courts who dictate them with their vicious and fiery judgements which has no basis or justification to be conferred with.

It is not a fact that these courts only pass diktats like ostracization or imposing heavy arbitrary fines but also, they are well known for passing death sentences. Such death sentences are passed in secrecy and due to patronization of the political parties such punishments go unnoticed, leaving the police in empty hands for further investigation. The political party who is in the power at present uses the *shalishi adalats* for settling political scores over its adversaries.

The death sentence passed by the “*shalishi adalats*” are usually executed in utmost secrecy and the whole village takes as “*omerta*^{xxiv}” or an oath of silence, thus foiling any effort by the law enforcement machinery to bring members of such kangaroo courts to justice. Even the bodies of the victim remain untraceable.^{xxv}

The practice of *salishi* by *Salishi Courts* is a family custom but not a forum for self-accomplished punishment. However, Khap Panchayat is a forum for punishment. Legally they do not have any stance or approval by any law Courts or any other appropriate forum. This so-called parallel justice delivery system has to be proscribed by the law immediately. If they pass any sentence, the Khap Panchayats, *Salishi Courts* and kangaroo Courts are to be treated under IPC as perpetrators of murder and of any other offence in the nature of grievous injury. Under the Indian Penal Code, they are liable to be tried and punished.^{xxvi}

These extra constitutional Khap Panchayats and kangaroo style courts try to legitimize their actions by quoting historical antecedents of uncertain origin to support their practices. They are of the opinion that the Khap Panchayat is an age-old institution, having its foundation in the early medieval period.^{xxvii}

If any member of the society is being summoned to be killed by the so called quasi-judicial bodies known as the Khap Panchayats just because they have been involved in some love affairs or might have chosen a life partner of their own, the same attracts unconstitutionality according to Article 13 of the Indian Constitution because such a diktat or so called norm is contrary and inconsistent with the Part III of the Constitution that enshrines our Fundamental Rights. Article 13 also includes “*custom and usage*” under its sub clauses which makes it indispensable for the citizens to abide by it and not pronounce such harsh edict which in itself again contrary to Article 21 of the Constitution. The Khap Panchayats pronounce decisions under the veil of custom and traditions, and if such diktats are seen under the lens of Article 21, it is constitutionally invalid.

HONOUR KILLINGS IN PAKISTAN

The concept of honour in most of the country’s hovers around women and the case in Pakistan is also not different enough. The condition of women those who digress from the general and marked boundaries set for women have to face the wrath of fellow community men. In Pakistan, the caste councils are known by different names yet they perform the same task. *Jirgas* are tribal council that adjudicate matters relating to honour crimes and are responsible for most of the honour-based crimes.

The Jirga system is one of the major structures that maintain honour killings in Sindh. The Jirga is a decision-making assembly or tribal council. This is a tribal system of justice which is actively practiced in Pakistan to settle legal cases and disputes, despite being banned by the government. Such councils are managed by local elites and are composed only of men,

particularly those who already are influential and inherited power within the braderi (shared community) clan or tribe (Hussain, 2006).^{xxviii}

“The word *jirga* is also used in Persian, Turkish and Mongolian languages that appears to be related to the word 'circle', but is commonly used to refer to the gathering of people. But regardless of the origin of the word, *jirga* refers to “Pashtun traditional tribal *jirga* , local/tribal institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutionalized rituals, and a body of village elders whose collective decision about the resolution of a dispute (or a local problem) is binding on the parties involved. “*Jirga* means 'an assembly, meeting of a party for consultation, and a sort of democratic council.' According to the Pashto Descriptive Dictionary *jirga* is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people; it also means consultation according to this source.”^{xxix}

Structure of a Jirga

For a *jirga* to constitute, there must be

1. At least two parties (p)
2. An unresolved dispute between the parties (d)
3. The parties agree that the dispute needs a solution (r)
4. An arbitrator (selected through consensus of both the parties) (a)

If any of the above variables is absent, a *jirga* cannot be constituted. For example, if variable 'p', 'd', and 'a' are present but the parties don't want an agreement, then the *jirga* would not be constituted. Likewise, in the absence of 'a' no *jirga* can be constituted.^{xxx}

“Under a law, the jurisdiction of the Supreme Court of Pakistan and of the Peshawar High Court has been extended to the former FATA (Federally Administered Tribal Areas), but it appears that either the law is yet to be implemented or it is in the process of implementation. The implementation of the law is of course slow considering the fact that the law came into effect in April 2018. With the enactment of this law not only the Jirga system but also the abominable Frontier Crimes Regulations (FCR) stood abolished. Under the FCR, introduced

by the Britishers in 1872, an entire village or locality was awarded collective punishment for the wrong, whether real or perceived, done by one man or a group of men. Under the Jirga system, a Council of Elders (maliks) acts as jurors. They give decision but a particular government official implements it. A British government official has said he can tell beforehand the decision by simply looking at the composition of the Jirga. The Supreme Court declared the Jirga and Panchayat systems illegal in January this year. It, however, said Jirgas and Panchayats could operate within the permissible limits of the law to the extent of arbitration, mediation or reconciliation forums between parties involved in civil disputes who willingly consented to the same.^{xxxix}

“The jirga system is entirely at odds with Pakistan’s constitution, as well as with the conscience of any human being demanding equality before the law. Jirgas operate on centuries-old codes of honor and their tribal code considers women to be property. It was a jirga that decided in 2002 that Mukhtar Mai was to be gang-raped as recompense for a sexual assault committed by her brother. It was also a jirga that ruled that two teenage lovers, Bakht Jan, 15, and her boyfriend Rehman, 17, were to be electrocuted to death for bringing dishonor to their community.”^{xxxix}

The Jirga is headed by a sardar [tribal chief] or a wadero [landlord] who is unanimously agreed by both warring parties. Each party nominates two or more representatives, commonly known as advisors, to lead their case in the Jirga. The main objective of Jirga is to restore the balance by compensation for damage and not to find truth and punish the perpetrator. For example, if a Jirga is arranged to resolve the case of an HM, the nominated advisors already identify numbers of murders or other damage from each party and announce these in the Jirga. The head of the privately discusses with those advisors and then announces the verdict publicly. Karokari (honour killings) is not considered as a crime by the Jirga but a legitimate action of the man whose family was dishonoured (Participatory Development Initiative) PDI (2005).^{xxxix}

NOTIONAL STRUCTURE OF PATRIARCHY

Honour Killings has roots in patriarchy and it is considered one of the severe manifestations of a patriarchal system (Johnson and Johnson, 2001). Bell Hooks defined patriarchy as 'a socio-political system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence'. According to (Ahmed et al., 2004) patriarchy is an ideological system of ideas and beliefs that rationalise domination of males over females in society.^{xxxiv}

The patriarchal social norms and values refer to customs and practices rooted in the familial social organisation headed by man (Ahmed et al., 2004). The patriarchal social structures give power and authority to male heads of household (Mann, 1986), community, clan and tribe (Wassan, 2012) because male has control on material and social resources (Kulwicki, 2002). This indicates the violence against women is engrained in wider social organisation and patriarchy is a key feature of it (Hunnicut, 2009), in which male decides what is right or wrong and whether or not an action deserves punishment. In order to protect and promote this outdated patriarchal system, men have formed different self-serving tools and institutionalised extremely restrictive codes of behaviour for females (Moghadam, 1992) such as gender-based arrangements to restrict women's mobility, speech and sexuality, specific forms of family and kinship, exchange marriages, Jirga (council), and a powerful ideology linking family honour to female virtue, which provide pretext for killing a female in the name of so-called honour.^{xxxv}

These all devices created and managed by men to treat women as objects (Nussbaum, 1995) to use for their own purposes. Hence, if a women's behaviour or action is seen to threaten the patriarchal order, then she is punished and that punishment could be her murder. Many parts of Pakistan, in particular upper Sindh, are stalled with the interplay between feudal, tribal and patriarchal values governing all aspects of the lives of women and treating them as objects. The customs, traditions and practices are often an expression of these values; women are treated as objects, used for one's own purpose such as provided as compensation to enemy to settle disputes, sold, bought, exchanged, damaged and killed.

This objectification is further manifested in the form of association of females to the honour of men, family and community. In the South Asian region, there is a well-known proverb zan, zar, zameen (woman, wealth and land) and it is generally believed that the honour of a man is associated to these three 'things'. These things can become a bone of contention and a man can kill or to be killed for them. Women are placed in this trio with two others 'objects', wealth and land; so, by association, women are considered as objects like wealth and land. In the case of HMs, the female body is considered as an 'object', which holds family honour, when that body is seen to a threat to so-called honour then it is punished with beating, burning, sexually abuse and murder.^{xxxvi}

CONCLUSION

Both the neighbouring countries India and Pakistan, are quite different from each other. May be there are cultural, linguistic or ethnic differences, yet both the countries lack skewness when it comes to either killings in the name of honour or establishing pseudo-judicial bodies for the adjudication of honour-based disputes. In India, the unjustified guardian known as Khap Panchayats takes the lead when it comes to deciding the fate of couples who are deeply in love and wish to marry a person of their own choice. They pass diabolic judgements ad diktats which does not fit into any body's sane state. Marrying outside the caste or clan is considered a primary reason to attract the wrath of the Khap. However, lack of education, infidelity, opting for divorce, wearing western clothes, giving birth to a girl child, victims of rape, homosexuality are amongst other reasons which also take a major share in deciding against them.

But India has taken a giant leap when the Bench consisting of Justice Dipak Misra, Justice D.Y. Chandrachud and Justice A.M. Khanwilkar decided on the writ petition filed by an NGO Shakti Vahini and laid down guidelines for combating honour crimes. The petitioner was authorized by the National Commission for Women vide an order passed on 22nd December 2009 to take survey on Honour based killings in Haryana and Western Uttar Pradesh. This writ petition turned out to be a ray of hope for the couples willing to marry the partner of their choice. The Supreme Court directed all the State and Central Governments to establish special cells that could serve as an immediate shelter for the couples those who eloped to marry with their own

choice. Furthermore, the preventive, remedial and punitive steps as directed by the apex Court should be stringently adopted by all the states in letter and spirit which might enable to serve as deterrence for the country. It also directed issuance of writ of mandamus to the State Governments to launch prosecutions in each case of honour killing and take appropriate measures to combat honour crimes.

In case of Pakistan, which is still considered as an underdeveloped economy, has showed dynamism in combating honour killings. It has amended its Penal Code and has included honour killing as a distinct offence. The area where India lacks is here as it has not yet included the concept of honour killings in the Indian Penal Code and also is reluctant to do so. It is advocated that the cases related to honour killings should be dealt under Section 300 of IPC that deal with Murder and the perpetrator would be punished under Section 302 of IPC. The Ministry of Home Affairs and Ministry of Women and Child Development urged to include it under a different section vide an affidavit but no effect to the cause has been seen and it is still under consideration.

In the year 1990, Pakistan amended the Penal Code of 1860 and inserted three elements of Islamic law: *wali* which means heirs of the victim, *qisas* which means retaliation or punishment and *diyat* which means forgiveness, into the Penal Code. The effect of these amendments was to enable men to kill wives, sisters and daughters to reinstate what they believed to be lost honour, avoiding punishment for their crimes at the same time.

In case of intentional murder, *wali* has the power to “voluntarily and without duress, waive the right of *qisas* (punishment for causing bodily injuries or a death)” and any *wali* who has chosen not to prosecute the offender is entitled to *diyat* (compensation payable to the heirs of the victim by the offender). Article 306 of the Penal Code stated that a wilful murder would not be punished when an offender causes the death of his child or grandchild, when the legal heir of the victim is a direct descendant. This meant that the murder of an individual who is a “direct descendant” of the offender, was left unpunished. For instance, in the case of a wife who had been killed by her husband, the offender was exempt from *qisas* (punishment) if the couple has children since the child as “heir of the victim,” would be a direct descendant of the husband.^{xxxvii}

The Penal Code also provided a right to the legal heir of the victim to pardon the offender in exchange for a pecuniary compensation for forgiving the one who has committed the homicide. The exchange of *diyat* for a pardon was usually used by family members to pardon offenders who had killed their sisters, wives or mothers.

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

Only advocating stringent guidelines without proper monitoring of the rules laid down will not suffice such a diabolic conduct of the community headman and the pseudo-guardians of honour. To combat honour killings and putting an end to the menace will effect from proper implementation and monitoring of the rules, amendments and contemporary procedures adopted.

REFERENCES

-
- ⁱ Jane F. Gardner, *Women in Roman law and society* (Bloomington, IN: Indiana University Press, 1986).
- ⁱⁱ William Blackstone, *Commentaries on the Laws of England, 1765- 1769, Book Four, Public Wrongs*, (Oxford, Clarendon Press, 1769, reprinted by Wildy & Sons Ltd., London, 1966): 181.
- ⁱⁱⁱ Available at <https://herald.dawn.com/news/1153470> (Accessed on 12th June 2018)
- ^{iv} Available at <http://www.romeacrosseurope.com/?p=4300#sthash.4leAkc7H.dpbs> (Accessed on 11th September 2018 at 09:18 PM)
- ^v Abu-Odeh, 293 and 306
- ^{vi} Sharon K. Araji, "Crimes of Honour and Shame: Violence against Women in Western and Non-Western Societies," *The Red Feather Journal of Postmodern Criminology* (2000): 5.
- ^{vii} *Ibid*
- ^{viii} Available at : <https://tribune.com.pk/story/597423/karo-kari-a-deep-rooted-norm-hard-to-get-rid-of/> , Accessed on 16th September 2019
- ^{ix} Patel, S., & Gadit, A. M. (2008). Karo-Kari: A Form of Honour Killing in Pakistan. *Transcultural Psychiatry*, 45(4), 683–694.
- ^x Coomaraswamy, Radhika (2006), "Preface: Violence against women and crimes of honour" in Welchman, Lynn and Hossain, Sara (Eds.) *Honour: Crimes Paradigms and Violence against Women*, Zed Books Ltd., New York, pp. xi.
- ^{xi} Arun Pal, "Honour Killing: Culture, Dilemma and Ritual" 1st Edn, 2012, Arise Publisher & Distributor, New Delhi, p.122.

- xii Kanika Sharma, “Understanding the concept of Honour Killing within the Social paradigm: Theoretical Perspectives’ IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue 9, Ver. 8 (Sep. 2016) PP 27.
- xiii Prem Chowdhry, “Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India” 2006.
- xiv Amnesty International. *Pakistan: Violence against women in the name of honour*, AI Index: ASA 33/17/99 (1999).
- xv Available at www.manupatra.com/roundup/337/Articles/Honour%20Killing.pdf. Viewed on 5/6/2019 at 7.55 a.m.
- xvi Arun Pal, “Honour Killing: Culture, Dilemma and Ritual” 1st Edn, 2012, Arise Publisher & Distributor, New Delhi, p.225.
- xvii Thousands of Women Killed for Family "Honor" Hillary Mayell for National Geographic News, February 12, 2002
- xviii Marsha Freeman, “Director of International Women's Rights Action Watch, Hubert Humphrey Institute of Public Affairs, University of Minnesota.
- xix Kachhwaha, Kavita, Khap Adjudication in India: Honouring the Culture with Crimes, International Journal of Criminal Justice Sciences, Vol 6 Issue 1 & 2 January- June / July – December 2011 (Combined Issue), p.298
- xx Singh, Ranbir, The Need to Tame Khap Panchayats, Economic and Political weekly p 17, Vol XLV No 21
- xxi *Ibid*
- xxii *Ibid*
- xxiii Available at <http://www.sacw.net/article7437.html> Accessed on 26th June 2019 at 14:25 hrs
- xxiv a code of silence about criminal activity and a refusal to give evidence to the police.
- xxv See : <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/The-injustice-of-justice/articleshow/29385084.cms> Accessed on 30th April 2018 at 02.13 AM.
- xxvi See : https://shodhganga.inflibnet.ac.in/bitstream/10603/184482/7/07_chapter%202.pdf, Accessed on 21st June 2019
- xxvii Suraj Bhan Bhardwaj, —Myth and Reality of the Khap Panchayats: a Historical Analysis of the Panchayat and Khap Panchayat, Available at <http://sih.sagepub.com/content/28/1/43>
- xxviii The Horrors Behind The Jirga System In Pakistan, Mangobaaz <<https://www.mangobaaz.com/jirga-system-in-pakistan>> accessed on 23rd August 2019.
- xxix Pakistan Journal of Criminology Volume 5, No. 2, July-Dec 2013, pp. 45 - 60 45 Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution
- xxx Supra Note 30
- xxxi See : <https://tribune.com.pk/story/1910652/6-terminate-jirga-system/>, accessed on 14th November 2018
- xxxii See : <https://thediplomat.com/2018/01/pakistans-jirgas-and-womens-rights/>, Accessed on 21st June 2019
- xxxiii *Ibid*.
- xxxiv Honour killings in Pakistan under killings in Pakistan under killings in Pakistan under Theoretical, Legal and Religious Perspectives Theoretical, Legal and Religious Perspectives heoretical, Legal and Religious Perspectives, Department of Global Political Studies <<https://pdfs.semanticscholar.org/614d/b7bd3d7981005f54228348b9b467c543224a.pdf>> accessed on 23rd August 2019.
- xxxv *Ibid*.
- xxxvi karokari : the murder of honour in sindh pakistan : an ethnographic study, Sheffield hallam university, International Journal of Asian Social Science, 2013, 3(7):1467-1484 , Available at : <http://shura.shu.ac.uk/7287/1/karo_kari_the_murder_of_honour_in_sindh_pakistan_an_ethnographic_study.pdf> accessed on 23rd august 2019.
- xxxvii Paul Hanley, ‘Girls in the river: Pakistan’s struggle to End Honour Killings’ (International Policy Digest, 19 Sep 2018) <<https://intpolicydigest.org/2018/09/19/girls-in-the-river-pakistan-s-struggle-to-end-honour-killings/>> accessed 23 August 2019.
- xxxviii Hannah Irfan, ‘Honour related violence against women in Pakistan’ (2008) WJF <http://www.abf-sociolegal.org/uploads/cms/documents/hannah_ifran_crimes_of_honour_and_a2j.doc> accessed 23 August, 2019.