YOUTH GENERAL ASSEMBLY

CRIMES IN THE NAME OF HONOUR

STATUTORY REVIEW

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CRIMES IN THE NAME OF HONOUR AND HONOUR CRIME

> "There was no honor in war, less in killing, and none in dying. But there was true dignity in how men comported themselves in battle. And there was always honor to be found in standing for a just cause and defending the defenseless."
>
> **-Michael Scott**

1. Background

Honour crimes are the crimes that are committed against a person, with licensed permission under patriarchal terrorism[1] to protect the honour of family or a person which is at stake due to any act of an individual which risks the honour assosciated with the name of family.[2] Let's rephrase the definition to picture a story, honour crimes are defined as a crime committed to protect honour by killing, abusing, harassing, and threatening someone, meaning thereby "*honour in committing a crime against someone.*" The moral to this visualization scenario is deep-rooted in finding an answer to the dilemma of whether there is any protection of honour or if the prestige of family resides in killing someone? and isn't this ironic how honour and killing are put together despite the fact that they provoke nothing but terror and fear?[3]

The root cause of honour crime is the so-called justification by different societies under the banner of *haya*[4] by assuming that the murder was necessary in order to wipe away the dishonuor from their family.[5] This violence is mainly gender-based and targets women specifically. Honour crimes are mostly the type of gender-based violence that stem and are motivated by "the belief that a woman's value lies in her sexual modesty and "purity."[6] In communities and societies where this belief is considered to be an ethical norm and therefore becomes a widespread norm to practice these values, then a transgression of that "purity" is regarded to bring disgrace upon a family's name and haya of their women's. Subsequently, the ghairat[7] of the men granted them the right

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[1] Johnson MP, *"Patriarchal terrorism and common couple violence: Two forms of violence against women"*, Journal of Marriage & the Family. 1995;57:283–294, "The patriarchal terrorism literature suggests that such men utilize violence as part of a broader context of controlling the other's women behavior."

[2] Syeda Romaiza Ibad, *"Honor Killing of Women in Pakistan,"* 17-03-2017; "It is shocking how people living in various countries are carrying out such practices, letting the blood of innocent victims spread around like venom only to maintain their virtue."

[3] *Id*; "It is ironic how honor and killing have been put together as they evoke nothing but a sense of terror and fear within a person."

[4] Shyness and a sense of modesty

[5] Lynn Welchman and Sara Hossain (ed.), "Honour": Crimes, Paradigms, and Violence Against Women (Zed Books 2005) **["Lynn: Honours"];** *Ibid*.

[6] Daniele Selby, "*9 People Brutally Killed in Pakistan in Alleged 'Honor Killing*" July 1, 2019, online: <https://www.globalcitizen.org/en/content/pakistan-honor-killing-nine-people/> [last accessed 27.03.2022] [**"Daniele: Alleged 'Honor Killing"**]

[7] Tahir H. Wasti, "The Law on Honour Killing: A British Innovation in the Criminal Law of the Indian Subcontinent and its Subsequent Metamorphosis under Pakistan Penal Code" A Research Journal of South Asian Studies Vol. 25, No. 2, July-December 2010, pp. 361-411, "Ghiarat is an Arabic word which means honour, shame, modesty and

with the responsibility to come up with the major decision for finding a logical approach to restore the honour they lose when their women defile it.[8] Their research which mainly based on unequal social, and cultural structures resulted the logical outcome for restoring this "honour" through acts of violence.[9] Their so-called logical approach gives birth to social aberration which is called "*Crimes in the name of Honour.*"

Honour crimes are a widespread form of crime worldwide, and their ramifications are deep, therefore refuting the myth or assumption that honour killings are less serious and painful than murder. It is a worldwide issue, and should not be regarded as an isolated random crime against a particular individual, but as a crime against an individual to scare a wider group of people, in accordance with all acts of gender-based violence. Incidents occurred,[10] but they were unreported because of legislative lapse, thereby victims believed it to be their fault. Thus, despite the failure of society to admit the presence of honour crimes, it is still a common practice. This common practice emphasizes creating a way forward to explore that isn't allowing honour crime for the sake of family honour, effectively means that human dignity can be accorded lesser value in the case of a woman when she is a family member?

Historically, the law has entrenched the notion of women as the property of men, first of their fathers or brothers and then of their husbands."[11] This, however, is also evident[12] from "rape laws which were initially legislated to defend the property of a men from other men rather than to protect the rights of women."[13] This ideology is similarly supported in honour crime cases where a valid justification for these acts of barbarism[14] is a claim that the victim has brought dishonour to the

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indignation. The word is also used in Urdu and Punjabi as well in all of these meanings but in an exaggerated form. For the sake of clarity, throughout this article, we shall use the word in its meaning of honour and shame only." [**"A British Innovation in the Criminal Law of the Indian Subcontinent"**]

[8] UN GA res 55/66, Working towards the elimination of crimes against women committed in the name of honour, Dec. 2000, UN doc. A/RES/55/66; UN GA res 57/179, Working towards the elimination of crimes against women committed in the names of honour, 18 Dec. A/RES/57/179.

[9] *Daniele: Alleged 'Honor Killing,* supre note 3

[10] *A daughter killed by her family – a story of love and 'honor*': Zohra Yusuf, the former chairperson of the non-governmental Human Rights Commission of Pakistan (HRCP), told DW that "Rights activists say it is difficult to determine the exact number of "honor killing" victims. Most of these cases go unreported, and in some cases, police do not allow an autopsy, thus making it easier for the family to pass it off as a "natural death." online: <https://www.dw.com/en/a-daughter-killed-by-her-family-a-story-of-love-and-honor/a-46362212 > Last accessd on 08 April 2022.

[11] Fleur Norton, "*The Role of Law in Confronting Marital Rape: A Case Study of Ghana*", University of Ghana, Legon 30 October 2009, [**"F. Norton"**] p.1; Diana E.H. Russell, "Rape in Marriage (1983) 358 (Appendix IH provides an updated state-by-state analysis of what the marital rape exemption law is in every state)"; Miller, Brenda A., William Downs, and Maria Testa, *"Women and Health"*, 2000, [**"Women and Health"**] p.70–72.

[12] *Fleur Norton*, p.1,

[13] *F.Norton*, p.1; RK Bergen, *"Wife rape: understanding the responses of survivors and service providers"* (1996), p.3; *Women and Health*, p.70 "The rape penalty was meant to dissuade men from undermining the value of another man's property, which led to the husband not being to charged with a criminal offense for his wife's rape as he is considered as an owner of the property."

[14] Aleena Khan, *"Honour' Killings in Pakistan: Judicial and Legal Treatment of the Crime: A Feminist Perspective"*, Sheikh Ahmad Hassan School of Law, Volume 7, online: <https://sahsol.lums.edu.pk/law-

family prestige or name by their actions.[15] In patriarchal societies, this justification for crimes in the name of honour is mostly based on a socially created responsibility and belief that men as protectors of women's sexuality[16] have the authority to control and discipline females, by monitoring the actions of girls and women to safeguard family values and social order.[17] If this phenomenon of honour crimes is considered on a broad canvas of complex religious, cultural, and social frameworks, then it is adequate to validly assume that our values blame the victim for violence by creating a story titled "woman honoured as a queen with the nourishing power of the family honour." This narrative is fit in the context of phrasing which Shakespeare is right in saying that "*heavy is the head that wears the crown."*[18]

This jurisprudence of the social behavioral code of good women creates a principle without any groundwork for equality and justice, namely, that the woman bears the burden of honour for the entire family. This approach is considered more practical for them when it comes to honour crimes, and therefore the deviance from any such principle and standards that are established and controlled by males in such a patriarchal system is interpreted as women misbehaving and undermining men's authority and social order, therefore liable to punishment. This sadistic pleasure is based upon the underlying philosophy of patriarchal society that unfortunately promotes a vision to kill or assault their own blood relatives simply because women are considered as the property of men in families.[19] Ideally, for them that notion of "women as a property of men" implies that she gives implied consent for everything, including men's control over every aspect of her life, even if she is unwilling to do something. However, in Pakistan, legally speaking the question to this vision was not answered in the affirmative.

2. Honour Killing Laws in Pakistan

Pakistan went a step further to criminalize that sadistic pleasure by defining the honour crimes as an "offence committed in the name or on the pretext of honour" under section 299 of the Pakistan Penal Code, 1860 (hereinafter the **"PPC"**)[20] by the Criminal Law (Amendment) Act of 2004 (hereinafter the **"Act of 2004"**). The Act of 2004 and the Criminal (Amendment) Act 2016

journal/%E2%80%98honour%E2%80%99-killings-pakistan-judicial-and-legal-treatment-crime-feminist-perspective > [**"Aleena: Judicial and Legal Treatment of the Crime"**]

[15] J. Douglas Dailey, "*Honor killing*" Online: <https://www.britannica.com/topic/patriarchy>

[16] Lynn Welchman and Sara Hossain (ed.), "Honour": Crimes, Paradigms, and Violence Against Women (Zed Books 2005).

[17] *Aleena: Judicial and Legal Treatment of the Crime*

[18] "The Shakespeare quote 'uneasy is the head that wears a crown' is from Henry IV Part 2 is often now phrased as 'heavy is the head the wears the crown" online: <https://nosweatshakespeare.com/quotes/famous/heavy-is-the-head-that-wears-the-crown/ >

[19] Malin Paulusson, *'Why Honor is Worth More Than a Life'* (Diva-portal) Online: <http://www.diva-portal.se/smash/get/diva2:830956/FULLTEXT01.pdf;jsessionid=wra6K3PeHmV8l7KkAHZj> accessed 06 April 2022.

[20] *Pakistan: Penal Code* [Pakistan], Act No. XLV, 6 October 1860, https://www.refworld.org/docid/485231942.html [last accessed 11/06/2021], [**"PPC"**].

(hereinafter as the **"Act of 2016"**)[21] was specifically intended to address honour killings, and particularly killings were made illegal by Parliament. The Act of 2004 made various amendments to the Code of Criminal Procedure, 1898 (hereinafter the **"Cr.P.C"**)[22] and the PPC, including killings on the pretext of honour under the category of qatl-i-amd.

2.1 Historical Existence of the Honour Killing Laws: The Gul Hassan Khan Case and the Qisas and Diyat Ordinance 1990

The initial laws on honour killing in Pakistan had their historical existence during the British colonial rule. In 1835, the law commission was established by the British to examine and deal with the issue of honour killings.[23] This commission was lenient toward males and target the women, subsequently, concluded its observations that if the family's honour was tarnished by the women, the benefit of sympathy goes to the men who killed under provocation, and hence such killings should not be defined as murder but rather as manslaughter.[24] These laws, together with culture predominantly against women, also justify this heinous crime in Pakistan under the exact term used in British law which is commonly named the plea of "grave and sudden provocation."[25] The criminal justice system further contributes to this leniency towards the perpetrators of honour crimes in the decision of the Gul Hassan Khan v the Government of Pakistan.[26] This was the first case in which one of the Shariat benches in the country,[27] the Shariat Bench of the Peshawar High Court declared several sections, including penalties that dealt with offences against the human body under chapter XVI of the PPC are repugnant to Islamic injunctions for not incorporating the Islamic principles of qisas and diyah. The Supreme Court of Pakistan held that sections 299 to 338 of the PPC, with respect to offence against the human body, are un-Islamic for a reason that they do not provide for a right to compromise on decided compensation that may be agreed upon between the parties and pardon by the victim in case of hurt and murder. Following this decision, the process of incorporating qisas and diyat provisions started in 1990 which resulted in the promulgation of the Criminal Law (Second Amendment) Ordinance of 1990.[28] However, Aleena

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[21]Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 [**"The Criminal (Amendment) Act 2016"**]

[22] Code of Civil Procedure, 1908. ACT. NO. V. OF. 1908. [21st March 1908] [**"Code of Civil Procedure, 1908"**]

[23] *Judicial and Legal Treatment of the Crime*, supra note 10.

[24]Paul Henley, 'Girls in the River: Pakistan's Struggle to End Honour Killing' (intpolicydigest) online: <https://intpolicydigest.org/girls-in-the-river-pakistan-s-struggle-to-end-honour-killings> accessed April 2022

[25]Gaurav Dhiman, *"What are the Ingredients of Grave and Sudden Provocation?"*, online: <https://www.shareyouressays.com/knowledge/what-are-the-ingredients-of-grave-and-sudden-provocation/120077 > [Last accessed 11.April.2022], "The ground of "grave and sudden provocation" the following facts must be proved (1) that the accused received provocation; (2) that the provocation was (a) grave, and (b) sudden; (3) that he was deprived by the provocation of his power of self-control; (4) that while thus deprived of his power of self-control and before he could cool down he caused the death of the person who gave him the provocation."

[26] Gul Hassan Khan v Government of Pakistan, PLD 1989 SC 633 [**"PLD 1989 SC 633"**]

[27]*Judicial and Legal Treatment of the Crime*, supra note 10 "Shariat judicial courts and court benches were estbalished in Zia ul Haq's regime as a part of his islamization process to judge legal cases using Islamic doctrine."

[28]Criminal Law (Second Amendment) Ordinance of 1990. The relevant sections of the P.P.C, specifically ss. 299-338, have been amended."

Khan[29] rightly noted that these "qisas and diyat laws have become powerful means for the offenders to commit honour killings and then go scot-free."[30]

2.1.1 The Concept of Qisas and Diyat: First Anomaly in Honour Killing Laws

To critically evaluate the effect of Gul Hassan Khan judgment[31] in facilitating the honour killing, it is important to expound upon the concept of qisas and diyat laws. The Islamic law of qisas and diyat is based and justifiable in light of "equal retribution and compensation."[32] However, notwithstanding the structural parcel of the quranic notion of justice by the qisas and diyat,[33] these laws are problematic in the cases of honour crimes by implementing three important factors of Islamic law in society. Specifically, "the concept of the wali (always male heir; brother, or father of the victim), the law of qisas (retaliation/punishment) and diyat (blood money/forgiveness)" in the PPC.[34] The cultural fabric and sociological system of norms with qisas and diyat laws mutually work together to obstruct the provision to access justice for women,[35] thereby leading to a miscarriage of justice for victims of honour killings on two grounds. Firstly, the choice of the prosecution that qisas and diyat laws essentially placed in the hands of the wali. As per section 305 of the PPC, in the case of a qatl, a wali as defined under section 299(m) of the PPC "*a person entitled to claim qisas*" shall be the heirs of the victim, according to his personal law; and the government, if there is no heir. This concept of wali is problematic in the case of honour killing because of the authority that he holds under section 309 of PPC. Section 309 of PPC allows a sane wali of the victim to either waive his/her right of qisas which under section 302(a) of PPC is punishable with the death penalty and to compound the offense under section 310 of PPC on accepting or in exchange for compensation badl-i-sulh, except that "*a female shall not be given in marriage or otherwise in badl-i-sulh.*" Furthermore, as per section 338-E of the PPC, all offenses related to bodily offenses under Chapter XVI of the PPC "may be waived or compounded and the provisions of sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences." Last and most importantly, these sections must be read in conjunction with section 345 of the Cr.P.C, which provides that qatl-i-amd may only be compounded by "the heirs of the victims other than the accused or the convict if the offence has been committed by him in

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[29] An Advocate of the High Court, B.A. LL.B from LUMS, and an LLM from the University of London. She holds a Postgraduate Certificate in Law and Development and a Postgraduate Diploma in Human Rights Law from the University of London.

[30] *Judicial and Legal Treatment of the Crime*

[31] PLD 1989 SC 633

[32] Sameera Rashid, "*Qisas and Diyat laws: a haven for honour killings*", April 25, 2016, online: <https://dailytimes.com.pk/86758/qisas-and-diyat-laws-a-haven-for-honour-killings/ > last accessed 07.04.2022

[33] Id "The basic principle of justice in Islamic laws as well as secular laws is proportionality or equal treatment: scales of justice should have balance. So, the principle of Qisas: an eye for eye, nose for nose and tooth for tooth, wound for wound; and Diyat compensation for the victim or the heirs of the victim has been enjoined in the Holy Quran. Many Islamic jurists opine that the rationale behind making Diyat part of Islamic model of justice had been to end a cycle of violence and vendetta that could be perpetuated by the retributive model of justice."

[34] *Paul Hanley: Girls in the River*

[35] Mahum Nazar, *"The analysis of honor killings in Pakistan and how it is related to the notion of "what will other people say?"*, Binghamton University--SUNY, Spring 5-2020.

the name or on the pretext of karo kari, siyah kari or similar other customs or practices." To forgive or forgo the killer by waiving/compounding of offence committed under the pretext of 'Honour' by following this legal structure of laws make this idea of wali more problematic. The reason is simple, a man who kills another family member in order to redeem family honour does so with the consent of the victim's next kin, and these heirs usually forgive the murderers. Aleena Khan rightly noted that "honour' killings are committed by the family members of a victim; hence the compounding of the offense by the other family members is inevitable. Hence, the law is assisting and encouraging potential offenders, rather than deterring them from committing 'honour' killings."[36] These laws also witness the failure of the philosophy named "rule of law" by non-legislative social norms and also rejects the notion of social contract theory[37] by limiting the role of the state as a non-entity to protect the life and liberty of people by promoting social construction of "privatization of legal process and justice." In an Amnesty International Delegation, while giving a summation of the "legal hurdles to prosecution in honour killings" Hina Jilani made the statement[38] that *"In karo-kari cases there is no aggrieved party to pursue the case, society as a whole approves of the killing... If a brother kills his sister on the ground of honour, her guardian, her father[,] can forgive his son."*[39] Meaning thereby is poetically writed down by a judge in the case of State v. Oliver, as *"it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."*[40] If maintaining this legal cover, the law on point is considered to make it encouragement for perpetrators and murderers of 'honour' killings to accomplish or escape punishment merely by other means because at the end the wali has the authority to waive/compound the offence in view of the aforementioned section. These laws operate in practice and the example to fit the point is the Samia Sarwar case,[41] where her brother, who had authority as a wali, compounded her murder committed by her own parents. The opinion of Supreme Court lawyer, Jilani[42] who deals with the issue of honour killings is worth quoting here that; "*the law really facilitates such killings. Killings arc private offences, against the individual, nor the state, so who will bring and pursue the charges of murder? If the father or brother kills a woman, the family of the girl will not pursue the case, as in their eyes no wrong has been done ... There is no chance of bringing the killer to book ... The prosecution case collapses on almost all the scenarios of an honour killing."*

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[36] *Aleena Khan, Judicial and Legal Treatment of the Crime,* p.80

[37] Contemporary Approaches to the Social Contract, First published Sun Mar 3, 1996; substantive revision Mon Sep 27, 2021, "The aim of a social contract theory is to show that members of some society have reason to endorse and comply with the fundamental social rules, laws, institutions, and/or principles of that society."

[38] Amnesty Int'l, Pakistan: Violence Against Women in the Name of Honour, AI Index ASA 33/017/1999, at 50 (Sept. 22, 1999).

[39] *Id*

[40] State v. Oliver, 70 N.C. 60, 62 (1874)

[41] The State vs. Muhammad Youna; Quoted in a study research report conducted on Qisas and Diyat laws by the National Commission on the Status of Women <http://www.ncsw.gov.pk/previewpublication/2>; The Human Rights Actions Network, "Pakistan: Feared impunity in case of murdered woman" Violence Against Women, Case PAK 120499.1.VAW, Follow-up Case PAK 120499.VAW, Geneva, June 30 1999

[42] Supreme Court lawyer Jilani (personal communication, 15 April 2003).

2.1.2 Judicial Discretion: Second Anomaly in Honour Killing Laws

However, now moving forward, section 338F of the PPC leads to a second anomaly which is the judicial discretion. According to this section "the interpretation and application of the provisions of this Chapter, and in respect of matters ancillary or akin thereto, the court shall be guided by the injunction of Islam as laid down in the Holy Qur'an and Sunnah." Under qisas and diyat laws, the tradition of considering threats to honour and provocation as mitigating factors in honour murders still continues, and by this section without establishing any parameters in law for interpreting Islamic injunctions, the judges were confirmed with the broad discretionary powers to decide in cases of offenses against the human body, and the right to qisas and diyat in respect of the same. It is hardly surprising that, in traditional Islamic law, honour crime, as a concept of a criminal offense, is quite unknown in society. However, it is not peculiar to argue that the guiding principles and law in the Quran is not merely an enactment but their essence lies in the way it is implemented, unfolded, and interpreted by the believers. The biased role of people towards women while interpreting the verses to establish that killing in the name of honour that looks abnormal is in religious effect normal encouraged for this cultural practice of sadistic pleasure to be tolerated rather than challenged. Jamal A. Badawi validly stated that *"any excess, cruelty, family violence, or abuse committed by any Muslim can never be traced, honestly, to any revelatory text (Quran or Hadith). Such excesses and violations are to be blamed on the person(s) himself, as it shows that they are paying lip service to Islamic teachings and injunctions and failing to follow the true Sunnah of the Prophet (PBUH)."*[43] The case of Ghulam Yasin v the State[44] is a fit practical example of authority to cite the nature and legal implications of self-presumed interpretation of Islamic principles. In this case, it was admitted by the judges that there is a lapse in the present law that does not distinguish between murder on account of ghairat and others that are not, and there is no guidance available under the new law for the same. Therefore, the courts were bound to take notice of Islamic injunctions (from Quran and Sunnah) with regards to honour killing in accordance with section 338-F of the PPC which provides that in the interpretation of Chapter XVI of the PPC, the court should take guidance from the Quran and Sunnah. Then the court cited a hadith from Sahih Bokhari,[45] and in view of these sayings of the Holy Prophet (PBUH) the court interpreted it in such a way that it was observed: "... it is obvious that a Qatl committed on account of Ghairat is not the same thing as Qatl-e-amd pure and simple and the persons found guilty of Qatl committed on account of Ghairat do deserve concession which must be given to them." With that being discussed, it was rightly argued by Tahir H. Wasti that *"the use of hadith literature even in this case again seems very erratic. The judge did not compare these sayings with the others that*

[43] Jamal A. Badawi is an "Egyptian-Canadian author, preacher and speaker on Islam."

[44] Ghulam Yasin v The State PLD 1994 Lah. 392.

[45] I.E: Abu Hurrira said that he heard God's messenger saying, 'if any one were to look into your house without receiving your permission and you were to throw a pebble at him and put out his eye, you would be guilty of no offence (Bukhari and Muslim); Sahl bin Sa'ad said that a man looked through a hole in God's messenger's door when God's messenger had a spike with which he was scratching his head, so he said, 'if I knew that you were seeing me I would poke it in your eyes, for asking permission has been appointed only on account of what people may see.' (Bukhari and Muslim).

deal with the rules of procedure of trial and evidence in cases of homicide and murder. No effort was made to explore the authenticity of the material cited before the court. The court did not ask the accused to prove his plea according to the injunctions of Islam."

2.2 The Acts of 2004 and 2016

This all follows up to the need in a country for reconsidering the contravene socio-cultural norms, and the quintessence of private matters read together with Islamic injunctions. The desire to map a difference between fact and opinion on the issue of honour crimes triggered the Act of 2004 and the Act of 2016 from state institutions. The Act of 2004 and the Act of 2016 were made specifically as legal responses to sexual violence that deal with 'honour' killings in Pakistan. In detailing the reasons for the new law, Senator Farhatullah Babar stated: "Honour killings are common throughout Pakistan, claiming the lives of hundreds of victims every year." According to Aurat Foundation's statistics, 432 women were reportedly killed in the name of honour in 2012, 705 in 2011, 557 in 2010, 604 in 2009, and 475 in 2008. These figures do not include unreported cases or, indeed, the number of men who are often killed alongside women in the name of honour. Addressing the loopholes and lacunae in the existing law is essential in order to prevent these crimes from being repeatedly committed."[46] Following this, a few of the most significant changes brought by the Act of 2004 will now be briefly examined.

The Act of 2004 defined honour crimes as *"offence[s] committed in the name or on the pretext of honour means an offence committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices."* It further states that the offense of qatl-i-amd committed on the pretext of honour will fall under section 302(a) and (b) of the PPC, as the case may be, and will not ipso facto fall under section 302(c) of the PPC. Moreover, the Act of 2004 under section 305 of the PPC, also laid down that the accused or convict will not act as the wali of a victim, but that the state may do so if necessary. Further, under section 311 of the PPC, it was stated that in cases where there is more than one wali and all of them refuse to waive or compound the right of qisas, or when the principle of causing fasad-fil-arz, the court may punish a perpetrator against whom the right of qisas has been waived or compounded, as well as impose a minimum sentence of ten years in the case of honour crimes. Also, under section 337-N (2) of the PPC, it was further laid down that in the cases of hurt where qisas will not be enforced, the court, coupled with arsh (compensation for hurt), may impose a tazir punishment, particularly if the crime is an honour crime. In addition, the court under the second proviso of section 338-E of the PPC has made the

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46 Senate approves criminal laws, Privatisation Commission amendment bills, International The News, March 03, 2015,Online:<https://www.thenews.com.pk/print/11184-senate-approves-criminal-laws-privatisation-commission-amendment-bills >, Last accessed 07.April.2022; Shehryar Khan, *"The Role of Qisas and Diyat in Facilatating Honour Killings"* [Last accsessed, 08.April.2022]

waiver and/or compoundability of honour crimes subject to conditions as the court deems fit according to the facts and circumstances of the case.

The passage of the Act of 2004, and thereby criminalization of honour crimes in Pakistan is a necessary step taken by the government,[47] but there are insufficient means to address the root cause of the problem in honour crime cases that causes the continuation of these deadly cultural practices in name of honour. Pakistan's Interior Ministry reports that *"honour killings continue to occur because qisas and diyat laws allow the perpetrators of these crimes to go unpunished, and since 2001 there have been more than 4,100 honour killings."*[48] Also, according to the Human Rights Commission of Pakistan, approximately 15222 cases of honour killing took place from 2004 to 2016.[49] In 2014, the number was 837 women including 75 minors."[50] Backing the mentioned surveys, this Act of 2004, therefore, failed to counter the statutory reprieves for family members who carry out honour killings.[51] The Act of 2004 is ineffective in dealing with the problem and providing redress to victims of honour killings for the reason being that certain key sections were left out of the final draft of the aforementioned the Act of 2004, which is now being laid out.[52] For instance, in situations of honour crimes, sections related to waiver and the compoundability of the right of qisas were retained intact by the drafters, thereby allowing for parties to reach a compromise, which is inevitable because honour crimes are frequently perpetrated by family members. The law not only catalyze discriminatory cultural practices that pattern the value of a woman's life in the hands of her family members, but also the compoundability or waiver of offences concerning murder or bodily hurt were determined depending on the court's satisfaction. Considering the matter, Stephanie Palo's view is important to mention, that suggests "since 1999, several amendments to PPC, particularly the 2004 amendment and the Protection of Women (Criminal Laws Amendment) Act of 2006,[53] purport to enact effective legislative action to end the honour killings and gender discriminatory legal practices in Pakistan. However, until the Qisas and Diyat Ordinance is removed from the PPC, the perpetrators of honour killings need not fear retribution because many of these crimes are committed by and with the consent of family members.[54] Pakistan must revoke its Qisas and Diyat Ordinance to comply with international

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[47] Miranda Hussain, Comment, Taking the Moral High Ground on Honor, Daily Times: Your Right to Know, A New Voice for a New Pakistan, Oct. 30, 2004, http://www.dailytimes.com.pk/default.asp?page=story_30-10-2004_pg3_5.

[48] Human Rights Watch, World Report 2007: Pakistan, online: <https://www.hrw.org/%20englishwr2k7/docs/2007/01/11/pakist14756.htm > [Last accessed 08.April.2022]

[49] Media monitoring of human rights violations and concerns in Pakistan, HRCP, online: <http://hrcpmonitor.org/ >

[50] http://hrcp-web.org/hrcpweb/wp-content/uploads/2015/09/killings-2014.pdf

[51] Sohail Akbar Warraich, 'Honour Killings' and the Law in Pakistan, in Honour 78, 82- 84 (Lynn Welchman & Sara Hossain eds., Zed Books 2005).

[52] *Judicial and Legal Treatment of the Crime*, supra note 10.

[53] Protection of Women (Criminal Laws Amendment) Act of 2006 (Dec. 1, 2006), online:<http://www.pakistani.org/pakistan/legislation/2006/wpb.html > (last visited April. 08, 2022)

[54] Generally Amnesty Int'l, Pakistan: Honour Killings of Girls and Women, AI Index ASA 33/018/1999 (Sept. 1, 1999).

human rights law, which discourages discrimination against Pakistani women."[55] Moreover, this Act of 2004 is of no help to the victims because the law makes no provision for courts to ensure when they considered an offense to be compounded, so they are left to ensure that it is not an honour crime. To recall, as honour killing is categorized under fasad-fil-arz,[56] and a minimum sentence of ten years as tazir has been provided for the same, this hardly results in any good.[57] This is due to the reason that the act leaves the important aspect which may make all the difference. It does not include in the definition of honour crimes the words "whether committed due to grave and sudden provocation." As a result, in such cases where qisas does not apply, the courts are authorized with discretionary powers to deal the issue with careful leniency and favorability under the plea of grave and sudden provocation. Without going much into the details, to wrap this head, the opinion of Aleena Khan regarding the plea of grave and sudden provocation is worth mentioning, that says *"other people who are usually involved in, or encourage such killings like jirgas, panchayats, and family members, and are thus primarily responsible for perpetuating these practices are not made liable under the law in any capacity."*[58]

2.2.1 Judicial Response and Interpretation of Honour Killing Laws

These lacunas that have been left in the Act of 2004 that stigmatized the social, and cultural norms under the notion of patriarchal nations needs deeper discussion. The critical analysis is required to investigate changes in the attitude of the judicial system in cases of honour killings after the passage of the Act of 2004. Since, as the above discussion indicated the presence of serious loopholes in the law, it did not come as a surprise. However, there could have been other factors for consideration, such as what our case law says about honour killings, how the legislation or relevant sections in the PPC were interpreted by the police, court, and legal community, and what were society's perceptions of the crime and any legal remedies available. Even though in 2016, Pakistani authorities passed a new stricter law to curb honour crimes. But, firstly, there is a need to have a quick look at the judiciary space to interpret the law prior to and after the anti 'honour' killings enactments, so that the new law of 2016 could be analyzed against the defects and loopholes in the Act of 2004. Besides that, a transparent picture of the attitude (if any) in social, legal, and cultural mentalities of people towards the handling of 'honour' killings can likewise be checked distinctly in this manner. Therefore, a pilot study is required on the ground situation to ascertain the level of understanding of the law in judicial dimensions.

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[55]Stephanie Palo, *"A Charade of Change: Qisas and Diyat Ordinance Allows Honour Killing to go Unpunished in Pakistan"* 2.7.2009, online: <https://jilp.law.ucdavis.edu/issues/volume-15-1/Palo.pdf >

[56]*The Criminal (Amendment) Act 2016*, Amendment of section 299, Act XLV of 1860, section 2(ee) "fasad-fil-arz" includes the past conduct of the offender, or whether he has any previous conviction, or the brutal or shocking nanner in which the offence has been committed whi:h is outrageous to the public conscience, or if the offende. is considered a potential danger to the community, or if the offence has been committed in the name or on thr: pretext of honour"

[57] *Aleena: Judicial and Legal Treatment of the Crime*

[58] *Aleena: Judicial and Legal Treatment of the Crime*

i. Pre-Partition Era

In the pre-partition era, when husbands murdered their wives and alleged lovers while accusing or blaming them of adultery,[59] they were given judicial protection under the provision of the grave and sudden provocation without even going into the details and definitions of honour. The further impetus for such leniency has appeared in the case of Emperor v Dinbandhu Ooriya, where the Calcutta High Court held that "it is well-established law that if a husband discovers his wife in the act of adultery and thereupon kills her, he is guilty of manslaughter only and not of murder."[60] Unsurprisingly, this is the order of things that naturally worked at that time. In the pre-partition period, the cases of honour killing were tried under Section 300 of the Indian Penal Code 1860 (hereinafter as the **"IPC"**)[61] devised by the British, however, the section 304(I) further provided for a partial defense of "grave and sudden provocation" to a husband who had killed an adulterous wife, converting the charge of murder into manslaughter.[62] Section 300 of the IPC is reproduced here to define murder at that time as *"except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death…"* However, the definition of murder was subject to the Exception I which provided a defense for sudden provocation in the words *"Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by' grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."* On the issue of the grave and sudden provocation under Exception I, the appellate court in the case of Said Ali v. The Empress[63] reduced the imprisonment to two years and wrote: "it is hard to say that any excess, where the provocation received is of the grave and sudden character disclosed in this case, an entry in the night into the house of the accused, must bring severe retribution. A Pathan with his blood justly roused could hardly be expected to show much moderation. I think myself that when the defence is accepted that a man has justifiably lost self-control and acted in accordance with the natural dictates of human nature when not under the control of reason, severe punishment is not called for: and this is especially true when the offender belongs to one of these frontier races and in taught from his cradle that dishonour to his women-folk calls for immediate and bloody revenge. Though the act done is not by law justifiable, as the offender may have supposed, it is held by the law to some extent excusable; and I think that to a man who in his own estimation is not morally culpable and whose view is shared by most, if not all his neighbors, a sentence of two

[59] Mangal Ganda v Emperor A.I.R 1925 Nagpur 37; Potharaju v Emperor A.I.R 1932 Madras 25(1); and Emperor v Jate Uraon A.I.R 1940 Patna 541 as quoted in 'Judicial Responses on the Issues of Honor Killing in India' (Inflibnet) last accessed 08 April 2022. See also, Emperor v Dinbandhu A.I.R 1930 Calcutta 199 as quoted in Adnan Sattar, 'The Laws of Honour Killing and Rape in Pakistan: Current Status and Future Prospects' (awaz.org.pk) last accessed 08 April 2022.

[60] *Id*

[61] The Indian Penal Code, 1860. ACT NO. 45 OF 1860 1*. [6th October, 1860.] [**"IPC"**]

[62] Section 295 of the original draft of the Indian Penal Code drafted in 1837.

[63] Said Ali v. The Empress (1890:15)

years rigors imprisonment is substantial punishment for an offence committed under circumstances which the law regards as an excuse."[64] The division bench surveyed all of India's case law since the IPC was promulgated in 1860, and found that several High Courts have reduced the penalty of murder to culpable homicide by establishing exception I to section 300 of the IPC. These were situations in which the accused had murdered his wife or her lover or both. Following the discussion, Thair H Wasti briefly wrote on the point that "For the framers of the Indian Penal Code, honour killing was not a cultural issue related to the Indian subcontinent, nor a socio-religious matter that belonged to a particular community or communities living in a particular geographical area but, a universally practiced phenomenon wherein men kill the men who commit adultery with their wives. According to their understanding of the issue, this illicit love causes such a great provocation in the heart of men, *in charge of women*, that if under the influence of such an outrage of their honour or under such sudden heat of passion they kill the woman, or her paramour or the both, they deserve the indulgence of the law. They justified their indulgence in the treatment of the offence, committed in the vindication of honour, not because of showing respect to the law operating in the region earlier, nor in the consideration of the local culture but showed their respect to the universally accepted norms."[65]

ii. Post-Independence Era

In the post-independence period, case laws[66] show that the courts interpret the plea of grave and sudden provocation quite broadly[67] due to the sympathy[68] they had for men whose honour was violated and it was perceived to have tarnished their family's reputation[69] if someone had sex with

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[64] *Id*

[65] *A British Innovation in the Criminal Law of the Indian Subcontinent*

[66] Chiragh v The State 1970 PCr.LJ 1199; Khadim Hussain and another v The State 1973 PCr.LJ 284; Jafir v The State 1975 PCr.LJ 582; Ali Sher v The State 1999 PCr.LJ 682.

[67] Muhammad Saleh v The State PLD 1965 SC 446; "The taking of a hatchet can be explained by the fact that it was still dark, that is, for self-protection, and it may be the accused expected to have to chastise his sister for mis-behavior if that was found. But upon the admissible evidence in this case, there is no ground for thinking that the appellant expected to find his sister in an act of intimacy with a stranger. He must be allowed, on the evidence, the benefit of a shock, on making the discovery, such as is fully recognized in law as furnishing grave and sudden provocation within the meaning of Exception I to section 300, P. P. C., sufficient to cause loss of self control."

[68] Mohammad Rafique v. The State, PLD 1985 79, "[I]t is proved that the appellant suspected Mst Nasim Akhtar deceased of loose character. Therefore a possibility can not be ruled out that when the appellant returned from Qatar and while he was in bed with the deceased, he might have asked the lady relating to her immorality and it is not known what answer she gave or what talk took place between them. May be the deceased either admitted of immorality against her or said something which provoked the appellant at the moment to such an extent that he lost all control and senses and caused injuries with toka which might be present in the home."

[69] Muhammad Sadiq v. The State, PLD 1966 104, "On the other hand, we cannot be oblivious to the fact that the deceased was caught while engaged in an act which was revolting to all senses of decency and morality, known to society particular to Muslim society. He was engaged in love making with no other woman than his own step mother who being the wife of his father according to the Quranic injunction was within the prohibited degree….[I]t is true that there is no evidence that the deceased was actually engaged in sexual intercourse with Mst. Hamidan when the appellant surprised them, yet considering the moral values and standard of chastity and social behaviour precluded for Muslim society, the act in which the deceased was engaged was no less obnoxious to and in principle it should not

his wife or sister, even if the situation attracts the rape provisions. But the confusion was created when the Islamisation of the provisions related to hurt and murder were started in the PPC. Subsequently, qisas and diyat laws were incorporated into the PPC. Owing to the decision in the Gul Hassan case,[70] the process of Islamization in the PPC and the changes that were made have already been discussed at the start of this chapter. Besides all of these changes, initially, the definition of murder was changed altogether, with every unnatural death of a person at the hands of another person becoming considered murder. All prior categories of murder were abolished, and four new categories regarding the proof and punishment were added. 1) Qatl-i-amd liable to qisas, punishable under section 302(a) of the PPC; 2) Qatl-i-amd liable to tazir, punishable under section 302(b) of the PPC; 3) Qatl-i-amd where qisas is not applicable, punishable under section 302(c) of the PPC; and 4) Qatl-i-amd not liable to qisas, punishable under section 308 of the PPC. Furthermore, on the issue of a grave and sudden provocation, Justice Taqi Usmani's insistence in the Gul Hassan Case[71] that the provocation did not conform to Islamic principles.[72] His opinion is worth mentioning here in which he noted that the Exception I of section 300 of the PPC has no relevance in Islamic penal law;

> As per Islamic rulings, provocation, no matter how grave or sudden, cannot by itself reduce the gravity of the offence of murder. Instead, the relevant issue from an Islamic perspective would be that whether the deceased was indulging in such acts which would amount to an offence punishable by death under Islamic law? For example, if a man sees his wife committing adultery, an offence punishable by death under Islamic law, and kills his wife and her paramour in such circumstances, and brings evidence of adultery as per the requisite standard of proof under Islamic law, then he shall indeed be exempt from Qisas (capital punishment in retribution). However, since he should have approached the authorities in such circumstances rather than taking the law into his own hands, he has committed a crime against the state and may be given any punishment by the state (as tazir).[73]

Interestingly, Justice Taqi Usmani, who wrote this positive additional note on the issue of honour killing, including its gray area of the plea of grave and sudden provocation, was also invited to be

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make any difference whether the victim of crime is actually engaged in love making preparatory to fornication or in the actually engaged in love making preparatory to fornication or in the actual act of fornication"

[70] Gul Hassan Khan v Government of Pakistan PLD 1989 SC 633

[71] *Id*

[72] *A British Innovation in the Criminal Law of the Indian Subcontinent*, p. 376 "Justice Pir Mohammad Karam Shah authored the judgment to which all the members of the Bench agreed. However, Justice Taqi Usmani and Justice Shafiur Rahman appended separate notes the main judgement. Justice Pir Karam Shah did not dealt with the issue of grave and sudden provocation or honour killing in detail; though, he briefly touched upon the punishments of homicides committed by mistake. Since the judgement of the Supreme Court had to go a long way in the formulation and the interpretation of the future law of homicide and murder of the State, Justice Taqi Usmani took upon himself to explain the culpability of a homicide committed under grave and sudden provocation."

[73] Federation of Pakistan v Gul Hassan and others PLD 1989 SC 633, 674.

involved in the process of drafting the qisas and diyat law for the country.[74] But that issue is separate and unrelated to our discussion. However, despite this positive aspect of the decision, which resulted in the removal of the exemption of "sudden and grave provocation" from the PPC, the issue still lacked clarity. It was nonetheless claimed and accepted in mitigation, as evident by the many instances that followed the Gul Hassan case. In 1992, Abdul Wahid's case[75] was placed before the Supreme Appellate Court.[76] This was the first case reported under the new law, where the Supreme Court evaluated the plea of sudden and grave provocation against the backdrop of the Gul Hassan case. In this case, the accused Abdul Wahid was charged with murder, under section 302 of the PPC (new law), of Shaukat Nizami, deceased as he suspected that Nizami had illicit relations with his sister. The accused was sentenced to hard labour for seven years under section 302(c), PPC (where qisas is not applicable), based on the accused's confession that he killed him because he had seen him committing sexual intercourse with his sister. Wahid confessed the commission of murdering Nizami but forwarded the plea of grave and sudden provocation. He alleged that he intended to shoot his sister after finding her in a compromising position with the victim, but the deceased came in between. The trial court relied on the islamic principles hihligted in the judgment of the Supreme Court in Gul Hasan's case and admitted the accused's account on the plea, thus declaring the victim as not masoom-ud-dam. An appeal was filed by the prosecution asking to sentence the accused to death for qisas under section 302(a), PPC. Naseem Hassan Shah J. referred to section 141 of the Qanoon-e-Shahadat Order[77] and noted that the onus of proof is on the accused when trying to benefit from exceptions. The Appellate Court, however, did not agree with the trial court's conclusions. The court relied upon Mohib Ali v The State,[78] where the Supreme Court observed that "a mere allegation of moral laxity without any unimpeachable evidence to substantiate would not constitute sudden and grave provocation. If such pleas, without any evidence, are accepted, it would give a license to people to kill innocent people,"[79] Further, the appellate court criticized the trial court for its reliance on the dictum of Gul Hasan's case without adverting to the note of Justice Taqi Usmani pertaining to the cases of grave and sudden provocation when read in conjunction with article 121 of the Qanun-i-Shatdat Order.[80] Therefore,

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[74] *A British Innovation in the Criminal Law of the Indian Subcontinent,* p. 378 " The Government departments, responsible for drafting the new law of homicide and murder, had formally invited the judges to give their opinions on the draft of the new law. They had read all the drafts of the law prepared by Council of Islamic Ideology (CII). They were also aware of the reservations different Ministries of the State had expressed on crucial issues, i.e., killing under grave and sudden provocation"; Minutes of the Cabinet meeting held on 20 January, 1986, prepared by Ch. Shaukat Ali, Additional Secretary, In charge, Cabinet Division

[75] The State v. Abdul Wahid, 1992 PCr.LJ 1596.

[76] This high-powered appellate Bench was constituted under section 13 of the Special Courts for Speedy Trials Act 1992. The Appellate Court was comprised of one judge of the Supreme Court, being its chairman, and two judges of the High Court - the members. To view the statute see, PLD 1992, CS, p. 229.

[77] Qanun-e-Shahadat Order, 1984 (PO No. 10 of 1984).

[78] Mohib Ali v The State 1985 SCMR 2055

[79] *Id,* 15

[80] Article 121 of Qanun-i-Shahadat Order 1984 (The new law of evidence) reads: 'When a person is accused of an offence, the burden of proving the existence of circumstances the case with any of 'general exceptions' in the Pakistan Penal Code or with any special exception or proviso contained in any other part of the same Code or any law defending the offence is upon him and the Court shall presume the absence of such circumstances.'

the court set aside the judgment of the trial court and punished Abdul Wahid, under section 302, PPC for qatl-i-amd - death as Qisas.

However, the positive precedent set by this judgment was not followed in many cases[81] filed in the same year (i.e., in 1992) of similar contention and of similar nature before the same court (Supreme Appellate Court of Pakistan), on the same point of consideration, namely "killing under grave and sudden provocation."[82] Cases were primarily decided based on the victim's conduct, which was used as both a cause for the murder and a justification for not compensating the heirs, as the victim was frequently ruled not to be a masoom-ud-dam (one whose blood is protected by law).[83] The accused's statement was not even examined. The application of qisas was made within the ambit of exception for self-defense.[84] While emphasizing how the merger of the concepts of self-defence and masoom-ud-dam reintroduced the exception of the plea of sudden and grave provocation, Aleen khan said, "the analysis of the case law also reveals that it is not just the black letter law that victimizes women but also the regressive mindset of the judges, as is clearly reflected in some of their decisions in cases of 'honour' killings. As a result, perpetrators of 'honour' killings were seldom brought to justice. Cases of 'honour' killings rarely led to convictions and imprisonments,[85] which could be one of the major reasons for the subsequent increase in cases of 'honour' killings after the enactment of Qisas and Diyat Ordinance 1990."[86]

In Pakistan, we have discussed above, the court's treatment of the cases of 'honour' killings in pre-2004 under the new law of qisas and diyat, and it is now required an analytical overview of the cases post-2004 from various high courts dating all the way back to 2005 in order to reflect what impact that new law had to pattern judicial mindset to respond while deciding the 'honour' killings cases. Recently, in the Supreme Court case, the distinction between honour and grave and sudden provocation was clearly recognized by placing reliance on the case of Muhammad Ameer v. The

[81] The State v Muhammad Hanif and 5 others 1992 SCMR 2047; Ghulam Yasin v The State PLD 1994 Lah. 392.; Ali Mohammad v Ali Muhammad PLD 1996 SC 274; Shabir Hussain v The State 2002 YLR 1177; Nisar Ahmad v The State 2002 YLR 740;

[82] *A British Innovation in the Criminal Law of the Indian Subcontinent*, p. 379

[83] Muhammad Ibrahim v The State, 2002 YLR 562; Haji Muhammad v The State, 2002 YLR 59; Wazir v The State 2000 YLR 2823; Ali Sher v The State 1999 PCr.LJ 682; Muhammad Ishaque v The State 1998 PCr.LJ 1110; Muhammad Arshad v The State 2006 SCMR 89; Abdul Jabbar v The State 2007 SCMR 1496; Muhammad Zaman v The State PLD 2009 SC 49, [11]; Ashiq Hussain v Abdul Hameed 2002 PCr.LJ 859; Bashir v The State 2006 PCr.LJ 1945;

[84] Kamal Shah v The State 2009 PCr.LJ 547; Nasir Abbas v The State 2006 PCr.LJ 497; Muhammad Imran v The State 2008 YLR 1290; Sarfraz v The State 2008 YLR 969; Muhammad Farooq v The State 2008 YLR 2319 [15]; Sabir Hussain alias Pehlwan v The State 2007 PCr.LJ 1159; Qaisar Ayub v The State 2009 PCr.LJ 1148; Muhammad Waryam v The State 2005 YLR 1017; Muhammad Akhtar and another v The State, 2009 YLR 1092; Sajjad Hussain alias Shahzad v The State 2016 YLR 1517; Sher Ahmed v Khuda-e-Rahim 2012 MLD 158; ; 2012 YLR1948

[85] 'IRB - Immigration and Refugee Board of Canada: Pakistan: Honour killings targeting men and women [PAK104257.E]', (ecoi.net) accessed 30 April 2018. See also, 'Navi Pillay Urges Government Action After "Honour" Killing of Pregnant Woman in Pakistan' (ohchr.org) accessed 30 April 2018. See also, 'Pakistan: Women fearing gender-based harm/violence' (gov.uk) last accessed 09 April 2022

[86] *Aleena: Judicial and Legal Treatment of the Crime*, p. 94-95

State.[87] In the case of Muhammad Qasim v the State,[88] accused murdered two persons namely Meer Muhammad and Mst. Qaim Khatoon (a sister-in-law of the appellant) in the backdrop of a motive based upon a suspicion of illicit relations between the two deceased. After a regular trial, the appellant was convicted on two counts of an offense under section 302(b), PPC, and was sentenced to death on each count and was subjected to pay compensation. The appellant challenged his convictions and sentences before the High Court through an appeal which was dismissed to the extent of his convictions on both the counts, but the same was partly allowed to the extent of his sentences of death which were reduced by the High Court to imprisonment for life on each count. In this case, the court distinguished between the crimes committed based on honour and those committed on the account of the grave and sudden provocation. The court referred to the proviso to section 302, PPC, as added by Criminal Law (Amendment) Act, 2004 (I of 2005), S.3, which stated that nothing in this clause shall apply to the offence of qatl-i-amd if committed in the name or on the pretext of honour and the same shall fall within the ambit of (a) and (b), as the case may be. The court said that the words 'in the name or pretext of honour', referred to a premeditated crime and should not be confused with grave and sudden provocation which refers to crimes committed under loss of self-control. The Supreme Court ruled that "the discussion made above leads us to an inescapable conclusion that the case in hand was indeed a case of grave and sudden provocation which could possibly attract the provisions of section 302(c) of the PPC as declared by this Court in the case of Zahid Rehman v. the State.[89] The learned Deputy Prosecutor-General, Punjab appearing for the State has, however, pointed out that in terms of the first proviso to section 302(c) of the PPC, the case in hand was a case of murders committed in the name or on the pretext of honour, and thus, it was to be treated as a case attracting the provisions of sections 302(a) or 302(b), of the PPC, not those of section 302(c). We have attended to this aspect of the matter with care and have found that the words "in the name or on the pretext of honour" used in the first proviso to section 302(c), of the PPC are not without any significance or meaning. The said words indicate that a murder committed "in the name or on the pretext of honour" has to be a calculated murder committed with premeditation in the background of honour whereas the words used in the context of a grave and sudden provocation in Exception 1 to the erstwhile Section 300, of the PPC were "deprived of the power of self-control". Such words used in Exception I to the erstwhile section 300, of the PPC catered for a situation that was not premeditated and had developed suddenly leading to grave provocation depriving a person of the power of self-control. Such different phraseology used by the legislature in these distinct provisions clearly indicates catering for different situations and, therefore, the words "in the name or on the pretext of honour" ought not to be mixed or confused with grave and sudden provocation leading to depriving of the power of self-control. This distinction between honour and grave and sudden provocation was clearly recognized by this Court in the case of Muhammad Ameer v. the State[90] and the same is manifestly

[87] Muhammad Ameer v. The State, PLD 2006 SC 283
[88] Muhammad Qasim v the State PLD 2018 SC 840.
[89] Zahid Rehman v the State, PLD 2015 SC 77
[90] Muhammad Ameer v. The States, PLD 2006 SC 283

attracted to the facts of the present case as well. It has already been found by us above that the case in hand was a case of grave and sudden provocation and honour only provided a backdrop to the same." For what has been discussed above, the court held that this appeal is partly allowed, and the convictions and sentences of the appellant are set aside.

Having this in mind, in post-2004, the court again failed to question an accused about the circumstances against him, and that amounts to a total failure of justice, and the trial is vitiated. An example is of the case Umar Zahid vs. The State,[91] in which the High Court of Khyber Pakhtunkhwa took a regressive approach toward honour crimes. On the day of the incident, there was a jirga between the complainant party and one Umar Zahid who allegedly took Mst. Shabnum deceased in her house in the dark hours. The deceased was buried without making any report about her unnatural death and it was subsequently discovered in an inquiry that the death of the deceased had occurred due to hanging. After the exhumation of the dead body of the deceased, some pieces of her body which include nails, heirs, and skin along with earth has taken from the graveyard certified that the deceased has died due to poising. In the judgment, it was considered that it is possible that the deceased may have used poison to commit suicide for honour of family, in which the deceased committed suicide for the family's honour. In any case, the criminal was released under the same umbrella of legal mechanisms. Failure to question an accused about the circumstances against him amounts to total failure of justice. Even in the case as recent as Aurangzeb v The State,[92] due to lack of evidence for premeditated murder, it was held that, "offence committed on the pretext of ghairat or family honour was different from the one committed on the ground of grave and sudden provocation which would be determined by looking into the circumstances of each case." However, in Sanobar Khan v The State,[93] quite a positive precedent was set by the Peshawar High Court. In this case, accused was convicted and sentenced to death under section 302(b), of the PPC on two (2) counts. He murdered the victums only due to the fault that she had come to the 'Baitak' for preparing cot where the deceased Ashfaq Khan had come and both the deceased talked to each other. The accused later sought criminal revision based on the compromise between him and the heirs of the two deceased. The court referred to the Act of 2016 and stated "According to the extraordinary published authority in the Gazette Notification of Pakistan, National Assembly Secretariat on 06.10.2016 at Islamabad has amended the law in order to deter and prevent killings in the name or on the pretext of honour killing due to which hundreds of people especially women lost their lives every year. The offence has now been termed to be non-compoundable and it will be covered under the domain 'fasad-fil-arz' if committed in the name or on the pretext of honour." The court has made a positive step forward in enforcing the new anti-honour killings law in a way which will deter killings in the name of honour. The court held that "the accused/Petitioner being so infuriated when he killed two innocent persons merely that as to why Mst. Sharafat Bibi had come to the 'Baitak' and talked to the co-deceased Ashfaq (without even being under compromising terms). The male deceased was none other than a female

[91] Umar Zahid v The State 2009 MLD 4.
[92] Aurangzeb v The State 2015 YLR 912.
[93] Sanobar Khan v The State 2018 PCr.LJ Note 181.

deceased close relative (maternal uncle son), so in such a state of affairs, the accused/Petitioner has to suffer his sentence accordingly." However, in the context of honour crimes, the Balochistan High Court appeared to make some positive judgments. In Khadim Hussain v The State,[94] the court supported the view that "Nobody had any right nor could anybody be allowed to take law in his own hands to take the life of anybody in the name of "Ghairat." Neither the law nor the religion permitted the so-called honour killing which amounted to a "Qatl-e-amd" simpliciter. Such iniquitous and vile act was violative of the fundamental rights as enshrined in Art.9 of the Constitution which provided that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect was void under Art.8(1) of the Constitution."[95] Similarly, it was said by the court in another case of Gul Muhammad v The State, that the "murder based on "ghairat" did not furnish a valid mitigating circumstance for awarding a lesser sentence, and "killing of innocent people, especially the women on to pretext of 'Siyahkari' was un-Islamic, illegal, and unconstitutional."[96] Moreover, despite the fact that few instances have come before the court, but it is evident that after 2004, the Sindh High Court apparently took a considerably harsher attitude against the offender in honour crimes. For instance, in Daimuddin v The State,[97] the court denied bail to petitioners who conspired to murder a female member of their family for marrying someone of her own choice. Shahid Anwar Bajwa J. stated that "Karo Kari is a crime which is a blot not only on the fair name of Sindh … It has in the comity of nations, always sullied Pakistan and Muslim Society as a whole." However, as evidenced by its pre-2004 jurisprudence, the Lahore High Court continues to render contradictory decisions in cases of 'honour' killings. In Muhammad Tahir v The State,[98] the accused committed the murder of his wife on the plea of 'ghairat' but while passing the judgment, the Lahore High Court stated that "no lenient view can be taken in the present case on account of 'ghairat' (honour) which is quite a positive stance taken by the court." However, later the court did not hold onto this positive ruling in the case of Muhammad Sadiq v The State,[99] noted that the "infliction of multiple firearm injuries on the chest and abdomen of the deceased Ghulam Hussain reflects that the appellant Muhammad Sadiq had nurtured grave provocation in his mind based on suspicion of illicit relations of his wife with the deceased. It, therefore, furnishes considerable mitigating circumstances to reconsider the quantum of punishment of death awarded to Muhammad Sadiq appellant. In the attending circumstances, awarding of sentence of death to Muhammad Sadiq appellant would be harsh and instead imprisonment for life would be sufficient to meet the ends of justice." Following this, in another case of Muhammad Shah Nawaz v The State,[100] the Lahore High Court cited Act XLIII of 2016 (Anti-Honour Killings Law 2016) and stated that occurrences of honour killings are only covered by sections 302(a) and 302(b) of the PPC and not by section 302(c) of the PPC. The court

[94] Khadim Hussain v The State 2012 PLD 179, 6
[95] *Id*, at 6
[96] Gul Muhammad v The State 2012 PLD 22., 14
[97] Daimuddin v The State 2010 MLD 1089, 10.
[98] Muhammad Tahir v The State 2014 YLR15
[99] Muhammad Sadiq v The State 2012 MLD 53.
[100] Muhammad Shah Nawaz v The State 2019 MLD 455, 20

stated that “we have observed mitigating factors i.e. the recovery of the crime weapon remained inconsequential and the occurrence had taken place inside the bounds of the appellant’s compound in the adjacent room of his house and on seeing both the deceased in the objectionable condition, he being a first paternal cousin of deceased Mst Tahira Bibi, had reacted blindly without considering its consequences.” As a result, the court concluded that it is a well-established legal principle that, in the event when both life imprisonment and death are possible punishments, the lower punishment should be preferred as a matter of caution. As a consequence, the appellant's death sentence was reduced to imprisonment to life.

The overall analysis of case law post-2004[101] suggests that even after the enactment of the stricter new law, the Criminal Law (Amendment) Act 2004, through which the benefit that could have come about in terms of harsher punishments for "honour" killings are being canceled out by the courts under the plea of grave and sudden provocation as a mitigating factor in cases of honour crimes.[102] According to the annual report of the Human Rights Commission, 1096 people died in honour-related incidents in 2015 alone, 1008 of them women. These numbers show a disturbingly sharp increase from the previously reported figures of 1000 deaths in 2014 and 869 in 2013.[103] Based on local and national media, Arts and Humanities Research Council indicates that 215 honour killings occurred between 1 January and 20 November 2012.[104] According to the US Country Reports on Human Rights Practices for 2011, hundreds of women were victims of honour killings in 2011 in Pakistan.[105] The Human Rights Commission of Pakistan (HRCP), indicates in its State of Human Rights in 2011 report that at least 943 women were victims of honour killings, including 557 married women and 93 minors.[106] The Aurat Foundation indicates in another report that, during 2011, 705 cases of honour killings occurred in the country.[107] The breakdown by province is: 322 cases in Punjab, 266 in Sindh, 30 in Khyber Pakhtunkhwa, 86 in Balochistan, and 1 in Islamabad. The same report indicates that honour killings represented 8.25 percent of the total number of crimes against women during that year.[108] The Aurat Foundation reports that there were 557 cases in 2010, 604 in 2009, and 475 in 2008.[109] On the other hand, statistics from the Pakistani Ministry of Women Development indicate that, from 2005 to 2008, 50 cases of honour killings

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[101] Muhammad Ramzan Sharif v Hussan Gul, 2018 MLD 1860; 2018 Y L R 740*;* P L D 2017 Lahore 103*;* 2019 P Cr. L J 1239 [Gilgit-Baltistan Chief Court];

[102]PLD 2012 BALOCHISTAN 179; 2018 P Cr. L J 1071; 2018 P Cr. L J 422*;* P L D 2018 Balochistan 97*; 1977 PCRLJ 690 KARACHI-HIGH-COURT-SINDH;* 1968 P Cr. L J 545*;* 2019 PCrLJN 143 KARACHI-HIGH-COURT-SINDH; 2018 Y L R 1455

[103] "Pakistan honour killings on the rise, report reveals - BBC News". *BBC News*. Bbc.com. April 2016. [Last accessed 11.April.2022]

[104] Asian Human Rights Commission (AHRC), 10 December 2012; *The State of Human Rights in Pakistan in 2012*. [Last accessed 11.April.2022]

[105] United States (US). 24 May 2012. Department of State. "Pakistan." *Country Reports on Human Rights Practices for 2011*. [Last accessed 11.April.2022]

[106] Human Rights Commission of Pakistan (HRCP). March 2012. *State of Human Rights in 2011*.

[107] [AcAurat Publication and Information Service Foundation (AF). [July 2012]. "Press Briefing: Incidents of Violence against Women in Pakistan Reported during 2011. [Last accessed 11.April.2022]

[108] *Supra note 102*

[109] *Id*

were reported in the country.[110] Pakistan's Interior Ministry reports that since 2001, there have been more than 4,100 honour killings.[111] Aleena Khan rightly summarizes the case law analysis by saying that the "assertion of masculinity through violence, with much of it against women, a distinct feature of a patriarchal society, is being given full formal backing under the pretext of guarding family honour. Mere suspicion of any form of behavior on part of women that seems to transgress societal norms is considered adequate to taint one's honour. The perceived or actual immoral behavior that may lead to 'honour' killings of women may take various forms including marital infidelity, pre-marital sexual relations, demanding a divorce, being a victim of rape, or refusing to submit to an arranged marriage….The case laws post-2004 reveal that judges are not always the neutral arbiters of the law, rather they are social and political actors, who tend to use legal doctrines as mere verbal camouflage to lend unwarranted plausibility and legitimacy to judicial caprice."[112]

While this is not strictly a flaw in the judicial system and law itself, however, there are other sociocultural covering and characteristics that contributed to the offence of honour crimes. Advocate Mr. Saad Rasool, in his article, "The Qandeel brand of Honour" rightly stated that: "to live freely, especially for women, continues to be a crime in this society, where neither the law, nor the people, nor a tainted interpretation of Divine decree, allows or protects this primordial gift of humanity."[113] Mr. Saad Rasool's choice of this name with term "qandeel" for his article has a backstory. In October 2016, Qandeel Baloch, a Pakistani model, was murdered in the province of Punjab by her brother on the pretext of honour for dishonouring the family.[114] This high-profile case of honour killing attracted significant public notice, and recent law reform, known as the Criminal Law (Amendment)(Offences in the name or pretext of Honour) Act 2016, which was passed on Oct 6, 2016.[115]

This new law fixed a loophole that allowed killers (who are usually their family members) to be spared punishment if the rest of the family (legal heirs) forgives them. Also, most strikingly, under the proviso to section 311 of the PPC, the law makes the crime of honour killing a non-compoundable offense. The law included by a way of tazir, as a prerogative of the court despite a waiver of qisas by the victim's legal heirs, a mandatory punishment with a minimum lifetime jail sentence for the perpetrators. The Act of 2016 adds four important clauses under the *qatl-i-amd*

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[110]Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, 24 September 2011.Last Accessed 11.April.2022.

[111]HUMAN RIGHTS WATCH, WORLD REPORT 2007: PAKISTAN, online: <https://www.hrw.org/%20englishwr2k7/docs/2007/01/11/pakist14756.htm >[Last accessed 11.April.2022]

[112] *Aleena: Judicial and Legal Treatment of the Crime,* p. 99

[113]The Nation: "The Qandeel brand of Honour", Saad Rasool Advocate http://nation.com.pk/columns/17-Jul-2016/the-qandeel-brand-of-honour

[114] Suugested to follow the case in an Academy Award-winning documentary about her murder, "A Life Too Short" revisits honour killing of Qandeel Baloch, debuted on Pluto TV on Friday, January 22, 2021; "On February 14, following the directions of the Multan bench, the LHC had acquitted Qandeel Baloch's brother in her murder case."

[115] Kelly Chen et al., *Pakistan Passes Legislation Against Honor Killings*, CNN (Oct. 8, 2016 12:24AM), https://www.cnn.com/2016/10/06/asia/pakistan-anti-honor-killing-law/index.html.

provisions of the penal code: (1) a "*fasad-fil-arz*" offense includes offenses committed in the name or on the pretext of honour; (2) for *fasad-fil-arz* offenses, the waiver of *qiṣāṣ* and the compounding of the right of *qiṣāṣ* shall be subject to the *ta'zīr* provisions; (3) if a *fasad-fil-arz* offense has been established, the court may having regards to the facts and circumstances of the case punish the offender against whom the right of *qiṣāṣ* has been waived by the legal heirs of the victim; (4) if the offense has been committed in the name or on the pretext of honour, the (*ta'zīr*) punishment shall be imprisonment for life. However, while commenting on the new law, several commentators point out that in the case of intentional homicide, the rationality and consistency of tazir with sharia; results in the positive fear for the conduct of murder not only in private injury but "it also involves a dreadful threat to society at large, in terms of the chaos and horror it creates in the public mind."[116] For some Muslim scholars commented, that "the crime of homicide involves two rights, the private right of the aggrieved, and the public right (because of violating the prohibition of Allāh), thus upon remission of one right the other would not be waived." Therefore, the type of punishment for an offender will be decided by the authorities who is notoriously known for his/her misdeeds [117] On the other hand, while discussing how there are still a few gaps in the new legislation that can undoubtedly shift the balance in favour of the perpetrators, the Aleena Khan suggested that; "It is now upon the prosecution to prove that the murder was an honour crime. This is problematic as women's lives and conduct will be up for assessment in the courts paving a way for misogynistic rulings on the victims' morality rather than the act of perpetrators. The judge can commute the death penalty into a life sentence. Perpetrators can easily alter the motive of their crimes by denying that their crimes were on the pretext of honour, and thus escape the mandatory term and hence be charged under section 302 of the PPC and pardoned under section 309 of the PPC by the family members. So essentially, the crime has still not been made non-compoundable, a major loophole paving a way for perpetrators to go scot-free…..It can be said that the new anti-honour killings act is essentially an old law in a new disguise enacted just to appease women and create false consciousness among them, that stricter punishments will translate into justice for them." Favoring what Aleena Khan said, it is true that honour crimes are sometimes considered not more than myths in the courtroom. Left judges with discretion over whether a murder may be defined as a crime of 'honour,' is problematic considering the patriarchal attitude of some members, particularly at the lower levels. Also, the new legislation does not give any remedy or recourse to survivors of 'honour' crimes, as it exclusively addresses murder and death.

Finally, under the new rule, 'honour' crimes have not been declared crimes against the state, allowing room for criminals to walk free or either get lenient punishments." That's very unfortunate that even after strengthening the law against 'honour' killings in 2016, the incidents of honour killings are still one among the highest crimes in Pakistan. "At least 280 such killings were recorded by the Human Rights Commission of Pakistan from October 2016 to June 2017,

[116] Sayed Sikandar Shah Haneef, Homicide in Islam, 176 (2000).
[117] *Id*, at 177

and this figure is still considered to be underestimated and incomplete."[118] According to the Human Rights Commission of Pakistan, nearly 1,100 women were killed by relatives in Pakistan last year in such killings. However, there are no official statistics since many other incidents go unreported, or are logged as suicide or natural death by family members, as per the study notes.[119] In Peshawar "the Peshawar High Court twice acquitted a man of honour crimes after this law was passed, suggesting no change in the patriarchal mindset of the judiciary."[120] In the same city, a father in Peshawar killed his two daughters in September 2017 on the suspicion that they had boyfriends, which made him feel embarrassed.[121] In Khyber Pakhtunkhwa, "ninety-four women were killed by close family members in 2017."[122] Moreover, a woman with two young children was reportedly murdered by her husband earlier this year in Sindh's Umerkot district, in what is suspected to be a case of 'honour' killing by the police.[123] According to a survey undertaken by the women's rights organization Sindh Suhai Sath (SSS), 176 persons, including women and men, were killed in the name of honour killing (Karo-Kari) in Sindh province in 2021.[124] Recently, "three women and two men were killed in the name of honour in Jaffarabad, Mastung, and Hub areas."[125] Throughout the analysis of the data indicates that despite the passing of new and stricter anti-honour killings law, the incidents took place at an alarming stage in Pakistan. It shows that to provide a panacea for social justice or change,[126] there is something more required than the mere enactment of harsher law provisions and punishments. We need something more, "we need to listen with care, but also with skepticism, to sweeping definitions of this thing called culture, forged as they are in a world of constantly expanding difference and complexity."[127]

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[118] Aurat Foundation Pakistan, 'Women still victims of honour killings despite new law' (The Express Tribune, 31 October,2017),online:<https://tribune.com.pk/story/1545802/1-women-still-victims-honour-killings-despite-new-law> [Last accessed 11.April.2022] ["Aurat Foundation Pakistan, 'Women still victims of honour killings despite new law"]

[119] 'Honour killings': Pakistan closes loophole allowing killers to go free", BBC News, 6 October 2016, Online: <https://www.bbc.com/news/world-asia-37578111 > [Last accessed 11.April.2022]

[120] *Aurat Foundation Pakistan, 'Women still victims of honour killings despite new law'*

[121] Ali Akbar, 'Man kills two daughters for 'honour' in Peshawar'' (Dawn, 23 September 2017) online: <https://www.dawn.com/news/1359543 > [Last accessed 11.April.2022]

[122] Saroop Ijaz, ''Honor' Killings Continue in Pakistan Despite New Law' (Human Rights Watch, 25 September 2017) onine: <https://www.hrw.org/news/2017/09/25/honor-killings-continue-pakistan-despite-new-law > [Last accessed, 11.April.2022]

[123] Hanif Samoon, 'Mother of two allegedly killed by husband over 'honour' in Umerkot' (Dawn, 1 January 2018) online: <https://www.dawn.com/news/1380162 > [Last accessed, 11.April.2022]

[124] Imdad Soomro, "Karo-Kari claimed 176 lives in Sindh in 2021: study", International The News, February 04, 2022, online: <https://www.thenews.com.pk/print/930710-karo-kari-claimed-176-lives-in-sindh-in-2021-study > [Last accessed, 11.April.2022]

[125] "Honour killing cases up in Pak as Balochistan reports 5 killings in a day", Last Updated at February 13, 2022, online;<https://www.business-standard.com/article/international/honour-killing-cases-up-in-pak-as-balochistan-reports-5-killings-in-a-day-122021300715_1.html >, Last accessed, 11.April.2022]

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[127] Arati Rao, The Politics of Gender and Culture in International Human Rights Discourse, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 167, 171 (Julie Peters & Andrea Wolper eds., Routledge 1995)

Efforts are being made by respective Governments to eliminate this patriarchal practice prevailing in the country. Different NGOs and international or government organizations are willing to extend any further support required to curb the illegal practices of honour killings, vanni, swara, karo kari, etc., that is not only violative of the fundamental rights of women under the Constitution of Islamic Republic of Pakistan, 1973 but are also against the basic human rights guaranteed under the international conventions that Pakistan is a signatory to in this regard. Pakistan has been a signatory to core human rights conventions,[128] with an aim to ensures human rights, in accordance with the international standards,[129] are respected, protected, and implemented in Pakistan, and to deal with the issue as a whole community.[130] Besides, women's constitutional rights to life,[131] and equality of citizens,[132] including right to education,[133] liberty,[134] dignity,[135] and right to fair trial[136] cannot be infringed,[137] the law further emphasized that any law inconsistent with fundamental rights should be considered void.[138] The violation of constitutional rights is the fulcrum of the issue, therefore the protection of rights is the pivotal goal of this research.

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[128] For instances, the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on Elimination of Violence Against Women (DEVAW), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

[129] Inter-Parliamentary Union, Human Rights, 2016, Handbook for Parliamentarians N° 26, available at: https://www.refworld.org/docid/583554554.html [last accessed 11/06/2021]; "Pakistan's Domestic Implementation of its International Human Rights Obligations", https://www.pc.gov.pk/uploads/report/Domestic.pdf, [last accessed 11/06/2021] [**"Handbook for Parliamentarians N° 26"**]

[130] Saad-ur-Rehman Khan and Imaan Hazir Mazari, *"Pakistan's International Human Rights Obligations: Training Module for Capacity Building of Relevant Stakeholders at the Federal and Provincial Levels"*, The Research Society of International Law (RSIL), Pakistan, 2019, https://rsilpak.org/wp-content/uploads/2019/01/Pakistans-International-Human-Rights-Obligations-Training-Module-for-Capacity-Building-of-Government-Officials.pdf,[last accessed 11/06/2021]

[131]*Constitution of the Islamic Republic of Pakistan* [Pakistan], 10 April 1973, available at: https://www.refworld.org/docid/47558c422.html [Last accessed 11/06/2021],[**"The Constitution of Pakistan, 1973"**] Article 9: "Security of person:No person shall be deprived of life or liberty save in accordance with law."

[132] *Constitution of the Islamic Republic of Pakistan, 1973,* Article 25: "Equality of citizens":(1) "All citizens are equal before law and are entitled to equal protection of law" (2) "There shall be no discrimination on the basis of sex" (3) "Nothing in this Article shall prevent the State from making any special provision for the protection of women and children"

[133] *Constitution of the Islamic Republic of Pakistan, 1973,* Article 25A."Right to education":"The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."

[134] *Supra Note,* 31.

[135] *Constitution of the Islamic Republic of Pakistan, 1973,* Article 14: "Inviolability of dignity of man, etc":"(1)The dignity of man and, subject to law, the privacy of home, shall be inviolable, (2) No person shall be subjected to torture for the purpose of extracting evidence."

[136] *Constitution of the Islamic Republic of Pakistan, 1973,* Article 10-A.

[137] UN Office of the High Commissioner for Human Rights (OHCHR), *Women's Rights are Human Rights*, 2014, HR/PUB/14/2, available at: https://www.refworld.org/docid/5566cfd14.html [Last accessed 11/06/2021], **["Women's Rights are Human Rights"],** p.4:

[138] *Constitution of the Islamic Republic of Pakistan, 1973,* Article 8: "Laws inconsistent with or in derogation of fundamental rights to be void": (1) "Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void."

Though there has been constant social advancement, the problem of honour killing persists in the same way as history had seen in the British era of 1860, at the time of qisas and diyat laws in 1990, and during a period of promulgation of Acts of 2004 and 2016. However, the case of National Commission on Status of Women v. Government of Pakistan,[139] is consider to be a u-turn to some extent from the case law we reviewed so far. This case ensure that the people involved in such crimes become totally aware of the fact that they cannot tread an illegal path by way of panchayats, break the law, and offer justification with some kind of moral philosophy of their own. The positive precedents set by the superior courts on the abolishment of the jirga system in the case of National Commission on Status of Women v. Government of Pakistan,[140] is noteworthy here; "We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in the Lata Singh case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal." This ruling had one positive aspect, it says that people should forget that the law of the land requires to be shown implicit obedience and profound obeisance. This judgment emphasized that the human rights of a daughter, brother, sister or son are not mortgaged to the so-called or so-understood honour of the family or clan or the collective. The act of honour killing puts the Rule of law in a catastrophic crisis."

3. Suggestions and Recommendations

From the research and dialogue over, broadly speaking, how, then, in the face of such religious and legal judicial injunctions, could killing be openly committed, tolerated, condoned; justified, endorsed, and often applauded in Pakistan? To answer the query, and for maximizing the role of the law in combating the issue, a few considerations need to be discussed. Improving the law is also a necessary step that is required to curb the prevalence of the issue. There are other forms of honour crimes short of honour killings, (i.e: assault, battery, acid throwing) that exist elsewhere under the ambit of "crimes in the name of honour" and also need to be recognized in Pakistan. Moreover, the transition of article 35 (Protection of family, etc.)[141] and article 37 (Promotion of social justice and eradication of social evils.)[142] from a principle of policy[143] to fundamental

[139] National Comission on Status of Women v. Government of Pakistan, P L D 2019 Supreme Court 218
[140] National Comission on Status of Women v. Government of Pakistan, P L D 2019 Supreme Court 218
[141] *The Constitution of Pakistan, 1973,* Article 35
[142] *Id*, Article 37
[143] *The Constitution of Pakistan, 1973,* Part II: Fundamental Rights and Principles of Policy, Chapter 2.

rights,[144] thereby shifting it from guidelines to justiciable provisions may contribute to some extent in positive change. There is also a need to improve the criminal justice system by ensuring that the judgment and punishment should be independent of the plea of "grave and sudden provocation." Also, a proper system of check and balance should be maintained to ensure that courts do not tend to convict lower class and marginal ethnic men more than the upper class or majority ethnic ones, just because it is easier to report when your assailant is not the upper class and power. Moreover, the jurisprudence should not be fixated on the myth of "men cannot be victims". The influence of the education system is another different way to go. Families should talk to boys and girls about the topic, since according to the United Nations, educating boys and men to view women as valuable partners in life, in the development of society and in the attainment of peace are just as important as taking legal steps to protect women's human rights."[145] For this to happen, the government must ensure that education policy incorporates a proper understanding of human rights as a societal role, and function, thereby "the recognition of the common responsibility of men and women in the upbringing and development of the family's reputation"[146] Furthermore if they are victims of such crimes, they should be trained and encouraged to speak. According to Wolfgang & Schaffe "A person who silently bears the violence is also equally wrong."[147] Building a better support and protection system for victims is equally important to end the fundamental cause. In the case of honour crimes, the Government should make provision for grievance remedial cells, thereby meaning the government needs to take the initiative to provide these victims with compensation support. These recommendations would be helpful to some extent but, the "change, like always, will find resistance not so much by any kind of forces to be thoughtful, but by the darkness of ignorance which has its own comfort that it gives to the people living in them and which makes any enlightenment so hard to bring and any change so hard to occur."[148] To wrap this up, the rationale behind entire chapter is beautifully summed up in the below mentioned quotation.

> "You are not responsible for the past, but insofar you can do nothing, you are complicit in the present created by it."
>
> **Jonathan R. Miller**

[144] *Id*, Chapter 1

[145] United Nations Department of Economic & Social Affairs, 2008, December 12, Retrieved February 10, 2018, from Role of Men & Boys in Achieving Gender Equality: http://www.un.org/womenwatch/daw/public/w2000/W2000%20Men%20and%20Boys%20E%20web.pdf , [Last accessed 14/06/2021]

[146] *Id*

[147] Wolfgang & Schaffer (1978) - Victim Categories of Crime- 69 Journal of Criminal Law & Criminology 379

[148] Anand Kirti, Prateek Kumar and Rachana Yadav, 'The Face of Honor Based Crimes: Global Concerns and Solutions' [2011] 6(1 & 2) International Journal of Criminal Justice Sciences 343-357.

YOUTH GENERAL ASSEMBLY

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