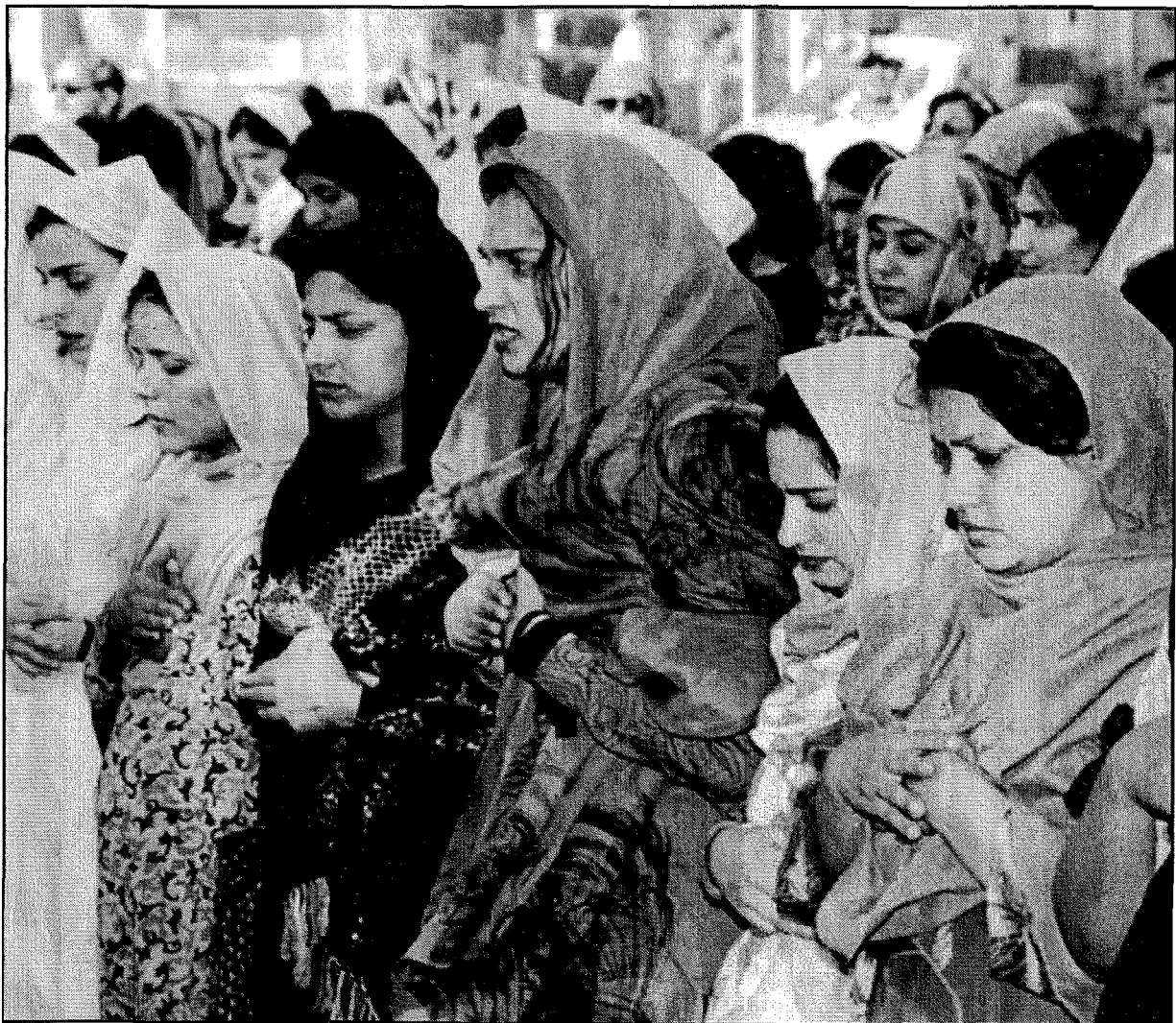


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# **PAKISTAN**

## **Violence Against Women in the Name of Honour**



**Amnesty International, International Secretariat,  
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*Front photograph:* Female activists from various Non-Governmental Organizations offer funeral prayers for Samia Sarwar who was murdered on 6 April 1999 for seeking a divorce against her parents wishes

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Samia Sarwar, aged 29, shot dead for seeking a divorce against her parents wishes. Lahore, 6 April 1999.

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# PAKISTAN

## Violence against women in the name of honour

*“Among the most lethal forces which impact [on] women’s dignity and security are customary practices which aim at preserving female subjugation. Often defended and sanctified as cultural traditions, they are usually fiercely defended by those who practice them, shrugged off by society and condoned by law-enforcing agencies and the courts. As a result, most of these inhuman practices continue unabated.”* Report of the Commission of Inquiry for Women, August 1997, set up on the basis of a resolution of the Pakistan Senate.

*“The right to life of women in Pakistan is conditional on their obeying social norms and traditions.”*  
Hina Jilani, lawyer and human rights activist.

*“Women in our society are killed like hens; they have no way to escape and no say in what happens to them.”*  
A journalist in Larkana in February 1999.

### A. INTRODUCTION

Every year in Pakistan hundreds of women, of all ages and in all parts of the country, are reported killed in the name of honour. Many more cases go unreported. Almost all go unpunished. The lives of millions of women in Pakistan are circumscribed by traditions which enforce extreme seclusion and submission to men, many of whom impose their virtually proprietorial control over women with violence. For the most part, women bear traditional male control over every aspect of their bodies, speech and behaviour with stoicism, as part of their *qismat* [fate], but exposure to media, the work of women’s rights groups and a greater degree of mobility have seen the beginnings of women’s rights awareness seep into the secluded world of women. But if women begin to assert these rights, however tentatively, they often face more repression and punishment: the curve of honour killings has risen parallel to the rise in awareness of rights. State indifference, discriminatory laws and the gender bias of much of the country’s police force and judiciary have ensured virtual impunity for perpetrators of honour killings.

This report is the fourth in a series Amnesty International has published over the past few years on different aspects of women’s rights in Pakistan<sup>1</sup>, including the discriminatory nature of certain laws, violations of women’s rights in the custody of the state and the lack of implementation of provisions of the United Nations Convention on the Elimination of All Forms of Discrimination against Women following ratification by Pakistan in 1996. This is the first report on abuses of women’s rights by private actors in Pakistan.<sup>2</sup>

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<sup>1</sup>*Women in Pakistan: Disadvantaged and denied their rights*, AI Index: ASA 33/23/95; *Pakistan: Women’s human rights remain a dead letter*, AI Index: ASA 33/07/97; *Pakistan: No progress on women’s rights*, AI Index: ASA 33/13/98.

<sup>2</sup>Over the past decade, Amnesty International has been steadily broadening its work to address abuses by non-state actors. In 1991, the organization began to work on abuses by armed opposition groups. Since 1995, it has begun developing work on the responsibilities companies and international financial institutions have for the protection and promotion of human rights. In 1997, Amnesty International’s membership decided the organization should explore approaches to state responsibility for abuses by non-state actors. This report is the first in a series, looking at

In part B, this report describes the different facets of the phenomenon of honour killings in Pakistan. It looks at the traditions that form the framework of such killings, particularly the commodification of women and the notion of honour. It asserts that the notions of what defiles honour have continually widened beyond defiance of sexual norms to include other forms of perceived defiance of social norms by women. These include the desire of women to choose a marriage partner and to seek divorce. In a curious twist, women victims of rape are also seen to have defiled their male relatives' honour and some have been killed on that account. The report then describes how the lure of compensation and the lenient treatment of honour killings by courts have led to abuses of the system in which women are killed supposedly on grounds of honour but really for an ulterior purpose. It describes the limited options which are open to women who apprehend being killed for reasons of honour.

Abuses by private actors such as honour killings and physical injury of women are crimes under a country's criminal law. However, systematic failure by the state to prevent and to investigate them and to punish the perpetrators leads to international responsibility of the state. The report in part C summarizes the doctrines of international human rights law which establish state responsibility beyond acts of its agents to include abuses by private actors if the state has failed to exercise due diligence in preventing, investigating and punishing them.<sup>3</sup> Honour killings take place at an alarming rate

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different themes in different regions of the world, which the organization hopes will make an important contribution to the international human rights debate.

<sup>3</sup>The UN Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 affirms that states must "exercise due diligence to prevent, investigate and ... punish acts of violence against women, whether those acts are

in Pakistan and with virtual impunity. The report points to the various areas in which the Pakistan government's failure to exercise due diligence is manifest, including the government's failure to respond to reports of honour killings and to amend overlapping and often contradictory legal regimes and discriminatory laws which prevent redress. It also looks at the gender bias shown by police and parts of the judiciary when dealing with crimes of honour. The report describes the limited reform moves undertaken by tribal leaders and ends in part D with a set of recommendations.

In the international human rights arena, honour crimes against women are understood as a form of domestic violence, i.e. violence against women in the family or community.<sup>4</sup> Based on the dichotomy of private and public spheres and the perception that the former was somehow less significant, domestic violence was earlier perceived as private acts within the family and not as an issue of civil and political rights. The United Nations has explicitly recognized violence against women as a human rights issue involving state responsibility. The UN Special Rapporteur on violence against women has defined domestic

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perpetrated by the State or by private persons" (Article 4(c)). The duty of states to exercise "due diligence" was spelled out by the Inter-American Court of Human Rights in the Velásquez-Rodríguez case (see below). The Special Rapporteur on violence against women noted that until very recently, the human rights discourse focused on violations in the public sphere committed by agents of the state. "Increasingly, however, this is changing. No longer are human rights guarantees restricted solely to the public sphere. They likewise apply to the private realm, including within the family, and oblige the State to act with due diligence to prevent, investigate and punish violations therein." (UN Doc. E/CN.4/1999/68, at para 6)

<sup>4</sup>See reports of the UN Special Rapporteur on violence against women.

violence as “violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere. Such violence may be carried out by both private and public actors and agents. This conceptual framework intentionally departs from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates ...”<sup>5</sup> In this way, domestic violence can be seen to have an inherently political nature. The Special Rapporteur has stated: “At its most complex, domestic violence exists as a powerful tool of oppression. Violence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotypes and is used to control women in the one space traditionally dominated by women, the home.”<sup>6</sup>

States and other apologists for violence against women have sometimes claimed that customs and traditions must be respected as genuine manifestations of a nation’s or community’s culture and may not be subjected to scrutiny from the perspective of rights contained in the Universal Declaration of Human Rights. Such views fail to recognize that cultural practices are sometimes both the context of human rights violations and a justification for them, concealing an unwillingness to take positive action to end discriminatory

practices. The World Conference on Human Rights adopted the Vienna Declaration and Programme of Action which says in article 5: “All human rights are universal, indivisible and interdependent and interrelated. ... While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”<sup>7</sup> The United Nations General Assembly in December 1993 adopted the Declaration on the Elimination of Violence against Women which urges states not to “invoke custom, tradition or religious consideration to avoid their obligation” to eliminate discriminatory treatment of women.<sup>8</sup>

Amnesty International takes no position on religions, customs or specific legal regimes; it welcomes the rich variety of cultures and believes that the universality of all human rights, far from denying diversity, can only benefit from it. The organization recognizes that the contribution of different cultures, at the local and the global level, enrich the understanding of human rights giving them their local form and language.

But cultures are not static. They are continually changing and evolving in response to interactions with other cultures, the needs of society and the demands of the modern age. ‘Tradition’ may have emphasised certain norms in the past, but this does not preclude tradition being shaped by new realities.

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<sup>7</sup>UN Doc. A/CONF.157/23

<sup>8</sup>UN Doc. A/RES/48/104. Article 4(j) recommends that the state “adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles of men and women.”

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<sup>5</sup>UN Doc. E/CN.4/1996/53, para 28. Domestic violence had earlier been understood as violence between “individuals related through intimacy, blood or law” (UN Doc. E/CN.4/1996/53, para 23) but the apparent gender neutrality of this definition conceals that mostly it is men using violence against women.

<sup>6</sup>UN Doc. E/CN.4/1996/53, para 27

This report shows how even the traditions of 'honour' in Pakistan, which are used to justify violence against women, have themselves undergone change, have broadened in concept and been debased and distorted by more generalized corruption and violence in society. It also highlights how the honour system derives from tribal traditions in Pakistan, which are often in conflict with other traditions in national life, such as Islam and liberal democracy; as a result women find themselves caught between competing and conflicting 'traditions' in Pakistan.

While recognizing the importance of cultural diversity, Amnesty International stands resolutely in defence of the universality of human rights, particularly the most fundamental rights to life and freedom from torture and ill-treatment. The duty of the state is to ensure the full protection of these rights, where necessary moderating tradition through education and the law. The World Conference on Human Rights in 1993 stated in Article 18 of the Vienna Declaration and Programme of Action: "... Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice ... are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education ... and social support."<sup>9</sup> As the Special Rapporteur on violence against women has pointed out: "States have an affirmative obligation to confront those cultural practices of the community which result in violence against women and which degrade and humiliate women, thereby denying them the full enjoyment of their rights. International standards require that there be concerted State policy to eradicate practices even

if their proponents argue that they have their roots in religious beliefs and rituals."<sup>10</sup>

Both men and women have become victims of honour killings and of other forms of honour related violence -- but as the report indicates, girls and women have less chance to physically escape such killings and to socially redeem themselves by payment of compensation than men. Significantly, the men who are killed for reasons of honour are invariably targeted by the male relatives of the women whose alleged breach of the code of honour constitutes the rationale for such acts. This report therefore focuses on the violence suffered by women and girls while recognizing that men are sometimes its targets as well.

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<sup>9</sup>UN Doc. A/CONF.157/23

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<sup>10</sup>UN Doc. E/CN.4/1997/47

## B. VIOLENCE AGAINST WOMEN IN THE NAME OF HONOUR



Village women. Lives circumscribed by tradition. © Dawn

### Killings in the name of honour

In August 1998, Zarina and her alleged paramour, Suleiman, were killed in village Gul Mohammad Brohi, Larkana district, by Zarina's three brothers.

In April 1998, a young man in the Punjab village Chak No. 65, axed his mother, Ghulam Bibi, to death after she was traced by her family and brought back home following her supposed elopement with a man.

In Kot Addu, near Multan, Naziran, a mother of six was axed to death by her brother on suspicion of an illicit relationship in November 1997.

On 29 April 1999, Shama Bibi, 16, wife of Saif Khan, living in Kahuta, Punjab, was shot by her husband on suspicion of her having an illicit relationship. She received bullet injuries in her

abdomen and her condition was stated to be critical; it is not known if she survived.

On 6 January 1999, Ghazala was set on fire by her brother in Joharabad, Punjab province on suspicion of illicit relations with a neighbour. The burned and naked body reportedly lay unattended on the street for two hours as nobody wanted to have anything to do with it.

In Pakistan, hundreds of women, of all ages, in all parts of the country and for a variety of reasons connected with perceptions of honour are killed every year. The number of such killings appears to be steadily increasing as the perception of what constitutes honour - and what damages it - steadily widens. Often honour killings are carried out on the flimsiest of grounds, for instance when a wife does not serve a meal quickly enough or when a man dreams that his wife betrays him (see below). As state institutions - the law enforcement apparatus and the judiciary - have dealt with such crimes against women with extraordinary leniency, and as the law provides many loopholes for murderers in the name of honour to get away, the tradition remains unbroken. In fact, more and more killings committed for other motives take on the guise of honour killings on the correct assumption that they are rarely -- and if so, only lightly -- punished.



Originally a Baloch and Pashtun tribal custom, honour killings are now reported not only in Balochistan, the North West Frontier Province (NWFP) and Upper Sindh which has a strong Baloch influx, but in Punjab province as well. Honour killings are no longer only reported from remote rural areas but also - though less frequently - from towns and cities. The modes of killing vary somewhat. In Sindh, a *kari* (literally 'a black woman') and a *karo* ('a black man') are more ritualistically killed and hacked to pieces, often in view of and with the implicit or explicit sanction of the community. In Punjab, such killings usually take place by shooting and appear more often based on individual decisions, occurring in an urban context and not always perpetrated in public.

The victims include young pre-pubescent girls, unmarried young girls and women, old women, including grandmothers, married women and widows. The mere allegation of girls and women having entered illicit sexual relationships usually suffices for their male relatives to take the law into their own hands and to kill them. The women are usually not given an opportunity to respond to such allegation. An allegation is enough to defile a man's honour, and therefore enough to kill a woman - and the man with whom she is alleged to have behaved 'improperly', if he can be found.

According to the non-governmental Human Rights Commission of Pakistan (HRCP), 888 women were reported deliberately killed in 1998 in Punjab alone. Of these, 595 killings were carried out by relatives; of these 286 were reportedly killed for reasons of honour. The Sindh Graduates Association said that in the first three months of 1999 alone, 132 honour killings had been reported in Sindh. Everyone contacted by Amnesty International about the incidence of honour killings in Pakistan held that the real number of such killings is vastly greater than the number reported.

An analysis of data on *karo-kari* killings collected by the Special Task Force for Sindh of the HRCP during 1998 highlights several remarkable features of honour killings in that province: In a total of 196 cases reported in Sindh, 255 persons were killed, including 158 women and 97 men. The data does not in all cases include information about the perpetrators, but of 154 persons killed for reasons of honour where the relation of the perpetrators to the killed person is given,

- in 46 instances when both a *karo* and a *kari* were killed, exactly one half of the killings were carried out by the husband of the *kari* and the other half by male relatives of the women concerned;
- of the 81 women killed alone as *kari*, 40 were killed by their husbands, 36 by male relatives, including, brothers, fathers, uncles or sons, five by others including their fathers-in-law or brothers-in-law;
- of the 27 men killed as *karo*, three were killed by the husbands of the alleged *kari*, and 21 by other male relatives of the women, with three killed by others, including the husband's relatives.

The fact that male relatives of the women concerned are so frequently perpetrators of the killings reflects the conviction that marriage and fidelity are not a matter between husband and wife but relate to the family and that a woman's assumed infidelity reflects on the honour of the entire family. While in the majority of cases, husbands, fathers or brothers commit the killings of girls and women in the name of honour alone or together with male relatives, in some cases, tribal councils or *jirgas* decide that they should be killed and send out men to carry out the deed. A *jirga* of members of the Afridi tribe living in Karachi decided that Riffat Afridi and Kunwar Ahsan were to be killed when they got married against Riffat Afridi's family's wishes. In March 1998, the husband, Kunwar Ahsan, was shot at by his wife's relatives. He remains permanently disabled. While the couple are still seeking a way to

settle in another country, the *jirga* has vowed to find and kill them wherever they go.<sup>11</sup>

*Everyone has the right to life, liberty and security of the person.*

**Universal Declaration of Human Rights, Article 3**

Large sections of society share traditional conceptions of honour and approve of honour killings - even mothers whose daughters have been killed on grounds of honour. Journalist Nafisa Shah reported the response of family members of women killed for honour: After Zarina and her alleged paramour, Suleiman, were killed by Zarina's three brothers in August 1998 in a village in Larkana district, Zarina's mother said, "there is no grief in *ghairat* [honour], it was right to kill them. They saw them together and they killed them." She and other women of the family were more concerned about her sons' arrest and the fact that their wives and children had no one to look after them. In another village near Warah, district Larkana, 18-year-old Aminat and her alleged paramour Azizullah were killed by Aminat's brothers and brothers-in-law. Aminat's mother-in-law expressed similar sentiments to the journalist: "Look, it was here that she was killed. We were all here. We saw them together all the time... I have been robbed, my honour has been robbed, I have been violated. This was a *zulm* [oppression, injustice] against me. So we axed her." Aminat's killers expressed the same conviction that they had done the right thing. Others in the two villages doubted Zarina's and Aminat's guilt but the common assumption was that if they were guilty their killing was justified.

Even educated women appear not to have dispensed with internalized customs and traditions which directly deprive them of dignity and often of life

itself. Samia Sarwar's mother, a doctor, facilitated the honour killing of her daughter in April 1999 when Samia sought divorce from a severely abusive husband (see case details below). Shahtaj Qisalbash, witness and hostage during the killing, reported that Samia's mother was "cool and collected during the getaway, walking away from the murder of her daughter as though the woman slumped in her own blood was a stranger". Similarly a woman activist in Karachi told Amnesty International how a woman near Sukkur refused to give police a *charpoi* [string bed] to carry her dead daughter who had been killed as a *kari* in front of her mother's house.

Honour killings are by no means confined to remote rural areas. They have been reported, though less frequently, in urban settings, sometimes among the urban elite. Samia Sarwar was killed on grounds of honour in April 1999 in Lahore (see below); Riffat Afridi and Kunwar Ahsan were attacked in Karachi for having defiled Riffat's family's honour by marrying against their wishes. A Faisalabad-based film producer on 16 February 1999 allegedly strangled his 28-year-old wife and mother of a small child at his rented studio office at Allama Iqbal Town on suspicion of her illicit relationship with another man.<sup>12</sup>

The frequency and randomness of *karo-kari* incidents contribute to an atmosphere of fear among young women in Pakistan. Human rights activists in Balochistan told Amnesty International that women facing the danger of being branded *siahkari* [black women] by the merest chance contact with a man not belonging to their families, are driven into ever more profound seclusion. Woman poet Attiya Dawood quoted a 13 or 14-year old girl in a small Sindhi village: "What is there to my body? ... Is it studded with diamonds or pearls? My brother's eyes forever follow me. My father's gaze guards me all the time, stern, angry ... Then why do they make me

<sup>11</sup>For details of the case see: *Pakistan: No progress on women's rights*, AI Index: ASA 33/13/98.

<sup>12</sup>*The Nation*, 17 February 1999.

labour in the fields? Why don't they do all the work by themselves? We, the women, work in the fields all day long, bear the heat and the sun, sweat and toil and we tremble all day long, not knowing who may cast a look upon us. We stand accused and condemned to be declared *kari* and murdered."<sup>13</sup>

*Everyone is entitled without distinction to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language...*

**Universal Declaration of Human Rights, Article 2**

Standards of honour and chastity are not equally applied to men and women in Pakistan though the honour code in theory applies to both genders equally. In surveys conducted in the North West Frontier Province and in Balochistan, men and women stated that in their communities, men often go unpunished for 'illicit' relationships whereas women are killed on the merest rumour of 'impropriety', any form of sexual contact outside marriage. Some towns and cities in Pakistan reportedly have red light districts and the regional trade in women for prostitution is reported in the media and noted by human rights groups. A Sindhi journalist activist was quoted in a monthly magazine as saying: "Ninety per cent of the young men in my village are having affairs, but at the same time they talk of nothing but *ghairat* [honour]... They have affairs but they are ready to kill any man who they think may be having an affair with their sister - and they kill her too."<sup>14</sup> Other male sexual activities, including homosexuality, reportedly occur in Baloch and Pashtun society but are ignored, perhaps tolerated and not punished.

Honour killings are also reported from the Pakistani community living abroad. In the UK, the Nottingham crown court in May 1999 sentenced a Pakistani woman and her eldest son to life imprisonment for murdering the woman's daughter, 19-year-old Rukhsana Naz, a pregnant mother of two children, in Derby in March 1998. Rukhsana was perceived by the family to have brought shame on them by having a sexual relationship outside marriage. Her brother reportedly strangled Rukhsana while her mother held her down.

British MP Ann Cryer in February 1999 in the House of Commons raised the case of Zena Briggs who had married an English man against her parents' decision to marry her to a cousin in Pakistan whom the young woman considered wholly unsuitable. Ann Cryer said: "To this day, a death sentence is hanging over them and through the years this otherwise decent Bradford Asian family have employed private detectives, bounty hunters and hit men to seek out their once much loved daughter for the purpose of killing her and her husband." A Pakistani woman and her British husband have described in a memoir the life they have had to lead in hiding for the last six years, following persistent threats to their lives when they married against her family's wishes.<sup>15</sup>

International support for women fleeing abroad when they fear for their lives from their families' death threats has been hesitant. The threat to the lives of women who refuse to accept their fathers' decisions relating to their marriages has only recently been recognized as a ground for granting asylum to such women.<sup>16</sup> In a landmark decision, the UK House of Lords in March 1999 ruled that two women who had come to Britain after rumours about

<sup>13</sup>Attiya Dawood, "Karo-kari: A question of honour, but whose honour?", in: *Feminista*, 2 (3/4), April 1999.

<sup>14</sup>*Newsline*, April 1988, p.19.

<sup>15</sup>Jack and Zena Briggs, *Runaway*, Vista, released in June 1999.

<sup>16</sup>See a recent Canadian decision: CRDD M97-06821 et al., Michnick, Arvanitakis, July 14, 1998.

their having illicit relationships were spread in Pakistan, had a well-founded fear of persecution as members of a particular social group, namely women, who experience discrimination and oppression because they occupy a lower status than men in Pakistani society. They were consequently granted refugee status in the UK.<sup>17</sup>

### The rationale of honour killings: Commodification of women and the honour code

Two main factors contribute to violence against women in the name of honour: women's commodification and conceptions of honour. The end result is that "the right to life of women in Pakistan is conditional on their obeying social norms and traditions".<sup>18</sup>

The concept of women as an object or commodity, not a human being endowed with dignity and rights equal to those of men, is deeply rooted in tribal culture. Dr Tahira Shahid Khan of Shirkatgah, a woman's resource centre, points out: "Women are considered the property of the males in their family irrespective of their class, ethnic or religious groups. The owner of the property has the right to decide its fate. The concept of ownership has turned women into a commodity which can be exchanged, bought and sold. ..."<sup>19</sup>

Similarly, a close observer of women's issues in Sindh, journalist Nafisa Shah says: "In the tribal society of Sindh and Balochistan, a woman is equated with money. ... But although she has monetary value, her worth is essentially that of a

commodity and this view goes far towards creating a situation when she may be butchered if she transgresses the conditions under which she is bound to a man for life. She may also be freely traded or given away as part of a *karo-kari* settlement."<sup>20</sup>

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood.*

**Universal Declaration of Human Rights, Article 1**

Ownership rights are at stake when women are to be married, almost always in Pakistan by arrangement of their parents. A major consideration is the young woman's future inheritance rights over family property or assets. "In Pakistan, feudal and tribal custom dictate that property be kept in the family. It is not uncommon for girls to be married to a paternal uncle or aunt's sons ... so that control over the estate (*jagir*) is not weakened which would happen if a daughter married an outsider. Feudals do not want their *jagirs* dismembered on any account. To keep daughters in the paternal family, they are sometimes married to paternal cousins 10-20 years younger than them (in some *syed* [descendant of the prophet] families of Punjab and Sindh, parents wait until a son is born to a paternal uncle). A girl 15-20 years old then raises her would-be husband. She has no choice. What if there is no paternal uncle available? Maternal cousins become acceptable in that situation. What if there is no maternal cousin? Then the woman has to undergo the ceremony of *haq-baksh-wai* (marriage with the Quran).<sup>21</sup> This is more

<sup>20</sup>Nafisa Shah: "Of female bondage" in: *Newsline*, January 1993, p.44.

<sup>21</sup>The practice of marrying a woman to the Quran, supposedly with her consent, is reportedly on the decline, but women's activists have told Amnesty International that it may still be found among *syeds*, descendant of the prophet, in upper Sindh. *Syeds* only marry within their community; on account of their high

<sup>17</sup>The judgment can be found on the web site [www.parliament.uk](http://www.parliament.uk) under House of Lords, judgments.

<sup>18</sup>Hina Jilani, February 1999.

<sup>19</sup>Tahira Shahid Khan: "Chained to custom" in: *The Review*, 4-10 March 1999, p.9.

common in Sindh. In Punjab daughters are kept unmarried till the age of menopause when they take up the Quran and *Tasbih* [prayer beads] voluntarily.<sup>22</sup> In June 1999, a brief report in the newspaper *Dawn* indicated that concern for property sometimes overrides concern for women's rights. Fatima Bibi of Jalalpur Pirwala, Multan district, had married Muhammad Umar against the wishes of her father. Intent to "save" his property by preventing his daughter's marriage, he invited the couple to his home, beat and locked up the husband, then forcibly married Fatima Bibi to the Quran. On 29 June 1999, Fatima Bibi committed suicide by hanging herself from a ceiling fan.<sup>23</sup>

While women are usually forced to accept such marital decisions made by their fathers, men have the possibility to marry a second wife according to their liking and lead a life in the public sphere where they can find fulfilment. Women by contrast are in the vast majority of cases confined almost entirely to the *char divari*, the four walls of the home.

The commodification of women is also evident in that every marriage in tribal society involves payment of the bride price (*vulver* in NWFP and Balochistan and *vekro* in Sindh). The girl or woman is exchanged for a price in the market. The price is paid by the groom to the father for the transfer of a commodity from the father's to the groom's/husband's possession and custody. The bride price varies according to status, health, beauty and age of the woman and, like other possessions, the bride subsequently adds to the honour of the groom. To receive a bride price in exchange for a

daughter is honourable not only to the family but also to the woman concerned whose worth is thereby acknowledged.

Sometimes the bride price is taken in the form of another woman. Men exchange their daughters, even granddaughters, for new wives for themselves. While demanding a low bride price for their daughters, some men ask in addition that the as yet unborn grand-daughters be handed over to them to be married off for another bride price.

The commodification of women is also the basis of the practice of *khoon baha* [literally: blood money], i.e. the compensation negotiated to end a dispute which besides money may involve a woman to be given to an adversary. For instance, a woman may be handed over to compensate a man whose honour has been damaged or to settle a conflict between two tribes or families. Nafisa Shah reports that the "standard price [to settle a conflict] is one girl above seven years of age or two under seven" and notes that girls' milk teeth had been broken to create the sense that they were above seven so a family would only have to give one girl.<sup>24</sup>

The possession and control of desirable commodities, especially *zan*, *zar*, *zamin* [woman, gold and land] is closely linked to the perception of a man's honour. These objects are worthy of possession and need to be controlled on account of their inherent value. *Ghairat* [honour] is closely linked with *izzat*, respect or standing in society. *Izzat* bases itself on possession, wealth, property.<sup>25</sup> "A man's property, wealth and all that is linked with

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status, *syed* women observe strict seclusion to the extent that some may never leave the home in which they were born.

<sup>22</sup>Tahira Shahid Khan: "Chained to custom", in: *The Review*, 4-10 March 1999, p.9.

<sup>23</sup>*Dawn*, 30 June 1999.

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<sup>24</sup>Nafisa Shah: "Karo kari. Ritual killings in the name of honour", in: *Newsline*, January 1993, p. 35.

<sup>25</sup>Only the Pashtoon have codified the honour system in the *Pashtoonwali*; it revolves around four concepts: *malmasty*, the obligation to show hospitality; *badal*, revenge; *nanawaty*, asylum; and *nang*, honour.

these is the sum total of his honour value. A woman is also an object of value and therefore is an integral part of the honour of a man, tribe etc. Therefore when the rights of a woman are transferred from her father to the man she is marrying, the guardianship of honour shifts as well.<sup>26</sup>

A key observation is that “although honour is located in material wealth, the language and expression of honour reside in the body”<sup>27</sup>. Women’s bodies are considered to be the “repository of family honour” as the Report of the Commission of Inquiry for Women put it<sup>28</sup>. Women are seen to embody the honour of the men to whom they belong and through them of the family and tribe whose right over them they must respect. Honour in the traditional setting is a male prerogative, it is men who possess *zan*, *zar*, *zamin* which allows them to hold their heads up; women have no honour of their own.

*State Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

**Convention on the Elimination of All Forms of Discrimination against Women, Article 5**

Perceived as the embodiment of the honour of their family, women must guard their virginity and chastity. By entering an adulterous relationship a woman subverts the order of things, undermines the

<sup>26</sup>Nafisa Shah: “Honour killings: Code of dishonour”, in *The Review*, 19-25 November 1998, p.7.

<sup>27</sup>Nafisa Shah: “Honour killings: Code of dishonour”, in *The Review*, 19-25 November 1998, p. 8.

<sup>28</sup>*Report of the Commission of Inquiry for Women*, 1997, p.88.

ownership rights of others to her body - and indirectly challenges the social order as a whole. She becomes black, *kari* (Sindhi) or *siahkari* (Baloch).

Women’s bodies must not be given or taken away except in a regulated exchange, effected by men. Women’s physical chastity is of uppermost importance and by the merest hint of ‘illicit’ sexual interest a woman loses her inherent value as an object worthy of possession and therefore her right to life. In most tribes, there is no other punishment for a woman accused of ‘illicit’ sex but death.

The logic of tribal tradition turns conceptions of victim and perpetrator, right or wrong on their head: women who are killed or flee a killing are not victims but the guilty party in the tribal setting. The man to whom a woman, whether a wife, sister or daughter, ‘belongs’, has to kill to restore his honour. He is the victim as he has suffered loss, first to his honour and then of the woman whom he has to kill. Consequently, he is the aggrieved person with whom the sympathies in tribal settings lie, not the possibly innocent woman he killed. A man whose honour has been damaged must publicly demonstrate his power to safeguard it by killing those who damaged it and thereby restore it. In the tribal setting, an honour killing is not a crime but a legitimate action, seen as the appropriate punishment for those who contravene the honour code. The man who kills for reasons of honour becomes *ghairatmand* [possessing honour] and is morally and legally supported by his kinsmen. A man’s ability to protect his honour is judged by his family and neighbours and he is taunted by *tano* [insinuation bordering on insult] that he is ‘socially impotent’ and *beghairat* [without honour] if he fails to kill a woman of his household who has damaged his honour. Honour killings consequently are not hidden away but openly performed, often ritually and with the maximum spilling of blood. Further, the family of alleged *karo* never kill as they do not lose honour - on the contrary, by captivating another man’s wife or daughter, they have increased their standing.

A human rights activist in Balochistan told Amnesty International that the distinction between a woman being guilty and a woman being alleged to be guilty of illicit sex is irrelevant. "What impacts on the man's honour is the public perception, the belief of her infidelity. It is this which blackens honour and for which she is killed. To talk of 'alleged *kari*' or 'alleged *siahkari*' makes no sense in this system nor does your demand that a woman should be heard. It is not the truth that honour is about, but public perception of honour." This view that the truth or otherwise of an allegation is meaningless in a tribal context was also confirmed by other observers in Sindh. Rumour, belief, insinuation are enough to defile honour and demand remedial action: the killing of women.

*Karis* remain dishonoured even after death. Their dead bodies are thrown in rivers or buried in special hidden *kari* graveyards. Nobody mourns for them or honours their memory by performing the relevant rites. *Karos* by contrast are reportedly buried in the communal graveyard.

A few tribes in upper Sindh like the Mehars do not physically kill a woman accused of being a *kari*; instead they banish them, marrying them to far away tribes. Their original community must never see a banished woman again and she must never come to visit her family. In a world where individual identity is closely linked to being part of a community such banishment may be experienced as an extremely harsh punishment.

The perception of what defiles honour appears to have been continually widened to the point where it is now very loose. Observers have told Amnesty International that male control does not only extend to a woman's body and her sexual behaviour but all of her behaviour, including her movements, her language and her actions. In any of these areas, defiance by women translates into undermining male honour and ultimately family and community honour. Severe punishments are reported for

bringing food late, for answering back, for undertaking forbidden visits. I.A. Rehman, director of the non-governmental Human Rights Commission of Pakistan, cited the case of a woman in Balochistan who was killed by her husband on the ground that she had gone to see her family without his permission.<sup>29</sup> Nafisa Shah mentions a teacher in Jacobabad as reporting that a man killed his wife after he had dreamed of her having an 'illicit' relationship. She also reported that in late 1992, a 14-year-old boy and a 10-year-old girl from the Chandio tribe were branded *karo* and *kari* and killed in village Akil Khurio in Larkana district. The boy had been seen drying his sweat-moist shirt in the sun after taking his younger siblings to visit neighbours on a hot summer's day; the young girl was resting on a *charpoi*, a string bed nearby. The girl's elder brother mistook the situation and spread the rumour; a few days later the children were killed.

For women to choose their marriage partners, object to male violence, or seek divorce are outright acts of defiance and thereby shame the man. They require severe acts of violence to restore honour.

A man's honour, defiled by a woman's alleged or real sexual misdemeanour or other defiance is only partly restored by killing her. He also has to kill the man allegedly involved. Since a *kari* is murdered first, the *karo* often hears about it and flees, aided by the fact that unlike a woman, he is both familiar with the world outside the house and can move freely in it.

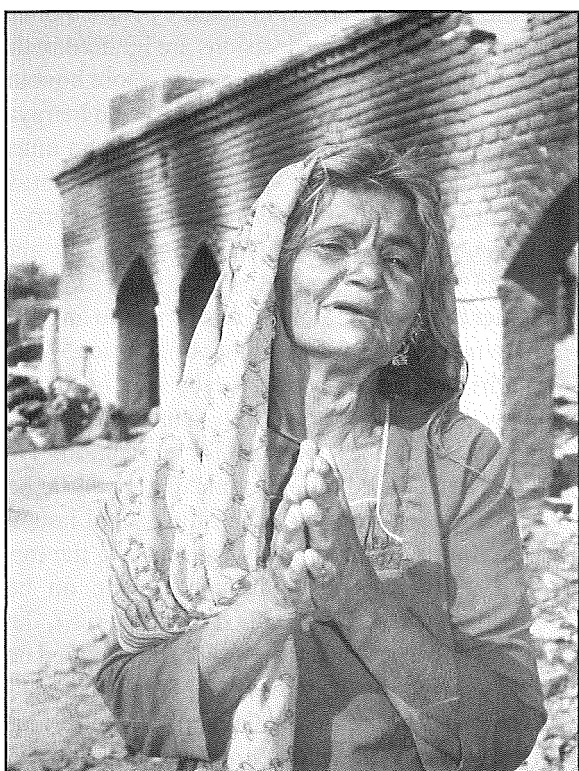
Baloch activists have told Amnesty International that *karos* - alleged or real - who escape will not be able to return to normal life. "Nobody will give such a man shelter, he remains on the run until he and his family are ready to negotiate with the victim, the

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<sup>29</sup>I.A. Rehman, *The legal rights of women in Pakistan: Theory and practice*, 1998, p.9.

man whose honour the *karo* defiled and who had to kill his wife or sister or daughter.”

If both sides agree, a *faislo* [agreement, meeting] or *jirga* [tribal council] is set up, attended by representatives of both sides and headed by the local respectable, the tribal *sardar* [leader], his subordinate or a local landlord, depending on the status of the parties involved.



Village women crying for her son who was killed as *karo*. Although both men and women have become victims of honour killings, more women are killed than men.  
© Yousuf Nagori.

The traditional justice dispensed by the *jirga* or *faislo* is about restoration of the balance disturbed by a woman's alleged 'misdemeanour'. It is not intended to elicit truth and punish the culprit. The balance is restored by negotiating compensation for damages. The *karo* who gets away has to pay

compensation for his life to be spared, for the loss of honour of the man to whom the *kari* belonged and for the woman the man killing her lost. The amount of compensation is fixed within each tribe, but *jirgas* also decide how the compensation amount is to be disbursed. Compensation can be either in the form of money or the transfer of a woman or both.

Compensation for defilement of honour is distributed in proportion to perceived damage. Journalist Ishaq Mangrio described this in relation to the killing of 16-year-old Shah Khatoon, married six months earlier to Rafiq, and 13-year-old unmarried Amina, both of the Khaskheli tribe who had run away with Zulfikar Chandio. The girls were caught and a *faislo* decided to send them back to their families. On the night they returned, their male relatives, the brothers Rafiq and Amir Ali, hacked them to death. Shortly afterwards, on 6 February 1996, elders of the Khaskheli and the Chandio tribes sat in a *jirga*; the aggrieved party, the Khaskheli, demanded two women in compensation but the Chandios refused and offered monetary compensation. On 8 April 1996, the following compensation agreement totalling 600,000 Rupees, an enormous amount by rural standards, was made, to be paid within six weeks to the following individuals:

- Mitho Khaskheli, elder of the tribe, probably because Shah Khatoon's father was dead: 150,000 Rs;
- the murderers Amir Khaskheli and Rafiq Khaskheli: 60,000 Rs each;
- Amina's father for the loss of a daughter he could have married for a bride price: 150,000 Rs;
- the elder brother of the accused because he had sold his taxi to get his brothers released from police: 60,000 Rs.;
- Murad Khaskheli, the father of the accused: 120,000 Rs.

As no family member had complained to police about the murder, police had on their own initiative



registered the complaint and arrested both murderers. In the *faislo*, a *razinama* [a legal document in which a complaint is formally withdrawn] was signed. Both murderers were released and participated in the celebration of the settlement. Zulfikar Chandio was told to move to another part of the town.

The transfer of women is by many *sardars* [tribal leaders] considered to be a good mechanism to settle disputes. Nawab Mohammad Aslam Raisani explained the logic: "If her paramour escapes, he has to pay two *khums* [blood money], one for the loss of a wife or daughter and one because the paramour's life is spared." A different logic was given by lawyers in the Sukkur High Court Bar Association: "One woman is given to compensate him for the disturbance in his life and one to replace the *kari*." The blind sardar of Shikarpur, Sardar Khadim Hussain Jatoi, told Amnesty International that *khoon baha*, the giving of women is "the best way to cool tempers, to heal a conflict and to bring families together by the links of marriage". This view appears unduly sanguine: women exchanged as *khoon baha* live in a hostile environment without their consent and continue to be treated ignobly all their lives.

Several *sardars* in Upper Sindh and in Balochistan told Amnesty International that their decisions effectively settle disputes and provide lasting peace; however, this claim is not borne out by the evidence. Such settlements are often flouted, and women killed despite *sardars'* decisions. Nafisa Shah attributes this to the lowering of the status and the plurality of alternate mediators of varying credentials, including religious personalities, parliamentarians, professional of tribal origin, local teachers and administrators, many of whom have conflicting interests to consider. They do not enjoy the unquestioned authority *sardars* had in the past; accordingly their decisions do not meet the same respect and are sometimes broken.

To break a *faislo* or *jirga* settlement is not dishonourable. Killing and violence as well as deceit and breaking of promises are not dishonourable in a context of intending to restore honour, they are not crimes. This partly explains why *sardars'* mediation efforts often do not bring lasting peace. *Karos* who have paid heavy compensation are sometimes killed years later, *karis* who are returned to their families on promises of safety, may be killed.

Mai Piri's case, described in detail by Nafisa Shah, demonstrates how *jirga* decisions are ignored in the interest of males killing a woman to restore honour. It shows that in issues of honour, deceit and betrayal are accepted. Mai Piri was married to a man much older than herself for a comparatively low bride price, just enough to allow her father to marry a young second wife. Her marriage agreement also included the commitment to hand over a future daughter to her own father so that he would have the right to marry her off for another bride price. When Mai Piri was sexually abused by her husband's nephews, she ran away to a religious leader, a *syed* [descendent of the prophet] for protection. Her having been abused did not immediately defile her husband's honour in the logic of the tribal honour system, but by running away and making the rape known to the *syed*, she brought shame on her husband. At the *faislo* called by the *syed*, her husband unexpectedly stood by her and declared her 'white', saying that he was willing to take her back. The nephews swore on the Quran that Mai Piri had run away to rid herself of her old husband. The *syed* ruled that the nephews were not to visit Mai Piri and that a wall be constructed through the compound to prevent Mai Piri being harassed. Family elders gave surety that no harm would come to her. A few days after her return to her home, Mai Piri was murdered by her husband's nephews.

After her death, Mai Piri's father said that police had betrayed him. He had paid a huge bribe to have a complaint registered against the murderers of his daughter but he was 'out-bribed' by the murderers

and no case was filed. He was also concerned that Yasmin, Mai Piri's young daughter to whom he had a right under Mai Piri's marriage agreement, might be withheld from him.

If it is felt that an injustice occurred or compensation was inadequate, *karo-kari* killings can lead to series of further killings. In October 1997, seven people, including three young boys, and two young girls as well as their mother and an uncle were killed in village Shahul Khan Umrani; reporters found the incident to be connected to a *karo-kari* killing in 1979 in which a man and a woman were killed for their alleged illicit relationship. Already in 1995, a further killing of two relatives had occurred. Mediation efforts by village elders had not led to a reconciliation.

#### Honour killings for seeking marriage

The notion of the defilement of male honour has extended over time to include not only sexual 'misdemeanour' but also other acts of defiance of male control. Expressing a desire to choose a marriage partner and actually contracting a marriage with a partner of one's choice in a society where the majority of marriages are arranged by parents, are considered major acts of defiance. Such acts are perceived to defile the honour of the man to whom the young woman 'belongs' and who can expect a bride price at her marriage. Women who marry a man of their choice moreover take recourse to state law, placing themselves outside the traditional scheme; by the public nature of their action they shame their guardians leading them to resort to violence to restore their honour. Marriage arrangements are delicate and seen to involve careful balancing acts; any disturbance of this balance by a woman refusing a father's choice are considered to affect the father's standing in society.

Frequently fathers bring charges of *zina* [fornication] against daughters who have married partners of their choice, alleging that they did not

contract a valid marriage.<sup>30</sup> But even when such a complaint is before a court, some men resort to private justice in the form of honour killings. Sher Bano had earlier eloped with a man she wanted to marry but was apprehended and arrested under the Zina Ordinance. On 6 August 1997, when she emerged under police guard from the court room in the sessions court in Peshawar after submitting her bail application, her brother shot her dead.

Sometimes women are killed for alleged sexual impropriety in a marriage arrangement context when different male relatives have different marital arrangements in mind and the woman is caught between conflicting requirements of obedience. Seventeen-year-old Nagina Bibi in Tarali Kalan near Islamabad, was engaged by her father to her cousin but her brother wanted her to marry his wife's brother. After her brother saw her talk to the cousin chosen by their father on the street, he and another brother on 14 April 1994 reportedly tied Nagina with a rope to a wooden post in their home, sprinkled kerosene over her and set her on fire. Neighbours had her admitted to a hospital with 75% burns, which the family claimed to be due to a stove bursting. Nagina told doctors that her brother had set her on fire because she had disobeyed him. The Progressive Women's Association investigated the case and had a case registered against the brothers, both of whom were arrested. One of the brothers admitted that he had burned Nagina with the help of his brother, because she had taken the liberty to talk to her cousin on the street. Nagina died after 23 painful days in hospital. It is not known at present if the brothers' case has gone to court.

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<sup>30</sup>The Zina Ordinance of 1979 makes *zina*, fornication and adultery a criminal offence which, if established by the court, can lead to the imposition of cruel, inhuman and degrading punishments, including stoning to death and public flogging. For a detailed discussion of the discriminatory nature of the law see: *Women in Pakistan: Disadvantaged and denied their rights*, AI Index: ASA 33/23/95.

Several of the women whom Amnesty International met in the state-run women's shelters called *Darul Aman* [literally: house of peace], in Sukkur, Larkana and Hyderabad had fled because of fear of lethal violence when they had disagreed with or refused their father's choice of a marriage partner. Seventeen-year-old H. [name withheld] in the Larkana *Darul Aman* had in early childhood been engaged to a man she disliked and whom she described as a thief and 'bad character'. When the wedding date drew near, H. was threatened with death if she continued to refuse the arrangement; she then fled to the shelter. H. did not believe that her family would accept her wishes as the selected husband was her mother's cousin and it would involve a loss of face if the arrangement was broken off. She did not have much hope of a resolution of her problem but was adamant that she would not go back.

R.'s [name withheld] case illustrates how being disowned by a family over a marriage without family consent cuts a woman loose from her social moorings and renders her vulnerable to exploitation. She told Amnesty International in the Hyderabad *Darul Aman* that at the age of 15 or 16 she had married a man from another tribe against her family's wishes; after three years of marriage her husband verbally divorced her but as her family had threatened to kill her for marrying a man of her choice, she had nowhere to go. She took up begging at various tombs and shrines. Eight years later she married another man but was one day recognized by her first husband who wanted her to work for him as a beggar and threatened to bring charges of *zina* against her for living with another man as he denied having divorced her. She was arrested by police; meanwhile the local *wadera* [landlord] intervened and had her brought before a magistrate who sent her to protective custody in the *Darul Aman*. At the time Amnesty International met her, she was unsure if *zina* charges had actually been filed and did not know at all what was going to happen to her.

*Satta-watta* marriages in which siblings are married to siblings of another family, put an additional burden on women to abide by parental marriage arrangement and to neither refuse marriage nor seek divorce. All marriage arrangements are understood to be about balance, involving the transfer of women for an appropriate bride price; in *satta-watta* marriages the delicate balance additionally involves exchange of siblings. The two couples so linked must remain perfectly balanced for the sake of the honour of the parents responsible for the arrangement.

In Humaira's case (described below), Humaira's parents had promised her to a man in a *satta-watta* arrangement and her refusal to abide by it brought shame on her parents. Similarly Shaheen was allegedly set on fire by her husband Anwar in Gujjarpura in December 1998 in a *satta-watta* context. Their marriage had run into trouble and Anwar felt humiliated that when he wanted to send his wife Shaheen back to her parents, Shaheen's brother, married to Anwar's sister, refused to send his wife home as well. He found no other way to remove his shame than to kill his wife.<sup>31</sup> Similarly in Samia Sarwar's case (described below), the mothers of husband and wife were sisters and hence Samia's attempt to seek divorce proved an unbearable slur on her parents' honour.

Often women choosing their spouses are abducted and not heard of again, perhaps murdered with no questions asked and no police action taken. While writing this report, on 16 May 1999, Abdul Ghaffar and his wife Shabana Bibi who got married a month earlier against the will of their elders, were reportedly abducted from the sessions court in Gujranwala, Punjab province, where the Lahore High Court had advised them to record their statement that they were validly married after

<sup>31</sup>*Dawn*, 16 December 1998.

Shabana's parents had filed an abduction charge against Abdul Ghaffar. While they were waiting for the hearing to begin, 16 armed men, several of whom were reportedly identified as belonging to the woman's family, burst into the court room, in the presence of dozens of passively watching police officers, and abducted the couple at gunpoint. It is not known to Amnesty International what happened to the couple later.

*(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

*(2) Marriage shall be entered into only with the free and full consent of the intending spouses.*

*(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

**Universal Declaration of Human Rights, Article 16**

In early February 1999, Zuleikha, a young woman of the Banglani tribe who had married a husband of the Khosa tribe, was reportedly shot dead by male relatives in Thul village in the interior of Sindh; her husband escaped. A local newspaper commented:

*"The only thing unusual about the event is that, unlike hundreds of other such killings across the country, Zuleikha's murder has been reported and become public. Otherwise, most family murders over marriage rows are buried with the victim. So entrenched and deep-rooted is this tradition of linking a tribe's honour with its women's marriages that rural communities tend to take their murder in the stride of an inescapable eventuality, something that has to happen because of the women's 'violation' of tribal or caste code. ... The helplessness of rural folks, especially women, is beyond the grasp of imagination. These voiceless creatures, shackled in a primitive mode of life, are treated worse than even tradable*

*commodities: they are but household possessions, living and dying at their males' whims."*<sup>32</sup>

The latest unresolved case brought to Amnesty International's notice is the abduction of Uzma Talpur. Uzma had married Nasir Rajput, whom she had met in college, on 14 November 1998 against the wishes of her father who wanted her to marry her cousin Masroor, whom she disliked. The couple fled to her husband's village in Jhelum district but police raided their home and arrested them on 30 November on the basis of a *zina* and abduction charge registered in Hyderabad - despite their showing police their valid *nikahnama* [marriage certificate]. They were brought to Hyderabad on 1 December 1998, where Uzma was handed over by the magistrate to her family while the husband was held and reportedly tortured in a police station whose station house officer was a member of the Talpur tribe. Nasir Rajput said that while he was in police custody, Uzma's family threatened to kill his entire family if he did not sign blank papers. When he complied, he was released. Nasir Rajput filed a constitutional petition in the Sindh High Court that his wife be released from her parents' unlawful custody, that the First Information Report (FIR) alleging abduction and *zina* be quashed and action be taken against those responsible for harassing and threatening the couple. The court asked the family several times to bring Uzma to court but they did not comply. At a hearing on 6 May, police informed the court that the family had left Hyderabad four months earlier. At a hearing on 10 May, counsel for the family reportedly claimed that Uzma had been abducted by unknown men and that they did not know where she was. Subsequently, Uzma's father Gul Mohammad Talpur filed a complaint in Cantonment police station of Hyderabad alleging that four unknown persons, at the behest of Nasir Rajput, had kidnapped his daughter from the court premises. At a hearing on 21 June, the Station

<sup>32</sup> Editorial in *The News*, 6 February 1999.

House Officer stated before the Sindh High Court that such a kidnapping had not taken place. The Sindh High Court ordered a general search for Uzma's recovery. At the time of printing this report, Uzma's whereabouts remained unknown.

The illegal detention, ill-treatment and abduction of Humaira Khokhar, in violation of high court orders, show to what extent an educated middle-class father will go if his perceived right to arrange his daughter's marriage is challenged. He threatened her with death, committed perjury and used the entire state machinery to which he as a parliamentarian had access to enforce his daughter's obedience. Without the intervention of alert women's rights activists, neither Humaira nor her chosen husband would probably be alive today. Unfortunately such cases are not few: the non-governmental Human Rights Commission of Pakistan said that at least four to five cases of women forcibly prevented by their fathers from marrying men of their choice reach the high court every month.

Humaira Khokhar, the 29-year-old daughter of locally influential landowner and sitting member of Punjab provincial assembly for the ruling Pakistan Muslim League, Malik Abbas Khokhar, on 16 May 1997 secretly married Mehmood Butt, a businessman settled in the US, against the wishes of her father who had promised her in marriage to her cousin.

She told Amnesty International that when she had disclosed to her parents that she intended to marry a man of her choice, she was beaten up, taken to the surgical ward of a government hospital, where her whole body was tightly bandaged and immobilized. She was detained there for a month. She also said that the cousin to whom she was promised in marriage at the age of three, was cruel and that she had seen him rape a family servant girl.

After the wedding Mehmood Butt returned to the US but came back to Pakistan in August 1998 after

Humaira had been forced by her parents to put her thumb impression on a *nikahnama* [marriage certificate] solemnizing her marriage to her cousin. In November 1998, the couple went to Karachi where Humaira sought protection in the Edhi Centre apprehending that her family would kill her.

On 30 November, Punjab police at the instigation of Humaira's brother on the basis of a false police complaint raided the Edhi Centre and abducted Humaira. At the intervention of women's rights activists with the Governor of Sindh, Humaira was released from her brother's custody and brought on 3 December to the *Darul Aman*.

Despite Sindh High Court orders not to arrest Humaira on any charges and the Lahore High Court bail order, Humaira, Mehmood Butt and his mother were on 29 January 1999 arrested at Karachi airport by Punjab police and CIA staff. Mehmood Butt said, "They ripped off my wife's veil and dragged her by her hair through the hall, they beat all of us. There were many people witnessing our ordeal but everyone was scared and did not dare help." The three detainees were taken first to a car park of the Aga Khan hospital where they were held overnight, then by road to Okara, Humaira's home town where her father wielded great influence, then to Lahore in Punjab, accompanied by Punjab police and her brother Abbas Khokhar. "We did not know where they would take us and if we would be killed", Humaira said.

In Lahore Humaira was taken to a police station which was sealed off from the public, later to a private house where her father and mother alternatively threatened and enticed her to declare that Mehmood had abducted her and to conform to their wishes with respect to her marriage; her father promised that nothing would happen to Mehmood if she admitted that he had kidnapped her: "I will take care of him, but I don't want him to be your husband", Humaira reported her father as saying. He threatened that "you cannot win this case, I can do

what I want, you will have to come with me, I will have your husband cut up". Butt and his mother were meanwhile held in another police station, not knowing what was happening to Humaira.

The Lahore High Court heard Humaira's petition to quash abduction charges against Mehmood Butt and also considered if her marriage was valid. During hearings Humaira confirmed that she had been ill-treated, abducted and threatened with death by members of her family if she did not give up her marriage to Butt. Humaira's father's counsel reportedly said in court that she would be dealt with by her father as an 'adulteress daughter who had crossed the limits of Allah'; he reportedly said that if women were allowed to contract marriages at will, society would suffer disruption.

In what the Pakistan human rights community hailed as 'a landmark judgement', the Lahore High Court on 18 February decided the case: Humaira's marriage to Mehmood Butt was found *prima facie* valid because it had been duly recorded and was acknowledged by both spouses. The judge severely reprimanded police functionaries who had "acted in a manner which betrayed total disregard of the law of the land and the mandate of their calling" by taking part in the abduction. The police inspector involved in the abduction was sentenced to one month's imprisonment and fine for contempt of court when arresting Humaira despite her pre-arrest bail. He also directed the Medical Superintendent of the Services Hospital to inquire into Humaira's forced confinement in the hospital.

On a "socio-moral plane", the judge observed that

*"the case had certain disconcerting overtones. Humaira was to be given in marriage to Moazzam in exchange of the latter's sister who was married to Humaira's brother. On the one hand, there was anguish and pain of a father whose daughter had rebelled and refused to marry a person of his choice and had left her hearth and home to join*

*someone with whom she had contracted marriage.*

*The father called it a sinful act and was not prepared to accept her under any circumstances. On the other hand there was a girl in distress ... waiting for a parental permission to join a husband of her choice. She was in a critical dilemma; i.e. of facing the social consequences of going back to a family fold where she stood eternally stigmatized or to go back with Mehmood whom she stood married to. The former course was full of tension, uncertainty and carried a death threat whereas in the latter course, although there was a death threat, yet it meant a fulfilment of her desire, where she dreamt of security and if she survived the death threat she hoped for an ultimate release from the high walls of feudal bondage. She chose the latter course and wanted the society to accept it. Perhaps she was not asking for too much at this age of her life but she was refused."*

Humaira's father's lawyer announced that he would appeal against the judgment and seek a stay to prevent the couple from leaving the country but they had already left Pakistan as they continued to fear for their lives.

### **Honour killings of women seeking divorce**

Several women who have sought divorce through the courts have been injured, killed or never been heard of again. Seeking divorce gives a strong signal of public defiance which calls for punitive action against such women to restore male honour within the traditional honour scheme.

One of the most recent honour killings of a woman seeking divorce occurred in the afternoon of 6 April 1999, when 29-year-old Samia Sarwar, a mother of two young sons, was shot dead in her lawyer's office in Lahore. Her lawyer Hina Jilani was also threatened but not injured. A para-legal trainer, Shahtaj Qisalbash was abducted by the killers but eventually released.

The apparent reason for the killing, threats and abduction was that Samia Sarwar's family felt their honour defiled by her disobedience to their wishes and her persisting in seeking a divorce from her abusive husband. They had allowed Samia to return home and had accepted the incompatibility of the spouses, but would not allow her to divorce. The case shows that some prosperous city dwellers -- Samia's father is a prominent business man, her mother a doctor while Samia studied law, her sister medicine -- follow the same traditional norms of what constitutes shameful behaviour in a woman and advocate the same punishments as rural populations.

Samia Sarwar was married to her cousin in 1989 in Peshawar, North West Frontier Province (NWFP). In the 10 years of her marriage, Samia was subjected to high levels of domestic violence, beating, kicking and other physical abuse which she was not willing to bear. In April 1995, she returned to her family home after her husband had thrown her down the stairs of their home when she was pregnant with their second child. When she expressed her intention of seeking a divorce, both her parents refused to help and instead allegedly threatened to kill her. Her mother and her husband's mother are sisters and it was considered shameful for the family that the marriage had broken down. Hina Jilani, Samia's lawyer said after her death: "On the two or three occasions that I met her personally to discuss her case, she repeatedly expressed the fear of death at the hands of her family. ... She seemed well-educated. However, I had the impression that she lacked confidence. I was surprised that a timid woman like her had resolved to take on the enmity of her family by resorting to legal action for divorce which, according to her, the family was opposed to even after five years of separation from her husband. ... Samia was a frightened, unhappy woman who felt very alone in a predicament that she couldn't deal with confidently."

Grasping the opportunity of her parents' absence from Peshawar during their pilgrimage to Mecca, Samia fled to Lahore on 26 March 1999 and sought help in the law firm AGHS<sup>33</sup> and refuge in the AGHS-run shelter Dastak. Acutely aware of her family's threats to her life, Samia refused to see male relatives but agreed to meet her mother who was to hand over papers needed for the divorce settlement.

On 6 April, Samia Sarwar consulted lawyer Hina Jilani in her office when her mother arrived, accompanied by Samia's uncle, Yunus Sarwar and Habibur Rehman, a driver employed in the NWFP Directorate of Education in Peshawar. When Hina Jilani told the men to leave the room, Samia's mother declared that she could not walk and needed her driver's assistance. Habibur Rehman then pulled out a gun and shot at Samia's head; she died instantly. He also fired at Hina Jilani who narrowly escaped injury. In the ensuing confusion, the driver threatened a security guard and was shot dead. Meanwhile Yunus Sarwar who had waited in the antechamber, took hold of AGHS paralegal coordinator Shahtaj Qisalbash and, using her as a shield, escaped with Samia's mother. According to Shahtaj Qisalbash's account, they drove to a local hotel where Samia's father awaited them, asking if "the job was done". They released her soon afterwards.

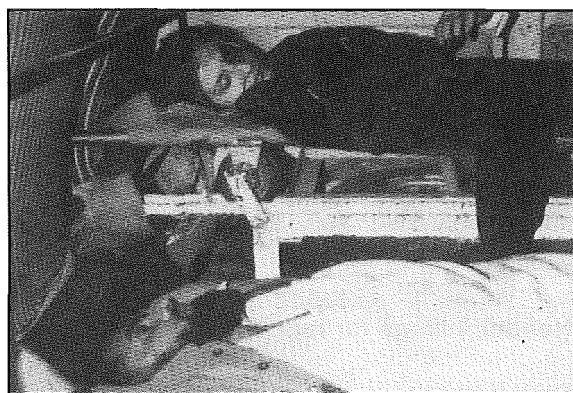
The fact that the killing was carried out in the lawyer's office during a busy afternoon, in the presence of well-known Supreme Court lawyer Hina Jilani suggests that the perpetrators were convinced they were doing the right thing, were not afraid of publicity as they could count on widespread support

<sup>33</sup>An acronym composed of the first letters of the first names of the four women lawyers who founded it; they include Hina Jilani and her sister Asma Jahangir, the current UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions and then chairperson of the non-governmental HRCP.

and not inclined to hide their identity. They were possibly convinced that the state would not take measures to hold them to account. They were right. Despite a First Information Report (FIR, the complaint registered with police obliging them to investigate the alleged offence) filed on the same day, nominating Samia's father, mother and uncle for murder, to date no one has been arrested. Low ranking police officers were on 20 April sent to Peshawar with arrest warrants, but were "shooed away" as a human rights activist put it. On 29 April, the accused obtained bail. In the first week of May, Hina Jilani petitioned the Lahore High Court against police failure to investigate and to submit their investigation report; an interim report was subsequently submitted. At a second hearing, on 15 June, a written note of the Crime Investigation Agency (CIA) explained the delay saying that the case was complicated and that a second FIR had been registered (see below).

Newspapers reported that the public response to the killing of Samia Sarwar in the North West Frontier Province (NWFP) overwhelmingly sided with the murderers. Many Pashtun commentators argued that since it was in accordance with tradition it could not be a crime. Some argued, however, that the parents should have obtained a *jirga* verdict before undertaking the honour killing to lend it legitimacy.<sup>34</sup> A similar attitude was also manifest in the Senate of Pakistan. When opposition Pakistan People's Party Senator Iqbal Haider presented a resolution condemning the killing of Samia Sarwar, Senator Ilyas Bilour referring to Asma Jahangir and Hina Jilani said: "We have fought for human rights and civil liberties all our lives but wonder what sort of human rights are being claimed by these girls in jeans." Other senators shouted abuse and threats against the two women lawyers. An amended resolution was being debated in the Senate in July

<sup>34</sup>M. Ziauddin, "The legitimacy of honour killings", in: *Dawn*, 8 May 1999.



The bodies of Samia Sarwar and her killer being taken away by ambulance. © Newline

and rejected on 2 August.<sup>35</sup>

The Sarhad Chamber of Commerce of which Samia's father is president and several religious organizations on 8 and 9 April demanded that Hina Jilani and Asma Jahangir be dealt with in accordance with "tribal and Islamic law" and be arrested for "misleading women in Pakistan and contributing to the country's bad image abroad". Several people belonging to religious organizations issued *fatwas* [religious edicts] against both women and promised to pay rewards to anyone who would kill them. In late April 1999, Asma Jahangir lodged a First Information Report with police against 16 people, including prominent businessmen in Peshawar, for issuing death threats against her and her sister. She also called on the government to set up a judicial inquiry headed by a Supreme Court judge to investigate almost 300 cases of honour killings reported last year in Pakistan. No action is known to have been taken on either issue.

<sup>35</sup>Farzana Bari, representing 15 human rights groups commented: "It is highly unfortunate that the so-called custodians of the constitutional rights of the citizens are violating the constitution by upholding and reinforcing archaic tribal value systems, chauvinism, fanaticism and political expediency." *Financial Times*, 5 August 1999.



On 11 May, Ghulam Sarwar Mohmand filed a complaint with Peshawar police accusing Hina Jilani, Asma Jahangir and two others with abducting and murdering his daughter. The accused obtained bail before arrest and on 15 June the Peshawar High Court admitted their petition to quash the case and ordered police not to take any adverse action on the basis of the later complaint. The case is pending.

### Honour killings for rape

For a woman to be targeted for killing in the name of honour, her consent -- or the lack of consent -- in an action considered shameful is irrelevant to the guardians of honour. Consequently a woman subjected to rape brings shame on her family just as she would when engaging in a consensual sexual relationship. "A woman raped shames the community and dishonours the man" according to Nafisa Shah<sup>36</sup> -- it does not dishonour the rapist.

In March 1999, a 16-year-old mentally retarded girl, Lal Jamilla Mandokhel, was repeatedly raped by a junior clerk of the local government department of agriculture who took her to a hotel in Parachinar, North West Frontier Province. The girl's uncle filed a complaint about the incident with police who apprehended the accused but handed over the girl to her tribe, the Mazuzai in the Kurram Agency, a tribal area which has its own legal and judicial system under provisions of the Constitution of Pakistan, apparently indifferent to, or not appreciating the danger to the girl's life. A *jirga* of Pashtun tribesmen decided that she had brought shame to her tribe and that its honour could only be

restored by her death. She was shot dead in front of a tribal gathering. The rapist was reportedly detained by police for "his own protection" when tribesmen demanded that he be handed over to them so they could execute him in accordance with tribal traditions. It is not known where he is now, but it is to be noted that the man who was the accused was thought worthy of police protection, not the victim of the crime. An Islamabad-based NGO, *Sahil*, in a press release expressed its shock at the killing, saying it had been carried out not by an individual overcome with emotion but by a community which sat in judgment and pronounced the victim "guilty".

Similarly two warring tribes in Shikarpur and Sukkur districts a few years ago reportedly killed their own women whom they considered 'disgraced' after rescuing them from their enemies who had abducted them. Nafisa Shah reports that women who publicly disclose the fact that they were raped and thereby dishonour their men are particularly vulnerable. Arbab Khatoon, raped by three men in a village in Jacobabad district lodged a complaint with police. She was murdered seven hours later, according to local residents by her relatives for bringing dishonour to the family by going to the police.<sup>37</sup>

### Killings under the pretext of honour

"Honour killing was punishment for violating the honour codes but the tribes have subverted the custom of killing not for honour but to obtain the compensation that the tribal settlement awards to the aggrieved person", Nafisa Shah summarizes.<sup>38</sup> In honour killings if both the *kari* and *karo* are killed,

<sup>36</sup>Nafisa Shah: *A story in black: Karo kari killings in Upper Sindh*, Reuter Foundation Paper 100, Oxford, 1998, p.56. Statutory law under the Zina Ordinance does not strictly differentiate between rape and fornication either; in fact, if a raped woman cannot prove that she did not consent to intercourse, she is considered to have committed *zina*, fornication, which attracts severe punishments.

<sup>37</sup>Nafisa Shah: *A story in black: Karo-kari killings in Upper Sindh*, Reuter Foundation Paper 100, Oxford, 1998, p. 56.

<sup>38</sup>Nafisa Shah: *A story in black: Karo kari killings in Upper Sindh*, Reuter Foundation Paper 100, Oxford, 1998, p.5.

the matter ends; if only the *kari* is killed and the *karo* escapes -- as is often the case -- he has to compensate the affected man, for the damage to honour he inflicted, for the woman's worth who was killed and to have his own life spared.

This scheme provides easy opportunities for the unscrupulous to make money, obtain a woman in supposed compensation or to conceal other crimes, in the near certainty that honour killings, if they come to court at all, will be dealt with leniently. As Nafisa Shah puts it, a whole 'honour killing industry' has sprung up with a range of stakeholders including tribes people, police administration and tribal mediators. "Vested interests ... use the excuse of honour as a blanket cover for a multitude of sins."<sup>39</sup>

Some people have been reported to manipulate quickly aroused public anger at women's imputed immorality to extract their own private revenge. In November 1997, Mussarrat Bibi, a mother of three children, pregnant and married for 11 years, was reportedly beaten to death by frenzied villagers in village Chehel Khurd near Qilla Deedar Singh in Sheikupura district after rumours of her immoral behaviour spread. Inquiries, however, revealed that she had refused to work for the local landlords without any payment. Her father reported that on 3 November, Mussarrat who was visiting friends in a neighbouring village was told that her husband was ill; she immediately returned to her village where the landowner's men started shouting that she was immoral and beat her with sticks and clubs and threw stones at her; villagers reportedly readily joined in. She died of head injuries on the spot. Two people were reportedly briefly detained.

Reports abound about men who, having murdered a man over issues not connected with honour, kill a woman of their own family as alleged *kari* to the

murdered man to camouflage the murder as an honour killing. That an innocent woman loses her life does not appear to be of concern to the murderer who reaps definite benefits from the ruse. By projecting the murder as an honour killing, the murderer will escape the death penalty and will evade the need to pay compensation for the murder, irrespective of whether he comes before a tribal or a formal court. In the tribal system, murder calls for compensation to be paid to the family of the murder victim but if in the case of the honour killing, both *karo* and *kari* are slain, the matter is concluded and no compensation is to be paid to anyone. If tried in the formal judicial system, the culprit may be made to pay *diyat* [blood money] for murder to the victim's family. If tried for an honour killing, he will usually not be forced to pay compensation.

The lure of monetary gain appears to have motivated many men to accuse their mothers, wives or female relatives of dishonouring their families and killing them in order to extract a compensation from the alleged *karos* who escape the killing. Nafisa Shah reports about a man in village Gujrani, near Kandhkot, killing his 85-year old mother as *kari* in 1992 and obtaining 25,000 Rupees from the man he declared the *karo*. Sometimes the money so extracted appears paltry. Fifty-year-old B. [name withheld] from Kandhkot, now in a *Darul Aman* in Sukkur, told Amnesty International that she had seven children by her first husband. Her brothers later married her to another man who proved to be a drug addict always in need of money. He declared her *kari* with her own son-in-law as *karo* and threatened to kill them both. The son-in-law then paid 3,000 rupees (about £35) to her brothers on condition that they would not treat B. as *kari* and another 3,000 rupees to her husband so that he would stop calling her *kari*. When the husband did not withdraw his threat to kill B., she sought shelter in the *Darul Aman* and filed for divorce.

The desire to obtain land may also lie behind some fake honour killings. "Land is the main issue in

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<sup>39</sup>*Newsline*, April 1998, p.18.

Sindhi society”, a journalist in Larkana said to Amnesty International, “all the rest follows from that. If a woman owns land, her brother may kill her to get her land; but even poor families nowadays imitate this pattern even though there is no property to grab, simply to ascertain themselves as equals in the system.” He told Amnesty International in February 1999 that three months earlier in a village near Larkana, a man killed his wife, then went to a neighbouring village and killed a man sleeping in his bed. Members of the dead man’s extended family ran away in fright leaving the murderer to grab the land thus vacated. “Women in our society are killed like hens” he concluded. “They have no way to escape and no say in what happens to them.”

Unable to repay loans, some men are known to have killed a woman of their own family to implicate someone in the debtor’s family to ensure the loan would be extinguished in compensation. In 1997, a political magazine reported that a Magsi tribesman had killed his mother in Larkana and labelled the local bank manager as *karo*. A *jirga* directed the supposed *karo* to pay a large amount of money to avoid his own killing and to compensate the ‘aggrieved’ man for the loss of his honour and of his mother.<sup>40</sup>

Nafisa Shah reports that a new twist to seeking pecuniary benefit in honour killings is emerging among the Sabzoi tribe in Kandhkot district. Here a *kari* is not killed, but returned to her family with the promise that she would be declared “white” and acceptable if the family pays a heavy fine.

The lure of compensation has in some cases led to outright and publicly known distortions of truth. In Ghotki, a man reportedly stood by his wife vouching for her innocence after she had been attacked and injured by his brother on the allegation of her illicit

relationship; he took her to Karachi for treatment but when he was told that she would be permanently paralysed from the waist down, he reneged, declared her a *kari* and took a woman in compensation from the supposed *karo*’s family.

The fact that women are often given in compensation when illicit relations are alleged has led to a further perversion of the practice. If a woman refuses to marry a man, he may declare a man of her family a *karo* and demand her in compensation for not killing him. In some cases, he may even for this purpose kill a woman of his own family to lend weight to the allegation. Attiya Dawood cited an incident in village Moorath, related to her by the sister of the alleged *karo*, Amanullah. Amanullah had married a woman who had earlier been fond of her cousin Nazir, a married man with eight children. Unable to obtain her family’s consent to marry her, Nazir murdered Amanullah, then killed his own innocent sister and declared both *karo* and *kari*. After a brief prison term, he was given Amanullah’s wife, now a widow, in compensation for the supposed infringement of his honour and the loss of his sister.

Nafisa Shah concludes that the “honour killing industry” turns the honour code upside down and indicates its degeneration. Women have monetary worth in themselves in tribal society and can be exchanged for money, but to knowingly kill them on false charges of sexual activity for monetary purposes is equivalent to prostituting them. “For in the honour system to use a woman to make money would be a dishonourable act.”

### **Punitive domestic violence against women**

Honour killings are but an extreme form of violence against women which appears to be approved by wide sections of society in Pakistan and is ignored by the state. Much of domestic violence in Pakistan is meted out to women in a habitual manner, arising from a male conviction that women deserve no other treatment. However, some violence is deliberate and

<sup>40</sup>Massoud Ansari, “Blind justice” in: *Herald*, November 1997, p.87.

punitive, intended to punish a woman for perceived insubordination which translates into an unpardonable transgression of a family or tribal norm. Sabira Khan, married at 16 to a man more than twice her age, was shortly after her wedding in 1991 told by her husband that she must never see her family again. When in December 1993 she tried to break this rule, he and his mother poured kerosene over her and set her on fire, though she was three months pregnant. Despite 60% burns she survived, badly scarred. Many operations later, she still needs restorative surgery to ears and eyes. She has fought since her husband's attack to bring charges against him - so far in vain. The Magistrate in Jhelum upheld her husband's argument that Sabira was insane and had set herself on fire. An appeal is pending in the Rawalpindi High Court bench.

The annual report for 1998 of the HRCP states bluntly: "Woman's subordination remained so routine by custom and traditions, and even putatively by religion, that much of the endemic domestic violence against her was considered normal behaviour. ... Domestic violence was common. A sample survey showed 82% of women in rural Punjab feared violence resulting from husbands' displeasure over minor matters; in the most developed urban areas 52% admitted being beaten by husbands... Burning by husbands and/or in-laws remained one extreme and widely occurring form of violence in Punjab. The reported cases of 1998 in and around Lahore alone numbered 282, only a minority (35%) of whom survived. The official claim of deaths from burning [made by the minister for the interior before parliament] was 59 in Punjab, 71 in Sindh and one in NWFP." <sup>41</sup> The survey found that more than two-thirds of both males and females considered disobedience a sufficient reason for beating. It also established that

women in paid employment who had thus gained a degree of independence were more liable to physical abuse than women doing unpaid labour.

Shahnaz Bokhari of the Progressive Women's Association in Islamabad told Amnesty International that since March 1994, when the organization was set up, it monitored 1,600 cases of women burned in their homes in the twin-cities of Rawalpindi and Islamabad alone. These are only reported cases whereas a large number of such cases must be assumed never to be made public - many women even in a big city never make it to the hospital. Shahnaz Bokhari said that most of the women have high degrees burns and that increasingly victims include unmarried girls and women seeking education and employment, apparently slipping from male control. The high mortality rate also reflects the lack of knowledge of first aid and of equipment. The twin cities Rawalpindi and Islamabad only has two hospitals with small burns units, while other hospitals lack facilities and often have highly infectious environments.

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<sup>41</sup>*The State of Human Rights in 1998, 1999*, p.216 and p.10.

Police, if they register a complaint at all, often accept bribes, then manipulate evidence and use sections of the penal code carrying lower penalties. They usually accept husbands' claims that the stove burst was accidental - but as Shahnaz Bokhari noted, "Why are the victims always



Victim of domestic violence at the Darul Aman in Hyderabad, February 1999. © AI

young wives, when in big families other and older women often do the cooking? Why does in an extended family, where there are always people around, nobody notice the 'accident' till it is too late? Why are the stoves that are supposed to have burst never found?"

Courts, too, frequently side with the offenders and utilize the slightest element of doubt to acquit offenders. Due to social pressure, witnesses rarely come forward, and the victims assuming that they will be cured do not wish to charge family members they have to return to or who may make life difficult for their children. Declarations made by women on their deathbeds have been challenged when slight discrepancies are found which may be due to the dying women's pain and distress. Parents often do not pursue the cases of their daughters burned to death as they have little hope of succeeding. Shahnaz Bokhari reported that of the 60 cases brought to prosecution (out of 1,600 recorded cases), only two led to convictions. Even when guilt is established, the law of Qisas and Diyat (see below) facilitates compromise and protects the perpetrators from punishment.

In February 1999, Amnesty International delegates visited a young 17 or 18-year-old woman in the Liaquat Medical College Hospital in Hyderabad; she had suffered 60% burns and was quietly whimpering and gasping for breath as her mother sat by her side and stroked her hair. The mother said the young woman's *dupatta* (scarf) had caught fire and the fire spread quickly over her back and entire body. Her father was choking back tears as he was aware that his daughter was dying. He said that she claimed to be married but was unable to show them her husband or the *nikahnama* (marriage certificate). The doctor attending to the dying woman said she was about six months pregnant. The "accident" had occurred when her pregnancy had become visible.

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

**Universal Declaration of Human Rights, Article 5**

Given the close link between a woman's conformity to customary norms of chastity and the honour of family or tribe, insulting or humiliating women is an easy way to inflict insult to their families or tribes. Women may thus become the victims of punitive

violence the intended aim of which is someone else, a man of their family or their family as a whole. This is already evident in verbal conflicts. Insults between men in a brawl usually take the form of slurs against the chastity of their mothers, sisters or daughters.

This equation is not lost on men seeking revenge against other men or families, leading to soaring instances of public sexual humiliation of women. In its annual report for 1998, the Human Rights Commission of Pakistan lists several of the 54 cases of women being publicly stripped and dragged through the streets in the Punjab reported in Lahore newspapers in the first 10 months of 1998. On 3 July 1998, a big landlord in Chak 15 near Multan along with his men raided the home of Allah Wasaya, molested three women of the family and forced them to walk naked through the village in punishment for a villager not agreeing to vacate a piece of land desired by the landlord.

The link between honour issues and the perception of women as the property of men is manifest in the following case reported by the HRC: "Mohammad Ramzan of Maisli had a suspicion that his son-in-law was planning to divorce his daughter to marry ...[another woman]. So one day in August [1998] he and five of his men lifted Mohammad Ramzan's daughter, stripped her, tarred her face black, put garland of shoes round her neck and paraded her through the village before returning her home."<sup>42</sup> Since the woman had passed into the 'possession' of her husband, Ramzan could, by humiliating her, undermine his son-in-law's honour. The fact that she was his daughter does not appear to have played any role in this decision, nor any recognition that women have an identify and rights of their own.

<sup>42</sup>*The State of Human Rights in 1998, 1999*, p. 221

### Women trying to escape tribal 'justice'

Girls and women who apprehend being targeted for killing for alleged breach of customary norms of honour have great difficulties finding refuge. In practical terms, they rarely know their way about in the world outside the home and their family's agricultural land. Women are unfamiliar with public transport, usually have no money and are highly visible, suspect and vulnerable to further abuse if they move around alone. The high proportion of *karis* killed in comparison to *karos* able to escape partly reflects this sheer inability of women to move in the public world. Many of the women who simply run in panic without plan or goal, are caught and killed in the fields, hiding in a graveyard or trying to reach a road.

*All are equal before the law and entitled without any discrimination to equal protection of law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

**Universal Declaration of Human Rights, Article 7**

Moreover, there are few safe places for a woman to escape to. Seeking help outside the family is fraught with danger for a woman. Not only does society blame a woman for being targeted for murder – the popular perception being that she must somehow deserve it – but by seeking outside help she risks being sent back to her husband or father in whose custody she is perceived to belong. Most important, by seeking help outside, she adds shame to her husband and his family by making the issue public. No *kari* who escapes is ever forgiven, even if her innocence is recognized; some men are known to have travelled hundreds of miles to find and kill *karis*, even years after the alleged misdeed. Escaped *karis* do not lose the stigma, their families often do not mention their names any more, do not visit them even at the time of their death or allow them to visit their original homes after deaths in the family, "the ultimate disgrace" according to Nafisa Shah.

One of the few places where a *kari* is safe is in the home of a tribal *sardar* [tribal leader], a *pir* [holy man] or in a religious shrine; in these places women are safe but expected to strictly abide by social roles, hence they are not a refuge for girls and women who seek to assert their rights. While providing sanctuary, the shrine cannot give assistance in negotiating a deal, it is merely a place where a woman can rest till she returns to her family. A tribal *sardar* of a Baloch tribe, Nawab Mohammad Aslam Raisani, chief of Sarawan, told Amnesty International that “if a woman is caught [in an illicit relationship], there is no way out”, making the sign of beheading. Only if she flees to her *sardar* is she safe. “Nobody will touch her here, she is safe. If she is unmarried I will find her a husband; if she is married I see to it that she is divorced and get her married in a faraway community which ensures her safety. That settles the matter and she is safe afterwards. ... This has been the system for a long time, there has been no change and that is good.”

Other *sardars* whom Amnesty International met in Upper Sindh confirmed this practice; they added that a woman seeking refuge with a *sardar* is sometimes returned to her parents, provided there is no apprehension that her parents would kill her. The parents may then arrange another marriage once a divorce is obtained. Journalists in Larkana reported that *karis* in the *sardar*'s household are completely powerless. Though they are protected against killing, they have no say in their further fate when men from both sides of an honour case meet with the *sardar* who decides the women's fate. A *sardar* in Upper Sindh told Amnesty International that other women are not consulted either so there was no cause for concern. R. [name withheld] in her mid-20s, a widow with small children who got married again, had come to the *Darul Aman* in Sukkur some six months before Amnesty International met her. Her husband had alleged that she had an illicit relationship with her maternal cousin (the son of her maternal uncle) and had severely beaten her. She initially fled to her parents but when her husband

threatened to kill her, she approached the Senior District Magistrate who ordered her refuge in the *Darul Aman*. The supposed *karo* was beaten up by her husband but escaped with his life. The local *wadera* [landlord] had arranged for a *faislo* [meeting, conciliation] in the family - her husband is also her paternal cousin - to decide her fate. But according to R., “I have no possibility to tell them that I am innocent. No women will be there and my male relatives will talk for me but what do they know? Once they call you a *kari* you are always treated as a *kari*, there is no way out. My husband will get compensation through the *faislo*, which the *karo* has to pay. I am angry about this: I have small children [from a previous marriage] who are left behind and whom I can never see. My husband resents them, they are not his ... I would go back for the children's sake but only if there is no danger for me. But that will never happen...” In her village near Sukkur, five women were killed as *karis* over the last two years.

Women who cannot be married off continue to work (and sometimes to be abused) in the *sardar*'s household, often for years as unpaid servants. Given that mere suspicion or rumour is enough to brand a woman *siahkari*, a woman in Balochistan who runs away and seeks protection is considered corrupt, and often subjected to humiliation and abuse. Such women may, Amnesty International was told in Balochistan, be auctioned at the annual cattle fair at Sibi where they are offered to tribal outsiders, and inspected like cattle. The *sardar* may subtract money for the time of her upkeep in his household from the money obtained, the rest is passed to her husband or father.

Yasmeen Hassan pointed out that recourse to tribal protection consolidates an abusive system as “this avenue of protection [appealing to tribal leaders] may be no more effective than reaching out to older male relatives because while it may help stop the

abuse for a while, the right to abuse goes unquestioned.”<sup>43</sup>

Few women reach state-run or private shelters of which, as all women’s rights activists in Pakistan agree, there are simply not enough to cope with the demand. Those women who succeed in reaching a shelter show a high degree of social responsibility and awareness as they seek to pursue their rights through legal channels - but they may often not be aware that by approaching the state system, they virtually block their return to communities whom they have shamed by this step. Moreover, safety in a shelter may be elusive. A lawyer in Sukkur told Amnesty International that some years ago a Baloch woman eloped with a non-Baloch man in Khairpur district. She was placed in the *Darul Aman* in Sukkur but her brother traced her to the shelter and shot her as she returned from the magistrate to record her statement. The family reportedly resented state interference in family and tribal matters.

*State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:.. (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which helps to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*

**Convention on the Elimination of All Forms of Discrimination against Women, Article 10**

The shortcomings of the state-run *Darul Amans* have been highlighted by many NGOs. They are not easily accessible in a woman’s hour of need as entry is only by the orders of a magistrate. Once there, the

refuge does not assist women to learn a trade which would make them economically independent later. Women spend their time in the shelter idly, in quasi-detention as they cannot leave except by authorisation of a magistrate. However, as the person running one of the *Darul Amans* in Sindh pointed out to Amnesty International, whatever its shortcomings, at least the wishes of women are taken into account with respect to their future.

Several small private shelters exist. The AGHS legal aid office of Asma Jahangir and Hina Jilani runs a small shelter in Lahore, *Dastak* and a few other urban crisis intervention centres exist, including two centres in Islamabad, *Bedari* and *Rahat*, which provide psychological, medical and legal assistance to women. A new shelter is currently being set up in Rawalpindi by the Progressive Women’s Association which will shelter and advise up to 30 women. The Edhi Homes are open in many towns to anyone in need of help - but Maulana Abdul Sattar Edhi has reportedly made it clear that he will not shelter women against the will of their husbands in the larger interest of his establishment which includes orphanages, homes for the dying and for the handicapped whose inmates often have no alternative refuge. According to Bilquis Edhi, over 4,500 girls and women have sought refuge in the nine shelter homes run by the organization; most of the girls and women in the 14-24 years age group leave home due to their parents’ hostile, often threatening attitude to their marrying a man of their choice. Among older women their unwillingness or inability to suffer systematic abuse in the home is the main reason for their seeking shelter. Safety may again elude women in these shelters. Humaira Khokhar (see above) was abducted from an Edhi Centre in late 1998.

In the new Women Crisis Centres in Islamabad and Vehari set up and run by the Ministry of Women’s Development, women in acute distress can obtain shelter directly, without any intermediary, but only for up to 24 hours. During this time, the sheltered

<sup>43</sup>Yasmeen Hassan: *The heaven becomes hell. A study of domestic violence in Pakistan*, Shirkatgah, 1995, p.49.



women's needs, whether legal help or social assistance, are identified, then the women have to make alternative arrangements or go back to their families. The Steering Committee of these centres is chaired in rotation by members of the different women's NGOs that manage the centres. In July 1999, two more crisis centres were opened in Karachi. Longer term shelters are a desperate need.

Unable to escape forced marriages or violence, some women resort to suicide, driven to resort to the most extreme form of violence against themselves. No official figures of women's suicides exist and many women must be assumed to be simply buried to cover up the possible damage to the family's honour. Occasionally, however, they come to light. On 29 March 1999, an 18-year-old college girl, Qaisrana Bibi, committed suicide in Khanpur when her parents put pressure on her to marry a man she did not want. She lay across a rail track where a train crushed the young woman. Again, on 5 March 1999, a young woman in Rajjar village near Charsadda shot herself dead when the date of her marriage to a man she did not like was announced. The village elders and the parents of the girl refused to hand over the dead body to police for a post mortem as the suicide was a disgrace to the family. Suicide is an offence under Pakistan law, hence in need of investigation, including a post mortem. Police have not paid any attention to the abetment by family members or the community to women committing suicide. "Suicide becomes the last resort especially for females who have far fewer opportunities than men to carry on a normal life after their family has turned against them. In a great many cases, the mental and physical violence leads to mental illness."<sup>44</sup> The seclusion in which women live and the dexterity with which such mental illness is hidden make any assessment of the extent of the suffering impossible.

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<sup>44</sup>Dr Tahira Shahid Khan: "Wedding bells" in: *The Review*, 4-10 March 1999, p.8.

### Reasons for the increasing incidence of honour killings

While the media coverage of honour killings has no doubt increased, leading to more such cases being reported, the real incidence, particularly of economically motivated killings of women concealed as honour killings, appears to have gone up as well. The sense of righteousness manifest in the way killings are carried out in broad daylight, sometimes in public places in front of witnesses, appears to have grown, too.

Observers and analysts in Pakistan have pointed to a number of reasons for this increase, a few of which are given below. Key among the contributing factors are the government's failure to take effective measures to end the practice (see chapter C) and the virtual impunity with which such killings are carried out. Others include the weakening of institutions of the state, a pervasive culture of violence, economic decline and a general disregard for women's issues.

In a perceptive analysis of the "severe multi-dimensional crisis" of Pakistan's socio-political environment, Najam Sethi, senior editor of *The Friday Times*, Lahore, wrote<sup>45</sup>:

*"The crisis of identity and ideology refers to the fact that after fifty years, Pakistanis are still unable to collectively agree upon who are we as a nation, where we belong, what we believe in and where we want to go. In terms of our identity ..., are we*

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<sup>45</sup>Najam Sethi was arbitrarily arrested and detained without charge or trial by different Pakistani state agencies from 8 May to 2 June 1999 after making a speech entitled *Pakistan on the eve of the new millennium* - from which these are excerpts - at the India International Centre, New Delhi on 30 April 1999. He has since his release been harassed by state agents and was barred from leaving Pakistan to accept the Amnesty International Special Award for Journalism under Threat in London in late June 1999.

*Pakistanis first and then Punjabis, Sindhis, Baloch, Pathan or Mohajir or vice versa? Do we belong - in the sense of our future bearings and anchors - do we belong to South Asia or do we belong to the Middle East? In terms of ideology, are we Muslim in a modern Muslim state or Muslims in an orthodox Islamic state? ... whose version of Islam do we follow? ... The crisis is manifest, above all, in the rapid public disenchantment with the political system of so-called democracy. Democracy is supposed to be about the supremacy of the law and constitution, about the necessity of checks and balances between the different organs of the state ... But it has degenerated into a system based exclusively on elections which return deaf and dumb public representatives to rubber stamp parliament. So we have the form of democracy but not its essence ... The crisis of civil society is demonstrated in many ways. In increasingly low turn out for elections. In continuing deterioration of law and order. In rising sectarianism, ethnicity and regionalism... In violence and armed conflict."*

Many analysts in Pakistan have concluded that each of these crises, relating to ideology, the democratic process and the breakdown of the civic order, has turned urban populations to alternative models, such as that inspired by the Taliban movement of Afghanistan,<sup>46</sup> which are claimed to alleviate these ills. Some observers have also pointed out that the apparent 'tribalization of formal law' may have created the impression of official sanction for this orientation which plays into the popular perception that it is acceptable to take the law into one's own hands (see section on laws). "The distance between the state law and the informal codes is being bridged. The imposition of the Hudood Ordinances and the Qisas and Diyat Act relating to sexual

offences and bodily harm, including murder, has added tribal characteristics to the formal justice system; especially the latter which has made murder a compoundable crime."<sup>47</sup>

Others have opined in the wake of the Samia Sarwar murder that "the progressive brutalisation of Pakistani society over the past few decades" is partly responsible. "It was brutalised when capital punishment was made a trivial matter by prescribing it as the minimum punishment for a variety of breaches of martial law regulation, and when several new offences were added to the list of capital crimes. It was brutalized when Zia-ul-Haq gathered crowds to witness a hanging in public or to listen to the shrieks of victims who were flogged in public squares, or when individuals in authority harangued their audiences with the resolve to hang people by lamp posts..."<sup>48</sup>

The increased access to heavy weapons by rural populations in the wake of the Afghanistan conflict has made it easier to settle issues, including honour issues, violently. For instance, the long-standing feud within the Bugti tribe on the Sindh-Balochistan border which ignited over an honour killing long ago and meanwhile cost the lives of 17 people, has reportedly recently escalated to the use of rocket launchers.

The economic decline of vast rural populations has delayed education and democratization and increased the lure to exploit the honour system and kill women for the sake of compensation payment. Nafisa Shah explains: "I am tempted to rationalize the increase of killings by linking them to new

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<sup>46</sup>In November 1998, Prime Minister Nawaz Sharif advocated the adoption of Taliban-style justice as a model of swift punishments and effective deterrence to end violence, crime and corruption.

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<sup>47</sup>Nafisa Shah: "Faislo - The informal settlement system" in: *Shaping women's lives. Laws, practices and strategies in Pakistan*, Shirkatgah, Lahore, 1998, 227-252.

<sup>48</sup>I.A. Rehman: "In the name of honour", *Newsline*, April 1999, p. 20.

market forces that have emerged in an impoverished economy. The stress factors of growing poverty and deprivation would be easy words to use here. Many factors would contribute to the 'demand' factor. Increasing poverty with breakdown of agriculture, excessive water logging [making vast tracts of land agriculturally useless], a high rate of unemployment, the slow growth of the 'development industry' have isolated the rural areas of Sindh. Tangwani, which is the hub of killing and feuding is a waterlogged area. Landlessness and unemployment are major concerns."<sup>49</sup> Pervasive corruption which is nationally and internationally noted may also have contributed to the increase in fake honour killings as there appears no social sanction to immoral behaviour or to breaking the law for the sake of personal enrichment.

At the same time, lawyers in Sukkur Bar Association pointed out to Amnesty International that economic decline has forced more and more women into the workforce but that men were not accustomed to seeing women move outside the traditional *char divari* [literally: the four walls]. They resent and fear the exposure of women to new people, ideas and influences as well as their increased self-confidence.

Indeed, the woman superintendent of the *Darul Aman* in Larkana pointed out that more women are



Village women with child. © Yousef Nagori

now aware of their rights, largely thanks to the awareness-raising work of women's rights groups but also to the media and greater mobility of women. Women's refusal to comply with decisions or traditions that violate their newly discovered rights has led to a backlash from men apprehending loss of control, involving violence, killings and threats of such violence. "There is a fear of change (viewed as Westernization) and the repercussions of this

<sup>49</sup>Nafisa Shah: *A story in black. Karo kari killings in Upper Sindh*, Reuter Foundation Paper 100, p.61.

fear/reaction are borne by women. This reactionary trend results in a great number of honour killings in urban areas where women are more mobile and there is a bigger chance that their activities will be seen as suspect.<sup>50</sup> Shahnaz Bokhari of the Progressive Women's Association says that "girls are more aware of their rights. It is about breaking the silence... So they run, they prefer to suffer jails, get beaten up and even die, but they increasingly say 'no' to tradition." Responding to these challenges, Simi Kamal of *Raasta* development consultants in Karachi, held that such backlash is inevitable if only women are made aware of their rights; human rights education and gender education have to be broad-based: if women are to be empowered, men have to be alerted to possible changes and the need to rethink roles and identities. The Commission of Inquiry for Women in its report of August 1997 pointed to the need for sustained and repeated gender sensitization programs and a continued dialogue between key institutions and personnel and women's groups to effect lasting education on gender issues and the integration of an awareness of gender issues into all areas of planning and policy making.<sup>51</sup>

The media and intellectuals may have paid insufficient attention to the tension between the rights of the family and the rights of those who make it up. While the family is seen as a unit worthy of protection in Pakistan, children and women currently lose their rights within the family in contemporary (but) tradition-dominated Pakistani society; the need to balance these different sets of rights has not been fully recognized and addressed.

In its search for solutions to protracted tribal conflicts, the administration in upper Sindh has increasingly used the services of traditional tribal leaders and the institution of the tribal *jirga* to solve problems facing the administration, including disputes over land and irrigation water that may have cost many lives in inter- and intra-tribal feuds. In this process the official judicial system has been bypassed on the grounds that the tribal system provides faster, cheaper and more lasting solutions. However, this approach has also conveyed the impression that the rule of law as enshrined in the constitution and statutory law is dispensable, replaceable by alternate systems such as the tribal justice system built on tribal notions of honour and social organization. The Director of the HRCP said: "There are more *jirgas* in Sindh than in the tribal areas. This is a dangerous trend. ... *Jirgas* are now held in jail. The state is abdicating its role. The state is colluding with tradition."<sup>52</sup>

The recourse to tribal justice and the implicit acknowledgement that rural populations fare best under this system is by many observers linked to the perceived shortcomings of the official judicial system. It is widely and increasingly seen to be inefficient, expensive and inaccessible to the general public; government efforts to set up special and summary courts to deal with a rising crime rate, the speedy trial courts, courts for the suppression of terrorist activities, anti-terrorist courts and special military courts, all set up under separate legislative acts or ordinances, have increasingly undermined the independence of the judiciary and confirmed public perception that existing courts are unable to deliver justice.

<sup>50</sup>I.A. Rehman: "In the name of honour", in: *Newline*, April 1999, p.20.

<sup>51</sup>Report of the Commission of Inquiry for Women, 1997, pp.110-111.

<sup>52</sup>*The Review*, 4-10 March 1999, p.6.

### C. HONOUR KILLINGS AND THE STATE

The crimes related to honour described in this report are violations of internationally recognized human rights of women for which the state bears responsibility if it systematically fails to exercise due diligence in preventing, investigating and punishing such violence. This chapter outlines the relevant international law on violence against women as a human rights issue and indicates the various areas in which the Government of Pakistan has failed to exercise due diligence in preventing, investigating and punishing such abuses. This includes state indifference to parallel legal regimes affecting women, gender bias in statutory law, and a biased application of the law by the police force and the judiciary. Such indifference allows these killings to continue with virtual impunity.

#### State responsibility for violence against women in the name of honour

The understanding of state responsibility for human rights violations has significantly widened in recent years to include not only violations of human rights by the state or its agents but also abuses by private actors. If the state fails to act with due diligence to prevent, investigate and punish abuses, including violence against women in the name of honour, it is responsible under international human rights law.<sup>53</sup>

<sup>53</sup>Violence against women in the home was explicitly acknowledged as a human rights concern in 1986 when the UN Economic and Social Council recognized violence in the family as “a grave violation of the rights of women”. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) noted in General Recommendation 19 that gender-based violence impairs or nullifies the following rights:

The responsibility of states to take action against human rights abuses by private persons is established in all the core human rights treaties. The International Covenant on Civil and Political Rights requires state parties to “ensure” the rights of the Covenant, an obligation which the Human Rights Committee has stated to extend to protecting against acts inflicted by people acting in their private capacity. The UN Convention on the Elimination of All Forms of Discrimination against Women (UN Women’s Convention) requires in Article 2(e) that states shall “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”. The Committee on the Elimination of Discrimination against Women (CEDAW) which monitors the implementation of the UN Women’s Convention has noted that “under general international law and specific human rights covenants, States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and for providing compensation”.<sup>54</sup> The Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 as a “commitment by States in respect of their responsibilities, and a commitment by the international community at large to the

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- (a) The right to life;
  - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
  - (c) The right to equal protection in situations of armed conflict;
  - (d) The right to liberty and security of the person;
  - (e) The right to equal protection under the law;
  - (f) The right to equality in the family;
  - (g) The right to the highest attainable standard of physical and mental health;
  - (h) The right to just and favourable conditions of work.

<sup>54</sup>CEDAW, General Recommendation 19.

elimination of violence against women”<sup>55</sup>, affirms that states must “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.<sup>56</sup> Radhika Coomaraswamy, the UN Special Rapporteur on violence against women concludes: “In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.”<sup>57</sup>

The standard of due diligence was applied by the Inter-American Court of Human Rights in its judgment in 1988 on the Velásquez-Rodríguez case, in which it held a state responsible for human rights abuses even if they were caused by private persons unconnected with the government. The Court stated: “An illegal act which violates human rights and which is initially not directly imputable to the State (for example, because it is an act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.” It

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<sup>55</sup>Preamble, Declaration on the Elimination of Violence against Women.

<sup>56</sup>Article 4(c).

<sup>57</sup>UN Doc. E/CN.4/1995/42, para 72. She added that “this emergence of State responsibility for violence in society plays an absolutely crucial role in efforts to eradicate gender-based violence and is perhaps one of the most important contributions of the women’s movement to the issue of human rights”, UN Doc. E/CN.4/1995/42, para 107.

spelled out what this duty implies: “The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim receives adequate compensation. This obligation implies the duty of the State parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”

The Court also pointed out that a single violation of human rights or one ineffective investigation does not establish a state’s lack of due diligence. It is the seriousness with which a state provides and enforces adequate measures that indicates its due diligence in ending abuses. As the UN Special Rapporteur on violence against women has noted, “the due diligence standard is not limited to legislation or criminalization”<sup>58</sup> but encompasses a whole range of approaches including training of state personnel, education, ‘demystifying domestic violence’ and other measures, each of which, if found an effective tool of preventing domestic violence, the state is obliged to adopt and apply with due diligence. The UN Declaration on the Elimination of Violence against Women sets out in Article 4 a series of judicial, legislative, administrative, educational and other steps that states should take to meet their obligation to end violence against women. The Declaration also calls on states to adopt national plans of action to promote the protection of women against any form of violence. The Beijing Platform of Action sets forth in even more detail steps for governments to

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<sup>58</sup>UN Doc. E/CN.4/1996/53, para 141.

take to eliminate violence against women.<sup>59</sup> These include *inter alia* the promotion of an active and visible policy of mainstreaming a gender perspective in all policies and programs related to violence against women, gender awareness raising programs, enactment and enforcement of legislation against perpetrators of practices violative of women's rights and of plans of action to eliminate violence against women. The implementation of such steps is one indicator for measuring the exercise of due diligence.<sup>60</sup>

State responsibility for abuses of women's rights by private actors also arises from state obligations to ensure non-discrimination and the right to equal protection of law. Under international law, states are under an obligation to ensure protection of human rights to all, without discrimination. States that discriminate in the protection of human rights on a number of specified grounds, including gender, commit a human rights violation. The International Covenant on Civil and Political Rights, for example, obligates state parties, in article 2, to ensure the rights in the Covenant to all in their jurisdiction, without discrimination on various grounds, including sex. Article 3 of the Covenant obligates state parties to ensure the equal rights of men and women in the enjoyment of all the rights set forth in the Covenant. These rights include the right to life (article 6) and the right not to be subjected to torture or cruel, inhuman or degrading treatment (article 7). The

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<sup>59</sup>UN Doc. A/CONF.177/20 (1995), paras. 124-130.

<sup>60</sup>In her report to the 1999 session of the UN Commission on Human Rights, the UN Special Rapporteur on violence against women listed eight questions she has been posing to states to assess their adherence to the due diligence standard in addressing violence against women by private actors. See UN Doc. E/CN.4/1999/68, para 25.

Human Rights Committee stated in its General Comment 20 on Article 7 that the state's duty includes protecting against such acts inflicted by people in their private capacity.

The Covenant also states that "[a]ll persons shall be equal before the courts and tribunals". Women victims of violence have a right to the enforcement and the protection of the law equal to that of any other victim of violence; if states fail to ensure this, such discriminatory treatment on grounds of gender violates the right to equal protection of law of the women victims concerned.

The Convention on the Elimination of All Form of Discrimination against Women in Article 2 requires state parties to end discrimination in all areas, i.e. "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". The Committee on the Elimination of Discrimination against Women in 1997 qualified honour killings as human rights violations in its consideration of Turkey's periodic report: "The practice of so-called honour killings, based on customs and traditions, was a violation of the right to life and security of persons and therefore must be appropriately addressed under the law" - which law, it had noted earlier, "allowed less rigorous sanctions or penalties for 'honour killings'".<sup>61</sup> Some experts, including the Committee on the Elimination of Discrimination against Women in its General Recommendation 19 adopted in 1992, have noted that violence against women, defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately", is itself a form of

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<sup>61</sup>UN Doc. A/52/38, paras 179 and 195.

discrimination and as such falls under the prohibition of gender discrimination.<sup>62</sup>

Another human rights treaty relevant to domestic violence is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In Article 1, it establishes state responsibility for acts of torture and ill-treatment by private actors if carried out with the “consent or acquiescence of a public official”. Scholars have stated that all the elements of torture can be present in domestic violence. It may cause severe physical and/or mental pain, and may be intentionally inflicted, for a specific purpose. There would be official responsibility, whether active or passive, if states tacitly condone domestic violence by not exercising due diligence and equal protection in preventing and punishing domestic violence. The UN Special Rapporteur on violence against women recommends: “The argument that domestic violence should be understood and treated as a form of torture and, when less severe, ill-treatment, is one that deserves consideration by the rapporteurs and treaty bodies that investigate these violations together perhaps with appropriate NGO experts and jurists.”<sup>63</sup>

Honour killings were addressed by Asma Jahangir, the UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions in 1999 in her report to the UN Commission on Human Rights. She dealt with traditional practices and customs affecting the right to life as falling within her mandate when condoned by the state. She took note of “... certain traditional practices which, when condoned or ignored by the

authorities, may constitute violations of the right to life”.<sup>64</sup> As examples of agents of the state condoning such practices, her report cites police failing to intervene to stop honour killings, and the judiciary viewing defence of family honour as a mitigating circumstance when sentencing men who had killed female relatives in such contexts. The Special Rapporteur on the Independence of Judges and Lawyers expressed “grave concern” about this in his 1999 report to the Commission and pledged to work with Asma Jahangir to study this phenomenon and report their findings to the next session of the Commission. Grave concern about honour killings was also expressed by the Special Rapporteur on violence against women in her 1999 report to the Commission.

Another human rights treaty relevant to violence against girls under the age of 18 is the Convention on the Rights of the Child which has been ratified by every state but two.<sup>65</sup> The Convention in article 19(1) obligates states to protect children from violence, injury or abuse inflicted in the private realm, including by parents, legal guardians or other persons who have the care of a child. “State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

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<sup>62</sup>General Recommendation 19 of CEDAW, UN Doc. A/47/38, para 31.

<sup>63</sup>UN Doc. E/CN.4/1996/53, para 50.

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<sup>64</sup>UN Doc. E/CN.4/1999/39.

<sup>65</sup>The United States and the collapsed state of Somalia.



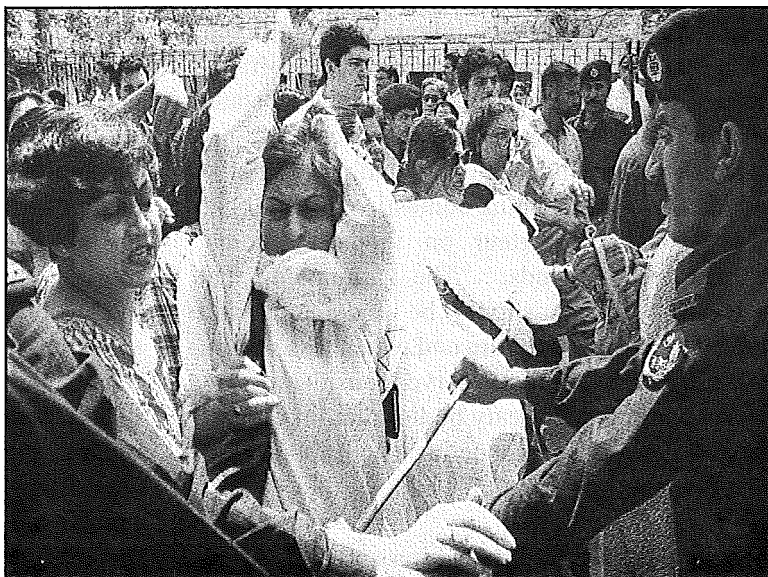
### Failure of the Government of Pakistan to act on honour killings

The Constitution of Pakistan in several articles guarantees gender equality. For instance, article 25 says: "All citizens are equal before law and are entitled to equal protection of law" and article 27 states: "There shall be no discrimination on the basis of sex alone". Of the international human rights treaties relevant to the issue of honour killings, Pakistan has ratified only the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child. However, both of these conventions obligate it to act to protect the relevant rights.

The UN Special Rapporteur on violence against women has given substance to the notion of due diligence by saying that any measure that is effective in reducing and preventing domestic violence becomes an obligation for a state to adopt under its due diligence mandate. She also echoed the UN Declaration on the Elimination of Violence against Women and recommended the adoption and implementation of national plans of action to ensure to women the full enjoyment of their rights. She further elaborated a series of questions to use in assessing state adherence to the due diligence standard.

Pakistan does not appear to have taken seriously its domestic commitments to ensure gender equality and its international legal obligation to exercise due diligence in preventing, investigating and punishing violations of rights of girls and

women in the context of honour. Pakistan has failed to ensure that legal provisions, law enforcement and judicial structures ensure the full enjoyment by women of their human rights (see following chapters). An existing plan of action has by NGOs been criticized as inadequate and in practice largely ignored. Support systems for women victims of violence are woefully inadequate and no effort has been made in the field of education<sup>66</sup> or the media portrayal of women to lessen and ultimately end discrimination against women. The government's



Human rights activists, protesting against government inaction in bringing the killers of Samia Sarwar to justice, are prevented from entering the Punjab Secretariat. © Private (AI use)

inaction on honour related violence virtually

<sup>66</sup>A study, *Awareness of laws regarding female issues among educated women*, released in June 1999 by Karachi University Centre of Excellence for Women Studies, showed that over 64% of women with a bachelor or professional degree interviewed for the project had no information of fundamental and constitutional rights of women.

signals its indifference if not outright approval of the practice.

Government inaction has received more public exposure since the honour killing of Samia Sarwar in Hina Jilani's office in April 1999. To this day, the accused identified by eye witnesses and named in the police complaint have not been arrested, nor has any action been taken against those who issued death threats against Asma Jahangir and Hina Jilani for protecting women's rights. Responding to the death threats against them, Asma Jahangir in May 1999 spoke about a "campaign of vilification, misinformation and incitement":

*"... Threats to kill me are being made publicly and people are being exhorted to commit violence against me. Are we living in a lawless society, where there is no respect for human life or dignity of the person? An incident in which a client is killed in the office of her lawyer shows that sanctity of law and constitution have been completely eroded. ... The government has shown complete insensitivity towards this naked violation of the rule of law. Why has the government failed to take action against persons publicly announcing their intent to kill me and are blatantly publicising this threat with their names through the press? I want to warn the government that they will be fully responsible for any harm that comes to me because of their failure to perform their legal and constitutional duty."*

A representative of the Government of Pakistan did condemn the killing of Samia Sarwar before the UN Human Right Commission in Geneva. And the Minister of Women Development made a statement in Washington on 10 April, four days after Samia's murder, stressing her government's commitment to women's advancement. She told the foreign press that her government had set up 21 women's crisis centres for distressed women where they can obtain legal and medical support and psychological counselling and that women's rights were uniquely

protected by Islam. But for domestic audiences, where attitudinal changes are urgently needed, the government only issued a statement three weeks after the killing saying it considered such acts "dishonourable and an extreme form of violence against women".<sup>67</sup> To date, the police inquiry into the killing has not been completed, nor has any action been taken against those who publicly issued death threats against Samia Sarwar's lawyers.

In February 1999, after a film on honour killings in Pakistan was shown on US television, the Pakistan diplomatic mission in Washington protested saying that it exaggerated the issue and created the impression that society as a whole sanctioned and condoned such killings. Prime Minister Nawaz Sharif, during a visit to Badin district on 18 March 1999, did mention the need for a law to "eliminate the menace of *karo-kari* killings" in Sindh, but he did not elaborate its content or time frame, and nothing has been heard of this initiative since.

The government's disregard for the obligations it undertook when ratifying the UN Convention on the Elimination on All Forms of Discrimination against Women has resulted in the persistence and increase of honour killings. When the 1998 annual report of the HRCP was released in March 1999, Information

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<sup>67</sup>Women members of the two major political parties condemned the act and pointed to underlying causes: Mehnaz Rafi of the Pakistan Muslim League said: "The problem lies in our feudal system ...[which] dominates even our National Assembly. Can you imagine them fighting for women? Women are considered to have rights within their four walls. And when they try to rebel against traditional thought, they are scandalized." Similarly Shahida Jabeen of the Pakistan People's Party said that the socio-economic stagnation had resulted in the resurgence of fundamentalism, tribal values and anti-women prejudices. Both were quoted by Shehar Bano Khan in "Women suffering under a reign of terror" in: *Dawn*, 2 May 1999.

Minister Mushahid Hussain reportedly said about its allegations of violence against women and of child labour: "These are a feature of Pakistan feudal society, they are not part of any government policy or a consequence of any law ... It is a long-standing problem in a feudal society that unfortunately happens to be male-dominated and also in certain part male chauvinist."<sup>68</sup> But no effective steps have been taken to promote equality and protection of women's rights through the resources the government has at its disposal. Though the government controls radio and television in Pakistan, these media project a stereotypically biased image of women or a romantic fiction which obscures the reality of many women's lives. These powerful media have not been utilized for human rights awareness and community education purposes which might begin to shift the entrenched culture of discrimination against women. Similarly school curricula and text books have not been reviewed with a view to abandoning gender stereotypes, as is required by article 10(c) of the UN Women's Convention.

#### **Failure of the Government of Pakistan to end parallel systems affecting the rights of women**

The status of women in Pakistan has been described as defined by the "interplay of tribal codes, Islamic law, Indo-British judicial traditions and customary traditions ... [which have] created an atmosphere of oppression around women, where any advantage or opportunity offered to women by one law is cancelled out by one or more of the others".<sup>69</sup> The government of Pakistan has failed to ensure that women are aware of their legal and constitutional rights and to put in place adequate measures to ensure that these rights and freedoms take

<sup>68</sup>Reuter, 10 March 1999.

<sup>69</sup>Simi Kamal, Asma Khan: *A study of the interplay of formal and customary laws on women*, vol I, 1997, p. ii.

precedence over other norms which deny women equality. Women's lives are by and large confined to the private sphere with little access to information outside their homes. As their lives are inevitably governed by the traditions of the community and tribe, women in Pakistan do not enjoy or benefit from the fundamental rights recognized in the Constitution of Pakistan nor the provisions of Muslim personal law. At the same time men have used the parallel legal regimes to which they have access whenever it benefited them.

Taking over statutory law introduced in the colonial period, the small elite holding political power in Pakistan after independence made no effort to integrate the value system underlying state law with the traditional beliefs and practices of the majority of its citizens. They have remained parallel and dissonant entities. "This lack of coincidence encourages and sustains parallel legal systems. ... Formal state law and its machinery has either not penetrated into different parts of society or has not found legitimacy because of its content, or has been found wanting as a system of justice because of its faulty implementation."<sup>70</sup>

The policy of former President Zia-ul-Haq to purportedly 'islamize' the law of the country introduced a further layer of concepts and judicial structures by substituting sections of the Pakistan Penal Code with Islamic provisions, by setting up a parallel Islamic court structure, and by declaring through constitutional change that all laws in Pakistan have to conform to Islamic injunctions.<sup>71</sup> Meanwhile the Muslim Family Law Ordinance of

<sup>70</sup>Farida Shaheed: "Engagements of culture, customs and law: Women's lives and activism", in: *Shaping women's lives: Laws, practices and strategies in Pakistan*, Shirkatgah, Lahore, 1998, p. 70.

<sup>71</sup>Henceforth, when reference to Islamic law is made, it refers to its interpretation in Pakistan.

1961 and related laws govern the realm of family law.

The contribution of customary and tribal norms to the discrimination against women has only recently received attention; given the flagrant deterioration of women's rights in Pakistan during, and as a consequence of, the Islamisation drive in Pakistan in the 1980s, women's rights activists and human rights groups focussed on this source of deterioration of women's legal and social status and are only now turning to other sources of discrimination.<sup>72</sup>

The limited awareness among women of their rights is evident from the fact that the majority continue to believe that it is virtuous for women to forgo their rights. "The spirit of sacrifice built so strongly in women within the family structure, means that when giving up a right there is a feeling of doing a good and/or having gained favour rather than one of deprivation",<sup>73</sup> a survey said about its findings in the North West Frontier Province and Balochistan; it also noted that women considered demanding their rights to be a 'condemned act' whereas men did not do so.

Traditional norms, Islamic provisions and state law diverge in many areas relevant to women's lives,

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<sup>72</sup>"In Pakistan, many of the inequities that women are subjected to are laid at the door of 'Islam'. Much of the debate on women in Pakistan is being waged by male religious leaders on the one hand and Pakistani feminists (mostly women) on the other. This debate is, therefore, focussed on 'Women and Islam', rather than on women within specific ... Pakistani contexts. ... The often stronger role of traditional and customary laws in shaping the lives of women is only recently beginning to be recognized." Simi Kamal, Asma Khan, *A study of the interplay ...*, Vol. II, p. 2.

<sup>73</sup>Simi Kamal, *A study of the interplay ...*, Vol II, p.57.

including control of assets, inheritance law, marriage, divorce, sexual relations, rape. Here only the latter four will be briefly described.

Islamic law (as interpreted in Pakistan) requires the explicit consent of both marriage partners to the marriage; the consent of the *wali* [legal guardian] is not required. Under the Constitution of Pakistan anyone above 18 is no longer a minor and does not need a parent's permission to marry. In customary laws and practice, by contrast, women are not allowed to choose a spouse; their consent is not asked and their dissent punished. Women interviewed in the NWFP indicated that in only 8 % of rural and 37 % of urban households women are allowed to select their husbands but further questioning revealed that this right was exercised with their elders' consent. The survey concludes: "To decide independently [in the choice of a marriage partner] is not 'traditional' and is considered sin".<sup>74</sup>

The survey in the NWFP further showed that over 80% of the population believed the *wali's* consent necessary for the validation of marriage, based on the "belief that men are better decision makers and 'guardians' of women and that women need protection to have a better deal during *nikah* [wedding]".<sup>75</sup> Seeking the explicit consent of the bride as required both in statutory and Islamic law, was in practice considered shameful.

Rights to divorce are unequally distributed under Muslim family law. Men may initiate and obtain a divorce under clearly defined conditions; however, the right to divorce may be delegated to women at the time of entering the marriage under clause 18 of

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<sup>74</sup>Simi Kamal, *A study of the interplay ...*, Vol. II, 1997, p. 58.

<sup>75</sup>Simi Kamal, *A study of the interplay...* , Vol II, p.138.

the *nikahnama* [marriage certificate]. Women have a right to obtain divorce or *khula* only through the court on specific grounds. In practice, a 'popular' Islamic interpretation of divorce law prevails in which husbands repeat *talaq* [I divorce you] three times in succession, whereas the Muslim Family Ordinance requires that the notice of divorce is only finalized after three months if compulsory attempts at mediation in that period have failed. However, women's ignorance of the law and men's access to several systems contributes to a drastic deterioration of the situation of women in this area. Women who consider themselves divorced under the traditional threefold repudiation and contract another marriage are frequently arrested and detained under the Zina law for unlawful sexual relations as their divorce is socially but not legally valid. Husbands who resent their former wives' new marriages have found this a convenient tool with which to harass their former wives. The right to *khula*, too, is problematic as most women do not know the law nor have the possibility of accessing a court.

The Zina Ordinance, part of the statutory criminal law of Pakistan, deals with fornication and rape and lays down evidentiary requirements and punishments for both, treating them as related offences. It lays down the punishments of stoning to death or public flogging for both offences if certain evidentiary requirements are fulfilled.

The Zina Ordinance discriminates against women and is defective also in other ways leading to demands for its abolition by national and international human rights and women's groups as well as by the Commission of Inquiry for Women. However, it provides in some areas more security to women than custom and tradition. Customary law makes no distinction between mere suspicion or proof of sexual relations, whereas the Zina Ordinance imposes stringent evidentiary requirements for the conviction and punishment of *zina*; there is no punishment for being the object of suspicion. Also, under customary law, a victim of

rape is considered guilty and considered to deserve the death penalty as well as the perpetrator; whereas the Zina Ordinance ascribes guilt only to the perpetrator. In practice, most women suspected of an illicit relationship or of being a victim of rape are not aware of their rights, and may believe themselves deserving of the punishment. Many women in such a situation would not and cannot approach the formal judicial system to argue their innocence. Instead they are killed in the community.

Traditional social attitudes differentiate little between alleged and real illicit sexual relations, indicating that in the absence of legal awareness programs, the knowledge of state law which makes this distinction has not reached many people. A survey conducted in NWFP of penalties imposed in the community on men and women suspected of *zina* and proven to have committed *zina* showed: 57% of rural men and 53% of rural women said that death was the usual punishment for women suspected of *zina*, whereas 39% of rural men and 38% of rural women said that death was the punishment given to men suspected of *zina*. While 83% of rural men and 75% of rural women reported the usual punishment for women proven guilty of *zina* was death, 58% of rural men and 57% of rural women said death was the usual penalty for men proven to have committed *zina*. Both the gender bias and the lack of differentiation between suspected and proven *zina* are glaring in this survey of rural practice.<sup>76</sup> Figures for city dwellers were somewhat better in all these categories, but Pakistan's population is primarily rural so the customary practice of the rural population does affect a much large sector. The same survey also showed that 17% of rural and urban men and women said that men received no punishment for suspected *zina* and 15% of rural and urban men and women said that no punishment was given to men proven guilty of *zina*

<sup>76</sup>Simi Kamal, *A study of the interplay...*, Vol II, p. 112 - 116.

-- whereas this category of 'no punishment' did not even exist in the survey when it came to women either suspected or proven to have committed *zina*.

The survey revealed a similar lack of distinction between allegation and fact in the traditional social attitude in NWFP towards rape and a failure to distinguish between perpetrator and victim noted above. A large proportion of rural men (50%) and women (44%) said that women merely suspected of having been subjected to rape are liable to be killed; women proven to have been raped were liable to be killed according to 55% of rural men and 47% of rural women. Men suspected of having raped a woman were said by 44% of rural men and 40% of rural women to be liable to be killed, whereas 55% of rural men and 47% of rural women said that men proven to have raped a woman were liable to be killed.

The survey concludes that in the case of rape, "the victim (i.e. women) were treated as the criminals although this is totally against Islamic and constitutional law. While agreeing in principle that this practice is wrong, families (i.e. the men in control) let their outraged feelings on having 'lost face' (when a female member is raped) override their sense of justice".<sup>77</sup>

The government of Pakistan has not only failed to educate the public in general and women in particular about rights and freedoms laid down in the constitution and state law, it has also failed to remove widespread misperceptions that Islam sanctions crimes of honour. Islamic scholars in Pakistan have repeatedly pointed out that Islamic teachings do not condone such killings and observers and analysts of the phenomenon of honour crimes in Pakistan identify tradition and custom as

the source of this form of violence against women.

A recent BBC film 'Murder in Purdah' showed several men responsible for honour killings saying that in doing so they had carried out the dictates of Islam. However, in the same village the *imam* [prayer leader] of the local mosque clearly stated that the practice was un-Islamic. In a debate following the showing of the film on ABC Nightline in the United States, Dr Riffat Hassan, Professor of Religious Studies and Humanities at the University of Louisville, Kentucky, USA, stated that the practice of honour killings had nothing to do with the teachings of Islam but "has its roots in ancient tribal customs which became incorporated in many cultures. Nevertheless, it is profoundly regrettable that such a crime should be so widely prevalent in Pakistan, a country whose very name - 'the Land of the Pure' - denotes the idealism of the Muslims of the subcontinent who engaged in a long and arduous struggle to establish a homeland in which the lofty principles of Islam could become actualized and institutionalized."<sup>78</sup>

A judge dealing with *Shariah* [Islamic law] cases in the Sukkur sessions court told an Amnesty International delegation in February 1999 that Islam strictly forbids taking the law in one's own hands. All disputes have to be brought before a competent court. In cases of alleged adultery, a court will weigh the evidence, allow a woman to present her case and a judge will decide the case in accordance with law. Evidentiary requirements are very strict to avoid anyone being convicted of and punished for offences they did not commit, and nobody should be punished on mere allegation. He added that the practice of *swara* [handing over a woman to settle a dispute] is unacceptable in Islam.

<sup>77</sup>Simi Kamal, *A study of the interplay ...*, Vol.II, p.120.

<sup>78</sup> M. Khalid Rahman: "Dr. Riffat Hassan. A feminist theologian", in: *The Review*, 29 July-4 August 1999, p. 22.

Again, Justice Tassaduq Jilani of the Lahore High Court in the Humaira Khokhar case said,

*“As Muslims we loudly proclaim our commitment to the lofty ideals of an Islamic ideology. The advent of Islam was a milestone in human civilization. It came at a time when women were treated as serfs and chattel. ... It was Islam which declared equality between a man and a woman. In matters of marriage a woman was given equal right to choose her life partner. After obtaining the age of puberty, she could exercise her option and choice. Unfortunately, in our practical lives, we are influenced by a host of other prejudices bequeathed by history, tradition and feudalism. ... It is that culture which needs to be tamed by law and an objective understanding of the Islamic values. ... Male chauvinism, feudal bias and compulsions of a conceited ego should not be confused with Islamic values. An enlightened approach is called for otherwise an obscurantism in this field may break the social fabric.”*

The Commission of Inquiry for Women stated in 1997:

*“Islam is the most enlightened of religions. It seeks to emancipate rather than to isolate and subjugate women. ... It is the only religion to recognize women’s individual rights and status, and to empower them as a matter of their own right. As a progressive religion exemplifying justice and equality, it forbids discrimination on the basis of sex, colour, caste and creed. It is therefore unfortunate that Pakistan should have laws and customs that violate this absolute and sacred principle of equality. It is even more unfortunate that many of these derogatory laws and customs are justified in the name of Islam or have been introduced as Islamic laws when clearly they are retrograde customs and traditions, or ill-informed interpretations that bear no relation to the divine design. This distinction has to be clarified once and for all. Ambiguity allows*

*obscurantist elements to re-open debate on settled fundamental principles ... ”<sup>79</sup>*

### **Failure of the Government of Pakistan to remove gender bias in the law**

Despite its constitutional obligations to ensure equality before the law to men and women, the Government of Pakistan has done nothing to amend laws that discriminate against women and make full redress in the case of honour killings virtually impossible. Two laws in particular disadvantage women in Pakistan in this context.

The law of Qisas and Diyat covering offences relating to physical injury, manslaughter and murder reconceptualized these offences in Islamic terms as understood in Pakistan and replaced relevant sections of the Pakistan Penal Code (PPC) of 1860 which derives from British common law. It was first promulgated as an ordinance in 1990, and since then was periodically re-promulgated till it was passed by parliament in 1997, without significant public or parliamentary debate. The law *ab initio* disadvantages women in certain ways; at the same time, the law of Qisas and Diyat does not allow mitigating circumstances to be taken into account in murder cases, a change which benefited women but has been undermined by judicial practice (see following section).

*(1) State Parties shall accord to women equality with men before the law.*

#### **Convention on the Elimination of All Forms of Discrimination against Women, Article 15**

The law of Qisas and Diyat reconceptualized the offences listed to the effect that they are directed not against the legal order of the state but against the person of the victim. With respect to offences

<sup>79</sup>Report of the Commission of Inquiry for Women, August 1997, p. xi.

against the person, a judge observed: “In Islam, the individual victim or his heirs retain from the beginning to the end entire control over the matter including the crime and the criminal. They may not report it, they may not prosecute the offender. They may abandon prosecution of their free will. They may pardon the criminal at any stage before the execution of the sentence. They may accept monetary or other compensation to purge the crime and the criminal. They may compromise. They may accept *qisas* [punishment equal to the offence] from the criminal. The state cannot impede but must do its best to assist them in achieving their object and in appropriately exercising their rights.”<sup>80</sup>

This approach to criminal offences reinforces “assumptions regarding the private nature of murder within the family”.<sup>81</sup> It has sent the signal that murders of family members are a family affair and that prosecution and redress are not inevitable but may be negotiated. Supreme Court lawyer Hina Jilani summarized the legal hurdles to prosecution in honour killings for an Amnesty International delegation: “The law really facilitates such killings. Killings are private offences, against the individual, not 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. If the husband kills in the family home, his family are the witnesses but they will not testify against him. There is no chance of bringing the killer to book... The prosecution case collapses on almost all the scenarios of an honour killing: In *karo-kari* cases there is no aggrieved party to pursue the case, society as a whole approves of the killing and

usually there are no prosecution witnesses as nobody testifies against a family member. Since the killing takes place in a family context, forgiveness, voluntary or otherwise, is almost inevitable. If a brother kills his sister on grounds of honour, her guardian, her father can forgive his son. Courts have the discretion under the law to prosecute even in cases where the culprit is forgiven but this very rarely happens.”

As hinted in Hina Jilani’s summary, the law of *Qisas* and *Diyat* presents several obstacles to full redress for honour killings. It also provides that the death penalty may not be imposed for murder as either *qisas* [punishment equal to the offence which can only be imposed when strict evidentiary requirements are fulfilled] or *tazir* [discretionary punishment, when the evidence is insufficient to impose *qisas* ] when the *wali* [legal heir of the victim] is a direct descendant of the offender.<sup>82</sup> In such cases, the court may only impose a maximum of 14 years’ imprisonment. Thus if a man murders his wife with whom he has a child, who then is the victim’s heir and the descendent of the offender, he cannot be sentenced to death. Though the law equally protects both men and women from the death penalty for murder of a spouse with whom they have a child, in reality, the number of murders of women by their husbands is vastly greater than the number of murders of men by their wives. The large number of men murdering their wives are assured from the outset that such murder will not be punished in the same manner as the murder of other people but merely with a sentence of a few years’ imprisonment. An article on violence against women in the HRCP Newsletter in January 1999 bluntly states: “After the promulgation of the *Qisas* and *Diyat* Ordinance, the number of extended family

<sup>80</sup>*Federation of Pakistan through Secy. Min. of Law vs. S. Gul Hassan Khan*, PLD 1989 SC 633

<sup>81</sup>Hassam Qadir Shah: “Reflections on the law of *qisas* and *diyat*” in: *Shaping women’s lives: Laws, practices and strategies in Pakistan*, Shirkatgah, Lahore 1998, p.265.

<sup>82</sup>Article 306(c) PPC reads: *Qatl-e-Amd* [murder] shall not be liable to *qisas* (hence not entail the death penalty) “when any *wali* of the victim is a direct descendent, how low-so-ever, of the offender”.



members ... accused of killing women has registered a phenomenal rise. Perhaps the possibility to circumvent the defective law accounts for this change in the pattern of maintaining family honour.”<sup>83</sup>

Muhammad Akram was sentenced to death for killing his wife, three daughters and one son, when they had ‘annoyed’ him. Relying on section 306(c) and 306(b) (relating to the murder of one’s children) the appeal court commuted his death sentence to 14 years’ imprisonment, expressing its apparent displeasure with the law by imposing 14 years’ imprisonment for each murder to be served consecutively.<sup>84</sup>

Before the Qisas and Diyat Ordinance was promulgated in 1990, section 300(1) of the Pakistan Penal Code<sup>85</sup> allowed the conversion of a murder charge into a charge of manslaughter -- which is punishable with imprisonment rather than death -- if provocation was established. In its interpretation by the courts, the law thus provided men who had killed their wives or daughters for allegedly bringing shame on them with mitigating circumstances not applicable to women. Courts opined that if the provocation -- to a man’s honour -- is grave and sudden, as when someone tells him that his wife is involved in an illicit relationship, he loses all power of self-control and therefore is not fully responsible for this action. The courts’ interpretation of the law sends the signal that murdering women in an honour related context is a lesser offence than other murders

and that it is acceptable that men do not exercise self-control.

In a 1989 Supreme Court judgment (already before the introduction of the Qisas and Diyat Ordinance), Justice Taqi Usmani noted that, according to the injunctions of Islam, provocation, howsoever sudden and severe, is not considered a mitigating circumstance where murder is concerned. He observed that if a man were to see his wife commit *zina* he would be entitled to kill her only if all the evidentiary requirements for *zina* liable to *hadd* [prescribed punishment] are fulfilled, namely the presence of four Muslim men witnessing penetration. If a man merely suspects his wife of sexual misconduct, he is advised to divorce her.<sup>86</sup> The ‘grave and sudden provocation’ provision was omitted when the Qisas and Diyat Ordinance was promulgated in 1990.

The law of Qisas and Diyat continues implicitly to permit the traditional way to compensate murder through *swara* [handing over a woman in compensation]. This practice is not allowed in Islamic law as understood in Pakistan. The law provides that murder be punished, if all evidentiary requirements are fulfilled, by the *qisas* punishment of death, (i.e. a death for a death) and, if the evidence is insufficient, by the *tazir* [discretionary punishments] which range from imprisonment to death. The *wali* [legal heir] of the murder victim may also forgive the culprit and accept *diyat* [a fixed amount of money in compensation] or *badal-i-sulh* [compensation to be negotiated]. The law in section 310 PPC states that giving a woman in compensation is not a valid form of *badal-i-sulh*, but it does not prohibit the practice. According to reports, courts continue to accept women being handed over as part of compensation settlements. The Report of the Commission of Inquiry for

<sup>83</sup>Tanveer Jahan: “Faces of tyranny as mirrored in the press”, in: *HRCP Newsletter*, January 1999, p. 14.

<sup>84</sup>PLD 1994 SC 885

<sup>85</sup>“Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by sudden and severe provocation, causes the death of the person who gave the provocation ...”

<sup>86</sup>*Federation of Pakistan, through Secr. Min. of Law vs. S. Gul Hassan Khan*, PLD 1989 SC 633

Women recommended that it be made a criminal offence.

The Zina Ordinance<sup>87</sup> of 1979 has also contributed to restricting women's rights. The gender discrimination inherent in it has sent an affirmative signal to those intent on treating women as second class human beings with fewer rights than men. At the same time it has provided a handy tool with which to punish women who take any initiative with respect to their choice of a spouse. Despite the fact that under the Constitution of Pakistan, in the case law of the superior courts in Pakistan, and in Islamic law as interpreted in Pakistan, an adult woman is free to choose her spouse, police continue to register complaints of abduction and *zina* against women who have married of their own free will. "The police which is very shy of registering a case of marital abuse at the instance of a battered wife as these are 'private matters' has no qualms in registering a *zina* case at the instance of a father against his daughter."<sup>88</sup>

### Gender bias of the police force

The government of Pakistan has taken no measures to correct the widespread gender bias of law enforcement personnel and to provide adequate gender sensitization training to all staff likely to deal with complaints by or about women. As the case of Humaira Khokhar's abduction and illegal detention by police indicates, police often act, or allow themselves to be used, as guardians of tradition and customary morality rather than perform their task of enforcement of the law of the state. Often fathers use police to recover or unlawfully arrest and detain

their daughters who married men of their choice. Despite several judgments asserting that adult women have the right to marry without their male guardians' consent, police continue to register complaints of abduction and *zina* against women making use of this right, though police could easily ascertain if couples were validly married and thus not guilty of either abduction or *zina*.

Even when women are seriously injured by their husbands or families, police often discourage them from registering complaints and advise them to seek reconciliation with their husbands or families as any matrimonial or family dispute would bring dishonour to them and their families if pursued.

In *karo-kari* cases, when husbands appear in the police station with their blood smeared weapons declaring that they have killed their wives, police often fail to take action against them, reflecting their unwillingness to enforce the law over custom. An activist in Karachi told Amnesty International: "Police are not trained to look at things dispassionately. When a woman is believed to have done something 'illicit' or if she claims her rights, there is something wrong with her, she deserves to be punished in the eyes of the police."

While police by and large concur with traditionally held views of women, financial corruption also seems to contribute to their inaction before such crimes. Nafisa Shah quotes villagers in Kashmir as saying: "The police in Kashmir charge 7,000 Rupees to keep silent about *karo-kari* murders ... They never record cases and so we have a zero per cent crime rate"; she reports that "police stations in Jacobabad district are considered goldmines in police circles because of the high incidence of *karo-kari* murders here. A conservative estimate puts the number of *karo-kari* murders in Jacobabad at between 55 and 60 a month." She quotes a Station House Officer in the area as saying: "To commit a *karo-kari* murder you must have at least 150,000 to 200,000 Rupees at hand... After killing his wife and

<sup>87</sup>For a detailed discussion see: *Women in Pakistan: Disadvantaged and denied their rights*, AI Index: ASA 33/23/95.

<sup>88</sup>Danesh Zuberi, "Outlawed" in: *The Review*, 6-12 May 1999, p.8.

her paramour, a man usually comes to the police station with his blood-stained hatchet or gun. We help him by distorting the statement on record because this is a question of *ghairat* [honour]. And shares of the huge bribes from *karo-kari* cases regularly go to the SP [Superintendent of Police] and the DIG [Deputy Inspector General of Police] of the range.”<sup>89</sup> Given the lucrative aspect of honour killings, many police are not interested in ending the practice.

Police also appear to cover up fake honour killings. A housewife, Khadeja and a bank officer were shot dead on 19 January 1999 at around 8.30 pm in Jampur city, Rajanpur district in southern Punjab by Khadeja’s husband, Ameer Bukhsh, who then turned himself in, alleging the victims’ illicit relationship. Khadeja’s brother, Abdul Qadir registered a complaint against the accused under section 302 PPC, i.e. murder. Six days later, Abdul Qadir received a copy of the First Information Report which, he said, had distorted his complaint. The FIR said that Abdul Qadir, another brother and a cousin were in Khadeja’s house watching television with her four children when they heard Khadeja’s screams from the next room. On entering, it said, they saw Ameer Bukhsh shooting the victims lying together on a bed. Abdul Qadir reportedly denied that he had ever reported such an account and that he or the other men were present in Khadeja’s house at the time of the killing. He said that he heard of his sister’s murder when he returned home after his driving job at around 12.30 am. He and another male relative then reported the murder to police but before obtaining the body of his sister for burial, was forced by police to sign blank papers. He reported that police threatened to involve him in a false murder case if he did not sign the paper. Abdul Qadir alleged that Ameer Bakhsh had killed the bank officer for some other reason before killing his wife

as a cover up and that he had bribed police to distort the complaint.

*Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.*

**Universal Declaration of Human Rights, Article 8**

Similarly, burn cases -- most of which appear to be outright murders of women by their husbands or their husbands’ families in the guise of an accident -- are rarely fully investigated by police. Of the 183 women reported to have died of burn injuries (of 282 burn victims) allegedly while cooking in Lahore in 1998, only 21 complaints were registered with police and only three persons were finally arrested despite a High Court ruling three years ago that all burn cases be fully investigated by police. The HRCP annual report for 1998 adds that at least 70 of the victims were not even cooking when the supposed accident of catching fire took place.

### Gender bias of judges

Judges are part of the society in which they live, reflecting many of its cultural values and moral norms but also many of its prejudices. Nowhere is this more visible than when it comes to gender equality prescribed by the Constitution of Pakistan. To rise above prejudice is a requirement of judges’ office but in reality this does not always take place. In fact, Pakistan’s judges, at the lower levels of the judiciary but even sometimes at the higher level, tend to reinforce discriminatory customary norms rather than secure constitutionally guaranteed gender equality. “Culture continues to interface with law beyond its formation. Since the interpretation of law cannot be detached from the specific cultural context in which it is located, norms and accepted practices profoundly affect the application and interpretation of law. ... In societies in which the concept of honour killings is socially validated, the formal legal

<sup>89</sup>Nafisa Shah, “Karo Kari, ritual killings in the name of honour”, in: *Newsline*, January 1993, p.31.

system will reflect this validation - in spite of the textual provision of the law..."<sup>90</sup>

The gender bias of many judges is evident in the way in which they use the defence of honour to mitigate sentences in cases brought before them.

Women activists and lawyers practising in various parts of Pakistan confirm the existence of these attitudes on the part of judges. A woman lawyer and activist in Islamabad, Nahida Mehboob Elahi, told Amnesty International, "Judges are ready to believe the worst of women, and assume a paternal role towards them, as though they were incapable of deciding for themselves. So often they send women back to their tormentors and believe that is the best for the women. ... Mitigating circumstances are usually taken into account for men but never for women."

Other women lawyers in Karachi similarly state: "The courts tend to support women who conform to the role laid down for them within the patriarchal structure, but judgmental bias is evident in decisions where the court is dealing with women who do not conform, for example those who, it is alleged, have committed adultery, who are then considered to be immoral women not requiring the protection of the court or of society."<sup>91</sup>

Similarly human rights lawyer Hina Jilani in Lahore states: "Women's right to liberty is restricted in the name of modesty, protection and prevention of

immoral activity."<sup>92</sup> Women recovered after alleged abductions and women whose marriage to men of their choice was challenged by their fathers are usually placed in the custody of state-run institutions until the courts have decided the issue, treated by the court as 'crime property': "All this is done in the name of social morality. Courts have been known to refuse issuance of the writ of habeas corpus seeking the liberty of a woman on the grounds that her right to liberty is subject to conformity to social norms, and any suspicion that she may not abide by the standards of morality can disentitle her from receiving relief in equity."<sup>93</sup>

Parts of the judiciary appear convinced that any interference in the patriarchal structure of society will disrupt society and that it is its duty to guard against such upheaval. However, this attitude ignores that the existing structure of society perpetuates discrimination on gender grounds which deprives one half of the population of basic rights. This points to an important issue of self-perception of judges. Justice Sabihuddin Ahmed of the Sindh High Court told Amnesty International in February 1999 that in reflecting and upholding traditional conceptions of rights, the judiciary in Pakistan was forsaking an important role which the judiciary in other parts of South Asia had adopted, where it was leading the way of reform and progress in the area of personal liberty. Courts can either choose to reflect existing and broadly accepted norms of society or they can use the law as an instrument of change.

International commitments relating to the protection and promotion of the rights of women appear little known among members of the judiciary. The Commission of Inquiry for Women noted that

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<sup>90</sup>Farida Shaheed, "Engagements of culture, customs and law: Women's lives and activism", in: *Shaping women's lives: Laws, practices and strategies in Pakistan*, Shirkatgah, Lahore, 1998, p. 65.

<sup>91</sup>Nausheen Amin, Danesh Zuberi: "Partners in crime", in: *Newsline*, April 1999, p.30.

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<sup>92</sup>Hina Jilani, *Human rights and democratic development in Pakistan*, Lahore, 1998, p.143.

<sup>93</sup>Hina Jilani, *Human rights and democratic development in Pakistan*, Lahore, 1998, p.143-144.

“ratification [of the UN Convention on the Elimination of All Forms of Discrimination against Women] was accompanied by minimum publicity for fear of an adverse reaction from certain obscurantist elements in the country... Another fear was that it would bind the government to take measures to eliminate many of the laws or discriminatory aspects in laws which had been introduced in the garb of Islamic laws, a sensitive and controversial area that most governments are extremely reluctant to touch however much they might deplore them. As a result, most members of the government, including the judiciary, are unaware of the substance of CEDAW or the strategies or measures discussed therein.”<sup>94</sup>

In dealing with honour killings, the courts have usually applied the mitigation contained in section 300(1) PPC (before its removal in 1990 when the Qisas and Diyat Ordinance was promulgated), despite the fact that such killings are usually premeditated, not committed under sudden and severe provocation. Moreover they have placed a very low threshold on what constitutes provocation, thereby implicitly reiterating the prevalent tradition that men need not seek to exert self-control when it comes to women’s rights to life and physical integrity.

In a case in 1983, a man who had killed his fiancée and her family due to their refusal to have an early marriage had a death sentence commuted to life imprisonment by the court on the grounds that “there are mitigating circumstances in ... that the crime is committed due to family dispute on the marriage ... The appellant felt his honour injured and this provoked him to resort to violence.”<sup>95</sup> The court also took into account that the appellant belonged to the Brohi tribe and was “vulnerable to impulses

which tend to injure their peculiar ideas of respect and honour.” Almost 10 years later, in 1992, a high court argued similarly that the “impact of provocation on human frailty is to be judged in the context of social position and environment of the person concerned. The restraint which is generally shown by sophisticated persons used to modern living is hardly to be expected in the case of a villager who still regards his wife as his personal property and chattel ...”<sup>96</sup>

In some cases, courts have taken it upon themselves to find extenuating circumstances where the murderer has not even pleaded to have been suddenly and severely provoked. Muhammad Younis killed his wife, alleging that he had caught her committing adultery. Though all the circumstances, including medical evidence spoke against this assertion, the court accepted mitigating circumstances: “The appellant had two children from his deceased wife and when he took the extreme step of taking her life giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to that extent.”<sup>97</sup> The reference to the two children is legally irrelevant but implicitly relied on the social norm that a man would not kill the mother of his children if he had not been seriously provoked.

In theory, the murder of divorced wives should not benefit from the ‘sudden and severe provocation’ exemption as honour no longer attaches to divorced women. However, courts have been exceedingly lenient in this regard. A man who killed the wife he had divorced six months earlier when he saw her coming out of a house with a strange man, was granted mitigating circumstances. The prosecution argued that he had killed her out of jealousy at the prospect of his ex-wife marrying another man, but

<sup>94</sup>*Report of the Commission of Inquiry for Women*, August 1997, p. 91.

<sup>95</sup>*Moula Bux vs. the State*, 1983 Pcr LJ 1752.

<sup>96</sup>*Khanan Khan vs. the State*, Pcr LJ 1993

<sup>97</sup>*Muhammad Younis vs. the State*, 1989 Pcr LJ 1747

the judge ruled that although the divorce deed had been produced at the trial, it had not been entered into the evidence and as such could not be relied upon. He therefore considered the claim that the victim was not divorced as “reasonably probable” which entitled the murderer to benefit from section 300(1) PPC.<sup>98</sup>

After 1990, which saw the formal removal of the right to plead mitigating circumstances when the Qisas and Diyat Ordinance was promulgated, the courts have gradually reintroduced this provision in their interpretation of the law in order to lower sentences against men charged with crimes of honour.

The Lahore High Court in 1994 while hearing the bail application of Liaqat Ali who had gravely injured his sister and stabbed to death a man he found with her, was told by the petitioner’s counsel that in an Islamic society a person found to indulge in *zina* in public deserved to be ‘finished’ there and then. Indeed, such murder was more of a religious duty than an offence. The judge reportedly responded: “Prima facie, I am inclined to agree with the counsel.”

The Supreme Court also blurred the line between provocation on grounds of honour and premeditated murder by saying that “the reduction of sentence on the question of family honour or duty can be allowed notwithstanding the fact that an element of private revenge is involved in such cases.”<sup>99</sup>

In 1995, the Lahore High Court commuted three death sentences to life imprisonment on grounds of damage to a man’s honour. Muhammad Sharif,

aided by two male relatives, had killed his wife, the man she had gone to live with and that man’s father. The court concluded that this case did not involve sudden and severe provocation but nonetheless had mitigating circumstances: “As such their family honour had been attacked and injured to an alarming extent and this brought shame to them which continuously egged them on to avenge their grievance and to restore ... their family honour. ... it is obvious that the crime was committed in order to avenge a family disgrace. This therefore, certainly provided a mitigating circumstance.”<sup>100</sup>

Marriages contracted by women against the wishes of their fathers are also by many courts perceived to impact on fathers’ honour and to justify a man losing control and killing the offender. Mohammad Akram was sentenced to death for killing the man his cousin had chosen to marry against the wishes of the family. Accepting the plea that in Pakistan marrying without parental sanction raised the question of family honour, the Lahore High Court reduced his sentence to life imprisonment.<sup>101</sup>

*State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

- (a) the same right to enter into marriage;*
- (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
- (c) the same rights and responsibilities during marriage and its dissolution;....*

**Convention on the Elimination of All Forms of Discrimination against Women, Article 16**

<sup>98</sup>*Muhammad Sharif vs. the State*, 1983 Pcr LJ 1817

<sup>99</sup>*Ghulam Abbas vs. Mazhar Abbas*, PLD 1991, SC 1059 at 1063

<sup>100</sup>*Muhammad Sharif vs. the State*, Lahore High Court, 1995

<sup>101</sup>*Mohammad Akram vs. the State*, Lahore High Court, 1997

Mohammad Riaz and Mohammad Feroze were sentenced to life imprisonment for killing their sister who had married a man of her choice. The Lahore High Court reduced the sentence to the imprisonment already undergone, i.e. 18 months, saying that “in our society nobody forgives a person who marries his sister or daughter without the consent of parents or near relatives.”<sup>102</sup>

The courts seem to sometimes accommodate very remote circumstances to constitute mitigation. The Lahore High Court in 1998 commuted the death sentence to life imprisonment in the case of a man who had murdered another man who had first negotiated and then broken off his engagement with the man’s niece. The court held that society viewed the breaking of an engagement without reason as a dishonour to the family of the rejected woman.

Amnesty International believes that penal sanctions commensurate with the gravity of the offence should apply to honour crimes. However, it opposes unconditionally the imposition of the death penalty, which it regards as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The death penalty has never been shown to deter crimes more effectively than other forms of punishment, and it may actually contribute to brutalizing society. Accordingly, Amnesty International welcomes all commutation of death sentences.

In accordance with this unconditional opposition to the death penalty, Amnesty International does not think that men murdering female relatives in the context of honour killings should be given the death penalty. At the same time, it is concerned at the message the judiciary sends when it treats such murders as less serious than other murders. The acceptance of family honour as a mitigating

circumstance by judges in Pakistan leading to lenient sentencing of perpetrators of honour killings has by many observers in Pakistan been held responsible for the increase of such crimes.

The then chairperson of the HRC, Asma Jahangir, while opposing the death penalty in all cases, protested against lenient sentences for honour killings saying that such rulings were an “invitation to murder in the garb of morality ... The courts should deliver their judgments in accordance with the law rather than their perceived sense of morality. By allowing people to take the law into their own hands, the honourable courts will only promote disrespect for the law. Honour and dishonour are relative terms.”

#### Reform moves by *sardars*

The wide-ranging violations of women’s rights in the context of honour crimes are issues which the state has to address. Given the authority of tribal leaders and the fact that many of them are part of the legislature of Pakistan, they could be agents of change and contribute to ending the denial of rights and freedoms to women.

Most tribal chiefs or *sardars* in Pakistan have enjoyed higher education; many hold office in the country’s legislature on the basis of their tribes’ allegiance and bloc voting pattern; all are at least locally and many nationally influential. However, many *sardars* do not appear to integrate their roles in national politics and their tribal milieu, keeping the norms, standards and discourses well apart. They hold *jirgas* with unquestioned authority, then fly to Islamabad to take part in a formally democratic system based on the notion of equality of all.

The view that the *jirga* system serves the tribal community best is widespread among *sardars*. Sardar Khadim Jatoti told Amnesty International that both sides to a conflict have trust in the *sardar* as the most respected person and therefore do not lie

<sup>102</sup>*Mohammad Riaz and Mohammad Feroze vs. the State*, Lahore High Court, 1998.

before him. This makes it easier for the a *sardar* to settle a dispute than the regular judiciary where people lie and bribe police. Nawab Mohammad Aslam Raisani likewise emphasised: “The tribal justice system is what people are familiar with and trust. They know that we settle disputes fairly and in a short time. ... I recently settled in a *jirga* lasting nine days a tribal conflict going back 96 years to British times, involving five deaths. The official system could not achieve such fair and speedy solutions.”

Sardar Wali Khan Marzari while acknowledging that there had been some corruption of the system due to political rivalry of *sardars*, stated: “Notwithstanding the gross human and fundamental rights violations committed in such cases [*karo-kari* cases], often the feudal lord brings about reconciliation between the affected parties. The custom of monetary or matrimonial compensation adjudicated by the *sardar* ends the feud. It will be appropriate if a convention of feudal chiefs would initiate reforms of the *karo-kari* system, especially for the real victims of such tragedies.”<sup>103</sup> Similarly Mir Hazar Khan Bijarani, a member of the National Assembly, justified the custom but opposed its commercial aberrations which, he stressed, should be controlled by appropriate legislation.

Given the large number of fake honour killings, some tribal leaders have begun to look into ways to stop this distortion of the system, for instance by demanding that accusations be made under oath. Some *sardars* are reportedly looking into the allegations more carefully before deciding them. However, as public perceptions do not differentiate between unfounded and well-founded accusations, women may not necessarily benefit from the *sardar* using greater care to assess their cases on merits as the community may still go ahead and kill them on

mere suspicion before placing the connected issue of compensation before the *sardar*.

The Mahar tribe has reportedly found a simple mechanism to take the monetary incentive out of honour killings: Ali Gohar Mahar reported that his tribe has changed the tribal law so that the fine to be paid by a *karo* may be no more than 30,000 Rupees, giving little incentive for men to kill or banish their wives and extract the fine from the alleged *karo*.

A *wadera* [landowner] from near Mohenjo Daro, Larkana district, told Amnesty International in February 1999 that his ‘progressive’ approach to *karo-kari* issues did not enjoy general social approval. He was called upon by two sets of parents for advice after their children had secretly got married despite the bride’s family’s refusal to consent. The young woman and young man had returned to live in their parental homes, had run away when threatened with death when their marriage was found out but had returned in the hope of persuading their parents. The *wadera* advised both families to accept the marriage and for the young husband’s family to give a woman in compensation to the young wife’s family. The wife’s family did not accept this advice as it insufficiently compensated them for their loss of honour; at the time the issue was pending and the woman concerned under strictest confinement awaiting whatever punishment the family would decide on. The *wadera* adopted a pragmatic approach to a couple having married without parental consent, but then took recourse to the traditional method of settlement by handing over a woman whose consent was not considered. Some other tribal leaders by contrast have tried to do away with the practice of handing over women in compensation but have met with social resistance as well.

Other tribal leaders have encountered similar obstacles when trying to rid the system of abuses. Nafisa Shah reports about a *sardar* of the Marfani tribe who tried to avoid awarding compensation to

<sup>103</sup>Sardar Wali Khan Mazari: “A feudal with a view”, in: *Newsline*, June 1998, p. 17.



a man who had killed his wife and her alleged paramour when it became clear that he had killed them merely because he wanted a new wife in compensation; however, the community pressure was such that he could not decide otherwise.

Nadir Magsi who is known to have given refuge to many women, even reportedly to couples, in November 1998 settled a conflict arising when a man and a woman of a Magsi subtribe eloped and were both to be traced and killed. The young woman sought refuge with Nadir Magsi; during the three-hour long *jirga* in which both families were present, the woman's family cried out that "our honour has been violated, he should be killed". Nadir Magsi reportedly argued that killings are wrong and suggested the payment of 200,000 rupees [around US\$ 5,000] in compensation to the woman's family, return of the woman to her family and the woman's family refraining from killing the young man. A fine was threatened should the young man be killed. After a long process of negotiations, the woman's family accepted the deal. The man's side obtained the concession of paying the fine in four instalments; reportedly none of the parties was very content but the peace at present holds. The last instalment of the compensation was paid in February 1999, and so far the young man is reportedly alive and the young woman lives reportedly with the *sardar*.

Local commentators have pointed out that most *sardars* are loth to introduce change in the fear of losing their hold on tribal society. "The winds of change which come with education, economic development and exposure to the outside world have not been allowed to blow in the regions inhabited by the tribes of Pakistan."<sup>104</sup> However, tribal leaders, familiar with the constitution of Pakistan and statutory law and practised in parliamentary debate, should use their influence in society to introduce the

rights and freedoms they swear to uphold as parliamentarians into a society bound by tradition.

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<sup>104</sup>*Dawn*, 14 April 1998.

#### **D. AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENT OF PAKISTAN**

Amnesty International recalls the guarantees of equality contained in the Constitution and statutory law of Pakistan and international obligations undertaken when Pakistan ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child to exercise due diligence to prevent, investigate and punish violence against women and children. On this basis the organization calls on the Government of Pakistan to take urgent measures in the following three areas to end honour killings and to end the impunity now being enjoyed by the perpetrators :

1. legal measures, including penal sanctions and compensatory provisions to protect women against honour-related violence;
2. preventive measures, including educational and media strategies that will contribute to overcoming discrimination against women;
3. protective measures, including refuges, counselling, rehabilitation and support services for women at risk of honour related violence.

The United Nations, in its Declaration on the Elimination of Violence against Women, and more recently the Special Rapporteur on violence against women have called on governments to develop and implement national plans of action to combat all manifestations of domestic violence and provide remedies for victims of domestic violence. Amnesty International strongly urges that the Government of Pakistan comply with this request and that, given the prevalence of honour-related crimes and the high number of victims,

such strategy be adequately resourced and implemented in full, without delay.

As a first step, the government should firmly, publicly and unequivocally condemn violence in the name of honour and thereby send a clear signal that such violence will not be tolerated and that everyone taking the law into their own hands to injure or kill anyone in the name of honour will be brought to justice.

##### **1. Legal measures**

- Undertake a review of the criminal laws and enact any amendments necessary to ensure equality before the law and equal protection of law to women, including the law of Qisas and Diyat.
- Adopt legislation which makes domestic violence in all its manifestations a criminal offence and ensure that all law enforcement officers, police personnel and judicial workers are made fully aware of this legislation and of the obligation to enforce it. The Special Rapporteur on violence against women developed a framework for model legislation on domestic violence in 1996<sup>105</sup> which Amnesty International recommends be used when drafting legislation against such crimes.
- Make the sale of women and girls, the giving of women in marriage against financial consideration and as a form of compensation in lieu of a fine or imprisonment a criminal offence.

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<sup>105</sup>E/CN.4/1996/53/Add.2

- Provide women who are subjected to violence with access to the mechanisms of justice and to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms.
  - Consider the adoption of legal reforms in the areas of criminal and family law recommended by the Commission of Inquiry for Women set up in response to a resolution of the Pakistan Senate; it submitted its report in August 1997 but its wide-ranging recommendations have so far not been considered with a view to implementation.
  - Ensure that the provincial home departments, commissioners, deputy commissioners and senior police staff take notice of all reports of honour killings, ensure that all cases are investigated and that perpetrators are brought to justice in proceedings that comply with international standards of fair trial. Police should accordingly promptly and without bias register and investigate all complaints of honour killing or honour related violence. Contravention of the duty of police to register and investigate should result in sanctions such as dismissal.
  - Withdraw Pakistan's reservation to the UN Convention on the Elimination of All Forms of Discrimination against Women, comply with its reporting requirements and ratify the Optional Protocol to the UN Women's Convention which gives women victims and organizations working on their behalf the right to make individual complaints to the Committee on the Elimination of Discrimination Against Women.
  - Report in the next periodic reports to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child on the steps taken to meet Pakistan's obligations to prevent, investigate and punish honour killings.
  - Abolish the death penalty.
- 2. Preventive measures**
- Undertake wide-ranging public awareness programs through the media, the education system and public announcements to inform both men and women of women's equal rights, as the UN Convention on the Elimination of All Forms of Discrimination against Women requires.
  - In particular, provide gender-sensitization training to law enforcement and judicial personnel to enable them to impartially address complaints of violence in the name of honour.
  - Ensure that data and statistics are collected in a manner that ensures that the problem of honour killings is made visible.
- 3. Protective measures**
- Ensure that human rights activists, lawyers and women's rights groups can pursue their legitimate activities without harassment or fear for their own and their families' physical safety by providing adequate police protection to those exposed to threats and harassment as well as to public and privately run shelters for

women, and pursue all such threats with a view to punishment.

- Expand victim support services provided by the state or NGOs; they should be run as places of voluntary recourse for women and their purpose should be only protective; they should be available all over the country, adequately resourced, and linked to legal aid, vocational training and with adequate provisions for children.