

Feudalism and Honour Killing

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Feudalism, in its origins, remained quite a viable political system in place in Europe, Asia, Japan and China for many centuries. Feudalism in essence was a medieval contractual relationship among the upper classes, by which a lord granted land to his men in return for military service. Feudalism was further characterized by the localization of political and economic power in the hands of lords and their vassals and by the exercise of that power from the base of castles, each of which dominated the district in which it was situated. This formed a pyramidal form of hierarchy. The term feudalism thus involves a division of governmental power spreading over various castle-dominated districts downward through lesser nobles. Feudalism does not infer social and economic relationships between the peasants and their lords. This is better defined as manorialism.

In theory, diagrammatic feudalism resembles a pyramid, with the lowest vassals at its base and the lines of authority flowing up to the peak of the structure, the king. In practice, however, this scheme varied from nation to nation. Feudal institutions also varied greatly from region to region. Feudalism in combination with manorialism found its way in Muslim territories, as it was practiced through out the regions where Islam spread. Feudalism was also rooted in ties to family and for other social changes. Family ties came to be seen as more important than territorial or protective concerns. The economic and social gulf between greater and lesser nobles grew wider, and respect for historically based ties of mutual relationships between lord and vassal steadily weakened. These circumstances, as well as the increasing division of inheritances, all combined to destroy feudalism, slowly and inexorably. However, unlike other regions such as Japan, Europe and China where the system gradually weakened and dissipated, manorialism infusing in feudalism came to personify the patriarchal structure of medieval Muslim society, and became an intrinsic component of the social order. The questions as to why did feudalism found its anchor in the re-interpreted Islam, may be answered through the following discourse.

The contemporary situation we face today has a marked imprint of the record of the Muslim body politic, throughout the leaves of history. Gibbon, in his *Decline and Fall of the Roman Empire*, narrates the magnitude of the Monarchical System, founded in the Caliphate, after the four holy Caliphs, "The essence of monarchy among the Mussalmans, was its extraordinary concentration of power in the hands of one man and his advisors for the maintenance and external expansion...At the end of the first century of the Hijra", says Gibbon. "The Caliphs were the most potent and absolute monarchs of the globe. Their prerogatives were not prescribed, either in right

or in fact, the power of the nobles, the freedom of the commons, the privileges of the church, the votes of the senate, or the memory of a free constitution. The authority of the Companions of Mohammad (P.B.U.H.) expired with their lives and the chiefs of the Arabian tribes left behind in the desert their spirit of equality and independence..." The conclusion drawn by Prof. K.A. Nizami in his book, *Religion and Politics in India during the Thirteenth Century*, is identical to the narration by Gibbon, in his words, "The Prophet left the organization of political and administrative affairs, to the secular good sense (Ijma') of his community..." "The Sultanate", Mr. Nizami declares, "had no sanction in the Shar'iat, it was not a legal institution. Its laws were the results of the legislative activity and the governing class..." "The rules were remembered on the basis of authority, while the social objectives for which these rules had been formulated were completely ignored and no reference to them was considered valid. Second, it was accepted as a basic principle that Ijtihad, the adaptation of the law to suit new circumstances—was no longer possible and that the Shar'iat must stand unchanged for all times...This new principle served as a damper to free thought and research".

Gibbon's, or Nizami's analysis, of the quintessence of the Muslim thought, provides a clue to the psyche of the role players on Pakistan's socio-political stage since its creation.

The modern history of Indian Subcontinent is not just a conscious discussion of Hindu-Muslim hate portrait. It encompasses intricate embroidery of a unique culture, development of secular values, in a society, which could boast of totally divergent classes, coexisting, interacting, as one entity, all cast in the mould of democracy. The birth of two independent states, India and Pakistan, was in fact, a natural culmination of that democratic process, initiated between 1886 and 1906, with the establishment of the Congress Party, and All India Muslim League. If the British Raj left some contentious issues unresolved; it did indeed embed in its colony; the precepts of the greatest and the most sublime of the political development of the 20th Century, that of Democracy, and Constitutionalism. The moorings instated in the fundamental rights of the people, to govern their lives, their destiny, in accordance with their wishes, their aspirations as would other citizens of refined societies, aspire, and are indeed involved in such schemes, established within the legal orders, which remain unquestionable.

The early leadership of Pakistan chose autocratic system instead of the path to egalitarianism, reverting to pre-19th Century's dominant concepts of Statehood and Politics. In the process, the stresses upon a society which till then was not only educated, but well aware of its civil and political rights brought on by political experiments, have torn to shreds, its very fabric.

Today the natural consequences of such dichotomy in the system, is not an unusual composition manifesting anarchy within authoritarianism, a dangerously potent indicator, where the state and the society have landed.

In this backdrop of the evolution of the state, the study of *feudalism* in an evolving social order becomes necessary in its framework as the mainstay of patriarchy, the foundational base of any inequitable system contrary to the contemporary model of democracy and constitutionalism.

Marx's thesis about oriental despotism and his belief that no progressive change occurred in Asiatic societies for hundreds of years, may be disputed to a certain extent. However, there is no doubt that the ruling classes of India had little or no interest in public works, with exceptions Mohammad Tughlaq and Sher Shah Suri and some others, notwithstanding. The history of feudalism can be traced to the medieval period in the sub-continent. This is evident that each time the emperor or king died, the existing incumbents of the military-feudal land-holdings risked losing them because they had no right of ownership and the new ruler preferred to place his own men in such places. Consequently, any chance to occupy such holdings was precarious and was used to acquire as much wealth as possible. This resulted in a rapacious system of exploitation.

After the British had ruthlessly crushed the 1857 uprising, they established a more stable structure of landlordism by conferring property rights on those who remained loyal to them. This class became the mainstay of the colonial system and most of them (maharajas, zamindars, khans, and pirs) opposed the freedom struggle. The radical and popular scholarship described this class with the term feudalism.

In the post-independence politics of India and Pakistan, the feudal lobbies opposed democratic reforms. Radical land reforms in India generally broke the hold of the traditional landlords over politics, but in Bihar big land-holdings survived and that state has become notorious for the exploitation and cultural oppression of landless peasants most of whom were low caste or dalits. The existence of democratic institutions, however, provided an opportunity for these castes to move up the political ladder.

In Pakistan, the feudal class retained most of its privileges and despite a series of land reforms Sindh (interior), southern Punjab, much of Balochistan and many parts of the North West Frontier Province remain bastions of feudal tyranny. The failure of democracy to take root was partly the result of the fickle politics of the feudal lords. The suppressed Sindh Hari Report of the 1950s prepared by the senior civil servant Masud Khadarposh and the classic work of Malcolm Darling from the 1930s 'The Punjab Peasant in Prosperity and Debt' tell the woeful tale of millions of poor peasants and other rural workers crushed under the deadweight of economic, cultural and political feudalism.

Fifty-nine years later, the promise to relieve the peasant from feudal oppression and the economic stranglehold, which the erstwhile Muslim

League made to the people, has not been fulfilled. It is interesting to note that the feudal system received its greatest support from the fundamentalist ideologues who argued that in Islam there was no limit on the ownership of land if it is 'legally' acquired.

In Pakistani society with rigid Muslim thought imbibed in its mindset, man is considered ontologically superior to a woman. This generalization becomes obvious in the pre-suppositions of the social order that a woman is duty bound to submit to man in his status as "husband, father, brother etc." This ideology infuses within the system to that extent where it has come to be accepted as representing Islam as a religious patriarchy that professes models of hierarchal relationships and sexual inequalities and puts a sacred stamp (onto) female subservience.

It is in this context that that honour of man is construed and the real life of woman is bound to the man's honour as that of a chattel.

"Honour" killings of women can be defined as acts of murder in which "a woman is killed for her actual or perceived immoral behaviour." 'Such "immoral behaviour" may take the form of marital infidelity, refusing to submit to an arranged marriage, demanding a divorce, flirting with or receiving phone calls from men, failing to serve a meal on time, or -- grotesquely -- "allowing herself" to be raped. In the Turkish province of Sanliurfa, one young woman's "throat was slit in the town square because a love ballad was dedicated to her over the radio."ⁱⁱⁱ

Most "honour" killings of women occur in Muslim countries, the focus of this case study; but it is worth noting that no sanction for such murders is granted in Islamic religion or law. And the phenomenon is in any case a global one. According to Stephanie Nebehay, such killings "have been reported in Bangladesh, Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda." Afghanistan, where the practice is condoned under the rule of the fundamentalist Taliban movement, can be added to the list, along with Iraq and Iranⁱⁱⁱ.

Pakistan, where "honour" killings are known as *karo-kari*, is probably the country where such atrocities are most pervasive. Estimating the scale of the phenomenon there, as elsewhere, is made more difficult not only by the problems of data collection in predominantly rural countries, but by the extent to which community members and political authorities collaborate in covering up the atrocities. According to Yasmeen Hassan, author of *The Haven Becomes Hell: A Study of Domestic Violence in Pakistan*, "The concepts of women as property and honour are so deeply entrenched in the social, political and economic fabric of Pakistan that the government, for the most part, ignores the daily occurrences of women being killed and maimed by their families." (Hassan, "The Fate of Pakistani Women.") Frequently, women murdered in "honour" killings are recorded as having committed suicide or died in accidents.

One of the most notorious "honour" killings of recent years occurred in April 1999, when Samia Imran, a young married woman, "was shot in the office of a lawyer helping her to seek a divorce which her family could never countenance." According to Suzanne Goldenberg, Samia, 28, arrived at the Lahore law offices of Hina Jilani and Asma Jahangir, who are sisters, on April 6. She had engaged Jilani a few days earlier, because she wanted a divorce from her violent husband. Samia settled on a chair across the desk from the lawyer. Sultana, Samia's mother, entered five minutes later with a male companion. Samia half-rose in greeting. The man, Habib-ur-Rhemna, grabbed Samia and put a pistol to her head. The first bullet entered near Samia's eye and she fell. "There was no scream. There was dead silence. I don't even think she knew what was happening," Jilani said. The killer stood over Samia's body, and fired again. Jilani reached for the alarm button as the gunman and Sultana left. "She never even bothered to look whether the girl was dead."

The aftermath of the murder was equally revealing: "Members of Pakistan's upper house demanded punishment for the two women [lawyers] and none of Pakistan's political leaders condemned the attack. ... The clergy in Peshawar want the lawyers to be put to death" for trying to help Imran^{iv}.

The lives of millions of women in Pakistan are circumscribed by traditions which enforce extreme seclusion and submission to men. Male relatives virtually own them and punish contraventions of their proprietary control 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 fate, but exposure to media, the work of women's 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 their rights, however tentatively, the response is harsh and immediate: the curve of honour killings has risen parallel to the rise in awareness of rights.

Every year hundreds of women are known to die as a result of honour killings. Many more cases go unreported and almost all go unpunished. The isolation and fear of women living under such threats are compounded by state indifference to and complicity in women's oppression. Police almost invariably take the man's side in honour killings or domestic murders, and rarely prosecute the killers. Even when the men are convicted, the judiciary ensures that they usually receive a light sentence, reinforcing the view that men can kill their female relatives with virtual impunity. Specific laws hamper redress as they discriminate against women.

The isolation of women is completed by the almost total absence of anywhere to hide. There are few women's shelters, and any woman attempting to travel on her own is a target for abuse by police, strangers or male relatives hunting for her. For some women suicide appears the only means of escape.

Abuses such as honour killings are crimes under the country's criminal laws. However, systematic failure by the state to prevent and to investigate them and to punish perpetrators leads to international responsibility of the state. The Government of Pakistan has taken no serious measures to end honour killings and to hold perpetrators accountable. It has failed to train police and judges to be gender neutral and to amend discriminatory laws. It has ignored the Article 2 of the constitution which says the state shall protect fundamental rights of the people. And 52% people of Pakistan are female.

Honour killings are carried out on the flimsiest of grounds, such as by a man who said he had dreamt that his wife had betrayed him. State institutions -- the law enforcement apparatus and the judiciary -- deal with these crimes against women with extraordinary leniency and the law provides many loopholes for murderers in the name of honour to kill without punishment. As a result, the tradition remains unbroken.

The methods of honour killings vary. In Sindh, a kari (literally a 'black woman') and a karo ('a black man') are hacked to pieces by axe and hatchets, often with the complicity of the community. In Punjab, the killings, usually by shooting, are more often based on individual decisions and carried out in private. In most cases, husbands, fathers or brothers of the woman concerned commit the killings. In some cases, jirgas (tribal councils) decide that the woman should be killed and send men to carry out the deed.

The victims range from pre-pubescent girls to grandmothers. They are usually killed on the mere allegation of having entered 'illicit' sexual relationships. They are never given an opportunity to give their version of the allegation as there is no point in doing so -- the allegation alone is enough to defile a man's honour and therefore enough to justify the killing of the woman. They are also deprived of their basic right of self-defense. According to the non-governmental Human Rights Commission of Pakistan (HRCP), 286 women were reported to have been killed for reasons of honour in 1998 in the Punjab alone. The Special Task Force for Sindh of the HRCP received reports of 196 cases of karo-kari killings in Sindh in 1998, involving 255 deaths. The real number of such killings is vastly greater than those reported.

Two main factors contribute to violence against women: women's commodification and conceptions of honour. The concept of women as a commodity, not human beings endowed with dignity and rights equal to those of men, is deeply rooted in tribal culture. Women are considered the property of the males in their family irrespective of their class, ethnic or religious group. 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."

In most communities there is no other punishment for a kari but death. A man's ability to protect his honour is judged by his family and neighbours. He

must publicly demonstrate his power to safeguard his honour by killing those who damaged it and thereby restore it. Honour killings consequently are often performed openly.

The perception of what defiles honour has become very loose. Male control extends not just to a woman's body and her sexual behaviour, but to all of her behaviour, including her movements and language. In any of these areas, defiance by women translates into undermining male honour. Severe punishments are reported for bringing food late, for answering back, for undertaking forbidden family visits. Standards of honour and chastity are not applied equally to men and women, even though they are supposed to. Surveys conducted in the North West Frontier Province and in Balochistan found that men often go unpunished for 'illicit' relationships whereas women are killed on the merest rumour of 'impropriety'.

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.

To settle the issue, a faislo (agreement, meeting) or jirga is set up if both sides - the man whose honour is defiled and the escaped karo. It is attended by representatives of both sides and headed by the local tribal chief (sardar), his subordinate or a local landlord. The tribal justice dispensed by the jirga or faislo is not intended to elicit truth and punish the culprit. Justice means restoring the balance by compensation for damage. The karo who gets away has to pay compensation in order for his life to be spared. Compensation can be in the form of money or the transfer of a woman or both.

Expressing a desire to choose a spouse and marrying a partner of one's choice are seen as major acts of defiance in a society where most marriages are arranged by the fathers. They are seen to damage the honour of the man who negotiates the marriage and who can expect a bride price in return for handing her over to a spouse.

Frequently fathers bring charges of zina (unlawful sexual relations) against daughters who have married men of their choice, alleging that they are not validly married. But even when such complaints are before the courts, some men resort to private justice. Often women choosing a spouse are abducted and not heard of again.

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 brings shame on her family if she is raped.

In honour killings, if only the kari is killed and the karo escapes, as is often the case, the karo 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 many opportunities to make money, obtain a woman in compensation or to conceal other crimes, in the near certainty that honour killings if they come to court will be dealt with leniently.

Reports abound about men who have killed other men in murders not connected with honour issues who then kill a woman of their own family as alleged kari to camouflage the initial murder as an honour killing. The lure of compensation has in some cases led to publicly known distortions of truth.

The fact that women are often given in compensation when illicit relations are alleged has led to further perversions of the honour system. 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 kill a woman of his own family to lend weight to the allegation.

Honour killings are but an extreme form of violence against women. Domestic violence is also frequently intended to punish a woman for any perceived insubordination supposedly impacting on male honour.

Girls and women who fear punishment for alleged breaches of traditional norms of honour have few places to hide. They rarely know their way about in the world outside the home, they are unused to public transport, usually have no money and are vulnerable to further abuse if moving around alone. The high proportion of karis killed in relation to karos also reflects this sheer inability of women to move in the outside world. Many of the women who run are caught and killed.

One of the few places where a kari is safe is in the home of a tribal sardar, a pir (holy man) or in a religious shrine. Here women can obtain protection against murder. However, they are still expected to abide by strict social roles. In many cases, women remain for years as unpaid servants in the house of the sardars and are sometimes abused.

A few women reach state-run or private shelters of which there are simply too few. These women often seek to pursue their rights through legal channels -- but may not be aware that by approaching the state system they block their return to their communities. Such shelters have recently become targets of attacks.

Unable to escape violence or forced marriage, some women resort to suicide. Police does not pay attention to family members or the community abetting such suicides. No official figures of women's suicides exist and many women are quietly buried to cover up the possible damage to the family's honour.

The international understanding of state responsibility for human rights violations has significantly widened in recent years to include not only violations of human rights by state agents but also abuses by private actors which the state ignores. 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. This view of state responsibility is established in all the core human rights treaties.

The Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 affirmed 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".

The Government of Pakistan has failed to take measures to prevent and end honour killings. It has not sought to eradicate traditions that prescribe honour killings nor ended the virtual impunity of perpetrators of such killings. Discriminatory laws making full redress difficult persist. Police and the judiciary have applied the law in a biased manner as a result of which perpetrators have not been held to account for honour killings and the practice has been perpetuated.

The Government of Pakistan has not shown any determination to bring violence against women on grounds of honour to a halt, thus virtually signalling official indifference if not approval of the system.

The government's disregard for its obligations to take measures to alter public perceptions involving gender bias, to which it committed itself when ratifying the UN Convention on the Elimination on All Forms of Discrimination against Women, is partly responsible for the persistence and indeed increase of honour killings. When the 1998 annual report of the HRCP was released in March 1999, Information Minister Mushahid Hussain reportedly said about 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..."

Bias in Law:

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." Traditional norms, Islamic provisions (as interpreted in Pakistan) and statutory law diverge in many areas relevant to women's lives, including control of assets, inheritance, marriage, divorce, sexual relations, rape and custody.

The Government of Pakistan has failed to ensure that women are aware of their legal and constitutional rights and to ensure that these rights and freedoms take precedence over norms which deny women equality. The lives of women who are by and large confined to the private sphere do not benefit from constitutionally secured fundamental rights.

Often police act or allow themselves to be used as guardians of tradition and morality rather than impartial enforcers of the law. Frequently, fathers use police to recover or unlawfully arrest and detain their adult daughters who have married men of their choice. Despite numerous 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, even though police could easily ascertain if couples were married and thus not guilty of either abduction or zina.

When women are seriously injured by their husbands or families, police still discourage them from registering complaints and advise them to seek reconciliation with their husbands or families. In karo-kari cases, when husbands appear in police stations declaring that they have killed a girl or woman of their family, police often fail to take action, reflecting their unwillingness to enforce the law over custom.

Financial corruption also seems to contribute to police inaction before such crimes.

Pakistan's judges, particularly at the lower level of the judiciary, tend to reinforce discriminatory customary norms rather than securing constitutionally secured gender equality. For example, 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 -- and are treated by the court as "crime property". "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."

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.

Marriages contracted by women against the wishes of their fathers are perceived by many courts to impact on the father's honour and to justify a man losing control and killing the offender. 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 -- 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."

Section 13 of the General Clauses Act, 1897, may be cited to show the status of woman in law:-

"13. Gender and number: - In all (Central Acts) and Regulations, unless there is any thing repugnant in the subject or the context,--

- (1) words importing the masculine gender shall be taken to include females; and.
- (2) Words in the singular shall include the plural, and *vice versa*.

The same definition has been imported in the Constitution of Pakistan in Article 263. What should of interest here is absence of 'and *vice versa*' in clause 1 of Section 13.

What resolution of gender issues can be put forward when the law itself remains patriarchal in its character?

Gender justice is a recent concern of the law. The legal profession having remained a bastion of male dominance. The marginalization of woman as cited above, in legal language is a mere reflection of the real life situation of woman the society. The legal discourses and even the laws enacted referred to women as *pardah nashin khatoon* or a *hindu widow* entitled to a limited right to a limited property, or as a victim of sexual assault. The legal language and legal reasoning has always been gender biased, informed by men's experiences, and derived from powerful social and cultural position of men^v.

The Constitution of Pakistan, 1973 seeks to achieve social justice by discrimination inter alia on grounds of sex also. However normative declarations have shown to have shown to have the least effect on inequalities, without a normative change of mindset.

In conclusion it is my view that the situation of women in honour killings simply cannot be mitigated in insulation.

Proposals:

1. The issues of religious interpretations must be taken up at a level of healthy debates, intellectual interactivity, including jurists, scholars of jurisprudence, and academics.
2. There must be resolution of the problem of the problem by invocation of is-ought debate within the Muslim philosophy and the contemporary western philosophy

3. The law and the laws with specific regard to women needs to be viewed by the courts and the lawyers in a more holistic manner, than mere adherence to the conservative pattern of precedents, policy and principles.
4. The exercise of rooting out the vicious ill of honour killing must recognized in the general status of women, and the solution ought to be resolved from the fundamentals, rather than the efforts at treating the symptoms only.

ⁱ Yasmeen Hassan, "The Fate of Pakistani Women," *International Herald Tribune*, May 25, 1999.

ⁱⁱ Pelin Turgut, "'Honour' Killings Still Plague Turkish Province," *The Toronto Star*, May 14, 1998

ⁱⁱⁱ Nebehay, "'Honour Killings' of Women Said on Rise Worldwide," Reuters dispatch, April 7, 2000.

^{iv} Suzanne Goldenberg, "A Question of Honour," *The Guardian* (UK), May 27, 1999.

^v Upendra Baxi, "On being a woman" Har Anand Publications, New Delhi 1994.

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6. Feminist Perspectives on the foundational Subjects of Law; Anne Bottomley, Cavendesh 1996