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## **Honor Killing in Pakistan: Socio-Legal Implications from Mid-1990s to the Dawn of 21<sup>st</sup> Century-A Critical Analysis**

**Dr. Mazher Hussain**

*Lecturer, Department of History, the Islamia University of Bahawalpur, Pakistan*

**Dr. Aftab Hussain Gillani**

*Associate Professor, Dept. of Pakistan Studies, The Islamia University of Bahawalpur*

**Almas Fatima**

*Assistant Professor, Department of History, Sadiq Women University, Bahawalpur*

**Saeed Ahmad**

*Associate Professor, Dept. of Pakistan Studies, The Islamia University of Bahawalpur*

### **Abstract**

*Reports have been published in the newspapers that a women was killed by her husband, brother , father or any person from blood relations in anger and these kinds of killings are named as “ Honor killing” which has become a hot issue as NGOs and media have started campaign against this evil. Many innocent women have become the victim of this so called “Humor”. Tribal Codes, customs and traditions over the ages have been molded with misinterpreted religious injunctions give them credence and authority. It has been now boiled down to a convenient cover for all kinds of violence against women. This outlook continues to flourish and has survival cover for all legal, political and ethical development of our time. Article in hand addresses this issue delineated by urging that it must be understood in its totality and solution to be found to eradicate it. It needs to change his thinking, tradition and attitude towards women that are so deeply entrenched in the psyche of the Pakistan males. For this purpose, it is necessary to give wider exposure to this social evil amongst the masses to bring about an authentic and abiding social reformation.*

**Key Words: Honor Killing, Violence against Women, Tribal Codes, Penal Code, Domestic Law.**

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UNICEF, defines honor killing as “an ancient practice in which men kill their female relatives in the name of family honor for forced or suspected sexual activity outside marriage, when they become victim of rape”.<sup>1</sup>

Nasim Zahra, a famous writer defines it “it is carried out supposedly as punishment for extra marital sexual relations or refused to abide by parents’ choice of husband”<sup>2</sup>

According to Brigadier (Retd) Hayat Ahmad,” It is an emotional outrage engendered due to women’s alleged or actual infidelity which doesn’t abide by it tradition and code of behavior”<sup>3</sup>

Method of carrying honor killing varies across the country. In the southern Province of Sindh, where it is often referred as “*Karo Kari*”, (*Karo* means, Blackened man and *Kari* mean blackened women).

As a result of this activity, victim is hacked to death often with the complicity. If both, the *Karo* and *Kari* are killed, the matter ends. If only *Karo* escapes (as happened in most of the cases) he has to compensate the affected man foe, the loss of women killed to have his (*Karo*'s) life spared, if he likes to spend normal life. Compensation besides money may also involve women to be given to the adversary, standing payment in term of women is:

1. To hand over two girls if they are under seven years of age.
2. One girl if over seven year of age.

The fact is that men (*Karo*) sell their sisters or daughter in exchange for their lives, but women are never given relief to they pay with own lives.

Among the tribal Pakhtun community in NWFP and Baluchistan, Where the practice is known as “*Tur*”, the victim can be hacked, stabbed, burnt or shot. In Baluchistan it is named as “*Siakari*” literally mean Adulteration. In population Punjab the killing is done usually by shooting, are more often based on individual decisions and carried out in private, in most cases, husband, father or brother of the accused women perpetrated the murder. In some case, *Jirga*, or tribal council decides that the women should be killed and men are sent to execute.

**Historical background:** The roots of honor killing date back to two centuries in the pre-Islamic period. According to Sharif Kanaana, Professor of Anthropology at Birziet University, “It is a complicated issue that cuts deep into the history of Arab society,”<sup>4</sup>He argues that the honor killing stabbed from the patriarchal and patria-lineal societies’ interest maintaining strict control over designated familial power structure. “What the man of family, clan, or tribe seeks control of in a patria-lineal society is reproductive power. Women for the tribe were considered a factory for making children. The honor killing is not a means to control behavior, what’s behind it is the issue of fertility or reproductive power” in pre-Islamic period, women being physically weaker and vulnerable were treated as mere object of ownership. They enjoy no right, respect and justice in the society. Burying newborn daughter in Arabia was not a rare occurrence. In Hindu society, the custom of “*Sati*” was prevalent in which widow was forced to die with her husband.

#### Situation in Pakistan: 1995-1999

Year	Punjab	Sindh	NWFP	Baluchistan	Islamabad	North-Areas	Total
1995	345	125	49	39	1	7	566
1996	322	143	67	45	0	8	585
1997	354	116	56	32	0	5	563
1998	356	133	48	48	2	13	600
1999	357	138	72	52	3	12	634
<b>Total</b>	1734	655	292	216	6	45	2948

Source: Research and Development Bureau Govt. of Pakistan cited by Rashida Patel p. 87.

A quick look at the facts and figures available about the honor killing reveals that around 5000 women were killed in the world in the name of honor killing in which 1000 were killed in Pakistan.

**Worsening the Situation: 1998-2003:** From 1998-2003 over a period of 5 years, 327 men, and 2724 women were killed. In this period and ratio of honor killing in the different provinces of Pakistan was noted alarming.

**Pretexts for the Honor Killing:** Statistics show that one of the most common reasons for honor killing is marriage of a girl or young women without the consent of the family whom she meets and falls in love. Thought under the constitution of Pakistan and *Shariah*, any one above the age of 18 is not a minor and has the freedom and right to choose a marriage partner but due to feudal and culture norms that rarely happen.

Seeking a divorce from violent husband is also seen as an act of defiance and dishonoring her own and her spouse's family therefore deserves death; despite the fact that separation is allowed by the religion.

To settle other disputes like paying debt, to obtain women or to save one's own life due to previous *Karo* case, the man kills one of his own women as *Kari* then involves the person to whom the debt is to be paid or someone near to him as *Karo*, to affect a settlement in his favor.

Being raped, abducted or kidnapping is a stigma for the rest of a women's life even though she is not to be blamed by families of the victim start believing that she was to great extent responsible for bringing shame to the family, so she deserved to be killed.

**Reason for increasing incidents of honor killing:** Some of the reasons for the increasing number of incidents are:

1. Majority of the killing are motivated by economic gain.
2. Government failure to take effective measure to curb the evil.
3. Flaws in legal system, there are specific legal provisions which reduce punishment for actions suddenly caused by "grave and sudden provocation"
4. *Qisas* and *Diyat* ordinance, which allows the legal heirs of the victims to forgive the offender
5. Weak state institutions.
6. Law enforcing agencies and courts view the honor killing a personal problem to be dealt by the family or tribe thereby accepting and giving credence to the tribal customs of cases being adjudicated by *jirga*.
7. A pervasive culture of violence against women.
8. Illiteracy.
9. Overall economic decline and high cost of living.
10. General Disregard for women's welfare'
11. Tribalization of formal laws and wide acceptance of the *jirga* system has strengthened the outlook that this act has implicit official sanctions.

**Islam and Honor Killing:** It is the predicament of the Pakistani society that religion has been wrong interpreted by the Mullahs according to their own wishes. They do not preach the true meaning of Quran and Hadith in their proper context. In the same way there is misconception that women are inferior to men in Islam but it is a sheer misunderstanding because of the inadequate knowledge of the Quran and Hadith.

According to the Quran, the highest source of authority in Islam Allah created men and women from a single life cell or spirit (Al-Nisa: 01, Al-Araf 189, Al Imran 21). Both men and women have

male and female component (*Al-Hujurah* 13) and both together constitute the human species. It is clear teaching of Quran that men and women are equal in the eyes of Allah (*Al, Imran* 195, *Al-Nisa* 124. Being equal before Allah, men and women cannot subsequently become unequal to each other in essence.

The Holy Prophet (PBUH), said “women are the twin halves of men”<sup>5</sup> after this brief description as there may be cited many references from the Quran and Hadith but it will take lot of time and space.

Islam gave so much value to the life of human beings that it compares the killing of one person (no distinction is made between male and female) to the killing of whole humanity. In the Holy Quran, it reads as “if any one slays a human being unless it be (in punishment) for murder or for spreading corruption on earth, it should be as though he had slain all human kind; whereas if any one saves a life, it shall be as though he had saved the lives of all human kind”(Al, Ma-idah 32) the Quran even admonishes those men who oppress or ill treat women.” O you who believe, you are forbidden to inherit women against their will, nor should you treat them with harshness, that you may take away part of the dowry, except than when they have become guilty of open lewdness, on the contrary live with them on the footing of kindness and equity “(4 -19) after discussing that life of women is sacred as of men. Now the question whether any person has authority or right to punish or kill any girl or woman for the sake of his family’s honor ( in local expression *Izzat*).

First time in the third year of Hijra, *Zina* was considered punishable in Surah Nisa<sup>15</sup> but that time it was considered a family crime and if crime was proved, family had the right to beat but inside the room and for prove of crime four witness were also necessary on the other hand The Holy prophet (PBUH) ordered that “ don not blow on the face and beating shall not be of such nature that it left spot on the body” but it was further explained in Surah Nisa that this order is transitory until the next revelation about this matter. After sometime in Surah Noor *Zina* was declared legal crime, in this condition now individual had the right to make decision or punish anyone. “It was the jurisdiction of court to decide the matter after due process of law but for this purpose following requirements are necessary”<sup>6</sup>:

1. Four witnesses are necessary
2. Witnesses should be trustworthy
3. They should not be liars
4. They should not have been punished by courts in the past
5. They should have no personal animosity with the accused
6. It is necessary that witness have practically seen the occurring of the crime, just presumption is not valid.

The Quran that is extremely proactive of the rights of disadvantaged human beings is particularly concerned about protecting the rights and lives of women. It is well known fact that the most victims of honor killing are accused wrongly and murdered on little or no evidence but the Quran make it clear “ and for those who accuse chaste women ( of adultery), and they are unable to produce four witnesses, flog them with eighty stripes; and ever after refuse to accept from any testimony-since it is they that are truly deprived” (Al Noor 5).From this verses it is very clear that there are strict requirement for this purpose and it is not easy to prove and also there is severe punishment for wrong accusation which is a safeguard against misusing this law. And even for those who accuse their own wives ( of adultery), but have no witness except themselves, let each of these (accusers)

call God four times to witness that he is indeed telling the truth and the fifth time, that Allah's curse be upon them if they are telling lie.(Al-Noor 6-8)

The Quran make it mandatory upon all believers that they must respect the sanctity of life, that they must stand up for justice and they must speak truth, it is said 'Behold, Allah enjoined justice, and the doing of good, and generosity towards (one's) fellow beings: and Allah forbids all that is shameful and all that runs counter to reason, as well as on envy: (and) Allah exhorts you so that you might bear in mind' (An Nable 40) Again Quran says, "and cover not truth with falsehood, nor conceal the truth when you know" (Al-Baqarah 42).

Now it is clear that men and women are equal before Allah and Islam does not allow any body to kill anyone. Companions of Holy Prophet know this but they have no witness. Holy prophet (PBUH) said, "If I had evidence, I would have punished this women" ever when a person told Holy Prophet (PBUH) that he had committed *Zina*, Holy Prophet (PBUH) Did not accept his claim but gave him an opportunity to think but he repeatedly said that he had committed the sin, even, after forth time , Holy Prophet (PBUH), Deeply investigated the matter and had a long discussion with the person but when Holy Prophet (PBUH) saw that he is very stern in his option then Hadd was made Islam does not accept the excuse of emotional actions and it should not be a pretext for any offence. Only courts are authorized to punish anyone for his/her crime. It is misconception among the people that religion allows man to punish any women guilty of *Zina* but this thinking is un-Islamic and constitution and law of the state.

**Honor Killing and Human Rights:** The honor killing is the violence of basic rights as sanctity of life is basic human right and basic human rights have been guaranteed in the constitution of Pakistan. Article 55, of the Charter of the UN says, "with a view to the creation of condition of stability and wellbeing which are necessary for peaceful and friendly relations among the nation based on respect for principle of equal rights and fundamental freedom and self-determination of the people. The United Nations should promote universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion"<sup>7</sup>

Article 56 say "all members pledges themselves to take joint and separate action in cooperation with the organization for the achievement of the purpose set forth in the article"<sup>21</sup>. It means that it is the moral and legal obligation of the Pakistan as member of UNO to protect women for all kind of violence. Another important document is Universal Deceleration of human right. It entered into force by the UN General Assembly in 1948, established basic right and freedom of individual without distinction of any kind such as race, color or sex. The rights include the right to life, liberty and security of life and to be free from torturer or to cruel, inhuman or degrading treatment or punishment and "All are equal before the law and are entitled without any distinction to equal protection of the law." Everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal, in the determinant of his rights and obligations and of any criminal charge against him"<sup>8</sup>. All of these articles are relevant to gender based violence due to the threat to, or deprivation of these right once women because victim. The declaration however does not specifically address violence against women as an independent and important issue.

The Declaration on Elimination of Violence against Women ( hereafter DEDAW), was adopted by UNO General Assembly in 1993, though it is not legally binding but it has normative force that influence international standard concerning violence against women . In the preamble, the general assembly proclaimed that the "effective implementation of the DEDAW, would contribute to strengthen and complement the women's convention. DEDAW specifically addresses the issue of

cultural tradition and custom, which are main reason and protective shield for this heinous act of honor killing. In Article 4 By stating that “states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”<sup>9</sup>. Even DEDAW is not legally binding documents but provision concerning customary practices must be viewed as an important issue to all states ,including Pakistan.

### **Treaty Laws:**

**1. Convention on the Elimination of All Form of Discrimination against Women:** In 1996 Pakistan ratified the “Women Convention” by adopting this convention Pakistan agrees to incorporate the provisions that are set forth in order to eliminate discrimination against women. One important issue identified in the convention is about the elimination of cultural practices and customs that discriminate against women. Article 2 (F) say that state should undertake, “All appropriate measure , including legislation, to modify or abolish existing laws, regulation ,customs and practices which constitute discrimination against women”<sup>10</sup>Article 5 (2) say “states parties shall take all appropriate measures to “ modify the social and cultural pattern of conduct of man and women, with a view to achieving the eliminating of prejudices and customary and all other practices which are based on the inferiority or the superiority of either of the sex, or stereotype roles for men and women’s”<sup>11</sup> As it is believed in Pakistan, that as cultural practices are customary, so these are not violation of any law. Even when Pakistan ratified the convention, it did not issue any reservation concerning these articles. Pakistan has issued a reservation only to article 29 (1) only. Article 15 of the convention states “states parties shall accord to women equality with men before law”<sup>12</sup>

The main reason of honor killing is marriage of women with a person whom she like without the consent of his family but article 16 (a) and 16 (b) allow men and women “same rights” to enter into marriage. And also have the right to free choice of a spouse and to enter into marriage only with free and full consent. Article 18, make it obligatory on state parties “ to submit to the Secretary General of the UNO for consideration, a report and legislation, judicial, administrative or other measure they adopt to give effect to the provisions of the present convention on the progress make in this respect:

- (a) With one year after the entry into force for the state consideration.
- (b) Therefore at least every four year.<sup>13</sup>

The convention is the major international instrument dealing exclusively with the right of women, goes further that previous convention and declaration in recognizing the importance of cultural tradition in shaping the thinking and behavior of man and women and the significant part they play in restricting the exercise of basic right of women.

The recommendation 19 provides states are responsible for violence and discrimination by individual in addition to being responsible for violence and discrimination against women. State can be held accountable for violence committed and individual, when state face to act, with due diligence in prevention, investigation or punishment perpetrators and requiring compensation for victim for violence.<sup>14</sup> The optional protocol to the women convention, has entered into force in Dec,2000 which guarantees judicial remedies to individuals under the women, convention and additionally, states that ratify the protocol are not allowed to issue reservations thus, they are bound to the entire protocol.<sup>15</sup>

**International Convention on civil and political rights and convention against Torture:** Pakistan is not party to either the International Convention On Civil And Political Right (ICCPR) and the

convention against torture, in both conventions, it is held that torture and inhuman treatment violate international human right law and gender based violence is direct violence of women's inherent right of life, liberty and security of person and to free from torture or to cruel, inhuman or degrading treatment or punishment.

For this portion of the paper it is clearly evident that this heinous act of honor killing is clear violation of basic human right which have been guaranteed man without any discrimination on the basis of race, color, nationality not put their case in UNO but there are few mechanisms like 1503 procedure and special repeater on violence against women, which may be effective and assert preserve on the concerned.

**Honor killing and Domestic Law of Pakistan:** Women do not enjoy complete legal equality with man in Pakistan, despite constitutional guarantees to the country. The majority of women regardless of class or coast face unequal access to property, to protection from harm, to decision making powers surrounding their family life and outside activates to justice system itself. These disparities have negative the percussions on women vulnerability to violence and destitutions, on their ability to care for them self and their families; and on that over all sense of citizenship, security and integrity. A constitution is a declaration of the principal on which a country exists. In constitution, the fundamental rights of the citizen are established, and the structure, institutions and mechanisms through which law and policies are made, interpreted and enforced, in order to maintain these rights, are created. The provisions of constitution of the country and the manner in which it is expressed has wide-ranging implications for the legal as well as social, political and economic status of women gender equality is specifically guaranteed in the constitution of Pakistan under Article 25 ( equality before law and equal protection under law) and Article 27 ( non-discrimination based on gender) .the constitution also says about protection of marriage, family, the mother and the child as well as ensuring “ full participation of women in all sphere of life”.<sup>16</sup> Though constitution prohibited gender discrimination but discriminatory social traditions and the misunderstood interpretation of Islamic law for the most part render constitutional guarantees meaningless. As we are mainly concerned with honor killing so only those law will be discussed that have related with his social evil. As it is evident from the history of Pakistan politic that Islam has been used for the legitimacy general Zia – ul-Haq also used the garb of “Islamization” to legitimize his regime and cultivated the support of conservative religious parties like Jamat-I-Islamic. His most vulnerable and strategic target was women whom he promised to the sanctity of the ‘*Chardevari*’ (the four walls of house). This reaffirming women's domestic role as corner stone of Muslim way of life, Zia introduced a series of legal and social change that reversed many of the legal advances for women of the prior thirty years. He introduced new law that made women legal status subordinate to men, including:

1. Hudud ordinance which changed the law of rape and adultery (main pretext of honor killing) and made fornication a crime.
2. *Qanun-e-Shahadat* which renders the testimony of women equal to only half the weight of men's.
3. *Qisas* and *Diyat*:

In the preceding part of the paper we will critically analyze these laws with their special effects on women. The Haddood law were promulgated in 1979 and enforced in 1980, are a collection of five criminal laws, collectively known as the Haddood Ordinance these are:

1. *Zina* Ordinance: It is about the crime of rape, abduction, adultery and fornication.
2. Property Ordinance: it deal with the crime of theft and arm robbery.

3. Qazif's Ordinance: it deals with the false accusation of the crime including *Zina*.
4. The Prohibition Order, it prohibits the use of alcohol and narcotics.
5. Execution of Punishment of wiping Ordinance, which emphasis the mode of whipping for those convicted under the Haddood.<sup>17</sup>

Two new crimes were included in the Hudud Ordinance, one was qazf and other was Fornication. This ordinance was promulgated with the intended to bring criminal legal system of the country according to *Shariah*. Two Categories of punishment were prescribed, first one is called "Hadd" and other "Tazir" which means to punish. Hadd punishment of fixed and leaves no room for the judge to take account of mitigating or extenuating circumstances of the crime. For rape or *Zina* committed by adult married Muslim and single Muslim is 100 lashes Hadd for qazf and for drinking alcohol for (Muslim only) is eighty strips. Tazir is simply alternative way. When lack of evidence exempt accused from *hadd* but he is liable to Tazir but judge has the discretion to award punishment in accordance with the nature the gravity of the crime.

**Discriminatory Provisions of the Ordinance against women:** These are those sections of the Haddood ordinance which affect the rights of women.

1. Proof of *Zina* or *Zina-bil-Jabr* liable to hadd.
2. At least four Muslim adult male witnesses, about whom the court is satisfied, having regard to the requirement of Tazir-al-shahood, that they are truthful person and abstain from major sins (Kabi), given evidence as eye witnesses of the act of penetration necessary to the offence.<sup>18</sup>

The most controversial section of the ordinance is the requirement of "four adult male witnesses" and it means that women are excluded from a testimony as eyewitnesses. Is it possible those four male witnesses who are truthful persons and abstain from majors sins? Stand by and watch *Zina* or rape being committed?<sup>19</sup> This requirement has treated a great deal of problem for the women " a raped women who makes the mistake of reporting the rape but fail to prove it can be prosecuted for *Zina* i. e fornication or adultery under the *Zina* Ordinance or wrongful accusation under the *Qazf* Ordinance. Legal complaint of rape can be considered a self-confession of committing *Zina* , it is evidence the from the media report that under the *Zina* Ordinance man are often set free for lack of evidence, while raped women are frequently arrest, prosecuting for commuting *Zina* but does not mention how she can legally prove *Zina-Bill- Jabr* on her.

There may be a situation happened that evidence of four male witnesses may not be available but other signs and symptoms of the case may be determined with the help of modern technology.

**Supreme Court Ruling Genesis:** The Muslim jurists have always treated these signs as a substitute for evidence of four witnesses. It is the fear of being charged with offence of *Zina*, if women would not be able to prove her accusation that women do not go to court. According to Amnesty International, more then one third of all Pakistani women in prison are held due to having being accused or found guilty of *Zina*.<sup>20</sup>

**The Law of Evidence:** During the preparation of draft of the law of evidence, there were serious conflicts between the orthodox and progressive members of the Council of the Islamic Ideology. Even women group like APWA, WAF etc. raised serious objection and concern about regarding a women's evidence being half that of man. Finally *Qanun-e-Shahadat* Order 1984 replaced the Evidence Act of 1892.



**Provisions against Women:** Following are the provisions of the *Qanun-e-Shahadat*, which affected the status of women in Pakistan:

“The competence of a person to testify and the number of witnesses e=required in any case should be determined in accordance with the injunction of Islam as laid down in the Holy Quran and Sunnah, unless otherwise provided in any law related to Haddoo or any other special law.” (Section 10)

In matters related to financial and future obligation, if reduced to writing, the instrument shall by two men, or one man and two women so that one may remind the other, if necessary and (17b): In all other matters, the court may accept... The testimony of one man or one woman of such other evidence as the circumstance of the case may warrant. (17b) (b)

Whoever desires any court to give judgment as to any legal right... dependent on the existence of facts which he asserts, must prove that these facts exist. (117). It means that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. It implies that when a woman files a case against rape, she is responsible for proving the case.<sup>21</sup>

Section 17 gives wide discretionary powers to the court, it seriously endangers the right of witnesses by allowing hundreds of courts to determine the competence of a witness, since the courts are also to decide what of or not in accordance with the injunction of Islam, deferent interpretations by various judges may lead to confusion and discrimination. Section 17 (2) is based on the following surah of the Holy Quran “and call to witness from among your men, two witnesses but if these are not men, then one man and two women from among those whom you choose to witness, so witness, so that if one of them is confused, the other may remind her”<sup>22</sup> but these are nine other relevant verses in the Quran on this subject. Some jurists held that the above-mentioned verses of al-Baqrah were an early revelation and they were abrogated or superseded by other verses, which were revealed much later. In six other verses are mentioned without any distinction of man or woman. In one verse only women are mentioned it is an established fact of Islamic jurisprudence to take into view all verses in the Quran given on a particular subject that has been ignored in the law of evidence.

Other verses of the Holy Quran about evidence are:

1. “And when you come to them, their property, call witnesses in their presence (Nisa 6)
2. “And for those of your women, who are guilty of indecency, call to witness against them four witnesses from among you “ (Nisa 15)
3. And those who accuse free women and bring no witnesses flog them with eight stripes and never accept 5 evidence as they are transgressors” (Noor 40)
4. “ So when they have reached their prescribed time, retain them with kindness or dismiss them with kindness and call to witness two just ones among you and give upright testimony for Allah” (Talaq 2)

Now it is clear from the above verses of the Holy Quran that evidence of women and men are equally treated. Another important point to be worth mentioning is that in all the Quranic verses, mostly men are addressed but it does not mean that women are exempt. There may be cited, the example of fasting, for which there is only one verse in the Holy Quran but in this verse only men alone have been addressed, if this means women are exempt from fasting?<sup>23</sup>

It is argued that the function of the second woman is to save the first woman from any confusion, if she is not confused, the other woman has nothing to do with at all. In the 21<sup>st</sup> century when

women are highly educated and confident, chances of being she confused are nominal. There is a famous case in Islamic history, when Hazrat Usman (R.A.A), the third caliph was martyred; the case was decided on the evidence of one woman, Hazrat Naila (R.A), who was also the wife of the caliph. The reason being that at that time, nobody was also the wife of the Caliph. The companions of the Holy Prophet (PBUH) accepted her evidence and asked Hazrat Ali (R.A) to enforce Hadood punishment on the murder, Hazrat Ali (R.A) also accepted this decision.

Now it is clear that law of evidence is unable to provide justice and equality to women before law, which has been guaranteed in the constitution of Pakistan. Law commission also pointed out that this law does not cover many matters, which relate to our everyday life, beside complying with the injunctions of Holy Quran and Sunnah. The principles laid down by the jurists should also be kept in view. The economic and social conditions, the society, the people, their habits and behavior should also be carefully considered.

**The Law of *Qisas* and *Diyat*:** Federal Sharia Court, in the case of Gull Hassan vs., the Federation Of Pakistan on Sep, 23,1980 had held that some provisions of the Penal Code related to the offence of murder and injury to human body (*Zarb*) as being repugnant to the injunctions of the Holy Quran and sunnah so in 1991, the Pakistan Penal Code was amended and the *Qisas* and *Diyat* Ordinance was promulgated under the special legislative powers of the President. The objection to law as it stood before amendment was based on the following three principles.

The murder of the innocent is held to be the greatest of the major sins in Islam.

1. “Nor take life which Allah has made sacred except for just cause, whose slain wrongfully, we have given power to his heir to demand *Qisas* or forgiven” Bani Israel 33.
2. Under the Islamic injunctions power of pardon is the right of the heir of the victim.
3. If heir likes to pardon without any payment of compensation or by accepting *Diyat*,he/she can do so.<sup>24</sup>

Verse numbers 178 & 179 of surrah Al-baqra explain the comment of *Diyat* and *Qisas*:

*Qisas* means “retaliation”, in the context of murder, it is death for the offender and for *zarb* (hurt), the infliction of the same injury on the offender as he/she inflicted on the victim but *Qisas* should be taken to the offender in and there should be equality in the execution of *Qisas* right of claim to execute *Qisas* is obligatory on the other hand, the heir of the victim may claim blood money (*Khoon Baha*) in case of murder and his blood money is called *Diyat*.<sup>25</sup>

**Provisions against Women:** The strongest opposition to the law came from the women. The major obligation against the law was discrimination against women and like the Hadood ordinance, reduced the legal status of women. Under the law of *Qisas* and *Diyat*, *Qisas* cannot be enforced to minor, an adult is defined as “A person who has attained a male the age of 18 or being a female the age of 16, or has attained puberty, whichever is earlier.”<sup>47</sup>The standard of adulthood has created discrimination between men and women in the imposition of punishment as puberty is concerned majority female can become liable to same punishment as adult( as an age as nine or ten years. Criminal liability is determined in accordance with comprehension of offender about the consequence of his/her act. Puberty is not very affective to determine the mental maturity of the offender. This is the contradictory aspect that on the basis that a women’s understanding of an act witnessed by her is weak. On the other hand, women are held criminally liable at s younger age then man for the same act, on the premises that she understands the consequence of the act. The words barring the evidence of the women or proof of *Qatl-e-Amd* are not written in the law. Proof of

*Qatal-e-Amd* is either the confession of the offender before a competent court, or by evidence as provided in *Qanun-e-Shahadat*.

“Competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunction of Islam as laid down in the Holy Quran and sunnah”<sup>27</sup> and it has been given in article 17 (2), the evidence accepted as proof of *Qatal-e-Amd* (willful killing) for imposition of *Qisas* is given as two adult male witnesses, except under exceptional case.

**Determination in the Payment for *Qatal-e-Amd* of Women:** The most objectionable provision of this law is pertaining to the *Diyat* payment for women, it state “the court shall, subject to the injunction of Islam as laid down in the Holy Quran and Sunnah... Fix the value of *Diyat* (49) but it is clear that in Islamic law *Diyat* of a woman is half of a man sends it is binding for the court to fix the value of *Diyat* according to Islamic injunction. This law has made value of women half. As this is a legal sanction creating discriminatory attitude against women and have eroded the status of women the Quranic injunctions about this matter are very clear in verse... As in the verse a differentiation has been made about *Diyat* of human being. Even there is no distinction between a Muslim, non-Muslim. Jurist who include Qazi Abu Baker Asim Abn Aliya, made no distinction between *Diyat* of Muslim man and women or non-Muslim.”<sup>28</sup>

It is interesting even those jurists who insist on half *Diyat* for Muslim women, admit that full *Diyat* for women is established in Holy Quran but as majority of Muslim jurists held deferent view of half *Diyat*, hence their view should be adopted. The paradox of the law is that, on the one hand, *Diyat* for one finger has been fixed as one tenth of the full *Diyat*, in other words when ten fingers will be damaged, she should be entitled to full *Diyat* but she loses life and she will get half of the *Diyat*.<sup>29</sup>

As child marriage has been banned in the Muslim countries, because of the verdicts of the jurists like qazi Abu bakrAsimabdAbne-Aliya. Similar steps can be taken in respect of *diyat* which according to them is equal for both men and women. According to the constitution of Pakistan all citizen are equal before law a sentence to equal protection of law.<sup>30</sup> It means that Half *Diyat* of women is against the spirit of the constitution of Islamic republic of Pakistan.

Renowned Religious scholar, Dr. Malik Ghulam Murtaza and Dr. Israr who when requested during a discussion for their respected opinion on law of *Qisas* and *Diyat* said that Half *Diyat* of women on the ground of man’s greater economic contribution is not justified in our times as now women are also contributing in families earning on equal footing.<sup>31</sup>

One of the fundamental objective of law is to promote social cohesion and stability. A law can be successful in achieving this objective only if it is just. It should have the benefit of vast inputs of public opinion through enlightened public debate. These laws do not fulfill the criteria, which a set of rules or bill must meet with before it is legislated. The first test of any legislation is whether the proposed law is in conformity with the principles and the spirit of the supreme law of the land as enshrined in the constitution.

The contents of Huddud ordinance and *Qisas* and *Diyat* laws clearly contradict the following provisions of the constitution of Pakistan:

1. All citizens are equal before law and are entitled to equal protection of law.
2. There shall be no discrimination on the basis of sex alone.

3. Nothing in this article shall prevent the state from making any special provision for the protection of women and children.<sup>32</sup>

But the reality is very bitter as neither are women equal before law in the context of laws not have they been given equal protection of law, evidence of one women is half that of a man in many cases. Four adult males must testify to prove an accusation of rape. *Diyat* of women is half that of a man in all these cases gender has been used to discrimination against women.

Tahir Wasti, a research scholar prof school of oriental and African Studies London, is of the opinion that *Qisas* and *Diyat* Ordinance has increases the number of killing in the country, 60,540 person were killing during 1981-1990 but this death tall has increased and it was 8,640 during 1991-2000.<sup>33</sup> Justice Saeed Khusa of Lahore high court abrogated the Article 331.337-x and 337-y of *Qisas* and *Diyat* ordinance by calling this against the constitution of Pakistan.<sup>34</sup>

**Conclusion:** This problem of honor killing is not a problem of morality of ensuring that women maintain their own personal virtue, rather it is a problem of domination, power and hatred of women who in these stances are viewed as nothing and especially after her marriage to her temporal God (*Majazi Khuda*) both physically and symbolically. Thus she is mercilessly sacrificed at the altar of the males Ego and base desire to satisfy his Avarice for material benefit, other women or revenge. Confronting the problem of honor killing and other crimes that disproportionately affect women requires a change in attitude that pervade at all level of society where such attacks occur. Muslims today must unequivocally reject this distortion of Islamic teachings that is used to violence the most basic right of human life, decency integrity and justice unwillingness the part of Muslim community to address this issue in its proper context and un apologetic manner is born out perceived “Western” attempt to taint the image of Islam in the interest of global politics. Thus is no excuse for us to turn blind eye to injustice committed against Muslim and others, especially when the perpetrations are members of the same faith. In additional legal reform like the honor killing bill must occur with the intention to protect the victims and punish the perpetration. Attention must be paid to meting basic human needs solving problems stemming from poverty and illiteracy that are often at the roof of disturbing social trends seek out the most disenfranchised to serve as scapegoats. The educated, liberal and more enlightened segment of the society should come forward and must play an active role to influence the behavior; norms too alter society’s outlook and mindset.

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