

## **Violence Against Women: Violation of Right to Life of Women in FATA**

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### **Abstract**

Violence against women is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age. Even though most societies proscribe violence against women, the reality is that violations against women's human rights are often sanctioned under the garb of cultural practices and norms, or through misinterpretation of religious tenets. Pakistani society in general and tribal society in particular is so entrenched in culture, that customary and traditional laws and practices usually override both statutory and Islamic laws, which are only used selectively or adapted in accordance with cultural traditions. Honour Killing is a tradition and practice that has existed in FATA for many centuries. Today the custom of honour killing is doing no good but casting aspersions on the noble and dignified heritage of the tribal culture, which denotes courage, honour, hospitality and peaceful coexistence. The deplorable condition of the fair sex can be improved by providing their proper education.

### **Keywords**

Violence, Culture, FATA, FCR, Pakhtunwali, Jirga, Honour Killing, Customary Law, Islamic Law, Human Rights

### **Introduction**

Violence against women is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age. Even though most societies proscribe violence against women, the reality is that violations against women's human rights are often sanctioned under the garb of cultural practices and norms, or through misinterpretation of religious tenets. In Pakistan the overwhelming majority is Muslim, but while Islam and related State policies have affected social patterns to some extent, Pakistani society in general and tribal society in particular is so entrenched in culture, that customary and traditional laws and practices usually override both statutory and Islamic laws, which are only used selectively or adapted in accordance with cultural traditions. Discriminatory laws combined with harmful customary laws and practices deny women their human rights in Pakistan. Pervasive institutional and judicial discrimination along with illegal detention and custodial violence make it nearly impossible to obtain justice for many women. Though Pakistan ratified the United Nation's Convention on the Elimination of Discrimination Against Women in 1996, it has failed to remove discriminatory laws against women. It has additionally failed to create new laws and to enforce existing laws that protect women from discrimination and violence. Due to these failures, women's rights in Pakistan are progressively deteriorating.

## **Purpose of the Study**

The purpose of the paper is to frame the issue of violence against women in FATA in its cultural and feudal perspective, and focusing specifically on Honour killing the most prevalent yet relatively hidden and ignored form of violence against women. Analyzing the honour related killings with reference to right to life of women in the light of core international human rights instruments. Moreover it is also to be seen whether the FCR/the Tribal Code (Riwaj) is contravening the fundamental rights of the right to life and right to equality as envisaged in the Constitution of Pakistan.

## **Definitions of Violence and Honour Killing**

There is no universally accepted definition of violence against women. Some human rights activists prefer a broad-based definition that includes "structural violence" such as poverty, and unequal access to health and education. Others have argued for a more limited definition in order not to lose the actual descriptive power of the term.<sup>1</sup>

The United Nations Declaration on the Elimination of Violence against Women (1993) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>2</sup> This definition refers to the gender-based roots of violence, recognizing that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." It broadens the definition of violence by including both the physical and psychological harm done towards women, and it includes acts in both private and public life. The Declaration defines violence against women as encompassing, but not limited to, three areas: violence occurring in the family, within the general community, and violence perpetrated or condoned by the State.

Human Rights Watch defines "honor killings" as follows: Honor crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family. A woman can be targeted by her family for a variety of reasons including, refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce even from an abusive husband or committing adultery. The mere perception that a woman has acted in a manner to bring "dishonor" to the family is sufficient to trigger an attack.<sup>3</sup>

## The Federally Administered Tribal Areas (FATA)

Administratively, FATA is divided into seven political agencies viz Bajaur, Mohmand, Khyber, Orakzai, Kurram, North and South Waziristan, and six Frontier Regions: Peshawar FR, Kohat FR, Bannu FR, D I Khan FR, Tank FR and Lakki Marwat FR. It is the most impoverished region of Pakistan where majority of the population lives in rural areas. According to a WHO report of 2001 nearly 50 per cent of tribesmen are living in abject poverty, 75 per cent have no access to clean drinking water. Problems of infant and maternal mortality are severe. The literacy rate is 17 per cent against the national average of 40 per cent while female literacy is less than one percent. The population growth rate is 3.9 per cent as compared to nationally cited figures of 1.9 per cent.<sup>4</sup> According to a 1998 national census, it has a population of nearly 3.5 million, but presently expected to be about 7 million. Besides being one of the most important areas of the country mainly owing to its strategic location, it is also one of “the most sensitive areas in Pakistan and indeed in South Asia.”<sup>5</sup> It stretches like a rampart from northwest to southwest of North-West Frontier Province (NWFP) of Pakistan along the borders with Afghanistan. Of the size of Belgium, it is approximately 27,220 sq kms with a porous border of 450 kms with Afghanistan.<sup>6</sup>

## Administrative Justice in FATA

From time immemorial the tribal people of Pakistan have been living together by tribal, clan, or family bonds in meeting most of their spatial requirements. Quarrels and conflicts are still a common worry of the tribal society. However, most of their collective and individual feuds and disputes are generally settled by the tribesmen themselves in their Jirgas without the aid or assistance of any outside agency. The parties usually accept the decision given by the Jirga, consisting of their accepted elders and respectable people of the community.

Although, a predominantly spoken and unwritten culture of *Narkh* (precedent or custom) and *Liaraha* (rule), which have deep-roots in their history is still prevalent in all the tribal areas. However, an unwritten document of customary laws known as *Wazirnama*<sup>7</sup> (Aeen-e-Waziri) was first ever codified in Waziristan more than 400 years ago. Though, it is very simple rather incomplete and incoherent document but at least it secured some basic principles to settle criminal or civil disputes by administrative courts in Waziristan with the help of Jirga. The simple and non-technical system of customary laws may be partly attributed to the plain structure of the overall tribal society and partly to the inadequate role that administrative courts play in the process of administering retributive justice in the area.

One of the ways of seeking justice to obtain restitution, damages, or seeks other private remedies against a person, group of persons is to approach the administrative courts in the agency. An application in the court of political or assistant political agent may be preceded to initiate a case, which abates a customary nuisance or tradition. Political Naib Tehsildar (NT), a local Tehsil official initiates criminal proceedings with the reception of information regarding any crime or offence. At the instruction and approval of the political or the assistant political agent, the Naib Tehsildar takes action against the accused to offenders. Most of the disputes are solved by mutual consultation, failing that through arbitration by impartial parties in a Jirga or a Meraka. An immediate effort is made to obtain a truce between the parties. This arrangement locally termed as placing a Tiga.<sup>8</sup> It literally means to place a stone to have truce among the parties till such time when their tempers cold down and sanity return. Violation of the Tiga is punishable in accordance with the terms decided and often there is a provision of a substantial fine and forfeiture of a right. If the political authorities are a party to the truce, the violation may result in addition to their displeasure, as it entitles the administration to suspend or repeal any of the economic benefits enjoyed by the offending party.

*To answer the question as how does the system of customary laws and rules satisfy the demands of nature of justice administration in tribal areas? Three important components of the justice administration including the Jirga system, role of the political administration, and the Frontier Crimes Regulation of 1901, have had far reaching effects on the lives of the tribal people.*

## **Frontier Crimes Regulations (FCR)**

The Frontier Crimes Regulations 1901, popularly known as FCR is one of major component of the administrative system of justice in Tribal Areas. FATA's judicial system is enshrined in the FCR (1901), a hybrid colonial-era legal framework that mixes traditional customs and norms with executive discretion.<sup>9</sup> The British created this harsh law to manage and control their Indian Empire's restive frontier belt. Originally drafted in 1872, the FCR was promulgated with amendments in 1901 and applied by Pakistan to NWFP until 1963 and Balochistan until 1977. Unlike FATA, the Provincially Administered Tribal Areas (PATA) are subject to the jurisdiction of Pakistan's regular court system. In 2007, there is little justification for a parallel legal system that was designed to serve colonial ends and remains outside the purview of Pakistan's judiciary.<sup>10</sup>

### **FCR Jirga**

The jirga is although an informal institution but it has very formal effects on the pukhtoon society in general and on tribal people in particular. It is one of the most

time-honoured institutions in the tribal world and part of the culture of the tribesmen, who are very proud and fond of their culture.<sup>11</sup> The FCR preserves the Pashtun tribal structure of *jirga* (council of elders),<sup>12</sup> to which the political agent can refer civil and criminal matters.<sup>13</sup> The *jirga* ascertains guilt or innocence after hearing the parties to a dispute and passes verdicts on the basis of *rewaj*. However, the PA retains ultimate authority.<sup>14</sup>

On its face, the FCR is based on the premise of cohabitation between the *jirga* and the political agent for the provision of speedy justice in accordance with tribal customs. But the British distorted the institution, making it subservient to the political agent and its decisions non-binding.<sup>15</sup> Pakistan retained this system, with the political agent initiating cases, appointing the *jirga*, presiding over trials and awarding punishments without even the technical possibility of revision by a regular court of law.<sup>16</sup>

Most FATA residents supported the *jirga* as an efficient source of dispensing justice. In cases where neither the government nor the political agent has a stake, the process can be quicker and offer disputants more opportunity to air their grievance and negotiate than an ordinary court trial.<sup>17</sup> But *jirga* verdicts often favour those with political or economic clout at the expense of the vulnerable segments of the population, particularly women,<sup>18</sup> who are excluded from direct participation in the system and suffer when male members of their families are detained.

## Due Process

Trials under the FCR do not provide the accused due process of law. There is no right to legal representation, to present material evidence or cross-examine witnesses.<sup>19</sup> Those convicted are denied the right of appeal to the Peshawar High Court or the Supreme Court of Pakistan.<sup>20</sup> The power of revising the PA's decisions rests with an FCR commissioner, appointed by the NWFP governor, who can act either on his own or in response to a petition by an aggrieved party<sup>21</sup> but cannot "set aside the finding on any question of fact by a Council of Elders [FCR *jirga*] accepted by the Deputy Commissioner [Political Agent]". Revision is allowed only if there is "material irregularity or defect" in the proceedings or on an "occasion [of] a miscarriage of justice".<sup>22</sup>

A final appeal can be made to an FCR tribunal comprising the provincial law secretary, the home secretary and the chief secretary of the province (the senior civil bureaucrat), who casts the decisive vote in case of a split verdict. Given the skeletal nature of FCR rules for granting an appeal, the scope of review is limited.<sup>23</sup> In essence, convicted parties have no recourse to an impartial court of law and must rely on bureaucratic discretion. Since the FCR vests appellate authority in the executive, it violates the safeguard of an independent judiciary enshrined in Articles 2-A and 175 of the constitution.

## Justice Denied

Almost six decades after Pakistan's independence, tribal Pashtuns remain subject to the application of this colonial law, some of whose clauses are cruel to the point of being inhumane. Under section 40 of the FCR, the PA can preventively imprison tribesmen for up to three years “for the purpose of preventing murder, or culpable homicide....and sedition”.<sup>24</sup> The PA can also take other preventive measures such as stopping the construction of settlements close to the border or doing away with them on security grounds; and halting the construction of or demolishing buildings used for “criminal purposes”.<sup>25</sup>

Individuals involved in blood feuds and “dangerous fanatics” can be expelled from an agency.<sup>26</sup> Section 38-1 allows the private arrest of a suspect, a convenient weapon in the hands of those with economic and political power to settle scores with weaker opponents.<sup>27</sup> Used in conjunction with section 29, this can result in five-years imprisonment for suspicion alone.<sup>28</sup> Section 38-4 gives law enforcement agencies “a right to cause the death of a person” on suspicion of intent to use arms to evade arrest.

## Women in FATA

The lives of women in FATA are circumscribed by traditions, which enforce extreme seclusion and submission to men. Local customs, traditions and tribal laws play a role in determining the status of women in FATA. FATA is essentially a patriarchal society where socio-cultural traditions define the role of women as mother, wife, sister, and daughter in relation to a male. The importance of women as providers and producers is not generally recognized. In addition the interplay of tribal codes, Islamic lore, indo-British judicial traditions and customary traditions have created an atmosphere of oppression around women where any advantage or opportunity to women by one law is canceled out by one of the others.<sup>29</sup> The tribal code is based very strongly on the social values of PUKHTOON WALI and GHAIKAT (honour). The interpretation of the concept of GHAIKAT is largely in the light of the characteristics attributed to man and manliness, sometimes to the extent that embracing death or killing some one for the sake of honour is considered as a vital part of it.

Izzat is a concept central to the understanding of Pathan normative behavior. Khushal Khan Khattak, the quintessential Pathan and warrior- poet of the Khattak tribe, wrote in the 17th century,

*Sweeter to me is death than life*

*Which is passed day to day without honor.*<sup>30</sup>

*“I despise the man who does not guide his life by honour. The very word honour drives me mad.”*<sup>31</sup>

## Women Personify the Honour

In FATA women personify the honor of the tribe. The honor of women is an issue on which the tribal people are the most sensitive and uncompromising. The worst crime a woman can commit is to indulge in an illicit sexual relationship ("tor": literally "black").<sup>32</sup> If discovered and apprehended, the couple is killed. Tor is the one instance in which killing does not provoke "badal" (revenge). If a woman's honor is compromised, even though she be the unwilling victim, she is killed, as it is the only way that the honor of the tribe (or a relevant segment) can be redeemed.

Honour Killing is a tradition and practice that has existed in FATA for many centuries. It is a barbaric and inhuman custom, a legacy of tribalism and feudalism, which still exists, in its worst form in FATA today. This traditional custom gives parents, brothers, husbands, cousins and other relatives the right to kill women in their family or tribe on suspicion of sexual relations with a man occurring outside marriage. Relatives can also kill the suspected man on this charge.

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 FATA is conditional on their obeying social norms and traditions".<sup>33</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>34</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>35</sup> "A man's property, wealth and all that is linked with 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>36</sup>

A key observations are that "although honour is located in material wealth, the language and expressions of honour reside in the body".<sup>37</sup> Women's bodies are considered to be the "repository of family honour". 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.

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 ownership rights of others to her body - and indirectly challenges the social order as a whole. She becomes "tor" ("tor": literally it means "black"). 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.<sup>38</sup> Honour killings consequently are not hidden away but openly performed, often ritually and with the maximum spilling of blood.

### **Modus Operandi of Honour Killing**

Every year, in FATA, many of women who do not accept the tribal traditions; refuse forced marriages; marry according to their will; or live independently, are murdered by their family member, to save the 'honour' of the family. Women, who have brought 'shame' to family's 'honour', are sentenced to death by family courts and the sentence is usually carried out by male members of families. 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.

### Cases of Honour Killing in FATA

Every year in FATA women, of all ages and in all parts of the FATA, are reported killed in the name of honour. It's difficult to get precise numbers on the phenomenon of honor killing; the murders frequently go unreported, the perpetrators unpunished, and the concept of family honor justifies the act in the eyes of tribal society. But very few are taken by media. For instance in one of the case 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**<sup>39</sup> 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>40</sup>

Similarly, in March 1999, a 16-year-old mentally retarded girl, **Lal Jamilla**<sup>41</sup> 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".

### Islam and the Honour Killing

Islam recognizes and celebrates the inherent dignity bestowed by God upon all human beings regardless of race, ethnicity, gender or religion. The Qur'an is explicit in its emphasis on the equality of women and men before God:

*And their Lord has accepted of them and answered them, "Never will I suffer to be lost the work of any of you, whether male or female, you are members, one of another..." (3:195; see also 33:35)*

Individual accountability before God is stressed throughout the Qur'an, beginning with the story of Adam and Eve: as a result of their transgression (committed together and simultaneously) they were banished from Paradise and made to toil on Earth. God chose to forgive them both and so their sin is not inherited by subsequent generations. Similarly, as exemplified in the following verse:

*Whoever chooses to follow the right path, follows it but for his own good; and whoever goes astray, goes but astray to his own hurt; and no bearer of burdens shall be made to bear another's burden (17:15)*

Islam is clear on its prohibition of sexual relationships outside of marriage. This prohibition does not distinguish between men and women. But unfortunately, the legal safeguards to protect women and men from indiscriminate and unlawful enforcement of presumed Islamic injunctions have been forgotten. Indeed, the legal system and law enforcement agencies including police officers and prison guards have been implicated in the perpetuation of the problem by their willful lenience towards men who have carried out an assault in the name of "honor" and by their abuse and denigration of women who stand accused.

The problem of "honor killings" is not a problem of morality or of ensuring that women maintain their own personal virtue; rather, it is a problem of domination, power and hatred of women who, in these instances, are viewed as nothing more than servants to the family, both physically and symbolically. 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.

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>42</sup>

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>43</sup>

According to Sheikh Atiyyah Saqr, former head of the al-Azhar University Fatwa Committee (one of the oldest and most prestigious in the Muslim world):

*"Like all other religions, Islam strictly prohibits murder and killing without legal justification. Allah, Most High, says, "Whoso slayeth a believer of set purpose, his reward is Hell for ever. Allah is wroth against him and He hath cursed him and prepared for him an awful doom." (An-Nisa': 93) The so-called "honor killing" is based on ignorance and disregard of morals and laws, which cannot be abolished except by disciplinary punishments."*

Therefore, killing to preserve "honor" is not prescribed or endorsed by Sharia and many Islamic leaders and scholars condemn the practice and strongly deny that it is based on religious doctrine.

Muslims today must unequivocally reject this distortion of Islam that is used to violate the most basic Islamic rights of human decency, integrity and justice. Unwillingness on the part of the Muslim community to address these issues in a forthright and unapologetic manner is borne out of an inherent distrust of perceived "Western" attempts to taint the image of Islam in the interest of global politics. This is no excuse for us to turn a blind eye to injustices committed against women, especially when the perpetrators are members of the same faith.

### **Pakistan's Obligations under International Law**

Through its ratification of the U.N. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>44</sup> in 1996, Pakistan assumed the obligation to protect women from sexual and other forms of gender-based violence perpetrated by state agents and private actors alike. As a party to CEDAW, Pakistan is obliged "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women"<sup>45</sup> including "any distinction, exclusion or restriction made on the basis of sex which has the purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . on a basis of equality of men or women, of human rights and fundamental freedoms . . ."<sup>46</sup> The

U.N. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), established under CEDAW, has noted that "gender-based violence is a form of discrimination which seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>47</sup> As part of its obligation to prevent violence against women as a step toward eliminating sex discrimination, the government is required to ensure that women victims of violence have access to an effective remedy for the violation of their rights.<sup>48</sup> This duty to provide an effective remedy requires the government to show due diligence in investigating and prosecuting instances of violence against women.<sup>49</sup> In such cases, the effective collection of medical evidence is an integral part of a proper investigation, which, in turn, is central to the successful implementation of penal sanctions against perpetrators of violence against women. Similarly, the ability of the police, prosecutors, and judges to evaluate and use medical evidence is critical to ensuring effective prosecutions of perpetrators of violence against women. Hence, pursuant to its legal obligations under CEDAW, the government of Pakistan must provide an efficient and effective system of collection of medical evidence to facilitate the proper investigation and prosecution of cases of violence against women. Toward the same end, the state must ensure that the police, prosecutors, and judges are fully trained and prepared to interpret and utilize medical evidence in order to advance the prosecution of violence against women without prejudice to the accused.

In 1992 the CEDAW Committee adopted a general recommendation and comments on states' obligations under CEDAW that spelled out the facets of any potentially effective remedy to the problem of violence against women. The committee noted that states are obliged under CEDAW to take steps to provide the following:

- Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including *inter alia* violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- Protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.

Furthermore, the International Covenant on Civil and Political Rights (ICCPR), which Pakistan has not ratified but is a cornerstone of international

human rights law, requires governments to ensure the rights to life and security of the person of all individuals in their jurisdiction, without distinction of any kind, including sex.<sup>50</sup> The ICCPR would require Pakistan to not only refrain from, but also prevent private actors from committing, acts of violence against women.<sup>51</sup>

### **Recommendation to Improve the Situation**

Dignity and the status of women and men as equal citizens of Pakistan is a moral imperative, constitutional obligation and a guiding principle of an egalitarian and a progressive society. This requires concerted action by state and society to motivate change and adopt measures to achieve desired goals for the advancement of women.

### **Legislation**

A specific set of laws should be enacted explicitly criminalizing all forms of domestic and familial violence against women, including assault, battery, burns, acid burns, sexual assault, forced abortions, and illegal confinement, at the hands of husbands, in-laws, and other relatives. A provision should be added to the Criminal Law (Amendment) Act of 1997 to specify that "honor killings" are punishable as *qatl-e-amd* (intentional murder) and to explicitly prohibit the practice of mitigation of sentences in such cases. There should be an explicit prohibition against the application of the common law defense of grave and sudden provocation to cases of honor killings. Section 300(1) of the Pakistan Penal Code (PPC) read: "Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation..." Moreover, the UN Special Rapporteur on violence against women developed a framework for model legislation on domestic violence<sup>52</sup> which Amnesty International recommends be used when drafting legislation against such crimes.

### **Promotion of Political Culture**

Political parties and politicians are an integral part of the modern democratic set up and play an important role in the life of nations. They, on one hand organize and educate people to defend and secure their rights and fight back the negative tendencies and retrogressive forces while competing for power and popular support they cultivate and make flourish a culture of political tolerance, judgment, awareness and progressiveness which in turn accelerates the process of socio-economic development in the country. Political process generates the spirit of pluralism, broadens the horizons of thinking, which is a base to replace the obsolete values and change of mind and ideas that ultimately lead toward cultural change and

overall development. Unfortunately the people of FATA have been deprived of this basic democratic right without which one cannot think of human rights, rule of law, social justice and democracy.<sup>53</sup>

Until 1996, the people elected from FATA on the basis of limited franchise but at last on 15 December 1996, the Government gave the right of adult franchise and the first ever election held on the basis of adult franchise in February 3, 1997, had undoubtedly given a new boost to the struggle of pukhtoons of this backward area to overcome the political and administrative apartheid imposed on them by the British colonial rule and to join the main stream. The President, who under the constitution controls FATA affairs through his agent (Governor), must visit the area personally to get first hand knowledge about the people and their problems, especially of the common masses and not of the few selfish maliks.

### **Abolition of FCR**

The FCR absolutely ignores crimes against women, (not even a single woman reported a case under the FCR so far), despite the fact that maximum crimes in FATA are related to women. Honor killing, child marriage, swara marriage (a tribal custom to give women in marriage to the aggrieved party in consideration for settling a dispute), exchange marriages and "bride price" are still accepted norms in FATA without any legal remedies. Women are not represented in the jury or justice system in the tribal areas.<sup>54</sup> Moreover, Amnesty International considers the law governing the FATA, the Frontier Crimes Regulation, 1901 (FCR), to be deeply flawed as it does not ensure the human rights protection afforded by the Constitution of Pakistan, or Pakistan's international obligations as a state party to the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. Therefore, it is suggested that FCR should immediately be replaced. In the tribal area "Rule of Law" should be established and "Rule of Man" should be abolished.

### **Education**

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.

Education Curricula that teach non-violence, conflict resolution, human rights and gender issues should be included in elementary and secondary schools, universities, professional colleges, and other training settings. Violence against women can be prevented and eliminated only when the underlying causes of violence are addressed and cultural norms and attitudes are challenged. Curriculum

reform that works towards eliminating the gender stereotyping in schools (teaching about women's contributions in history class, eliminating sexstereotypes in textbooks, promoting girls' participation in sports) are important steps in achieving gender equality. A more fundamental problem that of girls' enrolment in schools has to be addressed by governments alongside curriculum reform.

### **The Media**

The media plays a pivotal role in both influencing and changing social norms and behaviour. In the area of domestic violence, media campaigns can help to reverse social attitudes that tolerate violence against women by questioning patterns of violent behaviour accepted by families and societies.<sup>55</sup> Collaboration with the media needs to focus on creating new messages and new responses to reduce domestic violence. Hence a conscious effort to make media professionals aware of the issues can play an important role in addressing violence against women. Alternative media channels such as theatre groups, puppeteers, community radio stations, musicians and performers of all sorts have a role to play in raising public awareness of the issue, and creating role models for men and young people in the community. Although FCR has no provision regarding press but it all depends on the whims of the political administration, which is very powerful because of the FCR and the decision of the administration cannot be challenged in any court of law. It is therefore essentials for every society that it should have strong and free press- a real threat to the prevailing corrupt system.

### **Religious Leaders and Scholars**

Religious Leaders and Scholars need to re-examine interpretations of religious texts and doctrines from the perspective of promoting equality and dignity for women. Many men who abuse women justify such behaviour on a religious basis, and many cultural practices that abuse and violate women are justified in the name of religion. Religious leaders at all levels have a responsibility to ensure that religious interpretations are not used to oppress women. Muslim leaders can provide an important example to their followers by taking an unequivocal stand against behavior that is in direct violation of Islam. In addition, legal reform must occur with the intention to protect the victims and punish the perpetrators, all totally possible within a legitimate Islamic legal framework.

### **Academia and Research Organizations**

Academia and Research Organizations should address the chronic lack of statistics on domestic violence that acts as a barrier to policy change on this issue. The lack of adequate data and documentation about violence against women, and domestic violence in particular, reinforces governments' silence. In the absence of concrete data, governments have been able to deny the fact of, and their

responsibility to address, such violence.<sup>56</sup> Researchers need to identify best practices in prevention and treatment, and evaluate them for effectiveness and replicability. Greater collaboration is required between research and academic institutes, women's organizations, NGOs, and service providers when conducting qualitative research to deepen understanding of the causes of domestic violence, and its physical and psychological impact on women. Such research needs to be fed back to the community so that it can lead to awareness and transformation.

## Conclusion

Dignity and the status of women and men as equal citizens of Pakistan is a moral imperative, constitutional obligation and a guiding principle of an egalitarian and a progressive society. This requires concerted action by state and society to motivate change and adopt measures to achieve desired goals for the advancement of women. In the backdrop of this modern outlook, all those sticking to the irrational old cultures and traditions would find themselves at a loss while competing with the modern world. The modern man will always look askance at those who sacrifice their women under the garb of honour killing. To sum up, today the custom of honour killing is doing no good but casting aspersions on the noble and dignified heritage of the tribal culture, which denotes courage, honour, hospitality and peaceful coexistence. The deplorable condition of the fair sex can be improved by providing their proper education. An educated and enlightened woman with a clear mind not only improves her own life in such societies, but also becomes a harbinger of an enlightened posterity-the very nation builders of tomorrow.

## End Notes

1. Heise L.L., Pitanguy J. and Germaine A. (1994) *Violence against Women. The Hidden Health Burden*. Discussion paper No 225, p.46. Washington DC: The World Bank.
2. General Assembly Resolution 48/104 of 20 December 1993; retrieved from, <http://www.un.org/documents/ga/res/48/a48r104.htm>
3. The State of Human Rights in 1998, 1999, p.216 and p.10.
4. Hasan Khan, "Not gone are the days," The News on Sunday, International, Rawalpindi-Islamabad, 14 March 2004, p.25.
5. Akbar S Ahmad, *Social and Economic Change in the Tribal Areas (1972-76)* (Karachi: Oxford University Press, 1977) p.1.
6. Hasan Khan., Op. Cite.
7. Wazirnama (Aeen-e Waziri), see Sir Denzil Ibbetson, Sir Edward Maclagan and H.A.Rose, *A Glossary of The Tribes and Castes of the Punjab and NWFP*, vol.111

(Lahore: Aziz Publishers Urdu Bazaar, 1911) p.496. Also see Iorimer's waziri pashto. Similarly Turizuna, or Qanoon-I-Riwaj Kurram, compiled by Abdul Rashid Khan, Assistan Political Officer, with the help and assistance of selected tribal Maliks, and elders of different tribes on the directive of the Lieutenant Colonel W.C. Leper, O.P.I.P.S., Political Agent, Kurram Valley, in 1944. It was translated in Urdu, by Mr. Sardar Hussain B.Sc, Ghundikhel and Mian Sahib Gul Kakakhel (Royal Printing Press, Kohat,) in 1947, and is still being followed in the disposal and revisions of cases in kurram.

8. See, Izzat Awan, Pattern Of Administration In The Tribal Areas Of Pakistan, Provincial Services Academy, Peshawar, 1972. p. 21.

9. Francois Teney-Renaud, "Post-Colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan", *Singapore Journal of Comparative and International Law*, 6 (2002).

10. Crisis Group Asia Report N°86, *Building Judicial Independence in Pakistan*, 10 November 2004, p.3.

11. Lt. Col. (R) Alam Zeb, "The Jirga System" *PARD*, Vol. XXX111, No. 2, (spring, 2001), p.15.

12. The jirga relies on the Pashtun code of honour (*Pakthunwali*), based on *melmastia* (hospitality), *nanawati* (hospitality cannot even be denied to a criminal or enemy) and *badal* (the right of revenge). The greatest tests of honour involve *zar* (gold), *zun* (women) and *zamin* (land). Settlements and punishments are derived from *narkh* (tribal precedent); the jirga can impose strong sanctions and punishments, including excommunication of a noncompliant person or clan, confiscation or *girvi* (mortgage) of property, fines and formation of a *laskhkar* (tribal militia) to punish the accused party.

13. A case is referred when the political agent believes a crime has been committed or a civil dispute can lead to a blood feud or breach of peace. FCR (1901) sections 8, 11.

14. The political agent may convict the accused in accordance with the jirga's decision, refer the case back to the jirga for review or appoint a new jirga. He may acquit or discharge the accused at his discretion in criminal cases (Section 11, clauses 3 a-c) or halt proceedings arbitrarily in civil cases (chapter III, section 8, clause 3-e).

15. Faqir Hussain, "Testing FCR on the Touchstone of the Constitution", paper presented at the FCR consultation organized by the Human Rights Commission of Pakistan (HRCPP), Islamabad, 4-5 October 2004.

16. Crisis Group interview, Latif Afridi, lawyer and former member of the National Assembly from Khyber Agency, Peshawar, 11 May 2006. Also see Pakistan's Tribal Areas: Appeasing the Militants, Asia Report N°125, 11 December 2006
17. Crisis Group interview, Latif Afridi, Peshawar, 11 May 2006. See Pakistan's Tribal Areas: Appeasing the Militants, Asia Report N°125, 11 December 2006.
18. See "State of Human Rights in 2003", Human Rights Commission of Pakistan, Lahore, 2004, pp.33-37; also "Pakistan: The Tribal Justice System", Amnesty International, at <http://web.amnesty.org/library/index/ENGASA330242002>.
19. Crisis Group interview, former judge, Peshawar, 12 May 2006, see Pakistan's Tribal Areas: Appeasing the Militants, Asia Report N°125, 11 December 2006.
20. "No appeal shall lie from any decision given, decree or sentence passed, order made or act done, under any of the provisions of this Regulation", FCR (1901), section 48.
21. Ibid., section 49.
22. Ibid., section 50
23. Crisis Group Report, "*Building Judicial Independence in Pakistan*," November 10, 2004.
24. The sentence can be extended by another three years under FCR (1901), section 46 (6). Section 40 allows the political agent "to require a person to execute a bond for good behaviour or for keeping the peace" for a period "not exceeding three years".
25. FCR (1901), sections 31-34.
26. Ibid., section 36.
27. Crisis Group interview, FATA parliamentarian, Islamabad, May 2006. See Pakistan's Tribal Areas: Appeasing the Militants, Asia Report N°125, 11 December 2006.
28. Crisis Group interview, former political agent and retired chief secretary of NWFP, Khalid Aziz, Peshawar, 13 May 2006. See Pakistan's Tribal Areas: Appeasing the Militants, Asia Report N°125, 11 December 2006
29. Simi Kamal, Asma Khan: *A study of the interplay of formal and customary laws on women*, vol I, 1997, p. ii.
30. Caroe, O., Howell, E. *The Poems of Khushal Khan Khattak*. University of Peshawar: Pashto Academy, 1963.
31. Ibid.
32. Tahira Shahid Khan: "Chained to custom" in: *The Review*, 4-10 March 1999, p.9.

33. Hina Jilani, *Human rights and democratic development in Pakistan*, Lahore, 1998, p.143-144.
34. Tahira Shahid Khan., Op. Cite.
35. Only the Pashtoon have codified the honour system in the Pashtoonwali; it revolves around four concepts: malmastya, the obligation to show hospitality; badal, revenge; nanawaty, asylum; and nang, honour.
36. Nafisa Shah: "Honour killings: Code of dishonour", in: *The Review*, 19-25 November 1998, p.7.
37. Ibid.
38. Amnesty International Report 1999.
39. For details of the case see: *Pakistan: No progress on women's rights*, AI Index: ASA 33/13/98.
40. Amnesty International Report 1999.
41. Simi Kamal, Asma Khan: *A study of the interplay of formal and customary laws on women*, vol I, 1997, Vol I, p. ii.
42. M. Khalid Rahman: "Dr. Riffat Hassan. A feminist theologian", in: *The Review*, 29 July-4 August 1999, p. 22.
43. Report of the Commission of Inquiry for Women, August 1997, p. xi.
44. CEDAW Article 2. CEDAW- The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 by the UN General Assembly; retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>
45. CEDAW Article 1.
46. Committee on the Elimination of Discrimination against Women, "Violence Against Women," General Recommendation No. 19 (Eleventh session, 1992), (New York: United Nations), CEDAW/C 1992/L.1/Add.15, Para. 1.
47. CEDAW obligates states to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination." Article 2.
48. CEDAW Article 2.
49. Committee on the Elimination of Discrimination Against Women, "Violence Against Women," General Recommendation No. 19 (Eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15.

50. Declaration on the Elimination of Violence Against Women, February 23, 1994 (New York: United Nations, 1994) A/Res/48/104. This declaration is a non-binding resolution that establishes an international standard. Arts. 2,6 and 9.
51. For additional discussion of international obligations with respect to violence against women by private actors, see Dorothy Q. Thomas and Michele Beasley, "Domestic Violence as a Human Rights Issue," *Human Rights Quarterly*, vol. 15, no. 1 (February 1993) and Human Rights Watch, *Global Report on Women's Human Rights* (New York: Human Rights Watch, 1995), pp. 39-44.
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54. See "State of Human Rights in 2003", Human Rights Commission of Pakistan, Lahore, 2004, pp.33-37; also "Pakistan: The Tribal Justice System", Amnesty International, at <http://web.amnesty.org/library/index/ENGASA330242002>.
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56. Human Rights Watch (1995) [online]  
[http://www.hrw.org/legacy/reports/1995/WR95/ASIA-08.htm#P482\\_162907](http://www.hrw.org/legacy/reports/1995/WR95/ASIA-08.htm#P482_162907)

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