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Determinants of Violence Against Women and Justice Delivery Mechanism in Pakistan: A Historical Perspective (1977-2014)

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Abstract

According to Human Rights Watch there are estimated to be over fourteen million child brides worldwide, many of whom are traded for debt, bondage, and in contexts where polygamy and sexual activities with children go hand in hand, justified by religion or custom.(United Nation, 2013:31) There occurs a victimization of a new rising class of feminists in countries like Pakistan, where Islamist extremism from 1977 to 1988 especially targets and instances even murders or attempts to murder women who challenge their patriarchal power base. The analysis that represents these forms of violence against women and women's struggles for justice delivery in Pakistan by using their voices and their stories, from their frame of analysis have been failed miserably.

Keywords: Violence, Women, Justice Delivery Mechanism, Pakistan

Objectives of the Study

Criminological theories (including feminist criminologies) need to encompass more global perspectives and outlooks. There is nothing wrong with embracing worldly influences theories; it is just that many criminological theories have assumptions that do not translate well to the global level, where problems of crime and violence are constructed around indigenous populations and the architecture, culture and customs of rural and regional life in these vast continents of North America, Africa and Asia. Feminist criminology has tended to uncritically, replicate these metropolitan biases. There are wide area of systemic forms of violence against females, most of which are even not defined as crimes. These include infanticide of female babies; sati (the cremation of living widows); honor killings and dowry violence; arranged marriage of child brides as young as ten; zina (the punishment of women for sex outside marriage, even in contexts where they have been raped); and the denial of the basic human freedoms to millions of women, such as the right to equal wages, work, vote or even appear in public without a man. Therefore, the purpose of study to explore these challenges and to provide global fair justice delivery to women generally an particularly in Pakistan.

Research Questions

1) Is global violence against women myths or realities especially in developing world like Pakistan, Latin America, Africa and Asia?

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2) Are there natural, biological or state of mind being reasons behind the violence?

3) Is strict implementation of laws for violence against women not possible for the justice delivery system especially in Pakistan?

Research Methodology

Epistemology is a theory of knowledge rather than beliefs. There are three different epistemological positions, positivism, interpretivism and realism. Positivist approach to social research typically means that quantitative data are collected while in interpretivist approach means having qualitative rich in detail and desertion description data collection. Realism starts from research that leads to action and therefore collecting qualitative and / or quantitative data. Critical realism is revealing hidden structures and mechanisms, uncovering power relations and dominant ideologies.

This research paper will use both primary and secondary data. The primary source would be semi-structured interviews, conducted by the research scholar by selecting randomly from any of the members of Central and Provincial Civil Services Bureaucracy, judicial officers of the subordinate judiciary, presiding officers of revenue courts including MBRS, lawyers, police officers, prosecution service officers, prison department officers, media both electronic and press representatives, litigants both victim and accused, general public and faculty members of law colleges, universities of public and private sectors of Pakistan. Secondary data would be collected from related reference books, research journals and leading newspapers.

Historical Background of the Problem

Global Female Violence

The reason for choosing these examples is to illustrate how grassroots campaigns for justice, bravely led by women (some feminist-other not), and exposed the brutality of violence against women in Latin America. These women's movements challenged the systemic inequities that women endured in a continent where deeply conservative Catholicism was intertwined with military fascist dictatorships to shape the distinctive patterns of violence against women. Western feminism, but rather as distinctive and heterogeneous collectivities that are networked and strengthened by transnational global flows of discourse. It concludes with and analysis of the importance of United Nations Women and other such transnational entities in the elimination of violence against women and children by highlighting some the work they are undertaking with partner local organizations in Latin America. The high rates of violence, self-harm, suicide and injury among men living or working in the socio-spatial frontiers of global capitalism cannot simply be reduced to individualized expressions of deviance or psycho-pathological deficit. The argument advanced also rejects outright essentialist representations of men as essentially dangerous these are spaces where self-sustaining

communities and forms of sociality based on social democratic norms of governance are largely absent or marginalized. Feminist scholars too have tended to duck the discomforting issue of female violence, preferring instead to either construct violent women as victims or narrow their research interests to only where women are victims of men's violence. It is perfectly understandable why feminist have had particular difficulty coming to grips with recorded rises in female violence over the last forty years. There are theories to explain recorded rises of girls' violence in the westernized countries of the northern hemisphere including the UK, the US, Canada and Australia from the global south.

There is rise in women participating in terrorist activity, especially suicide bombing and assassination, in countries like Russia, Palestine, Israel, Iraq and Sri Lanka. Women, the fastest cohort swelling the ranks of contemporary organizations defined as terrorist, make better assassins and suicide bombers than men and since 2008 have been responsible for more than half of the world's assassinations. The acts of female terrorism are not rooted in any particular religion, politics, ethnicity or social background. Not all are Islamist. Many women involved in acts of armed struggle and terrorism both historically and in the contemporary context are associated with secular causes and political struggles. Feminist silences about the violent crimes, atrocities and acts of terrorism committed by female sex leave anti-feminist explanations uncontested. It is time to contest these and offer counter explanations for the rise in the female violence and female terrorism, in a global context where systemic gendered violence against women is alarming and entrenched. The world needs to take hold across the globe against crimes committed against women now more than ever.

Islamophobia is a cultural syndrome that attributes negative traits to all who practice a Muslim faith, criminalizes Muslim immigrant youth in Anglo-phone countries and misrepresents Muslims as terrorists. This too is misguided, but so is turning a blind eye to the forced marriages of young girls, honor killings of women and institutionalized inequality between men and women in Yemen and other Islamist countries (Sassom, 2012: vii). According to the London-based Honor Based Violence Awareness Network (HBVA) there are five thousand honor killings internationally per year, one thousand of which are estimated in India and one thousand in Pakistan. However, due to the informal jirga or panchayat court systems in both India and Pakistan, which may demand the death of women, it is difficult to know how many cases of honor killings of women go unreported (HBVA) Honour killing have been defined as the killing of women for deviations from sexual norms when an honor code is believed to have been broken and shame is brought upon family. Women may also be forced to carry the burden of shame when their sexual honor is violated by rape or incest, particularly if they become pregnant. Honor killings are often carried out by a group of people such as a husband and family members such as mothers, brothers, uncles and cousins, and sometimes the entire community (Meetoo & Mirza, 2007: 187).

Acid attacks, involving sulphuric or nitric acid being thrown at or poured over the victim, most frequently result from a women's refusal of a marriage proposal or sexual advance, or conflicts over dowry, land or property. Acid attacks usually target a woman's face in order to diminish her value and beauty, and of all those who are attacked, 95% die immediately. In one such case the wife of a powerful Pakistani politician, Bilal Khar was attacked by her husband after she left him. Bilal Khar was acquitted of the charges. During the three years Fakhra Younas was married to Bilal Khar she was physically abused. When she left him he threw acid on her, causing extensive burns – her lips were fused shut and one of eyes was permanently damaged. She was transported to Italy, where she underwent more than three dozen operations in a decade. In 2012, she eventually committed suicide by throwing herself from the sixth floor of a building where she lived in Rome (Shah, 2008-2009:1172).

Violence against Women in Pakistan

In Pakistan women who claim they have been raped risk being viewed as bringing dishonor to the family through zina or sexual relations outside marriage. This is because under certain interpretations of Islamic law rape is not necessarily a crime, and in many contexts, like forced child marriages of girls as young as ten, their rape is sanctioned by Islamic customs. Courts in Bangladesh regularly punish raped girls and women by flogging and beating them and in Pakistan thousands of raped women accused of zina have been punished with long-term imprisonment. According to US organization KARAMAH, Women Muslim Lawyers for Human Rights, the Pakistani laws of zina and rape are incompatible with Islamic law, and there is certainly not a direct relationship between the writings of the Qur'an, Islamic law and the punishment of the women for rape. Rather, the problem lies in legal definitions that blur distinction between zina and rape and the lack of adherence to the Qur'anic principle of 'adalah' (justice, balance and equity (KARAMAH, 2008). The following case provides an example of how girls who are raped can be punished by zina under Shari'ah law:

In 1982, a thirteen-year-old Pakistani girl Jehan Mina was raped by her uncle and his son, while she was doing domestic work for her aunt. She became pregnant but did not tell anyone until she was almost six months pregnant. Another uncle filed a complaint of rape; however at the hearing Jehan Mina was convicted of zina and the two rapists were acquitted. She was sentenced to one hundred stripes or floggings, but on appeal the sentence was changed to three years rigorous imprisonment and fifteen lashes. Jehan Mina's conviction was based on the fact that she was pregnant and unmarried. In Pakistani courts, historically there is no often difference between zina and rape and women have no protection from being implicated in a false zina case. (Oette, 2011:248). Until 2006, Pakistan courts required the testimony of four men to support one women's allegation of rape. Now they require only two. While this is an advance, it's hardly gender equality. In countries where Islam is predominant religion, such as Yemen, Pakistan and Bangladesh, there is an expectation of strict adherence to

behavior that supports family honor. Female sexual purity is regarded crucial to upholding honor, as symbolized in an Arabic phrase that states that 'a man's honor lies between the legs of a woman'. Nevertheless, there remains a great deal of debate about the extent to which Muslim religiosity, cultural norms and laws accurately reflect Islamic religious texts. Some argue that in Islam under Shari'ah law women are highly esteemed and respected. What is problematic is not the critique of the way women are systematically denied human rights in parts of the Islamic world, but when all Muslim countries and cultures are homogenized as 'backward' and barbarism is presented as an inherent characteristic of Islam.

There is significant variation among Islamic states in regards to the treatment of women. In Kurdish Iraq, Qatar and United Arab Emirates for example Muslim women enjoy many of the same rights and freedoms as women, in Western social democracies and their testimony in court is considered equal to that of a man. They have the right to drive, work, study, and vote, have rates of literacy and participate in public life. The contrary is the case in the other Middle Eastern Islamic countries such as Yemen, the Gaza strip, Egypt and Iraq, where women are largely invisible, many are circumcised, and they are heavily restricted from studying, working, driving, voting or being independent. In these countries a woman's testimony is still considered only half that of a man's. Hence the inequalities that women experience under Islam varies across Muslim countries, and not all want to be 'liberated' by well-meaning but misdirect feminists or human rights activists from the West. Nevertheless there is strong local feminist resistance to repressive Islamic regimes that normalize honor crimes, female circumcision, violence against women, forced marriages and the rape of child brides. Honor crimes are forms of violence justified by the perpetrator, usually with the support of their community.

In Shari'ah law, provocation provision built into the courts' interpretation of the law have allowed for Islamic or cultural justifications for judicial decisions that systematically discriminate against women. This has resulted in some men accused of committing honor crimes, rapes or violence against women being acquitted or receiving light sentences. In cases of extreme violence by a husband, the provocation provisions can also result in women dropping all charges against the perpetrator in exchange for a divorce. According to Shah the provisions also encourage crimes such as acid attacks against women who are accused of dishonor. In South Asia the highest numbers of acid attacks occur in Bangladesh and Pakistan. The Progressive Women's Association in Pakistan reported increasing numbers of acid attacks, with 1,500 cases reported between 1994 and 2004 . Feminism has been used to justify colonialist and Western intervention in Islamic states, to justify the war on terror and assert the cultural superiority of American and Western values. They caution against those feminists from the West who want to 'rescue' Muslim women, as these women do not need or want rescuing. They assert that Muslim women regard the veil as a symbol of respect for the feminine body and that way Western women reveal their bodies as a

way of pleasing men. The politics of the burqa – the total veiling of women in public – are contentious. The French president, in banning the burqa, said, 'It is not a sign of religion, it is a sign of subservience… It will not be welcome in the territory of the French republic. The Urban Affairs minister, herself born to Algerian parents, described 'the burqa as a prison, it's a straightjacket… It is not a religious insignia but an insignia of a totalitarian political project that advocates inequality between the sexes and which is totally devoid of democracy'.

Other Muslim feminists also argue that the veil is a symbol of their subjugation, invisibility, passivity and seclusion in Islamic societies. Muslim women want political and economic development more than they desire gender equality – a big claim and one historically contested through the voices of Muslim feminists such as The Egyptian Feminist Union, formed in 1922 by Huda Sha'rawi, who famously 'cast off her veil. Most successful in struggling for women's equality are Muslim women who challenge interpretations and practices of justice under Shari'ah law that discriminate against women. Esposito and Mogahed argue that 'reform in Muslim societies will likely be mostly effective if promoted within an Islamic framework. This was the case when Muslim scholars issued a statement against FGM in light of Islamic teachings; and when Pakistan women use Qur'anic teachings to amend the discriminatory rape laws'. Being and insider gives Muslim women a strategic advantage to bring about reform. Well aware of the imperial distortions of Islam by the West, other Muslim feminists, who resist the lure of cultural relativism, argue that 'this of course in no way alters the fact that the reality of women's oppression in the Middle East is indeed ugly and unacceptable. There is a 'false consciousness' among men and women that makes women obedient instruments of their own oppression and transmitters of this false consciousness to future generations of children. It is said that fundamentalism as an invisible gender mutilation which instills fear, obedience and registration, and destroys the capacity to understand what is happening, to react or resist.

The women's movement in Pakistan emerged from the dictatorship of Zia ul-Haq, who imposed the harsh penalties of Shari'ah law during the 1970's and 1980's, and made a women's evidence in court worth half that of a man's, and only a quarter that of a man's in case of a rape. The Islamisation agenda of the dictator President Zia ul-Haq targeted women and minority groups and instituted legal and social discrimination. In contrast, under General Musharraf's rule, from 1999 to 2006, women gained unprecedented rights to political representation in parliament, appointments in federal cabinet and appointments in the armed forces and public services. Contemporary Islamic feminists in Pakistan strive to unravel patriarchal cultural practices from religion. According to Zia the biggest challenge feminists is the realization that women's sexuality is the site where culture and religion interact to control women's status and sexuality. For example Zia questions whether the shooting of the Pakistani woman minister for social welfare, Zille Huma, in 2007, for not adequately veiling herself in public, should be understood through a framework of cultural norms or religious sanction. While the interpretation of the law through a

framework of patriarchal morality is problematic, a larger concern is that patriarchal culture and/or religion will continue to dominate any translation of the social. Zia argues that feminist are not looking simply for improvements for women within an existing patriarchal framework, but rather for ways to uproot and transform gender relations to ensure women's choices are not considered either by faith-based political and legal systems, or sanctioned by a patriarchal culture (Zia, 2009: 239).

Politicians, human rights activists and judges are also at risk of assassination for supporting the rights of women under Islam. The most notorious instance of this from Pakistan is the shooting of fifteen-year-old schoolgirl Malala Yousafzai; a devout Muslim committed to rights of all children, not just boys, to be educated. Fazlullah, the local Taliban leader, is alleged to have ordered the shooting of Malala Yousafzai in October 2012. Born in Mingora, Pakistan, located in the country's Swat Valley, Malala, then aged fifteen was an exceptionally bright student attending her father's secondary school in Pakistan Swat Valley. In 2009 at only eleven years old, she began blogging for the BBC about living under threats of the Taliban to deny her and other girls in Afghanistan and Pakistan an education. International attention was sharply focused on her struggle for gender justice under Shari'ah law in South Asia, when on 9 October 2012, on the orders of the Taliban, a tall man bordered the school bus, asked which one was Malala and shot her in the head. Some of her friends were also shot and seriously injured. Malala sustained life-threatening injuries and was flown to Birmingham, England, for treatment, where she lives today with her family. She has since written a book I am Malala about her struggles for justice against the Taliban. The book has been banned in Pakistan and Malaysia. A Taliban spokesman told the Dawn online newspaper, 'The Taliban will not lose an opportunity to kill Malala Yousafzai and those selling her book will be targeted'. Reviews of her book in Pakistan have been scathing – accusing Malala of abandoning Islam for secularism, and for pairing up with the white Western feminist to attack Islam. Her story is mirror reflected on the brutally patriarchal Islamist ideology and extremist practices in Pakistan.

Following sixteen months of feuding between local Islamists and government forces in Pakistan's swat valley, in 2009 the Pakistan government introduced judicial regulations to ensure that all legal cases in the region would be determined according to Shari'ah law. While the new regulations were applauded by local people as well as the Taliban in the Swat region, less fundamentalist Islamic and secular groups of Pakistan were vocal in their criticisms. Among the critics was Malala's father, who established a coeducational Kushdale school that taught both boys and girls (M. Yousafzai, 2013: 90). He came under intense pressure from the local mufti to stop girls from attending the school. At first he negotiated that girls would use the back, not the front entrance, and be taught separately from boys. Critics, like Malala's father, were concerned that the regulations would strengthen the militants and encourage demands from the Taliban to implement a Shari'ah-based judicial system in

other parts of the country, or in the whole of Pakistan. Shari'ah law had a profound impact on the people of the Swat region, even before the implementation of the new regulations. Women and girls were instructed to wear burqas in public.

The Taliban closed barber shops and music stores, banned TV's and CD's, banned girl's education, prohibited women from going to the marketplace and torched or bombed more than three hundred other girls' school. The Taliban warned more than four hundred other girls' school not to open. In 2008 the Taliban announced on radio that 'From 15 January girls must stop going to school'. Malala's father refused the order to close his school to girls, described as 'a haven from the honors outside'. Taliban leader Mullah Fazlullah was a key instigator of the demands for Shari'ah law in Swat region. He set up a shura, similar to local Shari'ah court, where disputes and allegations were heard and punishments determined. They began to flog offenders in public after Friday prayers. They engaged in other human rights abuses, killing political opponents and critics including a close friend of Malala's father, Malak Bakht Baidar. They also murdered a young woman called Shabana in January 2009, known for dancing talents regarded by the Taliban as immoral and anti-Muslim. Her bullet-ridden body was left to Main Square for all to see, as a warning to other young women from Swat valley of their fate should they not comply with the strict Islamic regime imposed on women by Taliban.

The empirical evidence that the rises in young women's violence as well as the rises in women's participation in the terrorist activities are global phenomena. They are not necessarily rooted to any particular religion, ethnicity or social background. There are theories to explain recorded rises of girls' violence in the more affluent countries across the northern and southern hemispheres. The first relates to shifting cultural constructions which celebrate the violent femme and normalize 'ladette' culture. The second relates to the impact of new forms of social online networking that create a parallel universe that rewards and incites girls' fights in the real world. What are the reasons for the rise in the women's participation in torture, and terrorist activity, especially suicide bombing?

Conclusions

1. The data on sex violent offending show a pattern that female violent offenders are growing at a much faster rate than male violent offenders of most Westernized countries, most notably over the last two decades. There is substantial, but not conclusive evidence that socio-cultural shifts in the way gender are negotiated by young women in the twenty-first century are part of the explanation for rises in female violence.
2. Globalization has created other anomic social settings where male violence flourishes. Though men and boys are responsible for the majority of crimes of violence, and when it comes to domestic violence and sexual violence,

women are the vast majority of victims, male-in-male violence is still a significant problem.

3. Feminist criminology, understandably defensive, has the view that shirked the challenging issue of female torture and terrorism. There is no longer shortage, to spout their utter rubbish about feminists ruining the military, ruining girls, ruining the nation, indeed ruining the globe. The problem is that criminology, including much feminist criminology, has assumed that violence is essentially a masculine trait.

4. The protection against Harassment of women at the workplace Act, Pakistan, 2010 and Punjab Protection of Women Against Violence Bill, 2016 may be implemented on merit through Justice Delivery mechanism. There are two types of justice delivery systems in Pakistan one formal and the other is informal. Formal system included civil and criminal regular courts cases and informal is Alternative Dispute Resolution ADRs which included Conciliation, Mediation, Negotiation, Arbitration and Pre-trial processes. Which have not been remained operative continuously since2012 to date and thus not solving any problem of women violence at the grass roots level. It may be made functional forthwith as provided in chapter XI of Punjab Local Government Act, 2013.

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