

## HONOUR KILLINGS: ISLAMIC AND HUMAN RIGHTS PERSPECTIVES

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The issue of honour killing has become very acute in the Muslim countries/Asia in general and has got the attention of media and human rights groups in Pakistan in particular. This comment traces the origin of the notion of honour killing using Pakistan as case study. It also looks at the causes and abuses of the honour killing tradition and explores the Islamic as well as the legal dimension of this endemic issue in Pakistan. In addition, the Islamic law and human rights law positions will be considered and compared, to see whether or not both are compatible. The issue whether the tradition of honour killing is grounded in religion or culture will be looked at as well, together with the question of whether it is Islamic law or public perception of honour and shame, which need change.

Killing in the name of honour has plagued Pakistani society for decades and has markedly increased in recent years. The incidents of honour killing take place in all social strata, but it is the uneducated men and women in less developed rural areas who are the most likely victims. Many cases of honour killing go unnoticed and unreported, and the perpetrators unpunished. The victims include men and women of all ages. However, the majority of victims are young and unmarried individuals. Women victims outnumber men since men are able to escape the wrath of an aggrieved family by fleeing to other parts of the country or finding sanctuary with neighbouring tribes; women, in contrast, have no refuge to resort to. The Human Rights Commission of Pakistan (HRCP) notes:

“Data collected by the HRCP indicated that there had been at least 379 cases of Karo Kari in Sindh during the first 10 months of 2001. Of the victims included 226 women, 151 men and two children. It was believed that the total number killed could be far higher, with some deaths remaining undocumented.”<sup>1</sup>

The fate of women did not change in 2002 either. HRCP's 2002 annual report (released April 2003) states that 376 women were killed in Sindh, 278 in Punjab and 844 in North West Frontier Province in the name of honour.<sup>2</sup>

The notion of honour killing is neither confined to Muslim societies nor to Pakistan; rather it is an international women's human rights issue. Recently the *Guardian* (UK) reported: '[t]wo cousins were jailed for life yesterday for the murder of 21-year old Muslim bride who was stabbed to death in a

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<sup>1</sup> HRCP, 'State of Human Rights in 2001' p 213.

<sup>2</sup> *Ibid.* 'State of Human Rights in 2002, p 247.

wedding day honour killing.<sup>3</sup> The two cousins were angry at her (Sahjida Bibi) marriage with a divorcee and non-blood relative.

The BBC reported in September 2003 that, '[h]onour killing father begins sentence' in UK<sup>4</sup> when an Iraqi Kurdish father slit 16-year-old daughter's (Heshu) throat in an honour killing after she embraced Western culture and began dating a Christian boyfriend. 'A young Sikh pregnant woman who had fled to London from Glasgow after marrying a person whom her family disapproved of, was allegedly killed a year ago, with a sword.'<sup>5</sup> Nottingham crown court sentenced a woman and her grown up son to life imprisonment for murdering the woman's daughter for allegedly having a sexual relationship outside marriage.<sup>6</sup> Kalpana Sharma notes: '[t]he Shirkat Gah report on 'honour killing' is about Pakistan. But there are many parallels in India too.'<sup>7</sup> Three brothers axed two sisters for honour killing in Amman, reports BBC.<sup>8</sup>

### What is Honour Killing?

The concept of honour killing in Pakistan is considered originally to be a Pushtoon-Baluch tradition, but the incidence of honour killings is far higher in the Sindh Province as well as Punjab (more specifically, the southern part of Punjab).<sup>9</sup> The tradition is known as *Karo Kari* and *Siakari*. Both carry the same meanings. *Karo* literally means 'black man' and *Kari* 'black woman' in Sindh and *Siakari* is a different name used in regions like Baluchistan. According to common parlance, 'black man' and 'black woman' designate those who are guilty or suspected to have entered into illicit sexual relationships thereby defiling family/clan honour. The Supreme Court of Pakistan has defined '*Kala and Kali*' as 'adulterer and adulteress' respectively.<sup>10</sup> The BBC referred to honour killing as the 'practice of women being killed by male relatives to redeem the family name'.<sup>11</sup> The reason of dishonouring a family name may not be illicit relation solely; it could be marriage and its dissolution against the wishes of parents as well. The recent killings of two young girls Sahjida and Heshu are notable examples. Amnesty International states:

"They are killed for supposed 'illicit' relationships, for marrying men of their choice, for divorcing abusive husbands.

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<sup>3</sup> The *Guardian* 'Cousins given life for bride killing' October 21, 2003.

<sup>4</sup> BBC NEWS online version, 30/9/03. The story is also reported in *The Telegraph*, London on 30/9/03.

<sup>5</sup> Vijay Dutt, 'National debate rages on honour killing' *Hindustan Times.com/UK*. October 7, 2003.

<sup>6</sup> Amnesty International, 'Honour Killing of Girls and Women in Pakistan' September 22, 1999. ASA 33/018/1999.

<sup>7</sup> Kalpana Sharma, 'No honour in these killings' *The Hindu* 3/11/02 (internet version).

<sup>8</sup> BBC NEWS World edition, 10 September 2003 (internet edition).

<sup>9</sup> Punjab, Sindh, Baluchistan and NWFP (North West Frontier Province) are the four provinces of Pakistan.

<sup>10</sup> PLD 1977, Supreme Court, 153.

<sup>11</sup> See, BBC NEWS, *supra*.

They are even murdered by their kin if they are raped as they are thereby deemed to have brought shame on their family.”<sup>12</sup>

### **Honour Killing as Social Perception**

In theory the relevant code of honour is equally applied to both men and women. In practice, however, the standard of honour and chastity is not applied evenly to men and women. Many men have extra marital ties that go unpunished. Cases of homosexuality are common in most parts of the country and are ignored, even tolerated.<sup>13</sup> On the contrary, a woman can lose her life on the slightest suspicion of infidelity/unchastity. This is evident from the findings of HRCP and the wide difference between numbers of men and women killed. The woman is regarded as the repository of family honour and a simple allegation or rumour of sexual involvement outside marriage suffices for dishonouring the name of family. The only way of redeeming family honour is to murder the *Karo* and *Kari*, and for that mere suspicion of sexual relation suffices to warrant the killing. HRCP claims that of the total 722 cases of murder in which the victims were women ‘illicit relations’ had been mentioned as a possible motive for the murder in 204 of these cases.<sup>14</sup> None of the accused (*Karo* and *Kari*) is furnished an opportunity to respond to the allegation. The truth of the allegation is immaterial. It is the public perception that matters.

A number of women are killed because they wish to marry someone against the wishes of their family. The parents and family in rural and tribal communities usually arrange marriages for their women even if the prospective husband and wife apparently do not like each other and the parents and family know this. Parents have to give formal permission and play the role of organisers. The women choosing spouses for themselves are sometime abducted and never heard of again without any police action being taken. Marrying a person of choice and seeking divorce without overt consent of the family is believed defiance of the honour scheme of man. Several women who have sought divorces through courts are injured or killed. Samia Sarwar, a young lady wanted to get divorce from her abusive and violent husband but her parents were against the dissolution of marriage. She left her house and took refuge in another province and contacted human rights lawyer to help but was shot dead in her counsel’s office in April 1999.<sup>15</sup> Women victims of rape are also murdered irrespective of the fact that they have not consented to the act. The perception is that a woman raped shames the family and the community. Arbab Khatoon, who was raped by three men, lodged a complaint with police of what has happened to her. She was murdered seven hours after reporting to the police by her family for bringing dishonour to the family by going to the police and making it public.<sup>16</sup>

The perpetrators act under the so-called common notion of honour and societal pressure. The husbands, father, brothers and other close family

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<sup>12</sup> See, AI report *supra*, p 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> HRCP, ‘State of Human Rights in 2001’ p 213.

<sup>15</sup> See, AI report, *supra*.

<sup>16</sup> *Ibid.*

members take the onus of avenging the violators of their honour. Mehvish, an adult daughter of a former provincial Minister of NWFP, fell in love with the family's driver and escaped with him in 2001. She was found by her highly influential family and allegedly gunned down by her uncle and buried in an unmarked grave.<sup>17</sup> This reflects that marriage and fidelity are not matters between husband and wife alone. It is matter of honour for the entire family and even tribes can become involved in some cases. This makes the life of woman dependent on the observance of social norms and mores in societal set up. The case of Rifit Afridi is notable instance. Rifit, a young girl from Pushtoon family, wanted to marry Khanwar Ahsan, a man who was not from her tribe and ethnic group. Her parents opposed the marriage and she left home and married Ahsan. They were showered with bullets causing serious injury when going to court for protection. They left Pakistan to seek asylum abroad to secure their life.<sup>18</sup>

Wider society often accepts the concept of honour and these killings are not regarded as crimes/offences. It is legitimate and appropriate punishment for those who go against the commonly perceived honour scheme and traditions. Those who kill *Karo* and *Kari* are called *ghairatmand* (possessing honour and brave) and there is no grief in the family. This is more a social and religious duty than an offence. Society supports the act lending legitimacy and continuity to the practice. The victims are condemned and dishonoured for good even after death. In some areas they are buried in places separate than others, and prayers are not offered for their salvation on the traditional religious days. An eyewitness of Samia's murder scene reported that her mother walked away 'cool and collected . . . from the murder of her daughter as though the woman slumped in her own blood was a stranger'.<sup>19</sup>

Very few cases of honour killings are reported to the police as murder cases. The police do not take cognisance of the offence of the incident despite it being an arrestable offence, for it is perceived as a private and family affair. In honour killings, provocation is often taken by the courts as mitigating circumstances, and the courts tend not to impose harsh penalties on the perpetrators. Lenient sentencing is thus also one of the reasons for the continual honour killing. Speakers at a seminar in Peshawar organised by Non Governmental Organisations and United Nations Development Programme in 2001 'pointed out that most of the accused in cases involving killing for honour were acquitted by courts due to insufficient evidence and defective investigations'.<sup>20</sup> Police and court officials hail from the same social setting and tend to share the perceptions of honour and morality of the litigant. Low education and social and state apathy play major roles in the continuity of honour killings. When human rights activists and organizations intervene, they are threatened and accused of misleading the women, disrupting the social fabric and damaging Islamic values. The killers are the protagonists of upholding the customs and traditions of the society.

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<sup>17</sup> HRCF, 'State of Human Rights 2001', p 214.

<sup>18</sup> Human Rights Watch World Report 1999: Pakistan.

<sup>19</sup> See, AI's report, *supra*.

<sup>20</sup> HRCF, 'State of Human Rights in 2001', p 215.

### Abuses of Abuse

Honour killing scheme/notion is abused in several ways. It does not mean that it has legitimate form as well. What is suggested here is that large segment of society perceive it as the right course to adopt to protect family honour when defiled or threatened. The law before 1990 also used to give concession in sentencing on the basis of 'grave and sudden provocation', which was considered as mitigating circumstance in these cases. In the Pakistani society there is a custom of paying compensation (blood money) to the family whose honour has been damaged in case the alleged *Karo* has either escaped killing or wants to compromise the matter sparing his life. The compensation could be in the form of giving woman in marriage to the aggrieved family or money or land but giving woman as form of compensation is very popular and/ or the only acceptable form in some regions.

Some tribes have subverted this custom. They kill women of their families on the pretext of protecting honour of the family hoping to obtain the rewards offered to the aggrieved family. The unscrupulous design may be to get into marriage a woman of another family who is otherwise difficult to get, to make money or acquire land in certain cases or to get lenient sentencing if the matter ends up in the court. HRCP reported that in many cases a woman was declared '*Kari*' . . . to settle monetary disputes or property issues'.<sup>21</sup> It seems that honour code is used as an excuse to promote and protect vested interests. The absurdity of the notion of honour killing comes out when *Karo* and *Kari* become 'white' (clean) after the issue is compounded and compensation, in whatever form, is paid.

### Islam and Honour Killing

Many people assume that the practice of honour killing is based on the tenets of Islam. This view is erroneous and has nothing to do with the teachings of Islam. Islam provides strict evidential prerequisites for punishing the adulterous: testimony of four witnesses before the *Qazi* (Judge in Islamic state) and the man and woman are given an opportunity of leading evidence to prove themselves innocent. The Koran declares: "If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them . . ." (4:15).<sup>22</sup> Those who fail to produce the required evidence, they should be punished. The Koran clearly says: "And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations) – flog them with eighty strips and reject their evidence ever after" (24:4).<sup>23</sup> These two verses of the Koran manifest that no one could take the law into one's own hands since it is against the grain of the criminal justice system of Islam. The only way allowed to take life by the Koran is according to law. The Koran commands: "whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom" (6:151). Islam is the state religion of Pakistan and the Koran is the

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<sup>21</sup> HRCP, 'State of Human Rights in 2001', p 215.

<sup>22</sup> A. Yousaf Ali, *The Meaning of the Holy Qur'an*, (Amana Corporation, Maryland, USA, 1991) p 189.

<sup>23</sup> *Ibid*, p 866.

supreme law and this is why the Constitution of Pakistan also stipulates security of the person<sup>24</sup> and that every one should be dealt with in accordance with law.<sup>25</sup>

Amnesty International in 1999 asked the Council of Islamic Ideology<sup>26</sup> for its view on whether or not ‘honour’ killings are lawful according to Islam. It replied in its letter of 22 April 2000 that the Council had, in its 139th session on 6-7 December 1999, decided as follows:

“Although sexual immorality is one of the major sins according to Islam for which Islam has prescribed very severe punishment, nobody is allowed to take the law in his hands. Wilful homicide, whatsoever be the motive, is a culpable act tantamount to *qatl-e-amd* [murder] liable to *qisas* [equal punishment for the injury suffered based on the principle of an eye for an eye and a tooth for a tooth]. The Council for its opinion relied on an authentic *hadith* reported by Muslim, according to which a companion, Hazrat Saad Bin Ubadah, asked the Prophet (P.B.U.H. [peace be upon him]): if a person finds a man with his wife, shall it be lawful for him to kill that man? The Prophet (P.B.U.H.) replied: ‘No’. In another hadith on the same subject, Hazrat Saad Bin Ubadah asked the Prophet (P.B.U.H.): If I find a man with my wife should I wait till I bring forth four witnesses? The Prophet (P.B.U.H.) said: ‘Yes’.”<sup>27</sup>

The Supreme Court of Pakistan has made a reference to the case of Owamer Ijlani brought before the Prophet Muhammad who suspected his wife of having an illicit relationship. The Prophet, instead of telling him to punish or divorce his wife, asked him to produce four witnesses to support his accusation otherwise he would be punished under *qazf* (false accusation) according to the Koran.<sup>28</sup>

The Islamic criminal justice system has no room for either doubt or suspicion. It underscores the observance of certain procedures and a minimum standard of proof furnishing several guarantees to the accused. The High Court in Pakistan remarked:

“It is another fundamental principle of Muslim Law that in order to inflict *hadd* or *tazir*<sup>29</sup> the evidence shall be proved beyond any reasonable doubt. It is therefore, a fundamental rule of Islam that doubt cannot be the basis for punishment but provides a ground to pardon.”<sup>30</sup>

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<sup>24</sup> Art 9.

<sup>25</sup> Art 4.

<sup>26</sup> This is constitutional body responsible for advising the government whether or not a particular law is Islamic. It also has to make recommendations for bringing the existing in conformity with Islamic teachings.

<sup>27</sup> Pakistan Insufficient protection of Women, AI Index: ASA 33/006/2002.

<sup>28</sup> 2000 SCMR 406.

<sup>29</sup> *Hadd* is punishment fixed either by the Koran or the *Sunnah* whereas *tazir* is the punishment where the court has discretion regarding the amount of punishment to be given in a given case.

<sup>30</sup> PLD Quetta 1995, p 83.

The Federal Shariat Court of Pakistan rejected the presumption that a male and female living in the same room must have committed *Zina*.<sup>31</sup> In another case the Shariat Court ruled that living together might cause suspicion, which is not enough for the conviction of *Zina*.<sup>32</sup>

### **Honour Killing and the Law in Pakistan**

Killing in the name of honour became the focal point of national as well as international discussion in early nineties. All concerned, including people belonging to judiciary, agree on one point, namely that lenient sentencing by the courts is one of the major reasons for the persistence of honour killing. There are two distinct stages in the development of the relevant provisions in Pakistan's legal system: the periods of colonial law (1947-90) and Islamic law (introduced in 1990).

#### **(a) Colonial Law (1947-90)**

It has been a long standing tradition for trial and superior courts to award lesser punishment to those accused of killing in the name of honour taking the plea of 'grave and sudden provocation' and 'protecting the honour' of family. A murder committed under the heat of 'sudden and grave provocation' and 'loss of self-control' was considered manslaughter, not murder under the colonial law, which Pakistan inherited. This concept of diminished liability was contained in exception 1 to section 300 of the Pakistan Penal Code, 1860.<sup>33</sup> The repealed section reads: "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. . . ." Commenting on exceptions to section 300, Justice Aftab Hussian says: "the first exception is where death is caused when the offender was deprived of self control by grave or sudden provocation or by mistake or accident."<sup>34</sup> In the case of *Kamal v The State*<sup>35</sup> the husband killed his wife and her paramour on the spot, having seen them in a compromising position. He presented himself to the police stating that the man killed was not related to him and seeing him in my house having sex with my wife "I lost control of myself and shot them on vital parts resulting into their death. They were 'Kala Kali' and I have done nothing wrong but defended the honour of my self and family."<sup>36</sup> The trial court sentenced him to life imprisonment. The accused appealed to High Court, which upheld the conviction. He appealed to the Supreme Court, which ruled by majority that the case of the accused fell within the purview of exception 1 of section 300 and the accused was awarded lesser punishment accordingly. The court observed:

"As the appellant case falls under the first exception to section 300 P. P. C., it means that he killed his wife and her paramour "whilst deprived of the power of self-control". Therefore, the sentence of transportation is excessive, because transportation

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<sup>31</sup> PLD 1983 FSC 497.

<sup>32</sup> PLD 1983 FSC 522.

<sup>33</sup> Pakistan came into being in August 1947 adopting the colonial penal code made in 1860.

<sup>34</sup> PLD 1980, Federal Shariat Court, p 1.

<sup>35</sup> PLD 1977 SC 153.

<sup>36</sup> *Ibid.*

is one of two possible sentences for a conviction under section 302 P. P. C.”<sup>37</sup>

In 1980, the colonial concept of offences related to murder and ‘hurt to human body’ (composed by Lord McCauley’s Commission in 1860) was declared contrary to the principles of the Islamic criminal justice system. The Shariat Bench of NWFP High Court held in the case of *Gul Hassan Khan v Government of Pakistan and Another*<sup>38</sup> that the concept of ‘grave and sudden provocation’ has no place in the Islamic criminal justice system. The Federal Shariat Court in the case of *Mohammed Riaz*<sup>39</sup> endorsed the view of NWFP High Court. Later, the case of *Gul Hassan Khan* came before the Shariat Appellate Bench of the Supreme Court of Pakistan which very precisely laid down that ‘[p]rovisions of Ss 299 to 338, Penal Code which deal with offences against human body are repugnant to the [i]njunctions of Islam . . .’ and recommended amendment.<sup>40</sup> The Government of Pakistan accordingly amended the said sections in 1990 in order to bring them in line with the principles of Islamic criminal justice system.

### **(b) Islamic Law Post 1990**

The amended law based on the tenets of Islam has discarded the notion of sudden and grave provocation serving as mitigating circumstances resulting into lesser penalties for the accused. Amended section 300 of Pakistan Penal Code defining *qatl-e-amd* (deliberate murder) reads:

“Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, or by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit *qatl-I-amd*.”

The amended section does not provide an exception to the offence of *qatl-i-amd* committed on the ground of ‘grave and sudden provocation’. The High Court in Baluchistan ruled: ‘section 300 as amended does not provide any exception in offence of *qatl-i-amd* if committed due to grave and sudden provocation’.<sup>41</sup> The Punjab High Court observed: ‘Injunction of Islam in the form of *Ahadeeth*<sup>42</sup> relating to [*qatl*] [murder] on account of [*Ghairat*]<sup>43</sup> does not find any reflection in the specific provisions relating to [*qatl*] which now stands incorporated in the Pakistan Penal Code.’<sup>44</sup>

According to amended law, *Qatl-i-amd* has three categories: 1) *qatl-i-amd* punishable with death as *qisas*,<sup>45</sup> 2) *qatl-i-amd* punishable with death or life imprisonment as *tazir*, and 3) *qatl-i-amd* punishable with imprisonment of

<sup>37</sup> *Ibid*, p 153.

<sup>38</sup> PLD 1980 Peshawar, p 1.

<sup>39</sup> PLD 1980 FSC 1.

<sup>40</sup> PLD 1989 SC 633. All these provisions deal with murder hurt and related matters.

<sup>41</sup> PLD Quetta 1995, p 83.

<sup>42</sup> What the Prophet Muhammad said, did or approved by remaining silent. *Hadith* is the second source of Islamic law after the Koran.

<sup>43</sup> A general term used for bravery and honour.

<sup>44</sup> PLD 1994 Lahore 392.

<sup>45</sup> *Qisas* means retaliation, an eye for an eye and a tooth for a tooth.

either description for term which may extend to twenty five years where the punishment of *qisas* is not applicable according to injunctions of Islam.<sup>46</sup>

### Inconsistent Application of the Amended Law

Despite the amendment in the Pakistan Penal Code and the clear position of Islamic law on the issue of honour killing, the superior courts apply the law inconsistently and award lenient sentences even now to those accused of honour killing. These judgments are based on the exception annexed to the old definition of murder contained in the repealed section 300 of the Penal Code. The case reported as *National Law Reporter 1999 Criminal 11* is the most recent case in point. In this case the accused had killed his daughter and her paramour on the basis of *Siakari*. The dictum laid down in the judgment reads:

“Murder committed after being overpowered by a wave of family honour and *Ghairat* would be no offence. The conviction against a father for killing his daughter and her paramour after seeing them in compromising position is set aside.”<sup>47</sup>

Similarly, in another case the court made the following observation:

“In the instant case, the deceased entered into the house of the accused without his permission and at the dead of night and while the deceased was violating the honour of his wife, he surprised him, picked up his *chadar* [long piece of cloth usually carried by men to cover themselves from rain, hot sun, cold etc.] which was lying nearby and put it around his neck to expel him out of the room and the deceased died of asphyxia. *The appellant could do it. He had to stop him. He therefore, had committed no offence. He was left with no other course.*” [emphasis added].<sup>48</sup>

The Supreme Court of Pakistan overturned the ruling in the above case stating that ‘it was not right to hold that the accused had committed no offence and was not liable to any punishment’.<sup>49</sup> The court said about the trial court’s conviction of the accused “the learned trial judge assumed, and assumed wrongly, that that section [old 300] was still on the statute book; in fact, that section had been repealed on the 5<sup>th</sup> of September, 1990.”<sup>50</sup>

The case of *Ali Mohammed*<sup>51</sup> is a celebrated instance of honour killing. In this case the husband killed his wife and a man on the allegation of having sex. The court acquitted the accused with the following observations: “[*qatl-i-amd* liable to [*qisas* takes place only when the person murdered is not liable to be murdered and is *Masoom-ud-Daman* (innocent)”. This is the correct Islamic viewpoint on how murder is to be punished with death as *qisas*. The court also observed that the ‘accused as custodian of honour of

<sup>46</sup> See section 302 of Pakistan Penal Code.

<sup>47</sup> NLR 1999 Criminal 11.

<sup>48</sup> 1993 P CR L J 564

<sup>49</sup> PLD 1996 SC 274.

<sup>50</sup> *Ibid.*

<sup>51</sup> 1993, Pakistan Criminal Law Journal, p 557.

his wife had the right to kill the deceased while he was engaged in a sex act with his wife and he had not earned liability of [*q*]isas or [*t*]azir or even [*d*]iyat.’ This view is contrary to the principles of Islam and the rule laid down in the case of *Gul Hassan Khan*. The correct legal position is that when the accused proved beyond reasonable doubt the allegation of *zina*, then he will be exempted from death sentence as *qisas* but will still be subject to *tazir* punishment for taking the law into his hand. For instance, if a husband is provoked by seeing his wife having sex with another man and kills them on the spot, but he later takes in trial the plea of ‘grave and sudden provocation’, that person will not be sentenced to death as *qisas* if he establishes the fact that he had murdered the adulterers for committing *zina* carrying the death penalty. In that case he will be punished under *tazir*, as he is guilty of committing the offence against state by taking the law into his own hands. In case the accused defaults by providing the threshold proof provided in Islamic law, then he is subject to *qisas* for murder taking the law into his own hands. The lesser penalty is not for the reason that he had acted under ‘grave and sudden provocation’ and ‘loss of self control’ but because he killed the persons involved in an action carrying death punishment and he established the guilt of the deceased beyond reasonable ground.

Honour killing became the subject of intense debate in the year 2000 and gripped the attention of all and sundry due to increased incidence and some appalling incidents. The seven-member Bench of the Supreme Court took notice of it in the case of *Abdul Zahir* while explaining the scope of grave and sudden provocation. The Supreme Court ruled:

“All cases of grave and sudden provocation would not *ipso facto* fall within the purview of S 302 (c), P. P. C. particularly those of *qatl-i-amd* of wife, sister or other very close female relatives at the hands of males on the allegation of *Siakari*”.<sup>52</sup>

The court also affirmed the precedent laid down in the case of *Gul Hassan Khan*. The ruling holds the field and is binding on all courts according to article 189 of the constitution of Pakistan.

### International Human Rights Law

The right to life<sup>53</sup> and immunity from torture, cruel and inhuman treatment,<sup>54</sup> equal protection and equality before law<sup>55</sup> and the right to fair trial<sup>56</sup> contained in international human rights instruments have undisputedly acquired the status of customary international law. Pakistan had ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1996, which stipulates that states who are party to the Convention shall take all appropriate measures, including legislation, abolishing/amending existing laws, regulations, customs and practices

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<sup>52</sup> 2000 SCMR 406.

<sup>53</sup> Universal Declaration of Human Rights, 1948, art 3.

<sup>54</sup> *Ibid*, Art 5. Similar provisions are arts 5 and 7 of the UN Covenant on Civil and Political Rights, 1966. Art 9 guarantees the security of person.

<sup>55</sup> UDHR, art 7.

<sup>56</sup> *Ibid*, Art 10.

constituting discrimination against women.<sup>57</sup> The foundation of the ‘equality doctrine’ was laid down in the UN Charter and formulated into legally binding instruments later on known as the International Bill of Rights. The realisation of this principle is one of the prime goals of the United Nations. The Preamble to the Charter declares that its objective is:

“To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”

Furthermore, Article 1 proclaims that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all ‘without distinction as to race, sex, language or religion.’

Other references in the Charter to non-discrimination on the basis of sex are in articles 13, 55(c) and 76 (c). Article 13(b) declares that studies shall be initiated

“promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The principle of non-discrimination on the basis of sex is also reaffirmed in articles 55(c) and 76 (c). The member states ‘pledge themselves to take joint and separate action . . . for the achievement of the purposes set forth in article 55.’<sup>58</sup> ‘The Charter is the foundational treaty of contemporary international law and prevails over all other international obligations.’<sup>59</sup> Article 103 of the Charter imposes the same obligations on the contracting parties.

## CONCLUSION

From what has been said above, two points could be drawn in conclusion; firstly, that honour killing has no foundation in the religion of Islam and the constitution and penal law of Pakistan. It is grounded in Muslim culture but not Islam or Islamic law. It is ignorance of Islam, law and cultural biases that persuade people to take the law into their own hands and courts to misinterpret the law in the cases of honour killing. Secondly, usually there is a gap between the ideal Koranic law (what is contained in the Koran) and state practised statutory Islamic law but in the case of honour killing, there is no such gap and the prevalent law is in perfect match with the Koran and international human rights standards. Despite this legal reality, the honour killing industry goes unabated with many women losing their lives everyday. Pakistan is under Islamic, constitutional and international obligations to end the honour killing industry and its parallel tribal justice system but unfortunately, the government takes no action. HRCP, quoting Amnesty

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<sup>57</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979. Art 5.

<sup>58</sup> United Nations Charter, 1945.

<sup>59</sup> Courtney W. Howland, ‘Women and Religious Fundamentalism’ in K. D. Askin and D. M. Koeing (eds) *Women and International Human Rights Law* Vol 1 (Ardsey, NY: Transitional Publishers 1999).

International, reports<sup>60</sup> that there had been little action to prevent such crimes (honour killing), even though they were recognised under the law as murder.

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<sup>60</sup> See, HRCP's annual report 2002, *supra*.