

**Inquest into justice of the Pakistani customary “*Panchayat Justice System*” in  
context of International Human Rights Law**

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## **Dedication**

I lovingly dedicate this dissertation only to my mother (*Ammi Jaan*) who paved the way for my better future throughout her life.

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## Abstract

This paper reveals that informal justice forums in Pakistan have never been complementary to the state justice system because the failure of formal justice system in delivering justice has made these informal systems the only forums available to those poor communities who live in certain geographic areas. It unfolds the reality that the justice of informal system is only conceived and seen through the eyes of upper crust. The decisions and practices of *panchayat* justice are totally discriminatory and not adhering to international human rights laws and standards. The members of *panchayat* system are not sensitized to treat victim or culprit properly. Under the cloak of justice women and children are treated as a tool of conciliation and compensation and the equal rights of both genders are not entertained in *panchayat* justice system which is also against the state constitution. Due to the poor administration of official system perpetrators of *panchayat* system escape easily from the clutches of state legal system. The constant support and participation of political leaders in these forums explicitly shows that legislators are denying themselves state legal justice system and the state has failed to fulfil its international obligations to incorporate international human rights laws into domestic laws effectively. Conclusion is that the abolishment of *panchayat* system would be a rather impractical solution; this system functions because courts are thin on ground, otherwise there won't be any system to reassure rural communities of accessible justice. Despite the challenges, the *panchayat* system needs to be overhauled completely and like many other developing societies through socio-economic change and accountability mechanism informal justice system in Pakistan could also be an asset for enhancing access to justice for the disadvantaged communities.

## **Introduction:**

Courts are considered the key institutions of dispute resolution across the globe. But the societies having alternate dispute resolution (ADR) mechanisms, the competency, legitimacy and efficiency of these systems is not overruled (Yasin & Buniri, 2004, pg115). Informal justice system is an ADR system of dispensing justice to those poor communities mostly residing in rural areas. In these forums the disputes are settled between communities, families, tribes or individuals.

In post-colonial societies the modern judicial and formal institutions have not developed, stabilized and strengthened accordingly, while the informal justice mechanisms like customary or traditional justice forums are still widely practice in most countries of the South Asia and Africa. The reality of legal pluralism in these societies has become a challenge, as these countries have been striving to preserve cultural heritage through traditional forums, while struggling to work as constitutional regimes.

According to a report of UNDP (2006), in developing societies, informal justice mechanisms deal with 80% of the total cases load but these mechanisms often raise serious concerns about their decisions with regards to human rights and these systems viewed as biased, discriminatory and against the international standards of human rights.

Access to justice is defined as one's ability to seek just and timely justice for violation of their rights. One can obtain remedy from formal or informal (customary /traditional) institutions. Access to justice demands accessible, accountable, responsive and effective legal systems and also requires legal empowerment of all sections of the society, particularly marginalized groups, women and children who have the capacity to claim their rights by formal and informal justice systems.

Principle of equal access to justice is the vital part of the United Nations mandate to fulfil human rights obligations and expectations by states. It has been put forth in the international and national norms and standards and can't be confined to lack of legal representation. Although some states don't recognise such informal justice institutions and these substitute forums may also be seen as "a form of 'second-class justice', and a breach of the state's human rights obligations" (UNDP Report, 2006). But many countries have officially recognised and incorporated these mechanisms in their constitution and domestic laws. Informal justice systems comprise of customary, religious, traditional and informal normative mechanism and frameworks that deal and settle down local disputes.

Pakistan is a heterogeneous developing country passing through a transition phase, where the regime still has a weak writ of the governance across the country required to ensure good governance, democratic values and practical implementation of rule of law. The legal pluralism in Pakistan has taken the form of tribal justice system and prominent denomination of this justice systems are *panchayat* or *jirga* forums across the country. These forums are parallel judicial mechanisms widely prevalent and practiced in most of the Pakistani rural society and well known alternate dispute resolution mechanisms.

In case of Pakistan, we need to differentiate between what comprises alternative dispute resolution which expedite justice procedure on one side, and what has originated and or being practicing by *panchayat* forums through special unwritten customs confined to those communities residing in certain location on the other hand. The punishments given by *panchayats* are entirely different from the penalties awarded by state judicial systems. The *panchayat* system primarily emphasizes and focuses on compensation rather than imprisonment.

In recent years many incidents and have been reported and highlighted by national and international media, which has developed a perception that this centuries old customary justice system is a brazen violation of human rights and particularly women and children are considered the first to be subjected to *panchayat* decisions. This justice system has been portrayed as a ‘Dominic’ and stone-aged customary system through which fundamental human rights and being denied through this timely justice system.

Human rights perspective in *panchayat* justice forums has been explicitly discussed in this paper. Also attempts and efforts were made to inquire the hidden truth and nuts and bolts of this centuries old traditional justice system. This dissertation will also encompass the vital issues and problems related to the existence of *panchayat* system. Human right perceptive in informal justice system has also been discussed. During the course of study the issues related to formal justice system of Pakistan have also been highlighted. First chapter begins with theoretical framework in which different concepts related to violence, patriarchy, and honour will be discussed and brief history of *panchayat* and developments in different eras, its composition, power structure and social texture of Pakistan will be examined. Chapter two deals with understanding of *panchayat* forums about women status and different practices carried out by *panchayat* justice related to women and this chapter will also help to show the government perception and stance about justice of *panchayat*. In third chapter the legitimacy of *panchayat* justice system will be analysed through different perspectives and role of police and administration of state judicial system and its interaction with *panchayat* justice system will also be in spot light. Chapter four provides the perception of legal pluralism in other societies and in the eyes of United Nations. It also gauges the compatibility of *panchayat* justice with international human rights laws and standards. Last chapter is about the research methodology, through content analysis method a better understanding will be developed about the *panchayat* justice system. In this chapter content of two leading newspapers of Pakistan about *panchayat* justice will be examined through different variables and after findings the conclusion and recommendations will also be shared.



## Chapter1

### THEORETICAL FRAME WORK

This dissertation first looks into two concepts which need to be understood explicitly.

#### 1.1) Concept of Patriarchy:

In Greek, the word '*patria*' means father and '*arce*' means rule. Patriarchy refers to particular set of attitudes, mindset and way of thinking which value the male more than the female. In broader context patriarchy means a group of community or members of the ruling class, due to their presumed authority to exert control and women are ignored and supposed lack of control (Asma Barlas, 2004).

This phenomenon can easily witness in Islamic societies, where male is supposed to be a dominating factor of family institution and society. But the fact is that the practices of this notion can be traced back before the emergence of Islam (Kambarami, 2006, pg 2).

In his work, Kandiyohi (1988, pg 278) differentiated the areas where patriarchy culture can be found "The clearest instance of classic patriarchy may be found in the geographical area that includes North Africa, the Muslim Middle East (including Turkey, Pakistan and Iran), and south and East Asia (specially, India and China)." In her article 'Islam and Patriarchy' Munoz (1993) wrote that Islamic teachings have made it clear that tribal practices which now have become the part of Islamic societies should be eliminated. She conceded that Islamic societies have mixed Islamic concepts with their local cultures which contradict the Islamic vision of equality and reciprocal moral relationships.

Pakistan has always been a patriarchal society where this concept is used as a weapon particularly against the women and also children and marginalized groups. This tool has paved the way to the discrimination within the society and it also invokes the male dominated society to punish, beat or even kill the girls and women (*Dawn*, 2009). This male centered phenomenon has taken all social control to keep women under their protection and supervision.

#### 1.2) Notion of violence:

Violence is carried out not only at domestic level but also at cultural level. The John Galtung (1990, pg 297) theory about cultural violence is quite relevant which mentions that cultural violence is used in structural form to give legitimacy to the violence. It legitimizes direct forms of physical violence and permits the structural violence within institutional framework. In Pakistan this structural violence has got passive acceptance among marginalized groups. In 2001, Punjab Government conducted a research about violence in society which revealed that in Pakistan 42% of woman accepted violence as their fate, thirteen percent felt helpless to take stand against it while only 19 % protested against the violence and merely 4% decided to go into litigation against the violence (Amnesty International, 2004).

The Harvey and Gow (1994) has written that history of violence against women is linked to the history of women being viewed as property and a gender role assigned to be subservient to men (pg. 36). Women are considered no more than a chattel in remote areas of Pakistan, where *panchayat* treated women as a means of settling a dispute sometimes in the garb of local customs or religion (Irum Ahsan, 2009, pg.31).

Dr. Paul farmer (2012) has written in his article that structural violence reflects such social arrangements that put people in harm's way and these political and economic embedded structural settings cause injury to individual or people. Power in the few hands also creates inequality that triggers structural violence. This structural violence is witnessed upon all those individuals or marginalised groups whose social status in society denies to access social progress.

### **1.3) Concept of honour:**

Primarily we should understand the concept of honour in its social and cultural context. Honour (*izzat/ghairat*) and dishonour are the basic and fundamental concepts to the culture of Pakistan. A family who fails to take revenge certain forms of injury or insult by violence will be seen dishonourable before their community. That means lack of prestige which states that now 'the family's prospects will be diminished in every way' (Lieven, 2011, pg. 89).

Sir Cecil Walsh, a British colonial judge defined concept of honour in sub-continent in terms which implies its link to violence:

'Every Indian, from the highest to the lowest, has his *izzat* (honour) or name to keep. After his son, it is his most cherished possession, and if it is injured, he is an unhappy man. In such a sensitive race there is nothing easier to injure than the *izzat*. The injury may be purely imaginary, but it is no less keenly felt. He will neither forget it nor forgive the man who did it' (Ernest Benn, 1930 cited in Lieven, 2011). It is not only seen an individual matter, but it is equally considerable to the extended families and tribes as well. Mazna Hussain (2006, pg 225) describes the illicit relations, self choice marriages, seeking divorce , premarital relations and being a victim of rape are considered dishonourable acts. The female servitude to enhance the male honour has become the notion in the subcontinent where male honour is viewed as honour of a family. Therefore, any act committed by woman seems to be the unforgiving act which damages the male honour and supremacy. Lewis (1994) narrates that in Pakistan, gender relations based on two perceptions; that female is subordinate to the male members of the family, and man honour is based on the actions committed by the female of the family and women can be killed easily if they lose family honour.

### **1.4) Origin of *Panchayat* System: Brief history**

The forum of *panchayat* connected with the rural self-government system which has deeply rooted in medieval and ancient times. These institutions worked as a blessing for village poor community rather than a threat, this system remained confined to settle minor issues relating to administration or neighbourhood disputes. These two systems, based on the present egalitarian spirit, were stripped of their good features and colonial regime devastated the

spirit of such forums during their time and formalized them into court-like institutions to impose and enforce legitimate unjustifiable and harsh laws just to suppress the village community (Ahsan, 2009, pg27). The colonial power had perception that the people residing in specific areas of the country were potential criminals and they could pose a direct threat to their power and only an iron hand could deal with this kind of threat. (Yasin & Buniri, 2004, pg 116). Then special forums and laws were made to counter the people of certain areas.

The indo-Pak *panchayat* system of 20<sup>th</sup> century, which emerged as an elected and statutory body responsible for the village development, and this concept evolved in the last decades of the 19<sup>th</sup> century. This concept of development was a result of the British new policy of local self-government, which triggered the transitional period of the village with a more urbanized character of social organization (Yasin, & Buniri, 2004, pg 117). In 1888, the British regime gave these bodies statutory recognition in the Madras state when VCA (Village Courts Act) 1888 was passed. The Royal Commission on Decentralization of 1907 recommended the development and constitution of the *panchayats* as these forums believed to have performed a constructive role in the disposal of petty civil and criminal cases. This development led to the passing of the *panchayat* Act 1912, which injected more powers to *panchayats* that had only been arbitration committees so far. However, these given powers have practically been ineffective as these were limited to suits in which mutual agreement of both sides was necessary to take their disputes to the *panchayats*. British Raj soon realised the flaw and ratified this by Punjab Village *Panchayat* Act in 1922. The new law was aimed to restore original *panchayats* consisting of *panches* (members) and a *sarpanch* (leader) to be elected by village community. This Act had also given the jurisdiction to the *panchayats* to deal with civil and criminal cases. In case of unanimous decision, there was no appeal, review or revision to any other authority or court (Yasin, & Buniri, 2004, pg, 119). However, a decree not decided or passed unanimously could be revised by the *panchayat* that originally heard the case and a *panchayat* of the neighbouring village. At that time, these *panchayats* were also required to facilitate the requirements of villages regarding maintenance and construction of drains and public ways, and improvement of ponds, wells, and water tanks for the supply of clean drinking water, bathing and washing. The statutory responsibility and duties of these *panchayats* were enforced by the deputy commissioner. In 1939, the Punjab village *Panchayat* Act was again amended. Under this further change (Act XI of 1939), *panchayats* were given more powers by British government. They were now in a position to act as a judicial body to settle civil and criminal cases. Secondly, *panchayats* were to act as an administrative forum with certain duties regarding sanitation and thirdly, *panchayats* had started working as a legislative body which had the authority to impose taxes and could pass general orders to improve the living standard of village community (Siani, 1975 cited in Yasin & Buniri, 2004). Revenue sources were insufficient, only fines, fees for judicial work and some voluntary contributions were the only sources to meet the expenditure for the development and improvement of village. The 1939 Act had provided for the levy of taxes to meet the costs necessary by the key responsibilities and duties of *panchayats*. But these new powers were not often exercised by mostly *panchayats* because it was very difficult task to motivate the village people to pay taxes to *panchayats*.

Most of the *panchayats* had a little idea about their responsibilities; they were not fully aware and conscious about their duties under these Acts. As far as the judicial side is concerned, *panchayats* work had been very useful and effective. The numbers of civil and criminal cases tried by these forums increased substantially over the years (Siani, 1975 cited in Yasin & Buniri, 2004, p. 120).

In *Sindh* province<sup>1</sup>, *Panchayats* were given statutory recognition by *Sindh Village Panchayat Act 1933*. Under this Act a *panchayat* comprised of elected members along with a revenue holder and village officers. *Panchayat* was presided by *Sarpanch* (leader) to be elected by *panchayat panchs* (members) from among themselves. According to the Act, It had the authority to deal with both civil and criminal cases.

### **1.5) Panchayat Status after Post Independence Era (1947-2012):**

At the time of Indo-Pak partition, Pakistan inherited the forum of *panchayat* in the *Sindh* and *Panjab* provinces. After 11 years of independence, Law Reform Commission of Pakistan (1958-59) published a report about this forum. The Commission was of the view:

“In certain Areas judicial *Panchayats* were able to discharge their duties satisfactorily, but in others, they languished for want of proper selection of *panches*. Here also partisanship and even corrupt motives were attributed to members of certain *Panchayats*”.<sup>2</sup>

The Commission report reflected the thinking in official circles that they did not want to entertain this institution anymore. Therefore a plan was made to replace the *panchayat* system by a uniform system of local government. In 1959, all provincial enactments regarding village enactments were repealed by the Basic Democracies Order, and after two years under the Conciliation Courts Ordinance 1961, a uniform system was introduced in the country. The Ordinance brought some key changes regarding adjudication and settlement of civil and criminal cases. First, the indigenous local institution *panchayat* was replaced by conciliation courts. Secondly, while the *panchayat* which had been a feature of rural areas, but the ambit of conciliation courts was extended to urban centres as well. Through this move the local institution of dispute resolution was completely abolished, at least at the formal legal level (report of the Law Reform Commission 1967-70, cited in Yasin & Buniri, 2004).

In 1976, Parliament passed a law ‘System of *Sardari*<sup>3</sup> Abolition Act 1976’ which wiped out the *sardari* system across the country. The essence of the act was that *sardari* system is the worst remaining fragment of unjust and inhuman tribal and feudal system which is against the freedom, equality, human dignity and the spirit of democracy. This brutal system and its

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<sup>1</sup> Sindh is the second biggest province of Pakistan

<sup>2</sup> Law and justice Commission of Pakistan ‘Reports of Ad hoc Law reforms Commissions’ Law Reform Commission 1958

<http://www.ljcp.gov.pk/Menu%20Items/Publications/Summary%20of%20reports%20of%20Ad%20hoc%20Commissions/3-summary%20of%20reports%20ad hoc%20commissions.htm>

<sup>3</sup> Sardar is used for a person of high rank (as a hereditary noble) especially in India, or also specifically for the commander of the Anglo-Egyptian army. It is also used more generally for one (as a foreman) holding a responsible position, especially in India. Sardari nizam is the system having considerable influence of tribal leaders over the residents of respective areas.

customs create hindrance to the economic development and advancement of the population and totally against the principles of Islam and the Constitution of Islamic Republic of Pakistan. It has been clearly mentioned in article (3) that “no person shall exercise any judicial powers not expressly conferred on him by or under any law for the time being in force” (Daily *Dawn*, 2004).

## **1.6) Role of Power Structures**

### **Social and ethnical texture of Pakistan**

Social fabric of Pakistan is deeply rooted in feudal system. In remote areas, feudalism is in a moderated shape where feudal lords have land and power bases. A number of feudal families are in politics. Some of them believe that it's an obligation to govern and serve their people (Ali & Arif, 2004, p.122). But mostly have gone into politics just to protect their interests. Now feudal families have dominated local and national politics.

Today in Pakistan, *Panchayats* comprised of respected elders and wealthy or authoritative people from various caste or *Biradiri* and the members are chosen as they are the respecting elders representing different tribes and clans in the village or they are so wealthy, influential and having grip over valued status symbols. Those influential feudal or land owners have the authority to negotiate with government officials on behalf of the village community (Ali & Arif, 2004, p.122). The weak land reforms are also a considered able factor that has preserved the stronghold of these landholding families throughout the country. They can easily influence the local judicial persons, journalists, religious leaders and police officers (Zahid,A., 2009, p173). That's the key obstacle of non-registration of crimes related to *panchayat* justice and many stories also go unreported just because of pressure of feudal lords on low income local journalists.

The present National and provincial assemblies comprised of many feudal lords who have typical mentality about women rights and some of them defend the *panchayat/jirga* system publically. On September 2008, In Baluchistan three girls were buried alive after a decision given by their tribal judicial council. The leader of that tribe was a provincial minister of ruling party. The Deputy Chairman of Senate Jan Jamali gave a statement which reflects the mindset of tribal leaders who are the main stakeholders of this informal justice system. He criticised the media not the perpetrators. He said “The media gave the matter such a colour as if heavens have fallen”, the other feudal lord and part of government Senator Sana Ullah Zehri also defended the decision of *Jirga* openly. He clearly said on national media that “These are centuries-old traditions, and I will continue to defend them” (Telegraph, 2008).

### ***Panchayat* Composition: (Caste Based System)**

Primarily the composition and mode of operation of this informal forum needs to be considered. The forum has its roots in the Hindu caste system in which upper class Hindu community (wealthy businessmen & Landlords) used to control the lower-caste community of the village through the *panchayat* system. Today this institution is still based on the same *zaat n biradari* system, with the same applications of wealth and class.

It seems that rather than dispensing justice these forums have become another means of feudal and political control of the people residing in remote areas. So these forums try to maintain the status quo and anyone who tries to defy the existing social norms has to face severe consequences. Either he is socially boycotted or given severe punishments (Ali & Arif, 2004).

## Chapter 2

In rural areas of the Pakistan it is a common understanding that male members of the families, tribe, clan and the society have the right to make decisions while females have to bow their head for these decisions (Hassan, 1995). Women status before the *panchayat* forums has been significant factor which is mostly highlighted by media and human rights activists.

### 2.1) Women Status in the eyes of *Panchayat* justice:

It is a legal right of the offender or accused to be given the right to appear and defend his/her position but this right is only confined to men during *panchayat* hearing. Women have never appeared in front of these informal justice forums even as witness or as a member of the *jirga/panchayat* forum.

On the other hand, women are treated as a property, object or tool for mediation, arbitration or reconciliation known as restorative justice of *panchayat* system. Mukhar says in her memoir 'in the Name of Honour' (2006) that a woman is simply an object of possession, revenge or honour in front of the *panchayat*; she is married or raped according to the concept of tribal pride, and the custom does not give her any rights at all.

This kind of attitude is totally against the spirit of Pakistan's Constitution which guarantees women's entitlement to equal protection and equality before the law. Article 7 and 25 deal with equality of women their entitlement with equal opportunities. While article 8 has clearly mentioned that "any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by the constitution shall, to the extent of such inconsistency, be void."

### 2.2) *Panchayat* Practices: *Swara/Vani*

Either women are given in marriage to the other party to save culprits or handed over for the opponent pleasure. This has now become a part of *panchayat* justice. Many times even little girls are subjected to this heinous practice; girls are given to settle killings committed by the male members of the families () In remote areas daughters are usually considered useful only for her potential to consolidate land within her own family through marriage, strengthen or restore relations with other clans or to save the male family members who have killed the person of rival tribe.

Hence little girls are sacrificed for the community or family honour and sent to alien households, where they have to face taunt and humiliation for rest of their lives; girls are not allowed to participate in any rituals or festivities and they live like virtual slaves.

According to the annual report of Human Rights Commission of Pakistan (2003), *Swara* has been considered a 'virtual death penalty' for women who have become unfortunately target of this heinous tradition. In these cases girls are not physically killed, but they have to face the misery and humiliation for rest of their life, which is no doubt an inhuman and terrible punishment. It is made worse that the concerning girl is not guilty of any crime (pg. 56). In

Punjab, this custom is called *Vani*, In *Sindh* it is *Sangchatti and Swara* in Khyber *Pakhtunkhawa* Province. Unfortunately these practices are used against women under *panchayat* forum in order to infringe and manipulate their basic rights, and to exert control over women.

### 2.3) Honour Killing (*Karo-Kari*)

The notions of women as an honour and property are so entrenched in the economic and social fabric of Pakistani rural society that if once women is declared or labelled as *kari* by *panchayat/jirga* or her family, *panchayat* and her male family members believed that they have got the justification to murder her and the co-accused *Karo* (male) to revive or restore family honour (UNICEF, July 2011). If we see it as Islamic point of, honour killings or *Karo-kar<sup>4</sup>i* are the antithesis of Islamic teachings and morality. Hussain states that “honour is a deep-rooted traditional notion that originated in pre-Islamic eras in the ancient culture of desert tribes” and it is totally customary and cultural product of Muslim societies (2006, pg 227). To kill a woman or girl of this offence is not an Islamic Punishment. Majority of the Muslim countries are free from these practices yet these can be found in a few Muslim societies (Zaid, 2007). Report of UNDP (2011) has pointed out that “customs and religious beliefs can be deliberately mixed with the law to consolidate political, economic and social power – to the detriment of less powerful women and men”<sup>5</sup>

Human Rights Watch has defined honour crimes as “acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family”<sup>6</sup> Such heinous crimes include premarital pregnancy, adultery, or being a victim of rape or sexual assault. This custom of honour killings is also manipulated in *Panchayat/jirga* forums as a tool for settling disputes among tribes.

For example, a husband may kill his wife in order to blackmail a person of other tribe to gain money from him or to remarry another girl who brings a new dowry. Such cases are presented in the *panchayat* forum in which husband accuses his wife for having extra marital affair with the man of rival clan and unfortunately, without any proof, evidence, witness or listening the accused woman, *panchayat/jirga* declares the couple *karo-kari*. In these cases accused women are mostly killed by the male family members or *panchayat* itself and in order to preserve his life the alleged person is forced to transfer property or giving heavy sum of money for compensation otherwise he is also killed. In these cases honour crimes could also be called as a cover up for extortion.

In fact there is no mechanism available to *panchayats* to investigate or probe the charge of sexual relations of accused couple. As the concept of honour is culturally privileged hence

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<sup>4</sup> “Karo-kari is part of cultural tradition in Pakistani society and word (Karo) literally meaning (black) male and black female (Kari), in metaphoric terms for adulterer and adulteress.

<sup>5</sup> UNDP, 2011. Enforcing Rights and Correcting Wrongs. Available at: <http://www.snap-undp.org/eLibrary/Publications/EnforcingRightsCorrectingWrongs.pdf>

<sup>6</sup> Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and “Honor” Crimes, Intervention Before the 57th Session of the U.N. Commission on Human Rights ( Human Rights Watch April 6, 2001), available at [http://www.hrw.org/press/2001/04/un\\_oral12\\_0405.htm](http://www.hrw.org/press/2001/04/un_oral12_0405.htm).



the justice of *panchayat/jirga* has the sympathy for the murderer while the allegation of adultery is often considered enough to trigger an honour attack and statistics show that mostly honour killings occur merely on the basis of mere rumours or fabrication (Hussain, 2006, pg 231). In this context, women of rival tribes are usually crippled, burned or sexually assaulted. Such inhuman acts are committed to seek revenge from opponents and devalue the worth of female family members of rival tribes. A Raped woman is often killed by her own male family members in an attempt to wipe out the stigma on the family honour, so a woman has to face multiple cycles of violence under the facade of honour killing.

There is a famous case of Mukhtar Mai that had unfolded the velvet curtain through which world witnessed the true spirit of traditional system of justice. New York Times wrote that ‘Mukhtar is only a window into a much larger problem’ (NY Times, 2005). On July 2, 2002, 21 years old girl Mukhtar Mai was gang raped on the pre-planned verdict of *panchayat* in Meerwala, a village in District Muzaffargarh of south Punjab.

This case provides a comprehensive study of *panchayat* justice, behaviour of regime, methodology of police investigation and the response of state judicial system.

Mukhtar’s 11 years old brother shakur was accused to have illicit relation with the 23 years old girl of powerful and influential *Mastoi* tribe. Mukhtar was called to make apology for her brother’s act. But the justice was fixed already (Mukhtar, 2006). Aggressive rival tribe vowed ‘eye for an eye’ principal. The decision was given and poor woman was gang raped at the gun point in front of more than 200 village people including her father. After this vicious act, when she was half naked mukhtar was forced to walk through the crowd. The federal minister for women development, Dr. Attiya inayatullah, called it ‘the ultimate humiliation’ (NY Times, 2002).

Fortunately, the episode echoed and resonated in national and international media and after a few days the *panchayat* system along with its justice was on public trial (Human Rights Watch Report, 2004). In this specific case, *Panchayat* used rape as a tool of torture to seek revenge from the mukhtar’s tribe and to restore the honour of rival tribe. Mukhtar has described the intensity of torture, she says ‘They don’t even need to use their weapons, rape kills her’ (2006, p. 11).

#### **2.4) Government interaction with *Panchayat*:**

In 2001, The Military Regime had tried to deal with these informal judicial forums under the Punjab Local Government Ordinance, 2001 and introduced the *Musalihat Anjuman* (Conciliation committees) comprising of three *Musaleheen* selected by *Insaf* Committee (Justice Committee) of each Union Council.<sup>7</sup> Under this Ordinance these committees were given powers to deal with those cases which are brought before them with the consent of both parties or referred by the courts. The Final reports of the Committee *Musaleheen* will be attested by the Union secretary. This Ordinance had to face the difficulties of implementation. Although the local committees have established but the rules of business about their authority and duties have not been enacted properly and some of them are still under consideration.

#### **2.5) Bill of h Honour killing**

After the case of Mukhtar Mai (2002), there was a huge outcry in national and international media and the constant pressure of global actors compelled military regime to bring legislation against honour crimes. In 2004, Pakistani parliament passed the Criminal Law (Amendment) Bill against honour killings. But that seemed to be a cosmetic step by military regime as the key provisions of existing law that give the right to the next kin ‘to forgive the murdered in exchange for monetary compensation’ remained there, and these provisions were consistently misused by murderers to escape even after this legislation (UC Davis Journal of International law, 2009). Soon the stake holders realised these flaws and again pressure was built against the regime to amend the existing law accordingly to strengthen and it make more effective against the honour crimes especially honour killings. On March 1, 2005, the bill was tabled in the Parliament but proposed amendments were rejected by the parliamentarians.

This rejection of the bill highlights the classic struggle in many Islamic countries on the problems and issues of women’s rights are met by typical mind-set of political forces and the state’s reluctant attitude towards its commitment and international obligations to eliminate these targeted practices. Catherine Mackinnon seemed to be pretty convinced that, “Women oppression is expressed by ‘male’ laws and ‘male’ systems of justice” (Catherine Mackinnon, 1987 cited in Harvard Human Rights Journal 2002).

#### **2.6) Prevention of Anti-Women Practices Bill**

On 15th November 2011, Pakistan’s National Assembly passed ‘The Prevention of Anti-Women Practices (Criminal Law Amendment) Bill authored by Dr. Donya Aziz (MNA) after lobbying and keen efforts of human rights activists and women parliamentarians. The passage of the Bill has been declared an historic achievement and a landmark for the deprived women community living in remote areas. The motive of the legislation was to outlaw cruel practices that were being committed in the name of ‘customary practice’.

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<sup>7</sup>THE PUNJAB LOCAL GOVERNMENT ORDINANCE, 2001  
(Ordinance XIII of 2001)

[http://cmsdata.iucn.org/downloads/the\\_punjab\\_local\\_government\\_ordinance\\_2001.pdf](http://cmsdata.iucn.org/downloads/the_punjab_local_government_ordinance_2001.pdf)

This was the first time that any legislation proposed a minimum criterion for penalising those family or *panchayat* members involved in anti-women practices. The key features of the bill are as follows:

- For settling a dispute forcing a woman into marriage shall be a non-bail able offence.
- Forced marriages (other than those of settling disputes) shall be punishable by three to ten years imprisonment and a fine of 0.5 million rupees.
- Bartering women in the name of customary practice to be punishable following fine of one million rupees or three to five years imprisonment or both.
- Depriving a woman of her inheritance is considered a crime that carries imprisonment of between five to ten years or a fine of 1 million rupees or both.

The major breakthrough of the legislation was that there was an acceptance by the elected members and political leadership of the country that these customary practices against women are in actuality crimes.

However, that bill did not suggest a mechanism to ensure that such incidents are reported and reach a court, which is quite necessary in these cases where crimes often go unreported and unchecked.

## Chapter 3

### 3.1) Different Judicial Codes:

The official judicial system of Pakistan has been facing a dual challenge to its legitimacy; from formal, written legal code, that is *shariah*<sup>8</sup> and from customary unwritten laws and informal practices (including the loyalties & moral orders they resonate). Both the state laws and *shariah* are progressive in the context of traditional justice system, as far as females are concerned (Lieven, 2011).

The competition between judicial codes is directly related to the weakness of the government in the country and the problems in developing as a modern society.

The customary codes of Pakistan are constructed on quite different objectives; the restoration of peace, the defence of collective prestige and honour and the sustainability of basic order are the basic aims of armed kinship-based rural societies (Lieven, 2011,pg.88). These kinship groups considered themselves as sovereign and independent at bottom, it seems quite reasonable to think that the laws that grew up out of these rural societies should resemble like customary international law more than modern national law as they are usually aim at adjustment and compromise not penalty or punishment. On the other hand the possibility of coercion, violence or pressure continues to lurk in the background.

### 3.2) Factors that give rise to *panchayat's* legitimacy

These customary practices have constantly accepted not only by the village community but also the families of victims and even victims themselves as their fate, sacrifice for their male family members or as tradition/custom. 'Women are rarely prisoners of conscience but they are always prisoners of culture'. (Keck and Sikkink, 1998, pg 184).

Primarily the question needs to be raised is that if there is official justice system available then why people living in remote areas prefer informal justice system which practices are perceived as violation of international human rights law and against the constitution of Pakistan. There are some main reasons which show the *panchayat* legitimacy and high level of acceptance.

### 3.3) Financial inaccessibility

Former Supreme Court justice of India Shivraj Patel (2003) has described this factor very effectively that "everybody is equal in the eyes of law but not in the courts of law" (cited in Pllavi Bahar, 2009, pg 77). If anybody who wants to seek justice from official courts he/she has to pay the fee to lawyers and judicial departments. According to Pakistan government 45.7% (82 million) Pakistani are living below the poverty line (Jang paper, 8 June 2012). A country where people are striving for basic necessities of life, it's impossible for them to get enough money to enter the 'shrine' of official justice. . Sometimes processing a case in

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<sup>8</sup> shariah: the code of law derived from the Koran and from the teachings and example of Mohammed; "sharia is only applicable to Muslims"; "under Islamic law there is no separation of church and state"

Pakistani formal justice system exceeds the cost of whatever was at stake (lieven, 2011, pg 97). In this situation informal justice system is often free or affordable for poor village communities. They have to calculate the opportunity cost or lawyer's fees to pursue their case in formal courts and even register complain in police station.

### **3.4) Culturally 'uncomfortable (linguistic issues)**

In Pakistan, the legal language of official justice is English which requires great amount of clarity and understanding. According to the latest figures (The Nation, 21 June, 2012) the literacy rate in Pakistan is 58 % and those people are considered literate who can only write their name. Lack of clear translation facilities in courts creates problems during case proceedings and hearings. On the other hand the *panchayat/jirga* proceedings are heard in the native language which is easy to understand for both parties. UNDP report (Dec, 2006) pointed out this fact that in colonized countries customary laws were subordinated to the common or roman laws. In these states a big chunk of population sees official justice system as 'something foreign to them' as compare to the traditions and customs with which they are already familiar. The formal procedures followed in Pakistani courts create a sense of alienation and discomfort for those poor village people who can't even write their names and used thumb impression for their signature.

### **3.5) Swift Proceedings**

As it is believed that justice delayed is justice denied, the village community show a natural preference for the *panchayat* justice system which has swift processes, rather than lengthy appeals and delays that often characterise the official justice system. Delays in formal courts provide opportunity and time to the perpetrators to dislocate the important documents, temper the evidences, pressurising the police during investigation (Pallavi Bahar, 2009, pg77). In Pakistan where hundreds of thousands cases are already pending the legitimacy of *panchayat* justice system could be easily understood.

### **3.6) Geographical Proximity**

Another major reason of *panchayat* legitimacy is the geographical accessibility, the formal courts located in urban areas and poor living in rural areas can't afford to visit courts again and again (Pallavi Bahar, 2009). While *panchayat/jirgas* systems are usually close to the village communities and fall within their jurisdiction. Poor people also calculate transportation cost before setting foot inside a lawyer's office or formal courts located in cities. For those poor people whose savings are minimal, they prefer to save their single day of income and there is no other choice left other than *panchayat* justice system.

### **3.7) Pressure of Social norms**

Informal justice systems are mostly linked to the native population and reflect social norms of the society. The local people have a sense of ownership towards their traditional dispute resolution system which means that such customary systems have a kind of social legitimacy among the local communities (UNDP, 2006). The cultural, family and religious fabric and network has a strong binding within a village community. The rural society in Pakistan has

ingrained beliefs based on social norms and values. That's why the decisions of *panchayat* system are secured and enforced through social pressure and anyone who defies this system has to face serious consequences; social boycott or forcefully expel from the village. Therefore in *panchayat* decisions the license of social norms is exploited against the women, children and marginalised groups to settle the disputes and victims of this system have to accept their decisions under the pressure of social norms and their family as well.

When Mukhtar Mae (victim of *panchayat* justice) famous case was resonated all over the world, Amnesty International (2004)<sup>9</sup> published a report in which it was revealed that the *panchayat/ jirga* justice system in Pakistan had gain more legitimacy, power and weight against the formal justice system because poor people believe that “*panchayat/jirga* systems are quicker, cheaper and more reliable than regular courts”.

### **3.8) Devolution of Power (Local government issues)**

Devolution of power is considered a vital objective just to reach out to the grass root level but the weak local government system in Pakistan made *panchayat* an institution for dispute settlement to the rural population for whom reaching out to regular courts is impossible.

One point needs to be considered is that before partition in 1947 Pakistan and India were integrated and villages of both sides had *panchayat* justice system with same belief and customs. But today the picture is totally different it seems that Pakistani government did not accommodate this traditional justice system after the independence while Indian government had started work on that informal justice forum soon after the partition because like Pakistan 60% of Indian population is living in rural areas and they used to settle their disputes through these informal judicial institutions since ages. Indian Former Prime Minister Rajiv Gandhi decided to revive this customary *Panchayat* system in 80s. He believed that 5,000 elected parliamentarians of Lok Sabha (National Assembly) and other state assemblies could not represent the 1.2 billions of Indians and common person can't reach his representatives. With his vision Rajiv modified the *panchayat* system and now at village level, India has 250,000 *panchayats* along with 3.2 million elected representatives including 1.2 million women (Daily Dawn, 29 May, 2012). On the other hand when we analyse democracy and devolution of power in Pakistan at gross root level, we come to know that because of weak system local government Pakistanis are represented by 1,270 members of national and provincial assemblies.

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<sup>9</sup> (Amnesty International In Asia and The Pacific published report 2004 “Whose Justice” MUKHTARAN MAI: Punishment of the innocent [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw\\_062004](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/svaw_062004)

### 3.9) Police role (Players behind-the-scene)

In Pakistan, the formal judicial system is not the one chaperoning the in access to justice narrative but real players are behind-the-scene, with whom a victim will interact first. Traditionally the police organization is considered a key component of justice system which works as a filter mechanism between people and the courts. But in Pakistan the police department is highly politicized in administration and its policies.<sup>10</sup>

The corruption in police department is rampant. In 2010, Transparency International conducted a survey on Pakistan’s National Corruption Perception which revealed that police institution is consistently perceived the most corrupt institution in the country with the formal judicial system never far behind.<sup>11</sup>

Ranking 2009	Ranking 2006	Ranking 2002
<b>POLICE</b>	<b>POLICE</b>	<b>POLICE</b>
Power	Power	Power
Health	<b>JUDICIARY</b>	Taxation
Land	Land	<b>JUDICIARY</b>
Education	Taxation	Custom
Taxation	Custom	Health
<b>JUDICIARY</b>	Health	Land

Table 3.1

The justice system depends on the facilitators of this system. In Pakistani society, many obstacles prevent victims to seek legal redress. The main barrier is the initial stage of investigation, during which police conduct faulty or poor investigations about honour crimes related to *panchayat* system which results in insufficient evidence for a conviction. In Pakistan the conviction rate is less than 10% which shows the intrinsic weakness of evidence and poor investigation by police (Aslam Zahid, 2009, pg 172). In her article in Harvard Journal of Law and Gender, Mazna Hussain(2006) has pointed out that due to poor system of police investigation in cases of honour crimes in Pakistan, 85% or culprits are either released or get lenient sentences.

The methods of investigations are shallow and consequently the inquiry ends up with weak case which gives perpetrators enough time to find escape opportunities. In famous gang rape case of Mukhtar Mal (2002), the FIR was registered much later when there was a huge outcry in national and international media against the decision of *panchayat*. Before that police was reluctant because of the influence of powerful tribe of the *Mastois* (Mukhtar, 2006). Despite of that, poor inquiries and notorious tactics to twist the evidences police made the case so weak that culprits got clean chit from Supreme Court of Pakistan.

<sup>10</sup> VICTIMS OF CRIME IN PAKISTAN’

Muhammad Athar Waheed [http://www.unafei.or.jp/english/pdf/RS\\_No81/No81\\_14PA\\_Waheed.pdf](http://www.unafei.or.jp/english/pdf/RS_No81/No81_14PA_Waheed.pdf)

<sup>11</sup> HRCP/CHRI 2010 POLICE ORGANISATIONS IN PAKISTAN [http://www.hrcp-web.org/pdf/Police\\_Organisations\\_in\\_Pakistan\[1\].pdf](http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan[1].pdf)

Another considerable point is that the rate of reporting crime by women and children is much less than men. In Pakistan, the relationship between people and police is based on complete fear and trust deficit. According to a research it was noted that the victims who file a complaint in police stations unanimously believe that the wealthy and influential culprits, both in urban or rural areas “could buy (the) police and win the favour of the magistrates in courts” (Tariq & Durrani, 1983 cited in Yasin & Bunari, 2004).

On the other hand victims who filed a complaint to police are mostly harassed by the police officers to withdraw the case. In Pakistan police institution is strongly considered a ‘force rather than a service’.<sup>12</sup> The more troubling factor has been the registration of First Information Reports (FIRs) during which bribing and harassment is witnessed normally. There are persistent complains of non-registration of FIR against the police. Despite clear cut directions of registration a case under section 54 of Criminal Procedure Code, complaints still occur. As a result, victimized citizens never report their plights again to the police.

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<sup>12</sup> *ibid*



### 3.10) Administration of Justice in Pakistan

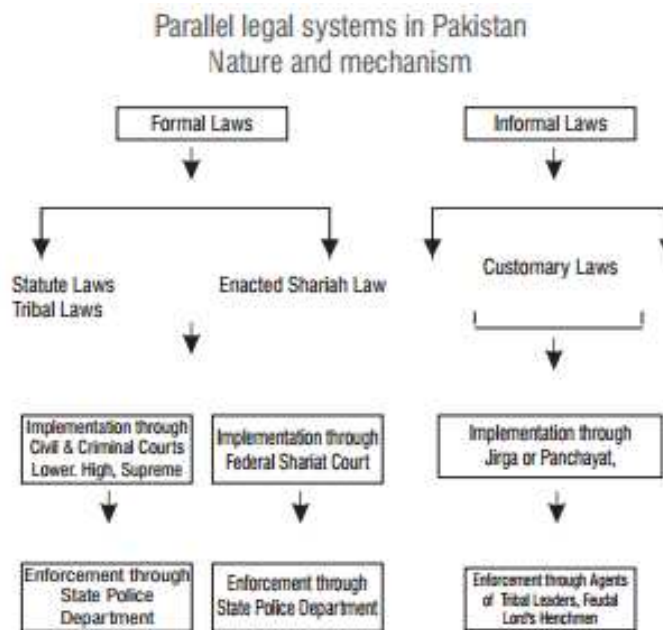
Some decades ago every person in the village knew everyone else. Today the situation has changed due to the money infusion, mass mobility of the peoples and changing social values. Therefore, it was more likely to settle disputes amicably. Nowadays while people may try their fate at the *panchayat* forum, but at the same time many know that fact that they can also knock the doors of regular courts (Ali& Arif, 2004). So Now Pakistani people by contrast have a choice among three judicial codes; the state law, customary/traditional laws and the *Shariah* (religion law).

#### Pakistan Judicial system:

At present there are 3 formal and informal legal systems in Pakistan. The country has inherited the Common Law system of civil and criminal laws from British. Military ruler General Zia ul Haq (1977-88) added Islamic law to official system and established the Federal *Shariat* Court to examine all existing laws. This court ensures that any law repugnant to Islamic injunctions is repealed.

#### Parallel legal system in Pakistan

##### Nature and Mechanism



(Diagram A)

Diagram A was taken from PILDAT (Pakistan Institute of Legislative Development and Transparency Report "Justice, Accountability and International Experience" May, 2007

In chapter of ‘Principles of Policy’ Article 37 of Pakistani Constitution 1973, make it explicitly clear that it’s a state responsibility to ‘ensure expeditious and inexpensive justice’. Unfortunately it remains a distant dream for Pakistanis. “As a court’s legitimacy is depleted, compliance becomes less likely, with decisions decreases, the court is further discredited” (Cohn 1965 cited in Pur & Krishna, 2009). The administration system of formal justice in Pakistan seems to be failed to deliver. The figure shows the sensitivity of the issue. The National Judicial Policy (2009) records that in the subordinate courts there were 1,565,926 cases pending as on 31 March 2009 and almost 138,945 cases were pending in the six superior courts of Pakistan.<sup>13</sup>

Superior Courts	Number of Pending Cases	Lower Courts	No. of Pending Cases
Supreme Court of Pakistan	19,055	_____	_____
Federal Shariat Court	2,092	_____	_____
Lahore High Court	84,704	Punjab	1,225,879
Sindh High Court	18,571	Sindh	144,942
Peshawar High Court	10,363	Khyber Pakhtunkhwa	187,441
Balochistan High Court	4,160	Balochistan	7,644
<b>Total</b>	<b>138,945 (A)</b>	-----	<b>1,565,926 (B)</b>
<b>Grand Total</b>	<b>(A+B)</b>	<b>1,704,841</b>	

Table 3.2 (Human Rights Commission Report 2010, Police Organizations in Pakistan)

It is estimated that it would take almost fifteen years to clear these cases even if new cases were not registered same even if new cases were not registered (World Bank report, 2009). In dispensation of justice long and complex delays have created a huge gulf between formal judicial system and people of Pakistan especially communities living in remote areas. Mukhtaran Mai case was resonated and echoed all over the world. She was gang raped in 2002 by *Panchayat* orders. The Supreme Court took *suo moto* notice in 2005, despite of Chief Justice Intervention it took more than six years with the decision, which is no doubt a source of concern and raised questions on the administration of formal justice system. On inauguration ceremony of New Judicial Complex, Chief Justice Iftikhar Muhammad Choudhary has admitted this aspect. He said that “common problems of backlog of cases; delays and protracted litigation; frivolous litigation; corruption and certain procedural flaws are still there” (Express Tribune, 17 July, 2012).

In his book, Professor Anotol Lieven writes that “justice in Pakistan is an extension of politics by other means and everyone with the slightest power to do so tries to corrupt and twist the judicial system to their advantage in every way possible” (Lieven, 2011). Therefore, the cases brought before the official justice system or informal *panchayat* forums, both are

<sup>13</sup> Ibid

considered weapons in the hands of influential groups for gaining local or national power. The results in both justice systems are mostly determined by political considerations.

Such kind of delays in cases might strengthen informal justice system and generate trust deficit between people and official justice system. Pakistan has a population of 196 million and more than 70% population lives in remote areas where almost 60% of the population is illiterate, mere existence of legal institutions is futile for the deprived and needy people of Pakistan. Official justice system in Pakistan is open to all in the same way as Harrods is open to everyone, means only those people could step in who have got enough money in their pockets to pay the fees of lawyers to seek justice. In 2002, under 'Access to Justice Development Initiative' programme Asian development Bank had given a loan worth of 350 million US dollars. Former Justice of Supreme Court of Pakistan, Nasir Aslam Zahid has written (2009, pg 171) that in the end of that project, a big chunk was used to build new courts, furnishings them and law libraries but there was no considerable change in the quality of official justice system.

It is despite the fact that mostly crimes especially minor cases are not reported or registered at police stations (Babar, 2007, p 74). It is estimated that hardly 30% crimes are registered in cities and only 10% in rural areas.

### 3.11) Panchayat Justice in the eyes of state legal system

Official justice system holds a clear stance about the *panchayat/ jirga* Justice. In 2002, National Judicial Policy Making Committee held a meeting in which it was announced that settlement or compromises of disputes over women under *Swara/Vani* is totally against Islamic values. Committee took serious notice of ‘*vani*’ issue and declared that a marriage demands the consent of both sides but in *vani* cases the will of girl is not considered and under Pakistan Penal Code sections 310 and 338 (E) it is prohibited to give a girl/woman in such form of marriage.<sup>14</sup>

On 23 April 2004, Sukkur Bench of Sindh High Court, in its landmark verdict, for the first time, banned the *panchayat/jirga* justice system in *Sindh* Province. Chief Justice declared *panchayat/jirga* justice to be contrary to the law of the land and state constitution.<sup>15</sup>

The 47th page of this judgement stated that the “private persons have no authority or power to execute the decisions of neither *panchayats* nor the *jirgas* have the authority to execute their own decisions through their own sources. If such decisions are carried out and executed by killing persons, the offender of murder will be committed and they will be liable for action as per the law”. A human rights cell has been established in the Supreme Court under the supervision of Chief Justice of Pakistan. On official website of this cell, it has been clearly mentioned that human rights practice of Supreme Court has played a pivotal role against the ‘social evils’ like ‘*Vani* and *Kao-Kari*’ which were rampant and violent in the society.<sup>16</sup>

In March 2012, Chairperson of National Commission on Status of Women, Miss Anis Haroon filed a petition under Article 184(3) of the Constitution of Pakistan. It has been mentioned that the practices of *panchayat/jirga* system are completely violating the articles 4, 8, 9, 10, 10(a), 14, 25, 34 and 37 of the Constitution which guarantees legal protection, justice and liberty to the people, right to fair trial, right to life and to be treated in accordance with law of land.<sup>17</sup>

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<sup>14</sup> Meeting of National Judicial Policy Making Committee dated 21-12-2002. (Study of Informal Justice System In Pakistan, Sindh Judicial Academy , Karachi, Pakistan –Funded Project

<http://www.sja.gos.pk/Publicaiton/Misc/Report%20Informal%20Justice%20System%20in%20Pakistan.pdf>

<sup>15</sup> A FIRST STEP IN GETTING JIRGA SYSTEM ABOLISHED by By Ardeshir Cowasjee

(A judgment of Sindh High Court (Sukkur Bench) in 2004 PCr.LJ 1523).

<http://www.rghr.net/mainfile.php/0622/721/>

<sup>16</sup> Supreme Court of Pakistan, The Human Rights Cell

<http://www.supremecourt.gov.pk/web/page.asp?id=337>

<sup>17</sup> IN THE SUPREME COURT OF PAKISTAN

(Original JURISDICTION) [http://www.ncsw.gov.pk/NCSW\\_Jirga\\_Petition.pdf](http://www.ncsw.gov.pk/NCSW_Jirga_Petition.pdf)

## Chapter 4

### 4.1) United Nations point of view on informal justice system

In the eyes of the United Nations, the rule of law associates with administration of justice and security by informal and formal institutions.<sup>18</sup> According to a UNDP report 2006, Informal justice mechanisms are the cornerstone of accessing justice for the mass population in many states, and recourse to the state legal system is only contemplated, if at all, as a last option or resort.<sup>19</sup> Informal judicial forums can't be overlooked because in many cases, these systems are seen as a core component of collective or individual identity, pride and dignity of indigenous populations on which they apply. Such traditional justice not only reflects the social values and norms but the lack of legitimacy of state systems. The failure to adjust or recognize these informal institutions may be itself discriminatory.<sup>20</sup> Legal Pluralism is a contemporary reality in most post-colonial states.<sup>21</sup> Informal justice systems are continuing to exist and function in many societies alongside official legal systems.

### 4.2) Legal Pluralism in other parts of the world:

In many southern and east African societies, a range of informal justice mechanisms rooted in traditional laws exist alongside formal legal institutions. In South Africa traditional *Indunas* and *Inkost* (ward councillors and tribal chiefs) are still engaging with local disputes and providing justice to persons belonging to particular tribe and clans. Traditional informal *Yoruba* judicial processes are still there to solve local disputes in Nigeria. UNDP report 2006, shares some statistics about some countries where informal justice systems are widely accepted not only by the majority of population but by the state authorities as well.

In Malawi 80 to 90% of all disputes are settled through traditional justice systems. In Sierra Leone, almost 80% of the population seek justice from the informal justice systems, which is defined as 'the rules of law' under the state Constitution and by custom; these traditional laws are applicable to certain groups and communities in Sierra Leone. It is estimated that 80% of Burundians are convinced with their informal justice systems and take their cases to *bashingantahe* forum to seek justice. In Peru, since before the Spanish invasion, indigenous people have been involving in delivering justice and these informal justice systems are still performing their functions effectively. In Bangladesh, approximately 10% of local conflicts or disputes are settled with the informal justice system called *Salish*. This alternate justice system is administering justice at village level. Traditional code of justice covers 75% of land in most African nations, affecting ninety percent of land transactions in Ghana and Mozambique.

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<sup>18</sup> United Nations Development Programme Oslo Governance Centre  
The Democratic Governance Fellowship Programme 'Doing Justice : How informal Justice can contribute'  
'<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EwaWojkowska.pdf>

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

<sup>21</sup> Legal Pluralism in Post-colonial Africa: Linking Statutory and Customary Adjudication in Mozambique

In India, at village level the *Nyaya panchayats* are working effectively and these forums have got the official support from the government of India as this institution has been established in 1950 as an effort to decentralize the judiciary and make justice system more easy, quick and accessible to the village communities (Ananth Pur & Krishna cited 2009) Similarly *Lok Adalats* are other informal judicial forums performing their functions to settle local disputes.

Rather than wiping out these informal justice institutions, many countries have taken concrete measures to integrate and incorporate these traditional justice systems with their formal judicial set-up. Such steps have been taken to give legitimacy to informal justice, enhancing effectiveness of ADR mechanisms and try to fill the gap between official and informal justice systems. The present judicial institution '*Baranguay*' in many parts of Philippines has been derived from the customary system of dispute resolution. In Bangladesh state authorities along with NGOs are working with informal justice forum *shalish* to make its process more effective and accountable. In Peru, the indigenous communities are authorised by the state's constitution to seek justice applying their traditional laws, provided these laws respect fundamental rights of human beings (Foundez, 2003 cited in Ananth Pur & Krishna).

Similarly many east African states have codified their traditional laws just to formalise such informal mechanisms and introduce election system for the leadership position in these forums. South African state is seriously thinking about providing Para-legal assistance to customary authorities who resolve issues and disputes at local level. The customary courts of Nigeria have been very lucky in this matter. They are believed to provide 'common-sense justice' as these informal forums use the "wisdom of both foreign and local concepts of right and wrong" (Albert et al. 1995 cited in Ananth Pur & Krishna, 2009, pg 60). In Botswana and Swaziland customary court secretariats have been established to facilitate traditional courts in their functioning.

Scholars and researchers are urging state authorities and policy makers to consider these informal justice forums and to take cognizance of the vital role and constructive input of these customary laws and indigenous justice institutions before plunge into any sort of large-scale judicial reforms (Chirayath et al. 2005 cited in Ananth Pur & Krishna). Concerning states need to develop such plans and strategies to take benefits from these informal justice mechanisms while encouraging constructive and appropriate reforms (UNDP report, 2006).

These informal forums of justice dispensation continue to prevail and flourish; these mechanisms are constantly used because of their accessibility and affordability and such systems are grounded in social norms of society, readily understood, quick and productive.

### 4.3) Compatibility between *Panchayat* Laws and International Human Rights Laws:

In the eyes of United Nations the process of informal justice system and its outcomes has raised serious concerns in terms of their compliance with International standards and norms. In these systems abuse of power, impunity, corruption and a lack of accountability are considered common problems.<sup>22</sup> The decisions taken by informal justice systems are tend to reinforce discriminatory practices, like the exclusion of women and these decisions are neither recorded nor enforceable. Sometimes, such systems are responsible to perpetuating gross violation and abuses of human rights such as extrajudicial murders and forced marriages.<sup>23</sup>

Under UDHR preamble, the Vienna Declaration and International human rights law, state who has signed the international conventions is now responsible to ensure the enjoyment of rights by all people living in its territory or jurisdiction. Pakistan is a member to numerous international conventions that entertain the specific provisions related to women rights, such as the rights to due process and fair trial and equality before the law. At the present, Pakistan has no such reservation regarding these conventions which can interfere with their effective implementation.<sup>24</sup>

Pakistan is a party of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

Articles two and five state that member states should take all ‘necessary and appropriate steps to alter social and cultural patterns’ in order to eliminate gender based stereotyped acts and customs based discrimination or any kind of prejudices, and state should agree to pursue a policy of eliminating discrimination against women without any delay and all appropriate measures should be taken in this regard.<sup>25</sup>

On the other hand when we see decisions taken by *panchayat* forums we can find complete contradiction between the spirit of the CEDAW and *panchayat* justice. For settling a dispute *panchayat* used woman as a remedy and forces into marriage against her consent. This has been a common practice used by *panchayat/jirga* in Pakistan for centuries.

Article two of this Convention states that a tradition, custom, or any religious reasons may not be invoked as grounds for not meeting obligations under this Convention. Article 16 mentions that all member state are responsible to take all necessary measures to eliminate discrimination against women in matters of family relations or marriages and particularly it will be ensured, on the basis of equality: (a) a woman will be given the same right to enter into marriage: (b) the same right to freely choose a spouse and to enter into marriage only with free consent; (c) the same rights and responsibilities during marriage and its

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<sup>22</sup> United Nations Rule of Law ‘Crosscutting Themes/Informal justice’  
official link [http://www.unrol.org/article.aspx?article\\_id=30](http://www.unrol.org/article.aspx?article_id=30)

<sup>23</sup> ibid

<sup>24</sup> Legislation and its Implementation to Protect Girl Children under 18 from Harmful Traditional Practices: Importance of the Holistic Approach  
[http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw\\_crc\\_contributions/GulnazZahid.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/GulnazZahid.pdf)

<sup>25</sup> <http://www.un.org/womenwatch/daw/cedaw/reports.htm>

dissolution". *Panchayat* system does not allow any woman to marry with her own choice. She is not allowed to dissolve her marriage with her own will until her husband gives her divorce. Though Islam gives this right to married women to dissolve her marriage if she does not want to live with her husband any more. But *panchayat* system takes it as an honour issue. In these cases women murder is considered a legitimate killing.

The United Nations General Assembly has defined violence against women that any act of violence that likely to result in or results in, arbitrary deprivation of liberty, mental, physical or sexual harm, including intimidation or threats or such acts, whether occurring in private or public life (Volodin & Symonides, 2002, pg 34).

If this definition of violence is considered than there is no doubt that mostly practices carried by *panchayat* forums regarding women are the complete violation of International human rights laws.

Pakistan is also a signatory of The Convention on the Rights of the Child (CRC). Article 3 (1) states clearly that in all actions relating to children, whether undertaken by administrative authorities, private or public social welfare organisations or official courts, the best interest of the child shall be the primary consideration. Similarly Article 34 says that "state parties undertake to protect the child from all forms of sexual exploitation and sexual abuse"

Like women little girls are also seen as an object of revenge and also sacrificed just to settle the disputes. Little boys and girls are there to be sacrificed in the name of old custom *watta satta* (*exchange marriages*). In 2007, according to the study of World Bank (2007) approximately one-third of marriages in remote or rural areas were exchange marriages. Especially girl child is likely to become the victim of *vani* custom easily. Pakistan official children report shows that in 2010, 29 cases of *vani* and 26 cases of child marriages were reported. In this report the *panchayat/jirga* had been considered a leading source to violation of child rights.<sup>26</sup>

The Articles 1 and 2 of Universal Declaration of Human Rights (UDHR) state that 'All human beings are born free and equal in dignity and rights' and without distinction of any kind whether it is language, sex, colour or race and every person is entitled to all the freedoms and rights set forth in the Universal Declaration. Article 3 says that every human being has the right to liberty, life and security of the person. Article 5 states that 'no one shall be subjected to torture, to cruel, inhuman or degrading treatment or punishment UDHR. But in Pakistan it seems that the right to life of a village woman is conditional on the obeying of customs or social norms. Mostly decisions given by the *panchayat* are against those women who don't commit any crime; they just want to demand their due rights which are also entertained by the constitution of Pakistan. But *Panchayat* traditional justice is considered the final authority in rural areas where women or girls are killed after the love marriage, during seeking dissolution of marriage or wishing to seek employment outside the hometown. Sometimes family members of that woman can't save her after the decision has been made.

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<sup>26</sup> 2010: A tough year for children in Pakistan. <http://www.pakistantoday.com.pk/2011/04/2010-a-tough-year-forchildren-in-pakistan/>



The intensity of this situation can be gauged with that news in which Pakistan has been ranked in top 5 states which have been declared dangerous for women.<sup>27</sup> One of the reasons was that every year 1,000 girls and women are killed in the name of honour and mostly women become the victims because of *panchayat/jirga* forums (Human Rights Commission of Pakistan, 2011).

Article 7 elaborates that everyone is equal before the law and is entitled to equal protection of the law and against any discrimination in violation of the UDHR. Article 8 and 10 clearly mention that every person has the right to a fair public trial by impartial, independent and competent national tribunals, and also the right to effective remedies in case of any criminal charge against the accused person. Similarly, article 11 states that according to law the persons who have charged with penal offences have got ‘the right to be presumed innocent until proven guilty’ and during public trial the accused person is entitled to provide all the guarantees necessary for his defence.

*Panchayat* forums don’t use legal established procedures as no woman is allowed to present as a witness or defend herself in front of the *panchayat*, no plausible investigation method is used to know the facts and most importantly there is no right to appeal against the decision of *panchayat/jirga*, so this system cannot be referred to as impartial or competent national tribunals. Also in *panchayat* forums when a person is accused to commit any crime, his participation is not considered necessary and without giving him/her any chance to defend him/herself *panchayat* declares its final decisions which is mostly irreversible.

#### **4.4) Pakistan international position: (Track Record)**

Pakistan has ratified principal international human rights treaties along with five international conventions including the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2008 Pakistan ratified International covenant on civil and Political Rights and Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (UNCAT), but its track record after signing the conventions has been very poor (human rights watch, 2003). In its assessment report of formal laws for CEDAW compliance in 5 Asian countries, it was observed that Pakistan was one of three countries who had expressed ‘constitutional provisions granting primacy of formal laws over customary practices (UNDP, 2011). The main reason has been its dualist approach, in which international law is not directly applicable into domestic laws. International law needs to be translated into domestic laws after legislation. It means that for a dualist state only ratification is not enough and implementation of these international human rights laws into national laws must be ensured by state authorities. The situation illustrates that Pakistan is doing little to fulfil its commitments under the international conventions and domestically the child and women protection issues are not catered holistically. Hence Pakistan should give full effect to international human rights laws in its policy policies and practices.

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<sup>27</sup> Thomson Reuters Foundation (2011).Pakistan ranks 3rd on list of most dangerous countries for women.

## Chapter 5

### Research Question

This research aims to explore the reality about *panchayat* justice with human rights perspective. It has been tried to see that how Pakistani print media portrays the news stories and issues related to *panchayat/jirga* justice system.

### Research Design: Methodology

#### 5.1) Content analysis

According to the requirement and nature of the research, content analysis method was adopted to find and examine the research question. Bernard Berelson (1952) defines content analysis as a “research technique for the objective, systematic and quantitative description of manifest content of communications”. This tool of research focuses and emphasizes on the original content and internal features of media. It deals with specific words, sentences, phrases, concepts and characters within the content or text and to measure this presence in an objective way. The study conclusively drew from quantitative findings during selected time period.

Content analysis of two national dailies of Pakistan was done from January 2012 to August 2012. Two prominent and widely circulated newspapers were selected; one was the national Urdu<sup>28</sup> newspapers Daily *Nawa-i-Waqt* and the other one was English paper Express tribune. Both papers have a professional reputation covering of the important issues of the country as well as the key issues of the world. Coverage of *panchayat/jirga* news in terms of quantitative metrics was categorically analyzed in both newspapers.

#### 5.2) Variables of the Content Analysis

##### Length and frequency

News stories about *panchayat/jirga* were counted and their length and space was measured as per column. In Pakistan, the average width of column in newspaper is 4 centimetres. Here it is necessary to mention that the visual coverage of the stories was also included in the length measurement of stories. During August 2011 to August 2012, Daily *Nawa-i-waqt* published 68 news regarding *panchayat/jirgas* decisions and practices while Express Tribune has published 111 news in this period. These stories have also been counted regarding their different category; honour killing, vanni, swara, stoned to death, forced marriages etc.

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<sup>28</sup> the official literary language of Pakistan, closely related to Hindi; widely used in India (mostly by Moslems); written in Arabic script

	Single Column	Two Column	Three Column	4/5 Column
<i>Nawa-i-Waqt</i>	35 (51.47%)	12 (17.64 %)	16 (23.5%)	5(7.35%)
<b>ExpressTribune</b>	<b>15(13.5%)</b>	<b>42(37.83%)</b>	<b>31(27.92%)</b>	<b>23(20.72%)</b>

Table 5.1

### Frame

Framing of news is considered an important factor in agenda setting effects. McComs, Weaver and Shah (1997) proposed that framing is, in fact, an extension of agenda setting. They also called it second level agenda setting to describe the impact of news coverage on readers. This shows how a story was framed in paper. Whether it is depicting *panchayat* decision a violation of human rights or justice or neutral etc. The framing of the stories were measured in terms of pro *panchayat* system, anti *panchayat* system or neutral. This thing was measured on the basis of contextual unit.

	Positive	Negative	Neutral
<i>Nawa-i-Waqt</i>	17(25%)	31(45.58%)	20 (29.41%)
<b>Express Tribune</b>	<b>88(79.27%)</b>	<b>0</b>	<b>23(33.82%)</b>

Table 5.2

### Source

The sources of the stories were also recorded as unofficial, official or others; media reports, national or international reports. This variable has been considered because of the crucial role of the sources that are basically gatekeepers having vital role in story making process. The news stories coming from different sources will definitely have different effects on the readers.

	Official	Unofficial	Others/TV
<i>Nawa-i-Waqt</i>	40 (58.82%)	13 (19.11%)	15(22.05%)
<b>Express Tribune</b>	<b>91(81.98%)</b>	<b>11(9.90%)</b>	<b>9 (8.10%)</b>

Table 5.3

### Placement

The placement of a news story is a key factor to understand the agenda setting of a news paper. In this research method the placement of news stories was divided into 6 categories.

1. Front Page upper half
2. Front Page lower half
3. Back Page upper half
4. Back Page lower half
5. inner pages upper half
6. inner pages lower half

The space given to the news items about *panchayat/35irga* justice was measured in columns. The front and back pages are considered the most important pages in newspapers, mostly important information is available on these pages and usually readers rely on these 2 pages and they don't bother to go through the inner pages.

	Front Page (U/H)	Front Page (L/ H)	Back Page (U/H)	Back Page (L/H)	Inner Page
<i>Nawa-i-Waqt</i>	(10.29%)	(14.70%)	(11.76%)	(16.17%)	(47.05%)
<b>ExpressTribne</b>	(27.92%)	(20.72%)	(29.72%)	(11.71%)	(9.90%)

Table 5.4

#### Stories remaining parts in other pages

	Full Stories	Half Stories
<i>Nawa-i-Waqt</i>	15 (22.05%)	53(77.94%)
<b>Express Tribune</b>	67(60.36%)	44(39.63%)

Table 5.5

### Geographic Breakdown of Media Coverage about Children

#### Region-wise coverage

##### *Nawa-i-Waqt*

<i>Punjab</i>	21(30.88%)
<i>Sindh</i>	11(16.17%)
<i>Khyber Pakhtunkhawa</i>	12(17.64%)
<i>Balochistan</i>	17(25%)
<i>FATA</i>	7(10.29%)

Table 5.6

##### **Express Tribune**

<i>Punjab</i>	30(27.02%)
<i>Sindh</i>	25(22.52%)
<i>Khyber Pakhtunkhawa</i>	14(12.61%)
<i>Balochistan</i>	29(26.12%)
<i>FATA</i>	13(11.71%)

Table 5.7

## Coverage of Anti-women Practices

### *Nawa-i-Waqt*

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<b>Honour Killing</b> 29(42.64%)
<b><i>Sawara/Vani</i></b> 17(25%)
<b>Forced Marriages</b> 8(11.76%)
<b>Child Marriages</b> 8(11.76%)
<b>Forced displacement/exile</b> 4(5.88%)
<b>Stoned to death</b> 1(1.47%)
<b>Women Buried Alive</b> 1(1.47%)

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Table 5.8

### **Express Tribune**

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<b>Honour Killing</b> 51(45.94%)
<b><i>Sawara/Vani</i></b> 23(20.72%)
<b>Forced Marriages</b> 15(13.51%)
<b>Child Marriages</b> 11(9.90%)
<b>Forced displacement/exile</b> 9(8.10%)
<b>Stoned to death</b> 1(.90%)
<b>Women Buried Alive</b> 1(.90%)

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Table 5.9

### News Stories

	Investigative	Follow up	Judgmental	Narration	HR
<i>Nawa-i-Waqt</i>	(8.82%)	(10.29%)	(25%)	34(50%)	2(2.94%)
Express News	(18.91%)	(15.31%)	(11.71%)	(17.11%)	(36.93%)

Table 5.10

### Positive Response

	Filed FIR	Government	Local politicians	Judiciary
<i>Nawa-i-Waqt</i>	17(25%)	7(10.29%)	3(4.41%)	11(16.17%)
Express Tribne	31(27.92%)	17(15.31%)	13(11.71%)	19(17.11%)

Table 5.11

### Version taken

	NGOs	Civil Society	Religious Circles	Victim's Family
<i>Nawa-i-Waqt</i>	29(42.64%)	0	0	17(25%)
Expres Tribune	47(42.34%)	11(9.90%)	0	31(27.92%)

Table 5.12

### 5.3) Findings

We gauged the news stories of *panchayat* justice with different parameters and angles. The results have explicitly shown that the decisions made by *panchayat* in these stories were only against the women and children. Only few men have been the victim of this justice system. It has been observed that coverage parameters of the stories in Urdu newspaper (*Nawa-i-waqt*) and English newspaper Express Tribune were entirely different. Here it is very essential to mention that the readership of both newspapers is entirely different. *Nawa-i-waqt* is the paper of the general masses while Express Tribune is usually read by the elite class, state officials, foreigners etc. That's why the policy of the both papers might be a result of different readership.

In *Nawa-i-Waqt* women's vulnerability to fall as a victim against the cruelties of feudal, patriarchal society was more highlighted and projected rather than focusing on the exploiters and culprits in these stories. This kind of coverage definitely instigates sympathetic attitudes in the news readers who psychologically see women as inferior species. In these stories we can easily judge the element of gender based stereotyping. In all those 68 news the newspaper projected women as sacrificing and subservient beings. It has been mentioned earlier that many *panchayat* related incidents go unnoticed or not reported; such kind of coverage does not seem to be helpful for the victims of this justice system while it leads to further victimization of the affected people. None of these stories highlighted the heinous practices of *panchayat* justice with human rights perspectives. Only 7 stories of *Nawa-i-waqt* dealt with it on which official legal system had already taken notice and state authorities had ordered investigation.

Information vacuum was clearly seen in most of the *Nawa-i-Waqt* news items; ingredients were missing, the name of the victim was there but the culprit names were not mentioned. Exploiters name were intentionally or unintentionally hidden behind the word *panchayat*. The framing of the news has been a very considering factor in *Nawa-i-waqt* news. According to Neuman, Just and Crigler (1992) 'They give the story a 'Spin'. A big chunk of content contained on judgments of the paper. Without investigation or quoted any source the news paper itself declares victim as an indirect offender who tried to break or violate the existing norms of the society. Only one side of the story was projected. It seemed that policy of the paper was tilt towards the exploiters and most interesting fact was that the news of *panchayat* were nor placed in crime section of the paper which indicates that the *panchayat* decisions are not perceived as crime in the eyes of the policy makers or editors.

The news items were explicitly slanted as it was observed that paper intentionally skipped the version of victims, reason of killing or forced marriages. The stories did not talk about the police investigation and left an impression that as it was a usual event in daily life. Another factor which needs to be taken into account was the language of the stories. In honour crimes stories related negative impressions were used "*bhaag kar shadi*" or "*mirasam*" means girl who had indecent relations with a person ran away from home and got married. This is how language of the news items indirectly justified *panchayat* decision to kill the girl. According to mostly honour killing stories woman was killed in the name of honour 'because' she brought bad name to her family and clan. In this way hatred was inculcated in the minds of

the readers against the girl who was afterwards killed when *panchayat* declared her a 'Kari' (black woman). In news stories it was mentioned that a young girl was killed in the name of honour but it was never told that she was also pregnant or mother of two or three kids. It seemed intentionally or unintentionally facts were concealed. The news stories did not talk about the psychological or emotional state of that girl who was given opponent in order to compensate a murder which was not committed by that affected girl; mostly the age of the girl was skipped when the same story was seen in English newspaper Express Tribune unfortunately age of that girl was under 10 years. In some news rather than emphasizing on the *panchayat* act the male family members of the victim were shown as exploiters but this factor was never there that those members were forced to do that heinous act by influential *panchayat* members. The element of investigation was totally missing in *Nawa-i-Waqt* stories. There was no through check, fact-finding or inquiry in *Panchayat* related news. Only 7 stories were followed up and investigated which were already being discussed in mainstream media because of the *suo motu* action of supreme judiciary. Only few stories gave the information about the Filed FIR (first Information Report) by police but the news were ended up with this sentence that investigation is underway. The version of NGOs or civil society in this regard was neglected intentionally or unintentionally. Only their protest was given a little space in the remaining part of the story which was mostly in the inner pages which are considered less important for the readers.

On the other hand the English Newspaper Express News had done a great job to highlight the heinous practices of *panchayat* system in a proper and well-mannered way. Mostly stories contained the version of the victims regarding the *panchayat* justice and expectations from the official judicial system and authorities. The news content projected the plights of the victims along with the mentality of exploiters and motives of this justice system. The human perspective was given key importance in almost all news stories. The ratio of follow ups has been significant in English newspaper. All *panchayat* related stories were given generous space on main page or back page in three or four column. Mostly stories got their place on upper half of the page. The differences in communication between *Nawa-i-Waqt* and Express Tribune can easily be witnessed. The issue of gender sensitivity in English stories was not seen because in mostly stories that boy was even mentioned who provoked the girl for marriage but in many cases the women were killed but the boys got the save passage after giving handsome amount to the women family. On their web page The Express Tribune has made a special category for honour related crimes. In its news framing the English paper focussed on the inhuman practices of *panchayat/jirga* justice system. In communicating text selection of words seemed to be catalyst to highlight this systematic violation of human rights. The intensity and sensitivity of the *panchayat* related issues was explicitly highlighted and its human perspective was also mentioned to establish the fact that women (victims) were not merely objects but human beings. Express Tribune also highlighted the physical and psychological health of the victims in its stories and it involved readers in concerns about human rights violation.



## 5.4) Conclusion

The paper has explicitly shown that devil is always in the details. When different aspects, features, perception, realities about the *panchayat* justice have explored, there are many concrete evidences revealed that in colonial era, British government had converted these informal forums into court-like mechanisms to impose harsh and unjustifiable laws in order to tight their grip over autonomous rural communities. So at that time these bodies were only a shadow of informal justice and in post-colonial era the tribal leaders continued the strategy of colonial power to suppress the poor communities. By participating and giving constant support to these informal justice institutions, the feudal lords and tribal leaders have given the indirect message that they don't believe or trust in official judicial system and hence they are completely denying the writ of government and legal justice.

It has proved now that *Panchayat* justice is patriarchal in its nature and also not pro-women. But unfortunately majority of the rural population is often not in a position to access the state judicial system. Many obstacle and impediments are there like mistrust of law, low legal literacy, financial, social, linguistic, intellectual, cultural, logistical and unfamiliarity of procedures are those barriers that stop the village communities to seek justice from the state legal system.

As *Panchayat* system has no written law and the member of this forums have no legal background and know how about state constitution or official legal system , therefore, legal principles and evidence collection have no space and place within the *panchayat* hearing. Thus the offender and victim are deprived their lawful rights. The decision mostly brings conciliation through compensation and unfortunately compensation is imposed not only on the criminal but collectively on his other family members as well and in such cases only girls and women are handed over to save the perpetrators.

The paper reveals that decisions taken by *panchayat/jirga* are discriminatory as perpetrators who are mostly men are given save passage and a woman or girl who belongs to his family is given to opponent party for compensation. But if woman has committed any offense she has to face severe punishments. The definition of offense is quite different in front of *panchayat* system. If she wants to get married to a person of her own choice it is considered such a serious offence that according to *panchayat* justice she deserved to be killed along with that person. There is no soft corner for poor women and girls where they are offender or victims.

The *panchayat* system is not compatible with the principles of human rights at all. Primarily in *panchayat/jirga* system the justice is only seen through the eyes of feudal lords of tribal leaders. The *panchayat* members are not elected through any mechanism but their appointment based on descent. There is no check and balance system or criteria available as exist in the state legal system for the appointment and selection of legal authorities.

These people have the typical mind-set about disadvantaged groups especially children and women. In *panchayat* system, to preserve the harmony in society seems to be more important rather than the protection of individual rights and it is witnessed that objective of harmony is used to compel and force weak and poor parties to accept social norms and decisions taken by

*panchayat* leaders, which results often in discrimination against disadvantaged groups. The research explicitly shows that these forums reflect the typical thinking and attitude of a cross section of the people and their decisions and justice don't recognise the equal rights of both genders. As a result, Inequalities and inconsistencies are often seen and reinforced in the *panchayat* justice.

In their current composition, procedures and formulation these system can't promote justice. Because the members of these forums can't deal with the intricacies of law and if they are allowed to take decisions than they will keep marginalized communities particularly woman and children at disadvantage, strengthen existing social hierarchies and carry class disparity.

Another important factor is the accountability of the *panchayat* system. In general, these forums are not accountable. The right to appeal is a basic legal right of an accused person in any legal system but the *panchayat/jirga* system don't offer this right and their decisions are binding to all parties and often forcefully enforced. Due to poor legislation and loopholes in formal justice system the perpetrators can easily dodge the courts. Hence informal justice forums like *panchayat/jirgas* are the only available platform left for poor peoples to settle their disputes. It means that indirectly state judicial system has made poor people sitting ducks in front of *panchayat/jirga* justice systems and impunity has become the order of the day.

Every state is legally bound to enforce and implement ratified international conventions and treaties. In Pakistani context it is quite evident that state has failed to comply with its obligations under international human rights laws and it has not modified or amended those laws that discriminate against children and women. The international human rights laws have not been incorporated or entertained in domestic laws accordingly. Only cosmetic changes have been made but no constructive steps were taken to implement international human rights provisions on grounds which bring the perpetrators of *panchayat* system to justice. When Pakistani state authorities can't enforce and ensure fundamental freedoms and other basic human and legal rights which are ratified internationally and also entertained in its constitution then these rights are worthless and state claims seem to be mere rhetoric.

Additionally, if the Pakistani government fails to prevent these forums from violation human rights, the state is responsible morally and legally for these violations. Despite these bitter realities and challenges, the informal forums have been very successful in many other developing countries, who overhauled their customary laws according to the modern requisites and given these forums legitimacy or incorporated these laws in their domestic laws. The informal justice system is vital and necessary for enhancing access to justice for the marginalized communities. The country like Pakistan whose more than 60 % population resides in rural areas this informal justice forum could be an asset if the state and legal authorities shown their serious attitude and concern to get benefit from this informal justice system. Otherwise rooting out the informal forums without providing alternative institutions is likely to have negative impacts and consequences.

The healthy sign is that national assembly of Pakistan has conceded with consensus that crimes committed against the women under the guise of *panchayat* justice have been conceded in actuality 'crimes'. This could be considered the first impression towards a social prohibition and repulsion of heinous crimes which are still committed in the name of justice.

### 5.5) Recommendation:

Pakistan government should ensure that the role of *panchayat/jirga* systems is explicitly defined in the domestic laws to develop better understanding about these mechanisms and to prevent any political or social control by these forums.

*Panchayat/jirgas* forums could be reliable partners of state judicial systems because Pakistani state justice system operates with limited resources and infrastructure. *Panchayat* forums can deal with those cases which don't involve serious crimes; here such informal systems would be useful by which people will get a legal choice to settle their disputes and it will also help state legal system to reduce its burden.

Legal awareness is also vital in order to securing access to justice. Sometimes laws are there but poor people often fail to get benefit from these laws or available remedies. State authorities should extend the reach of courts across the country. Quick provision of relief will also restore the confidence and trust of the poor communities and consistent human rights exercise will definitely bring a vital change to eliminate the social evils like *swara*, honour killing, *vani* and child marriages.

Media can play a very effective role in this regard. Though proper coverage and addressing the real problem which are behind the scene, media can change the mind-set of masses about the inhuman practices of *panchayat* justice. Media and NGOs should also highlight the positive decisions given by informal forums to preserve and strengthen the customary system that will serve those disadvantaged groups well, who don't have enough means to seek justice from the courts.

Government should incorporate international human rights laws into domestic laws with their spirit and should take appropriate measures to enforce these laws on grounds effectively to stop the different patterns of victimization in *panchayat* system. A systematic change in the state legal system is inevitable to improve the human rights situation in Pakistan.

The government should make such policies and strategies after the consultation of *panchayat* leaders so that these forums can be regulated through government machinery which will observe the decisions taken by informal forums are according to the human rights laws, domestic laws and state constitution. Martin Luther King Junior has said that "Faith is taking the first step, even when you don't see the whole staircase".

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