

Muslim Women's Honor and its Custodians: The British Colonizers, the
Landlords and the Legislators of Pakistan: A Historical Study

by
Nadia Syeda Wasti

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fulfillment of the requirements of the degree
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Abstract

Author: Nadia Syeda Wasti

Title: Muslim Women's Honor and its Custodians: The British
Colonizers, the Landlords and the Legislators of Pakistan: A
Historical Study

Department: Institute of Islamic Studies, McGill University

Degree: Master of Arts

This thesis traces the roots of women's honor killings in the tribal areas of Pakistan from the British rule in South Asia. The British colonial presence gave the tribal areas autonomy through landmark colonial legislations. The colonizers needed a harmonious relationship with tribal and rural notables in order to gain from the land. Thus, the British gave precedence to the tribal legal structure and as a result we see the beginnings of tribal autonomy in today's Pakistan.

Women's honor was also dictated by tribal laws thus tribal councils dictated women's mobility and rights.

After the creation of Pakistan in 1947 much colonial legislation was preserved in the Constitution. The tribal areas maintained autonomy and their legal systems also gained legitimacy on a national level. Therefore, cases of women's honor killings were dealt with in the rural areas but moreover, were justified in Pakistani law as well. Thus this thesis seeks to trace this legacy to the modern period and look at the evolution of the relationship between tribal autonomy and women's rights in the context of the pre and post- independence periods.

Synopsis

Auteure: Nadia Syeda Wasti

Titre: L'Honneur des Femmes Musulmanes et ses Gardiens: Les
Colonisateurs Britanniques, les Propriétaires et les
Législateurs du Pakistan: Une Étude Historique

Département: Institut des Études Islamiques, Université McGill

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Cette thèse cherche à découvrir les origines des Meurtres d'Honneur dans les zones tribales du Pakistan depuis le début du règne Britannique dans la région. La présence coloniale Britannique a donné l'autonomie aux régions tribales à travers des législations coloniales limitées. Les colonisateurs devaient maintenir une relation harmonieuse avec les notables ruraux et tribaux pour pouvoir profiter du territoire. Les Britanniques ont donné la précedence à la structure légale tribale qui a eu comme résultat, le début de l'autonomie rurale au Pakistan. L'honneur des femmes a aussi été dirigé par les lois tribales, qui veut dire que les conseils tribaux gouvernaient la mobilité et les droits féminins.

Après la création du Pakistan en 1947, une grande partie de la législation coloniale a été préservée dans la Constitution. Les régions tribales ont maintenu leur autonomie et leurs systèmes légaux ont été reconnus sur le niveau national. Donc, les procès relatifs à l'honneur des femmes étaient décidés en fonction des lois des régions rurales et aussi justifiés par la loi Pakistanaise. Donc cette thèse cherche à suivre cette tradition historique jusqu'à la période moderne et à

commenter sur l'évolution des relations entre l'autonomie tribale et les droits des femmes dans les contextes avant et après l'indépendance.

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Introduction

The term 'honor' is often used as a blanket statement to mask a hidden agenda. Thus, honor is frequently invoked by males who use violence to maintain their power over women. In the Middle East, there are cases where a brother has killed his sister in the name of 'honor,' only to reveal later that a property or inheritance issue was the real motive.¹ Similarly, in rural Punjab and Sindh, the statistics on honor killings indicate that this practice is quite common.² Whether the motive is actually honor or blood money this practice remains a legitimate form of justice in the tribal areas. The focus of this thesis will be on honor killings in these and other rural areas of Pakistan.

Each chapter will look at honor killings as a historical phenomenon against the background of the political terrain of the country. The study as a whole will show that the practice has evolved and survived because of legislation favoring tribal practices, which prescribe honor killing as a legitimate form of justice. The roots of the phenomenon thus lie amongst tribal practices. The authorities in rural areas yielded to such punishments thus creating arbitration by independent entities that did not coincide with state practice.

The historical process, beginning with the British rule in India, forms the starting point of this study. The British made a point of creating and establishing

¹ Lynn Welchman and Sara Hossein, "Honour , Rights and Wrongs," in *'Honour': Crimes, Paradigms, and Violence Against Women*, ed. Lynn Welchman and Sara Hossain, New York: Zed Books, 2005, 8.

² The daily Pakistani newspaper *The Dawn* reported that over 1,200 women in 2004 were killed in the name of honor in Pakistan. *Dawn* January 7, 2005: <http://www.dawn.com/2005/01/07/nat27.htm>.

rural autonomy in order to bolster the Empire's agenda. The methodological framework also concentrates on the historical development of the practice, analyzing it through the framework of the context of Pakistan's varying political agendas in regard to the rural areas.

Chapter one deals more specifically with the initial development of tribal autonomy and its later solidification through various colonial legislations. These will be explored within the larger context of tribal autonomy and then dealt with more specifically in terms of the role of women's honor in this framework. The progression of the relationship between and the centrality of rural and tribal elements led to the establishment of parallel judicial systems that functioned in accordance with cultural norms, which in turn were documented and regarded by the central British administration as valid. The origin of this process will be explored in the first chapter along with the growing impetus toward cooperation with the tribal areas. Land was the main issue in the need to forge strong relations with the tribal areas. Land was both a means to and a symbol of power; indeed, it has been a recurring theme throughout Pakistan's history in regard to tribal autonomy. When it comes to land, honor was at stake and so the issue of women and honor comes into play here. The chapter also deals with political developments in the early stages of Pakistan's independence, and it introduces the importance of the tribal areas in the Pakistani political context after 1947.

Chapter two discusses the push towards Islamization in the later 1970s undertaken by Zia ul-Haq. Islamization made harsh punishments applicable throughout Pakistan, including the rural areas, where they already were in force.

Tribal laws thus gained further clout because now they fit even more into the state's agenda. Women's rights issues were also being brought to the forefront at this time in an effort to combat the Islamization program or create a voice for women amongst various laws that would affect their legal status. Stipulations in the *Hudood*³ ordinances and the *zina*⁴ ordinance allowed for Islamic precepts to be completely justified by state law. Thus, many tribal practices applying to women's honor and movements were endorsed. The parallel systems of justice were allowed to thrive, thus creating contradictions within the legal realm of Pakistan. Multiple legal discourses were reaffirmed and the rural woman was often the one subjected to these various systems. The transition period after the death of Zia ul-Haq (1988) left women disappointed over the false hopes and promises of rights proclaimed by Benazir Bhutto. Her lofty agenda and proposed plan to help the status of women subjected to crimes of honor and various domestic crimes were not executed and thus the unstable terrain remained.

Chapter three deals more closely with specific case studies that exemplify the route the government of Pakistan took in regard to cases of honor killings. Matters at the local level are also analyzed in order to situate the issue of women's honor in the wider context of Pakistani politics and law. Rewards and compensation for honor killings are also addressed and the benefits to family members and tribe members are discussed here. This chapter also elucidates how the tribes remain as powerful as ever and how they continue to maintain their separate and autonomous status vis-à-vis the central government. The present

³ Punishments prescribed in Islamic law.

⁴ *Zina* refers to sexual relations outside of marriage.

situation in Pakistan is also examined in terms of the continuing debate over the repeal of the *Hudood* ordinances and the proposed passing of a Women's Rights Bill. The ongoing debate on the issue has created many disputes in parliament because of the lack of religious party support for the bill.

Finally, the conclusion will highlight the main points raised in the thesis and link them together, as well as discuss the future of the issue based on its evolution in various time periods and power structures in Pakistan. The issue of culture is a key point that permeates throughout this study and serves as the catalyst for the topic of honor killings in Pakistan.

Laws in the tribal system are based on the reality of the lives of the people and their customs. This is controversial territory, because cultural precedents were empowered by the colonizers who gave little consideration to the actual content of customary laws. Their main concern was to maintain the balance of power. Thus, when Pakistan took over the British system of law in 1947, many harsh laws were preserved. The theoretical framework behind this policy served as the guideline for nation building and provided the model that the new nation could imitate. The natural procedure would be to define rules elaborated by society and later codifying these into law. Law normally functions as an ideal for society and thus regulates all aspects of life ranging from politics, economics, and social interactions.⁵ However everyday life in Pakistan is dictated by the few in power. Their customs become the norm for all. It is becoming increasingly

⁵ Farida Shaheed, "Engagements of Culture, Customs, and Law: Women's Lives and Activism," in *Shaping Women's Lives: Laws Practices & Strategies in Pakistan*. ed. Shaheed, Farida, Sohail Akbar Warraich, Cassandra Balchin, and Aisha Gazdar, Lahore: Shirkat Gah, 1998, 62.

unrealistic for one to expect that such laws will change drastically. In the context of Pakistan, feudal structures dominate society and landlords continue to be the power brokers. Therefore, legislation in favor of disenfranchised peasants is not likely.⁶ Laws have been passed to prevent such actions, but these are interpreted in favor of the tribal way of life. Therefore, if laws are passed highlighting the criminal nature of honor killings, they will be ignored; in that cultural norms come first, and the context of the here is paramount. Hence, "...[if] the concept of honor killings is socially validated, the formal legal system will reflect this validation-- in spite of textual provisions of the law-- by reducing culpability in murder cases that are perceived to be related to honor."⁷ Judged on this basis, inaction in the face of "violations" of honor is unthinkable.

Grave and sudden provocation translates itself into the legal system. The Supreme Court of Pakistan has justified this provision in the village context.⁸ The ruling itself is from 1990, and although this was over 15 years ago, the cultural norms documented during the colonial period have endured at such a level. Their endurance highlights the accommodation given to the tribal areas. What is interesting, however, is that they have permeated into urban areas and have been justified by this same legislation. Thus the tribal norms have not only reached the urban areas by resettlement but more intriguingly by state backing. The inner

⁶ Ibid., 64.

⁷ Ibid., 65.

⁸ The *Qiyas and Diyat Ordinance* (1990) states, "Under village conditions and even in many other parts of society in this country, the right of the male member of the family to control the actions of their women folk, particularly in the field of sexual relations, is fully recognized and forcefully maintained. The idea that a young unmarried girl in a village family is entitled to leave her bed during the night and go where she pleases simply cannot be entertained."

workings of this relationship between the state and the tribes can only be fully elucidated by looking at the historical roots and by learning in this way how they have come to operate in the arena of modern Pakistan.

Gender in Pakistan

Gender and its role in the larger context of Pakistan must be examined in order to understand the relationship between women as a whole and women in the tribal context. Partha Chatterjee looks at nationalism and gender in the context of Bengal.⁹ He discusses the need to break away from colonial domination by using nationalism and cultural factors, thus resulting in a “material and spiritual” dichotomy. This validates in the material realm what former British structures would be maintained and in the spiritual realm what cultural remnants would be preserved. The spiritual would allow for cultural reassertion in a larger and codified context and serve as a means of resistance while also dictating the place for women in the newly emerging nationalist ideology.¹⁰ This place remained in the spiritual realm constituting to the private and inner circle. Thus the concept of seclusion and *purdah*¹¹ is also validated in this context, in that it keeps the two realms separate. This division becomes necessary in the nationalist struggle according to Chatterjee.

⁹ See, Partha Chatterjee, *The Nation and its Fragments: Colonial and Postcolonial Histories* Princeton: Princeton University Press, 1993, 119.

¹⁰ Shahnaz Rouse, “Gender, Nationalism(s), and Cultural Identity: Discursive Strategies and Exclusivities,” in Kumari Jayawardena and Malathi De Alwis eds., *Embodied Violence: Communalising Women’s Sexuality in South Asia*, London: Zed Books, 1996, 44.

¹¹ *Purdah* refers to the practice of seclusion in which women were confined to the four walls of the house---the private sphere. It is also known as a “veil,” a tradition for women to cover themselves when they leave their homes.

Women indeed played a great role in nation-building due to the extent of their contribution to various sectors, the most important of these being the economy. In rural production systems, women worked as field hands and often supported their families. Even today they work under landlords and contribute significantly to the household.¹² The patriarchal nature of the census has ignored women's contribution. Something also quite baffling is that men usually do not toil in the fields like women (who use their wages to support the family) and yet they feel entitled to dictate women's honor. In fact it is intriguing that these same men have such control over women who often provide men's income. Large numbers of women also work in the informal sector and do not get recognition for doing so. Rouse explains how such jobs go unnoticed, thereby reiterating Orientalist stereotypes associated with women in Muslim countries.¹³ This not only accommodates Orientalist stereotypes, but also Islamist and tribal stereotypes. Therefore, state documentation is flawed and mirrors the varying power elements of society. An important point worth noting is that women's honor is so highly valued; however, when women are able to earn a wage, honor is set aside and women are able to leave their homes.

This strengthens the male decision-making machine and power dynamic. Women's experience is grouped into one powerless whole and placed at the disposal of men who silence women by defining the precepts that they must follow. This holds true at the state and local levels, for as Rouse explains, "...it

¹² Ibid., 63.

¹³ Ibid.

(the state) constitutes as a basis for denying women access to resources...it (the state) creates a divide between 'visible' and 'invisible' female workers, thereby hindering mobilization..."¹⁴ This is translated down to all levels of society, enabling women to remain in the position assigned to them by custom and cementing the power of the patriarchal order, whether on a national or local basis.

Imagined communities were created in order to facilitate the state and eventually the place for women. In a way, ideologies based on culture have come to the forefront and in the process support state power and vice versa.¹⁵ The development process of the topic at hand involves the carrying over of cultural norms as law in the formation of the nation. In the case of Pakistan, a new form of cultural domination permeated society based on customary laws and confined to codes of honor. Deniz Kandiyoti points out that, "...women continue to represent 'privacy' of the group and the focal point of kinship-based primary solidarities as against a more abstract and problematic allegiance to the state."¹⁶ This furthers the rift between women and the state and leaves them confined to traditional roles dictated by outside parties. The legacy through which culture and custom dominate bolsters such patriarchal power. The interests of the patriarchal order need to be maintained: to do otherwise would compromise the very basis of customary law. With the state serving as the head of the social order, women are

¹⁴ Ibid., 64.

¹⁵ Deniz Kandiyoti, "Introduction," in *Women, Islam, and the State*, Deniz Kandiyoti ed., Philadelphia: Temple University Press, 1991, 4.

¹⁶ Ibid., 9.

confined to being symbols of the moral order.¹⁷ Women in the tribal sector have long been greatly disadvantaged due to the seclusion system. As a result they have not been exposed to the growing Western style feminist movements in the urban centers. The implications of *purdah* are obvious. The purpose of this seclusion was to keep women chaste; therefore, the practice became synonymous with virginity and chastity.¹⁸ The seclusion of women enforced during the colonial period led to the development of a consciousness of female morality.¹⁹ However, the colonial encounter (1757-1947) also allowed for a new consciousness to emerge in the cities. The local sources for motivation thereby shifted, creating a new and emergent counter culture that could formulate a movement based upon the empowerment and advocacy of women. However, due to reasons of isolation and tribal customs, rural women could not participate in such discourse. Cultural criticism of the colonial encounter also has also generated this new awareness.²⁰

This thesis will examine these factors and the historical developments that have aided the upholding of the honor structure in Pakistan. An in-depth analysis of British policies during the colonial period will be key in revealing the formulation of tribal identities and their subsequent autonomy. These isolated

¹⁷ Ayesha Jalal, "The Convenience of Subservience: Women and the State of Pakistan," in *Women, Islam, and the State*, Deniz Kandiyoti ed., Philadelphia: Temple University Press, 1991, 88.

¹⁸ A.A. Engineer, "Islam-The Status of Women and Social Change," in *Problems of Muslim Women in India*, ed. Asghar Ali Engineer, Bombay: Orient Longman Ltd, 1995, 4.

¹⁹ Ibid., 5.

²⁰ Gail Minault, *Secluded Scholars: Women's Education and Muslim Social Reform in Colonial India*, Delhi: Oxford University Press, 1998, 2.

systems of self-government functioned unquestioned due to colonial impact and involvement in the rural areas. Colonial literature and expeditions to the tribal lands were backed by one objective: economic control of resources. Through this the legacy of tribal arbitration was born and strengthened over time. These factors carried over after the creation of Pakistan in 1947.

Each chapter will illuminate different aspects of the favorable treatment given to the tribal areas. This is first illustrated through colonial policy and its ties with local landlords and then further demonstrated in the government of Pakistan's blind eye towards the tribal areas. Modern developments also show a string of similar events resulting in the suppression of disenfranchised groups, particularly women. No matter what state ideology was in force whether the Raj, newly formed Pakistan, Pakistan under martial law or Islamization, the tribes maintained a solid and defined place in society despite the instability faced by each successive government.

Additionally, this study tackles the issue of women's honor killings using a different approach. This method of analysis has not been utilized before. The impact of British policies sheds new light on the honor killings which are practiced in Pakistan today.

Chapter I: The Empowerment of the Tribes Through Colonial Legislation and The Adoption of the Colonial Structure in Pakistan

1.1 Colonial Discourse: Creation of Tribal Identities

The practice of honor killings in Pakistan is traceable to the British colonial presence through which the tribal structure was given autonomy. During the mid- nineteenth century, the British increasingly needed to obtain the support of the rural population in order to safeguard the power of the Raj. Due to their quest for political power, the British needed to maintain a harmonious relationship with the indigenous power base. The colonial discourse revolved around creating a class to facilitate the empire's policies. In order to preserve and strengthen colonial rule, the British found it necessary to create a class of "imagined" notables through which they could exercise their power and control. Thus, a new class of landowners developed by the British received power and control in the rural areas. They regularly used this power to their own advantage; however, this issue did not bother the British because their main goal with the imagined communities revolved around their own economic benefit. By having locals who would collaborate with them, the advantage was clear. This was particularly relevant in the case of Punjab where most of the agricultural production was centered.

Almost from the start the British agenda included collaboration with the tribes. As early as 1673, the governor of Bombay, Gerald Aungier of the British

East India Company, established *panchāyats* (tribal committees of arbitration).²¹ The rationale behind this was that the East India Company wanted to exercise only as much authority was necessary in order to ensure profits.²² Therefore, local tribal leaders were given the power to settle their own legal disputes. By granting legal and political jurisdiction to local leaders, the British legitimized their rule. This was in stark contrast to the former Mughal and Sikh rulers, who did not give such power to the tribal leaders. Thus the British created this class in order to have people who could represent them at the local level. As David Gilmartin elucidates, "Where no influential leaders appeared, however, the agency of *zaildari* (leading landowner) became a vehicle by which the British created them."²³ By doing so the British altered the entire framework of rural administration in the subcontinent.

Furthermore, the colonial tone permeates the writings of that time. The image of the untamed native with whom the British is far too superior to deal with is echoed in this literature. "There is a fine and wild flavor about these provisions which suggests rievvers and caterans after the heart of Scott or Stephenson."²⁴ The tone of that statement indicates the sort of nonchalance the British had in regard to the tribes. It can be inferred from such statements that

²¹ Scott Kugle, "Framed, Blamed, and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35,2: 2001, 260.

²² Ibid.,

²³ David Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan*, Berkeley: University of California Press, 1988, 21.

²⁴ Coutenay Ilbert, "British India," *Journal of the Society of Comparative Legislation* 3,2: 1901, 239.

their dealings may have been out of mere fancy that such a class could be created with little consequence to the indigenous populations. This was one factor in the development of tribal autonomy—the colonial superiority complex. However, the issue is much deeper, will be shown below.

1.2 Moneylenders: The Growing Threat to British Power

The British grew increasingly concerned over the issue of moneylenders. These were threatening the power of the British because the locals would be in debt to moneylenders rather than to the British. After the 1860s, agricultural prices increased drastically especially in Punjab, mainly due to the cultivation of new cash crops that caused Punjab's revenues to soar. Talbot asserts that, as a result of this rise in agricultural prices, the level of debt also increased.²⁵ The moneylenders benefited from the rise in agricultural prices because the peasant cultivator would have to borrow money from them. Moneylenders would then transfer land to themselves, thereby compromising rural cohesiveness. Furthermore, moneylenders were also seen by the British as “outside” the tribe. However, the moneylenders' possession of confiscated lands gave them a more central role within the tribal structure. This compromised the relationship with tribal leaders since much of the land found its way into the hands of the moneylenders.²⁶

The British government sent out a memorandum in regard to land transfer that described the situation in the villages. It states,

²⁵ Ian Talbot, *Punjab and the Raj 1849-1947*, New Delhi: Manohar, 1988, 54.

²⁶ Gilmartin, *Empire and Islam*, 28.

It is essential on the one hand that the management of the villages should be in the hands of men who possess the confidence of the villagers, and it is equally essential on the other that if the executive is to be obeyed and its objects rightly understood, there should be a class of men intermediate between the Government and the mass of people, who while trusted by the government, should have influence over their neighbors. In this respect the moneylender can never take the place of the large ancestral landlord or the substantial yeoman whom he dispossesses...²⁷

This statement shows the threat that rural moneylenders posed in the eyes of the British and the source of their conviction that the landlord ought to be the power holder in the village; only thus would the British influence be perpetuated and British clout strengthened in such areas. A large portion of land transactions went to moneylenders because cultivators owed them much debt. Therefore, the British saw them as compromising productivity and their profits. Revenues were not going to the empire but rather into the hands of moneylenders.²⁸

There proved to be local dissent in the print media of the time. Many felt that one moneylender was being replaced by an “agriculturalist moneylender” and that no benefit could be achieved through the bill. The peasants were subjugated to the avarice of the rich landowner who usurped power.

1.3 The Alienation of Land Act of 1900 (ALA): A Legislative Response to Moneylenders

A solution was swiftly needed, and so legislation in the form of the Alienation of Land Act of 1900 (ALA) was introduced. It was designed to regulate land transfer and keep them within certain tribes.²⁹ The ALA of 1900 and

²⁷ “Note on Land Transfer”, *Government of India , Revenue Proceedings*, October 1895, 90.

²⁸ M. Mufakharul Islam, “The Punjab Land Alienation Act and Professional Moneylenders” *Modern Asia Studies* 29, 2: 1995, 271.

²⁹ Ibid., 18-19, The ALA had serious implications because it secured power only for rural leaders. Gilmartin analyzes this by explaining that the British definitions of tribes and clans were

the Frontier Crimes Regulation (FCR) of 1901 manipulated the legal system in order to privilege the tribes.³⁰ These two pieces of legislation further empowered the new class of “imagined” notables. By incorporating local values such as honor into the legal framework, the British were able to further gain their complete cooperation. Through such formal codifications the locals were kept content just as the British agenda was kept intact. The colonizers wished to bring an end to the expropriation of land by Hindu moneylenders,³¹ who posed a severe threat to British interests. They were accumulating lands through rural debt and thus land was falling out of the hands of the landowners. By cooperating with local Muslim landlords, land could be kept in check and under British control. The British feared losing rural support due to the vast power of moneylenders and in order to reaffirm British rule they needed the support of the landlords. Therefore the ALA proved to be essential to maintaining and perpetuating their regime in the countryside.³²

According to the ALA, non-agriculturalist tribes could not serve as permanent landed aristocracy.³³ Therefore, land was in the hands of a few while a position of weakness was reserved for non-landowners. The British saw this as a

not entirely accurate. That is, the British used their own understanding for local terminology of clan based groups.

³⁰ For details of the FCR see, Willard Berry, *Aspects of the Frontier Crimes Regulation*, Durham: Duke University Press, 1966.

³¹ Imran Ali, *The Punjab Under Imperialism 1885-1947*, Princeton: Princeton University Press, 1988, 48-49.

³² Norman G. Barrier, *The Punjab Alienation of Land Bill of 1900*, Durham: Duke University, 1966, 25.

³³ Talbot, *Punjab and the Raj*, 56.

means of preserving tribal patronage for the Raj while eradicating challenges to rural power and prosperity. Provincial power was given precedence and religion played a secondary role.³⁴ Nevertheless, Gilmartin points out that the British conception of tribes and clans was not entirely accurate. That is, the British relied on their own understanding of the local terminology for clan-based groups.³⁵ Due to this a rift was created between the tribal areas and the centrally governed areas.³⁶

Several also claimed that the British were simply perpetuating their divide and rule tactics by passing the ALA. They recognized the various negative implications the ALA would have, such as stirring up communal antagonisms.³⁷ Not only did the peasants suffer from the ALA, so did wealthy Hindus as well as urban dwellers. Dissent arose because it became obvious that this "Junker class"³⁸ was utilizing the ALA for personal benefit. The District Commissioner of Jhelum described this as follows: "But as these 'Junkers' help to form the Government's bodyguard on the council this ever growing *latifundia* is not likely to receive any check."³⁹ They were thus assigned to positions of power and given control over the land. Agriculturalists were classified as people who had an ancestral claim to land, thereby giving possession of land to historically wealthy

³⁴ Gilmartin, *Empire and Islam*, 32.

³⁵ Ibid. 18-19. The British took terms such as *quam*, *zat*, and *biradari* and labeled them all as "tribe," when in actuality they had different political definitions.

³⁶ Ibid.

³⁷ "Note on Land Transfer," *Revenue Proceedings*, 63.

³⁸ The newly empowered tribal notables.

³⁹ "Note on Land Transfer," *Revenue Proceedings*, 94.

landowning families.⁴⁰ What is more, as Courtenay Ilbert, a member of the Legislative Council of the government of India, argued at the time, "But the power is given to the local government, with the previous sanction of the Government of India, to extend, or restrict this definition by notification, so as to include or exclude any persons or classes of persons."⁴¹ Thus, the landowners were able to consolidate their power and maintain their own autonomy in local dealings. Through accumulation of land, which was facilitated by the British, their power and sway over the tribe subsequently increased.

The landlords could thus deem who was an agriculturalist and who was a non-agriculturalist for the purposes of the ALA. This issue became so pressing that Lord Curzon⁴² felt it necessary to assert the power of the tribes. Through this he felt political unrest would decrease and land and tribal issues could be regulated without restrictions on the landowning class.⁴³ The main motive behind his eagerness was to combat the moneylenders and regulate land transfer into the hands of a few landowning allies. This would be easier and more beneficial for the British. Moneylenders could not be watched or commanded as easily as the landowners.

The ALA bolstered in this way the strength of the rural classes, thereby creating a prevailing agrarian party which was antithetical to peasant and urban

⁴⁰ Ali, *The Punjab Under Imperialism*, 51. Agriculturalist tribes according to the ALA were: Jat, Rajput, Saini, Arain, and Kamboh. Elite religious castes such as Syeds, Qureshis, and Mughals also fell into this category.

⁴¹ Courtenay Ilbert, "British India" *Journal of the Society of Comparative Legislation* 3,2: 1901, 314.

⁴² Governor General of India (1899-1905).

⁴³ Barrier, *The Punjab Alienation of Land Bill*, 56-58.

interests.⁴⁴ Indeed, the rural areas were dominated by the landowning class and through the ALA we see the beginnings of tribal autonomy and the precedence of the tribal structure. This facilitated further rifts in the rural areas which shall be discussed below. However, the ALA had immense importance in that it secured tribal and British authority for the time being. The British preference for a cultivating rural population created through land alienation, however, had immense repercussions that are felt until today. Also, as Rattigan explains, land was the basis of the family and needed to be kept in the hands of the family; hence, transfer outside of this unit would not be desirable. As he puts it, it would lead to “discord or strife.”⁴⁵

However, the British failed to anticipate the friction that would likely occur between the landlord and the peasant cultivator. The rural power dynamic is still operative in Pakistan today and relates back to this phenomenon of land alienation. The landowners dictated the duties of the tenants and monopolized their share of crops—again a situation that still occurs.⁴⁶ By placing material assets in the hands of a few, power came to be unevenly distributed. These few constituted the *panchāyats* and *jirgas* (tribal council of elders).

1.4 Tribes and Legal Powers Landmark Legislation: The Frontier Crimes Regulation (FCR) of 1901

⁴⁴ Ibid., 102.

⁴⁵ W.H. Rattigan, “The Influence of English Law Upon the Native Laws of India,” *Journal of the Society of Comparative Legislation*, 1901, 63.

⁴⁶ Ali, *The Punjab Under Imperialism*, 65

“The village system predominates, and community of interests, founded on community of land-holding, has produced a body of customary usages which Hindus, Mohammedans, and Sikhs alike observe.”⁴⁷ Rattigan asserts here the difference in Punjabi rural society in that it does not follow traditional Islamic laws. The system of customary law developed by the British served as a major factor in the precedence given to the tribal system. The tribal idiom became the cornerstone of rural society once the British facilitated the tribes’ hold on authority. By giving such power to locals the British were able to secure wider power over their colonial possessions. The indigenous leadership proved to be tangible and effective because it served as a medium of the British control over the local populations. The British were thereby able to dictate their policies while at the same time appeasing local rulers by recognizing their customary laws. They disregarded Islamic laws in the rural areas in favor of laws and customs dictated by rural elites. As Gilmartin states, “...it (law) provided a critical arena for the enunciation of the principles defining the state’s relationship to society.”⁴⁸ Customary law was to be the mode of governance in the rural areas and it was to be based on the British understanding of local customs and principles.

The FCR enabled tribes to separate themselves from the centrally governed areas by manifesting the supremacy of customary law. The *jirga* served as the intermediary between the tribe and the colonizers, and was granted by the

⁴⁷ Rattigan, “The Influence of English Law,” 62. Rattigan also asserts that land formed the basis of custom and superseded religion. He states that land transfer must be regulated in order to maintain harmony in the tribal context.

⁴⁸ Gilmartin, *Empire and Islam*, 13.

FCR the power to determine various punishments for criminal offences. The FCR was imposed in the Northwest Frontier region where the British felt interference with tribal customs would have “dire results” according to British officer, Penderel Moon.⁴⁹ The *jirga* functioned as the means of arbitration of law in the tribal areas and it was to be the basis upon which the FCR would become legislation. The crimes listed in the FCR and over which the *jirga* had precedence were: blood feuds, murder, and breach of peace.⁵⁰ The British deemed that the *jirga* had to consist of at least three elder members who would dictate various rulings. The motivation for this was the British judicial system had no place in the Frontier or rural areas and it could not cooperate or hold any place within this system.⁵¹

The rationale behind the FCR derived from the British revolved around their policy of non-interference and indirect rule. However the actual purpose of the FCR was “...to keep them (villagers) from a universally recognized judicial system and so deny them the basic human right of equality before law and equal protection of law.”⁵² This *jirga* served a different purpose than the traditional *jirga* in that it answered to the Deputy Commissioner, who could order the severe

⁴⁹ Berry, *Aspects of the Frontier Crimes Regulation*, iii.

⁵⁰ Ibid., 2.

⁵¹ Ibid., 32.

⁵² Shaheen Sardar Ali and Javaid Rehamn, *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives*, Richmond: Curzon, 2001, 52.

punishments dictated in the FCR.⁵³ In the traditional *jirga* the elders did not have to report to anyone and their activities were entirely controlled within the tribe.

They had to report to the Deputy Commissioner of each area according to each case in order to determine if any further steps needed to be taken against the accused.

The function of the Deputy Commissioner was either to order a second arbitration if the first one was not sufficient; or exonerate the accused; find the accused guilty in agreement with the *jirga* proceedings.⁵⁴ Furthermore, the Deputy Commissioner had little say in cases of adultery because of the honor correlated that with women. The customary law proved to be too strict in this regard however the stipulation made in the FCR acknowledged the seriousness of the issue due to the special mention of limits on killings due to adultery. The FCR stated:

- (1) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, and shall be punishable with imprisonment for a term which may extend to five years, or with fine or both.
- (2) Cognizance shall not be taken of offence under this section unless a complaint has been made by the husband of the woman, or in his absence, by a person who had cared for the woman on his behalf at the time when the offence was committed.⁵⁵

However, the exception made in terms of adultery could not be upheld due to the preliminary power given to the *jirga*. Because crimes of this type were often dealt with without any interference on the part of the Deputy Commissioner, a large amount of power and responsibility fell upon the *jirgas*, and their

⁵³ Ibid., 53.

⁵⁴ Berry, *Aspects of the Frontier Crimes Regulation*, 36.

⁵⁵ Ibid., 37. This passage comes from Section 40 (2)a of the FCR.

punishments were put into place in the form of a parallel legal system. These sentences were quite harsh and therefore any regulation often proved to be fruitless.

The FCR also dealt with various enemies or tribes that posed a threat, allowing for the seizure of land or property from hostile tribes, as well as the capture or imprisonment of various members, and the imposition of fines.⁵⁶ In regard to blood feuds, legal proceedings would be entirely left up to the *jirga*; indeed, while cases of this nature would entail severe punishments.⁵⁷ The *jirga*'s justice was to prevail, giving it the power to isolate community members deemed as "fanatic" or a danger to that society.

1.5 Honor in the Tribal Context and its Adaptation by the British

The question of honor can be correlated in this instance to the wide-ranging authority exercised by the *jirga*. The latter had no one to answer to despite the presence of the so-called Deputy Commissioner, while the FCR served as another outlet for securing tribal power. Tribes were able to arbitrate and handle issues independently without federal or even provincial interference. Therefore, crimes of honor were handled within the tribal circle. In fact, they were not considered crimes at all because it was held that dishonor could not be tolerated and had no place within the tribal structure.

Power was itself held on the basis of 'izzat (honor). That is, 'izzat was the means to political power in the tribal structure because families without an

⁵⁶ Ilbert, "British India," 239.

⁵⁷ Ibid.

honorable reputation were left excluded from its higher ranks. In the rural areas land was also considered 'izzat. The role of honor can be seen in this case too—connected with the land. The British were aware of this and utilized the situation to their benefit.⁵⁸ The British saw good relations with this class as essential to its economic project and as protection against the “disruptive impact of market forces”.⁵⁹

Therefore, the British authorities had to address this concept in order to perpetuate and uphold their power in the rural areas. For the territory of Sindh, for example, Sarah Ansari explains: “The authorities recognized that 'izzat (prestige or consideration in the eyes of one's neighbors) formed the cornerstone of the position of local elites in relation to the rest of Sindhi society, and hence incorporated into their system of political control.”⁶⁰ The British often dispensed land in Sindh because they recognized the connection between land and 'izzat. “These were all privileges which bestowed 'izzat in return for helpful activities which ranged from the provision of labor for work on canals and roads to assistance in capturing criminals and the preservation of government authority.”⁶¹ The reward consisted at times of as many as 20-30 acres of land. Since land was a lucrative means of production, such an arrangement was very appealing to locals.

⁵⁸ Ali, *The Punjab Under Imperialism*, 63.

⁵⁹ Ibid., 5.

⁶⁰ Sarah Ansari, *Sufi Saints and State Power: The Pirs of Sind, 1843-1947*, Cambridge: Cambridge University Press, 1992, 45.

⁶¹ Ibid., 46-47.

Thus, the British maintained control over the land that ensured their revenue and maintained their right to rule by collaborating with the locals who sometimes enjoyed a higher position than they had before the colonial takeover. The colonizers suppressed internal dissent by empowering the rural population and thus achieved two purposes. The British were not bothered by local disputes thanks to the fact that their local allies handled them, while at the same time they administered their economic agenda was realized through this indirect relationship.

1.6 Impact of the FCR

The British found it unnecessary to involve themselves in the social and legal affairs of their local subjects as long as these did not affect their chief purpose: extracting revenue from the land. The land was in the hands of the landowners and thus good terms had to be maintained with them in order to provide for more lucrative and productive means for the British Empire. One impact of the “divide and rule” tactics, however, was the growing debt of local cultivators. In the hands of the new agricultural moneylenders, peasants were subjected to cruel stipulations of repayment and in many cases all their property could be seized by the landlords. “The new moneylenders were not sympathetic toward their neighbors and quickly demanded the same harsh terms as their urban counterparts.”⁶² The British justified the failure of the ALA by stating that, even though the agriculturalists served as moneylenders, they at least had the notion of the primacy of land as their main priority; thus, the ALA could not be seen as a

⁶² Barrier, *The Punjab Alienation of Land Bill*, 83.

failure.⁶³ Essentially, this manifested the British agenda to divide and rule along rural and urban lines.⁶⁴

Analysis of the FCR further confirms this, given that local people without access to power suffered the worst consequences of such policies. Moreover, the colonial presence and power endured after the creation of Pakistan in 1947 due to the FCR's inclusion in the constitution.⁶⁵

Furthermore, the British implemented these changes to legislation and customary law primarily in the Punjab, where they could reap the greatest economic benefits from the agricultural sector. Thus, despite having created a class of Hindu moneylenders in other regions,⁶⁶ when these worked contrary to their agenda in the Punjab they alienated the group they had created.

The privileging of one class over another also furthered communal strife by creating animosity between different groups. What is more, it created rifts within the same group, in that tribal Muslims were distanced from urban Muslims. Also, tribal norms and Islamic norms were even further separated. An even greater problem arose when this arrangement was codified, thereby introducing contradictions and conflicts of customary law with Islamic law, despite always privileging the tribal mode of law.

⁶³ Ibid.

⁶⁴ Ian Talbot, "The British Punjab, 1875-1937" in *Punjabi Identity, Continuity and Change*, Gurharpal Singh and Ian Talbot ed., New Delhi: Manohar, 1996, 14.

⁶⁵ The FCR was maintained in the Constitution of Pakistan, 1973.

⁶⁶ Tahira Gonsalves, "Gandhi, Nationalism, and the Subaltern: An Examination of India Historiography," MA Thesis, Queens University, 2000, 15.

1.7 Customary Law and its Impact on Women

The British implementation of customary law hindered women's rights as well. The Punjabis prohibited inheritance of land by daughters, which went contrary to Islamic law.⁶⁷ Rattigan explains that males dominated agriculture and females did not play the same role.⁶⁸ The British justified this on the argument that women were not active in manual labor and therefore did not need land to cultivate. It might be concluded from this that women were not granted the property rights accorded to them through Islamic law due to the precedence of customary law.

Through the primacy of customary law, women's rights were also marginalized and dictated by members of a third party. This separation from religion served British purposes by justifying the tie to the tribal areas, which created a vestige through which tribal structures could be "protected."⁶⁹ The likely reason for this cooperative relationship with the tribal areas is the fact that the British relied on *zamindars* (landowners) for profits.

According to the *Punjab Laws Act of 1872*, custom served as the "primary rule of decision." The Act also asserted that customary law coincides with justice and that Islamic or Hindu Law would be used *after* customary law.⁷⁰ Rankin

⁶⁷ Gilmartin, *Empire and Islam*, 15.

⁶⁸ Rattigan, "The Influence of English Law", 63. A father's inheritance was given to the daughter's son and not to the daughter due to the customary laws in place in rural Punjab. It was also preferred that land be kept in male hands only.

⁶⁹ Gilmartin, *Empire and Islam*, 16.

⁷⁰ George Rankin, "Custom and the Muslim Law in India," *Transactions of the Grotius Society: British Institute of International and Comparative Law*, 1939, 106.

explains that this law could be used in the context of “succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution...”⁷¹ Through this, the relationship between such “domestic/family” issues became regulated thereby compromising and dictating the place of women solely based on custom.

The Penal Code required Muslim women to be under the protection of a male guardian who would act on their behalf. It detailed that if a woman had any dealings with a man other than her guardian, she and the other man were in violation of the Penal Code. That is, the third party or guardian was regarded as the victim because his “property” had been compromised. The Penal Code also recommended leniency in cases where husbands might kill adulterous wives, justifying such actions on the basis of grave and sudden provocation.⁷²

In 1860, the British Penal Code introduced the term “modesty,” as well as similar concepts such as “chastity” and “abduction,” and correlated them with the more general term “honor” on the basis of what they understood of the tribal context. This law maintained the rights of third parties (which could be the community, family, or the state) over women. Thus, women’s sexuality could be controlled by the tribe.⁷³ As exemplified by such legislation, tribal autonomy was

⁷¹ Ibid.

⁷² Sohail Akbar Warraich, “‘Honour Killings and the Law in Pakistan’” in *‘Honour’: Crimes, Paradigms, and Violence Against Women*, ed. Lynn Welchman and Sara Hossain. New York: Zed Books, 2005), 81-82.

⁷³ Ibid., 81.

further perpetuated at the expense of silencing women and fulfilling a larger imperial agenda.

1.8 The Transition to Independence: Appeasing the Tribes

In sum, the ALA, as stated before, created a fissure between the urban and rural populations. Therefore, rural and urban politics also became two distinct paradigms. To incorporate these two into one, the tribal entity had to be upheld so that unity on the local front could be realized. Therefore, the colonial administration was to maintain itself in the period before independence.

Such class divisions persisted, and the repercussions of the ALA became even more tangible. Animosity deepened between agriculturalists and non-agriculturalists, due mainly to the power monopoly enjoyed by the agriculturalists. “The ‘class’ divisions between ‘agriculturalists’ and ‘non-agriculturalists’, between ‘*zamindars*’ and ‘capitalists’, were inextricably tied to the cultural definitions of the Land Alienation Act itself—reflecting not just economic divisions but differing forms of local political organization.”⁷⁴

By appealing to the rural-base, political parties such as the Unionist Party⁷⁵ in the Punjab were able to expand their influence while at the same time preserving the agenda of the colonizers.⁷⁶ Parties aligned themselves with the landowners, who possessed assets in the form of agricultural products. Thus, we can see a transition period which was to maintain the previous claim to power of

⁷⁴ Gilmartin, *Empire and Islam*, 115-116.

⁷⁵ The Unionist Party founded in 1936 by Sir Fazl-i Hussain in Punjab. The party sought to cooperate with the rural factions of society.

⁷⁶ Gilmartin, *Empire and Islam*, 116.

the landlords. This claim may have not been only self motivated; however, as illustrated by the British cooperation and the later collaboration with the emerging political parties, the landlords were given an even stronger hold on power. The landlords thus made their way to the forefront of the politics of the time. The agriculturalist ideology could only persevere and dictate varying issues related to politics, economics, and domestic issues. The alienation of urban Muslims, a repercussion of the ALA, ensured that the rural areas' autonomy remained intact.

The autonomy of the tribes was bolstered and they were to hold a crucial place in the Pakistan Movement as shown by the small number of large landowners who were able to dictate the path Pakistani politics would take. Their influence was immense and their autonomy unquestionable. Through this rural independence, the prevailing tribal attitudes on Muslim women's honor were upheld.

In Sindh as well the landowners were pivotal in local politics. In many cases Sufi *pirs* (who were often landlords) allied with British policy or pro-British groups because of their protection of the land. However, even the Sindhis aligned themselves with the Muslim League.⁷⁷ The Muslim League cooperated with the Sindhis because then power would be left in the hands of the countryside.⁷⁸ As was the case in Punjab, the League secured the rights of the rural areas and kept the power in rural hands. Similarly, Sindhi *pirs* collaborated with the British Raj

⁷⁷ Political Party established in 1906 operating in order to protect the Muslim minority in British India, and later to establish a sovereign state for Muslims.

⁷⁸ Ansari, *Sufi Saints and State Power*, 122.

in order to maintain the system of landlord privilege. The emerging political parties followed the policies and tactics of the British in order to fortify their powerbase.⁷⁹ Thus the remnants of colonial policy played a great role at the rural level even in the Sindhi case. The electoral system of the British also furthered rural power. As described by Ansari, rural leaders, whether *zamindars* or *pirs*, transformed their role from one of cooperation to one of strong administration.⁸⁰ The rural role was strengthened and it was in the rural areas that the political parties exercised their influence. This was crucial because it landlords an easier transition into the new state of Pakistan.

The British defined the role of these landlords and it was not going to be altered after independence in 1947.⁸¹ This transition allowed for a defined place for the rural leaders in a national atmosphere of instability and uncertainty. In this way the landlords were in an extremely advantageous position because all factions were attempting to please them and include them in their broader agenda.

Such attitudes were the template that succeeding governments of Pakistan have followed. It is quite interesting that the landlords' influence reached such a level all due to British sponsorship of customary law and land grants. This served as a cornerstone of rural policy. The tribes could thus call upon their inner constituencies to represent them at the national level. The landlords were unchecked and free. Autonomy was key and it would remain. The rural areas remained privileged despite being part of an unstable new country.

⁷⁹ Ibid., 128.

⁸⁰ Ibid.

⁸¹ Ibid.

Chapter II: Women's Honor: The Continuation of Tribal Autonomy and its Effects after the Creation of Pakistan

2.1 The FCR and its implications after Independence

The FCR was also integrated into the legislation of the new state of Pakistan, where it remained unchallenged for nearly 10 years after independence. This exemplifies the vast authority the rural areas possessed in keeping laws applicable to their autonomy part of national legislation. As Durab Patel outlines, in the case of *State v. Dosso and others*⁸² (1958), the FCR was utilized by a *jirga* wishing to convict a certain Dosso of a crime. However when the case was appealed to the Supreme Court, Justice A.R. Cornelius⁸³ declared that the Supreme Court had no jurisdiction over the tribal areas and went even further, extolling the *jirga* system as a legitimate and sound form of justice.⁸⁴

Voices of dissent appeared in reaction to Justice Cornelius's verdict. Justice Kayani stated that the *jirga* system was arbitrary and that hard evidence was not always required.⁸⁵ The FCR did not allow for the presentation of evidence unless this was deemed necessary by the *jirga* itself. Nor was there any regulatory body that could check the exploitation of power through the FCR. The

⁸² *State v. Dosso* (1958) strengthened Martial Law and allowed for the abrogation of the constitution. Since Martial Law reigned the FCR was able to become valid and workable law again.

⁸³ Justice A.R Cornelius was a Catholic Englishman who served as the Chief justice of the Supreme Court of Pakistan (1960-1968).

⁸⁴ Durab Patel, *Testament of A Liberal*, Karachi: Oxford University Press, 2000), 58.

⁸⁵ Ibid.

process of adjudication was solely based on inquiry; thus, hearsay was given precedence over actual facts in many cases.⁸⁶ Under the FCR, as S. Ali states, it was not permissible to seek counsel or outside legal consultation.⁸⁷ This had a significant impact on women's rights since a woman's family would go against her if she were accused of "dishonoring" the family due to strict tribal customs.

Moreover, the informal nature of *jirga* trials possessed little legal validity in comparison to the constitution of Pakistan. This however counted for little once martial law was imposed under Ayub Khan, which set aside basic rights entirely. This gave the FCR credibility as valid law because the constitution was abrogated.⁸⁸ Additionally, in this time of martial law we see an emerging military dictatorship. Patel describes the phenomenon thus: "... *jirga* trials had been used from time to time even before martial law to harass critics of government. Therefore, to praise this system during a military dictatorship was to encourage the military dictator to use *jirga* trials for consolidating his power."⁸⁹ This meant power could be secured by relying on rural areas for backing. The 1962 Constitution moreover safeguarded the FCR.⁹⁰ However, the 1964 constitution abolished the FCR because President Ayub began to face increasing pressure in

⁸⁶ Shaheen Sardar Ali, "The Rights of Ethnic Minorities in Pakistan: A Legal Analysis," *International Journal on Minority and Group Rights* 6, 1999, 190.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid., 59.

⁹⁰ See *Constitution of Pakistan* (1962) Article 98.

regard to such laws.⁹¹ Moreover, the impending 1965 war with India made it necessary for President Ayub to have a wider base of popular support.

The alliance with the rural areas functioned until this point and would continue to do so. Consolidation of power served as a potent means towards political control. Thus, the rural areas needed to be satisfied. Since *jirgas* and *panchāyats* dealt with local issues, the local government could turn a blind eye to their decisions and rulings. As long as the rural areas did not compromise central authority, they were left to their own devices. Whenever alliances between government members and tribal leaders were in play there was a marked increase of tribal autonomy and privilege.⁹²

After Ayub, Zulfikar Ali Bhutto came to the forefront of Pakistani politics. He made it an agenda to dissolve feudalism and embark upon rural reforms. He announced that one of the Pakistan People's Party's objectives was to work against the long legacy of feudalism.⁹³ Bhutto knew the power of the rural areas could not be nationalized.⁹⁴ Yet such reforms remained a priority. This culminated in a series of land reforms that attempted to remove the power from the few rural notables. The 1972 reforms cut off the power of some of the landlords. Landlords could face seizure of land, penal sanctions, and imprisonment if they violated the landholding stipulations, ceilings on the amount

⁹¹ Justice Kayani increasingly opposed the FCR because it compromised the State's legal and administrative powers in the frontier regions.

⁹² Patel, *Testament of a Liberal*, 80-83.

⁹³ President Zulfikar Ali Bhutto, Address to the Nation, March 1, 1972.

⁹⁴ Herring, Ronald J., "Zulfikar Ali Bhutto and the Eradication of Feudalism," *Comparative Studies in Society and History*, Vol. 21, No. 4, Oct., 1979, 529.

of land that could be held, and tenancy policies.⁹⁵ Herring suggests however, that such reforms were empty, as were the later reforms introduced in 1977. These had the same result in promising a great deal but actually offering very little.

An attempt to raise the status of peasants was a main focus taken into consideration Bhutto's "Islamic Socialist" ideology. He proclaimed that power needed to be given to the peasants and that cultivator tenants needed to be given precedence. He also proposed that any peasant cultivating state lands would eventually acquire ownership to those lands. This would adversely affect the landlords due to the fact that they usually received those lands.⁹⁶

These policies shook the very core of Pakistani society—that is a society primarily based on agriculture. If land was to be allotted to everyone, even the peasants, the prestige and honor associated with the land would become null and void.⁹⁷ This would allow the rural structure and administration crashing down. This could also be seen as a step towards bringing an Islamic edge to the regime in that Islam praises equality and helping of the poor on an ideological level. However, this could not fit into the real political and economic terrain of Pakistan which thrived on the power of all resting in the hands of a few. The reigning power structure could not be transformed at such a level, nor could the nationalization of land and industries succeed due to the legacy of power-holding families and entities. These attempts at reforms and distribution of the land

⁹⁵ Ibid., 547.

⁹⁶ Ibid., 549.

⁹⁷ Ibid., 552.

among all could not be long-lasting because they compromised the wealth of the landowners. It must also be mentioned that ties to feudal society could not entirely be broken due to Bhutto's own ties to feudalism. Bearing that in mind, he was careful not to alienate the feudals entirely but rather aligned with some of them in hopes of gaining more support from peasants who worked under such powerful landlords.⁹⁸ Furthermore, the 1973 Constitution could not be properly administered. Though it promised a return to the parliamentary system, tensions with the tribes of Balochistan sidelined such attempts.⁹⁹ Indeed, after Bhutto's execution on April 4, 1979, Zia ul-Haq would cast these reforms aside and Islam and tribal practices would join forces. This stabilized the rural system and ensured tribal autonomy by sidelining such policies to the new mantra of "Islamization."

2.2 Tribal Practices Justified in the State System Based on Islamic Precepts

Another period of tribal autonomy surfaced during the Islamization program of Zia ul-Haq (r. 1977-1989). This period demonstrated a marked and documented increase in violations of women's rights even as the implementation of tribal practices heightened. The greatest change in the law during this period was the introduction of the *Hudood* ordinances of 1979. These justified strict punishments for crimes—and ensure that sexual crimes would henceforth be tried on the basis *shari'ah* and tribal law.

⁹⁸ Lawrence Ziring, "From Islamic Republic to Islamic State in Pakistan," *Asian Survey*, Vol. 24, No. 9. (Sep., 1984), 939.

⁹⁹ Ibid., 940. Bhutto sought to eradicate the *sardar* (tribal chief system) in Balochistan. This heightened tension in the area and insurgency ensued from 1973-1976.

This process of Islamization was a means for Zia of legitimating his rule and, furthermore, a method of asserting the power of his military dictatorship. The ideology behind this can be seen in Zia's overthrow and later execution of Zulfikar Ali Bhutto in 1979. Bhutto was Pakistan's first democratically elected leader and therefore Islam was the only means by which the coup could gain support and authority. Throughout his time in office, Zia used his campaign of Islamization as a validation for his actions. That is, he postponed democratic elections because he claimed that Islamization had not yet been fully accomplished and that elections would consequently serve no purpose.¹⁰⁰

As a result of this move towards Islamization, the Jama'at-i-Islami, headed by Maulana Maududi (d. 1979), finally came to the forefront of Pakistani politics. The Jama'at backed Zia and used his regime as a vehicle towards achieving their ultimate goal—a purely Islamic state. Through this battle for political power; the two parties, Zia and the Jama'at, were able to support each other in order to achieve their goals. Members of the Jama'at were able to hold seats in parliament-- an objective they had been struggling to achieve for decades. Their active participation thus allowed the *Hudood* ordinances to be passed in 1979. This indeed marked the beginning of a transition point in Pakistan's legal system that had not been very Islamized despite previous attempts.

¹⁰⁰ Ann Elizabeth Mayer, "The Fundamentalist Impact on Law, Politics, and Constitutions In Iran, Pakistan, and the Sudan." in *Fundamentalisms and the State: Remaking Politics, Economies, and Militance*, ed. Martin E. Marty and R. Scott Appleby, Chicago: University of Chicago Press, 1995, 124.

A main goal of Islamization was to restore the *purdah* (seclusion, veiling) system which was practiced in South Asia as a means to seclude women. *Purdah* was the norm in the tribal areas and thus statewide enforcement became a central issue. However, it was dismissed merely as a slogan in the urban areas where it was not widely adopted. S. Ali discusses how Zia pursued this sort of Islamization because he could not bear to be faced with any threat. That is, he felt he could easily undermine the protesting women who would not favor the Islamic provisions he stipulated for them.¹⁰¹ Zia used his political struggle to strengthen his aim to revamp culture. He began with the Law of Evidence, which had been codified in colonial times as the Evidence Act of 1872. Zia's agenda also intended to highlight his entirely Islamic approach which would encompass all areas. In the reintroduction of the law, it could be argued that Zia was indeed resurrecting remnants of colonial rule.¹⁰²

With the resulting alteration of the law, women were no longer equal to men as witnesses. The *Qanoon-i-Shahadat* (The Law of Evidence) of 1984 met with much criticism and its application proved to be shaky. It has been documented that its application depended entirely on the judge presiding over the case; therefore its full implications cannot be analyzed.¹⁰³ It was

¹⁰¹ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?*. Boston: Kluwer Law International, 2000, 101.

¹⁰² Charles Kennedy, "Islamization Under Zia." In *Islam and Democracy in Pakistan*. ed. Muhammad Aslam Syed. Islamabad: National Institute of Historical and Cultural Research, 1995, 139.

¹⁰³ Khawar Mumtaz and Farida Shaheed, *Women of Pakistan Two Steps Forward, One Step Back?* London: Zed Books, 1987, 110.

nevertheless claimed that the new law replaced the prior “un-Islamic” law and that it was one more step in the struggle for Islamization.

A close reading of the law indicates that there is very little difference between the old and the new, which indicates that Islamization may have only been a slogan. Section 17 of the Law of Evidence states:

1. ...in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly.
- 2... in all matters, the court may accept, or act on the evidence of one man or one woman or such other evidence as the circumstances of the case warrant.¹⁰⁴

Therefore, this law can simply be seen as a reassertion of the previous law, except that now the law was apparently “Islamic” because it was prescribed under the new “Islamic” law.

The discussion below details the various steps taken against women in the new legislation. They have been mentioned to demonstrate how such laws held most power at the rural level and thus affected rural women who were subjected to tribal laws and these new laws supposedly based on Islam. The situation may not have been that different from the previous one but now tribal forms of punishment and stipulations on female honor and mobility were warranted on a more detailed and specific constitutional level, not only through the FCR.

The Federal Shari‘at Court (FSC), founded in 1980, drew its power from these changes. There seems to be an overlying impression or façade involved with this Islamization, though there is no doubt that women did suffer-- especially rural women-- at the hands of these laws, their full fledged

¹⁰⁴ Kennedy, “Islamization Under Zia.” 140

application seems questionable, they seem not to have been applied in full. Moreover, the FSC had the power to hear appeals against conviction and also acquittals under the *Hudood* ordinances. Other functions included examining laws that were essentially anti-Islamic and also hearing claims filed by private citizens in regard to various issues they wished to contest or bring to the court's attention. The FSC found it an overwhelming task to alter the existing constitution. In its crusade to eradicate whatever was repugnant to Islam, it proposed 27 revisions to the constitution by 1985. After this initial stage of reworking, the FSC concentrated moved on the further application of the *Hudood* Ordinances.

It must be noted that in 1961, the Muslim Family Laws Ordinance (MFLO) had been passed. Through this law, marriage and divorce were regularized, the right of a woman to initiate divorce was introduced, polygamy was controlled by requiring permission for multiple marriages prior to the signing of the marriage contract, and inheritance from grandfathers was made possible for women if the father was already deceased.¹⁰⁵ Many attempts however were subsequently made by the religious establishment to repeal the MFLO, and there were calls to have it taken out of the constitution. The FSC and Zia ultimately used their political clout to have the rights granted by the MFLO sidelined through the *Hudood* ordinances.¹⁰⁶

¹⁰⁵ Khawar Mumtaz, "Political Participation :Women in National Legislatures in Pakistan", in *Shaping Women's Lives: Laws Practices & Strategies in Pakistan*, ed. Farida Shaheed, Sohail Akbar Warraich, Cassandra Balchin, and Aisha Gazdar Lahore: Shirkat Gah, 1998, 328.

¹⁰⁶ Ibid.

The *zina* ordinance of 1979 came to the forefront of the FSC's attention. Most of the cases brought to the court revolved around *zina* issues-- an overwhelming 60% of the cases related to such matters. The *zina* ordinance was followed by much controversy from the day of its introduction. Before the *zina* ordinance was enacted, adultery and such issues had been dealt with under the Pakistan Penal Code (PPC). Women could not be tried for *zina* because it was seen as a crime in the realm of adultery. Complaints could be made by the husband only, but women were not punishable by law.¹⁰⁷ Adultery cases were, moreover seldom reported. However, after the ordinance, accusations of *zina* soared into the thousands. It can be concluded that the high number of such cases correlated with the shift of power in regard to gender roles. It also illuminates how those who wished to decrease the status of women could use the ordinance as a tool. The ordinance was a means to power and this power was indeed entirely patriarchal. The *Hudood* ordinances proved that laws could be utilized in a manner that undermined and sidelined oppositional voices, which as a result would inevitably tighten the grip of the ruling and dominant party.

Violation of the *zina* ordinance called for different forms of punishment, the first of which were the *hadd*¹⁰⁸ punishments, which were more severe and required more witnesses. This was added into Section 8 of the ordinance. Furthermore, the law excludes women and non-Muslims as

¹⁰⁷ Sardar Ali, *Gender and Human Rights*, 107.

¹⁰⁸ *Hadd* refers to punishments stipulated in the Qur'an for fornication, adultery, making false accusations, consumption of alcohol, and theft.

witnesses. This prohibiting of female and non-Muslim evidence was opposed through a petition to the FSC in 1983, but it was not removed. As Rubya Mehdi asserts, it would prove to be quite difficult to find two people who committed *zina* in the presence of four Muslim male witnesses.¹⁰⁹

The *hadd* punishments were themselves very controversial as many argued against them and asserted that they had absolutely no basis in the Qur'an. In 1981, *rajm* (stoning to death) was bitterly protested and went to court that same year. The orthodox faction objected greatly to this and, after two years of dispute, it was finally declared in 1983 that while there was no Qur'anic basis for *rajm* it was derived from the *Sunnah* and *Hadith* of Prophet Muhammad.¹¹⁰ In this way religious establishment was kept satisfied and the harmonious balance between it and the government was maintained by this form of appeasement. Despite this "amicable" settlement, the *hadd* punishments continued to be difficult to enforce. Many used confession as a way to exonerate themselves from the punishments, thereby nullifying its application. Confession was a means by which they could escape such severe punishment. Nevertheless, despite the fact that these punishments were difficult to put into effect, their very presence in the legal literature shows that the possibility of implementation was there.

¹⁰⁹ Rubya Mehdi, *Islamization of the Law in Pakistan*. Richmond: Curzon Press, 1994,

118.

¹¹⁰ Ibid.

For application purposes, the *tazir*¹¹¹ punishments proved to be more practical. These possessed a wider scope than the *hadd* punishments. Section 7 of the ordinance states that when evidence is lacking for *hadd* punishments, *tazir* punishments are to be exercised.¹¹² These consist of harsh imprisonment for up to 10 years, thirty lashes, and a fine. They too were also met by much objection, it being argued that if there was insufficient proof for the *hadd* then the proof was also not enough for *tazir*. Due to the problematic nature of this law there were many inconsistencies in its application. Women usually suffered at the hands of such laws and were the ones who faced imprisonments and fines due to evidence that usually amounted to little more than illegitimate pregnancy.¹¹³

Unfortunately, the term rape is not clearly defined anywhere in the law. According to the Pakistan Penal Code (PPC), rape can be said to occur when two people who are not acquainted have sex with each other. Any other instance of a sexual relationship between acquaintances cannot fall into the realm of rape. This can be explained by the high degree of segregation of the sexes in the middle class. If a rape takes place among members of the middle class, it is usually kept within the family and is not revealed to the public sector. Instances such as this would hardly ever be reported to the police for fear of shaming or dishonoring the family, especially if other members of the

¹¹¹ *Tazir* refers to crimes under Islamic Law that are less than *hadd* crimes. Punishments for such "petty" crimes are not fixed.

¹¹² Ibid.

¹¹³ Mehdi, *Islamization of the Law*, 119.

community were to learn of the illicit sexual encounter.¹¹⁴ The victim of rape is often ostracized and blamed for having provoked the incident. In the lower classes the segregation mores are not as strict because both men and women are required to work together; therefore, mixing is more likely. Common instances of rape are those that take place in domestic servitude and at an even higher frequency, in fieldwork. Landlords often rape and sexually exploit female workers. Also, in the tribal system there is usually much animosity between rival tribes and rape is the ultimate revenge for various insults.

What is more, rape within marriage is deemed nonexistent. The wife must fulfill her duty to please her husband anytime he wishes. The use of violence against a wife who does not comply with her husbands' demands is perfectly justified in the eyes of the law.¹¹⁵ Such laws contained in the ordinance do nothing but lower the position of women and serve as a means of male dominance within society. Prior to the *zina* ordinance, the PPC protected underage girls from rape, stating that if an underage girl was involved in a sexual act, even with her consent, it would be considered rape. This was deleted from the *zina* ordinance. Not even underage girls were spared; they were also to blame for their so-called immoral actions.

The reworked ordinance defines rape as follows:

- ...if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances namely:
- (a) against the will of the victim

¹¹⁴ Ibid., 122.

¹¹⁵ Ibid.

- (b) without the consent of the victim
- (c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or hurt; or
- (d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself of himself to be validly married.¹¹⁶

Another point that can be inferred from this section of the ordinance is that women were now subject to being accused of rape. Though there have not been any such accusations, in its practical application women suffer at both ends and a man could essentially reverse an accusation for his own benefit. A woman would not be able to defend herself in such an instance either. It is unlikely, however, that such an incident would be brought to the attention of the authorities because it would challenge the masculinity of the man involved.

An additional example of how the ordinance disempowers women is the issue of bail. Those charged with a *zina* offense are usually in no position to offer bail as a means of freedom, nor can the complainant drop his/her charges; thus, women are again left in a difficult situation. Bail is often set quite high: from anywhere from Rs. 20,000 to 60,000. These amounts are out of the question for many who are subjected to such punishments. Most women accused of such crimes come from low income brackets of society, and what is more, they are often indicted by their husbands or members of their family—their source of income. Due to the nature of their accusation (being accused by family members), bail is often not posted because the women have no other access to money other than their families. And even if the woman is accused

¹¹⁶ M. Azam Khan, *Digest on Hudood Laws 1979-1999*. Lahore: Comprehensive Publishers, 1999, 199.

by an outsider, it is virtually impossible for her family or husband to provide such an amount for her release; therefore, she faces the charges and any penalties that may follow. If bail is given, it in many cases places the woman in a subordinate position; that is, their husband or family members use their payment as a weapon. They hold the matter over the women thereby asserting her inferior relation in the family structure and utilize this tool to do whatever they wish with the woman.¹¹⁷ These instances are most frequent in rural areas due to the control that the tribe has historically enjoyed over matters of women's honor; indeed, in rural areas such actions considered justified.

The issue of false accusation must also be addressed, or even worse false accusation coupled with lack of proper information on the laws being administered. This is often the case. Jahangir and Jilani¹¹⁸ affirm that many *qazis*¹¹⁹ who rely on the law are more likely to use their own conjecture in coming to a ruling on a particular issue.¹²⁰ The judges in the High Court were usually better able to make sound judgments. "The High Court observed that since the Sessions Judges could read English and comprehend medical reports, their conclusions were normally correct. The *Qazis* cannot read the medical reports of medical examiners; hence they base their decisions on guess

¹¹⁷ Rashida Mohammad Hussain Patel, *Woman Versus Man: Socio Legal Gender Inequality in Pakistan*. Karachi: Oxford University Press, 2003, 47-8.

¹¹⁸ Asma Jahangir and Hina Jilani are sisters who work for advocacy on Women and human rights issues in Pakistan. They are trained as lawyers and opened the first all female law firm in Pakistan.

¹¹⁹ Judges in religious courts.

¹²⁰ Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* Rhotas Books: Lahore, 1990, 118.

work.”¹²¹ In some cases the doctors translated their reports into Urdu. Though this example does show the lack of full understanding some *qazis* may have had, there are elitist perspectives echoing throughout this statement. Nevertheless, this claim is valid: the *qazis* were usually trained in religious studies and so their knowledge of English may not have been sufficient. Mistakes due to this issue did occur, leading to human rights violations. Due to evidence the *qazi* might not fully comprehend, and given a false accusation, a woman could be imprisoned until the case was cleared up. Further, many *qazis* were also be rural leaders and landlords and therefore their legal judgments were often influenced by their tribal surroundings, context, and law.

2.3 A Step Towards Women’s Rights

These inequalities have faced harsh criticism from women. In a reaction to the *Hudood* ordinances, the Women’s Action Forum (WAF) was founded in 1981. Its aim was to use the legal system to counter the negative effects of Zia’s campaign. The WAF aspired to incorporate women’s rights into the Islamic legal context, it was realized that it would be increasingly difficult to separate the two.¹²² They sought to use the tools of Western feminism in the context of Islamic modernism. The *zina* ordinance awakened the activism of the WAF, but the application of the Law of Evidence strengthened its desire to counter Zia’s Islamization program even more. WAF teamed up with the

¹²¹ Ibid.

¹²² Rachel Rosenbloom, “Islam, Feminism and the Law in Pakistan under Zia.” in *Islam and Democracy In Pakistan*, ed. Muhammad Aslam Syed, Islamabad: National Institute of Historical and Cultural Research, 1995, 244.

Pakistani Women Lawyers Association and protested the Law of Evidence before of the Lahore High Court.

Another instrument used by WAF to advance its cause was Islamic language. The following passage from the Qur'an was cited as primary proof of the equality of men and women in an attempt to counter the Law of Evidence.

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give, in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in God's praise for them God has prepared forgiveness and great reward.¹²³

As evidenced by this passage, the WAF sought to find an equitable and just voice in the Qur'an that could be translated into the legal framework. It also sought to elucidate the distinction between culture and religion. South Asian Islam possesses many distinct features that are not derived from the Qur'an but from coexistence with other populations. From the arrival of Islam in the subcontinent in 711 AD, there has been a distinct pluralism present in regard to religion which allows for the mixing of aspects from other South Asian religions such as Hinduism and Buddhism and so on. Therefore, the WAF argued that the practice of seclusion was a remnant of feudal culture and could not be found in the Qur'an. It also served as a class dynamic since wealthy women could afford to be secluded at home; therefore, its roots were nowhere

¹²³ From the Qur'an, Surat-al-Azhab 33:35. Taken from Abdullah Yusuf Ali, *The Holy Qur'an, Text Translation and Commentary*. Washington D.C., 1946, 1116-1117.

in Islam. They also questioned the Islamization program in terms of danger itself. They lobbied Zia's regime by writing to the *majlis-e-shoora*.¹²⁴

WAF members took this argument even further to help them with their protests and to protect themselves from police brutality, asserting that it was un-Islamic for men to touch women. They claimed this was valid because Zia used the same sort of justification to support segregation in universities, so that men from outside the family circle could not have access to women. Their strategy is similar to Amina Wudood's¹²⁵ definition of the active use of *ijtihad*¹²⁶ and to "put on a good face" for the rest of the world. The extent to which that was their ultimate goal is questionable. Such an argument was more a means to an end, i.e., to suspend such harsh *hadd* punishments on women and subsequently have them completely eradicated from the legal literature. They attempted to utilize the existing laws to their advantage and to promulgate and strengthen the basis by which they could embark upon as a means toward legal restructuring.

Asma Jahangir and Hina Jilani were active members of the WAF and fought assiduously for the cause. Jahangir primarily distanced Islam from the framework, stating that Islam was not the problem that the problem had to do with exploitation and injustice. She wished to keep the Islamic framework within the law so that the opposition could not entirely repudiate the WAF's platform. Jilani on the other hand, wanted to remove the context of Islam

¹²⁴ The Islamic parliament set up by Zia.

¹²⁵ She led the Friday Prayer held at St. John the Divine Cathedral in New York (2005) based on independent interpretation of the sources.

¹²⁶ Islamic legal reasoning based on independent interpretation based on the Qur'an and Sunnah.

entirely because, although Islam granted women many rights, she felt it also denied women many rights. For example, women are allowed to inherit only half of what their brothers are given. It is interesting that this argument was made by Jilani, because this inheritance could also be seen as power in that some share of inheritance is stipulated---however, Islamic law still grants more power to men. This illustrates the political and philosophical dimensions of the cause, the ultimate goal being a shift in power to assert and bolster the interests of a marginalized group---in this case women. Therefore any compliance with the mainstream Islamic ideology was in order to keep the distinction between real Islam and “tribal” interpretations of such laws and bring them to the forefront of the political arena.¹²⁷

However, WAF’s tactics were something of a concession to Zia and did not fully challenge his campaign. They utilized three levels of approach to Islam. Firstly, they incorporated the use of Islamic terms to dispute Zia. Secondly, the use of such Islamic dialogue was necessary in order to achieve a broader movement. Finally, the question of cultural authenticity was put into play. This factor was a means by which tribal authorities might be able to bolster their control, as the historical process suggests. The political process was utilized as well to make the agenda all-encompassing; thereby the issue could be tackled on a large-scale by using the government as an instrument.

¹²⁷ For details of the history of the WAF and its initiatives and Jahangir and Jilani’s efforts are highlighted., see Rosenbloom “Islam, Feminism, and The Law in Pakistan Under Zia,” in *Islam and Democracy In Pakistan*, ed. Muhammad Aslam Syed, Islamabad: National Institute of Historical and Cultural Research, 1995, 243-286.

Therefore, by pursuing these three modes of operation WAF's target was to empower women at the grass roots level, whence many of these customs derived. Crimes against women continued to amplify and were increasingly ignored, while the prospects for legal reforms seemed bleak.

2.4 Parallel Judicial System and Critiques of Gender in Pakistan

Parallel judicial systems continue to function in Pakistan. Independent entities govern themselves and enjoy independent jurisdiction over certain issues. As previously noted, the government of Pakistan retained the British form of dealing with the tribal areas and thus allowed for the survival of *jirgas* as a parallel judicial system. The most potent form of this sort of legislation is still the FCR which, despite being removed from the constitution, still functions in the Federally Administered Tribal Areas (FATA)¹²⁸ of Pakistan. Moreover, the FCR was the first parallel judicial system adopted in Pakistan, even before the military courts established during Ayub Khan's term.¹²⁹ Tribes in Pakistan that are subject to the FCR are denied constitutional rights in favor of the FCR. The FCR has evolved into to a system based only on inquiry, in which legal counsel is not permitted.¹³⁰ Thus, cases tried in such contexts are usually supervised by the tribal leaders. Needless to say, all human rights accorded within the constitution are categorically denied.

¹²⁸ FATA includes the areas of Malakand, Dir, Swat, Chitral, and Kohistan.

¹²⁹ Shaheen Sardar Ali and Kamran Atif "Parallel Judicial Systems in Pakistan and Consequences for Human Rights, in *Shaping Women's Lives*. 46.

¹³⁰ Ibid.

Tribes are able to act as they wish with other “unfriendly” tribes. Among the measures that can be taken is confiscating land from such tribes, which in turn finds validation in the earlier ALA which allowed for agriculturalist tribes to take land from non-agriculturalist tribes. The issue of land becomes pertinent again in that such preserved colonial legislation highlights the value of land and the dependence on the land. Hence the justification of such harsh measures in order to obtain land.

2.5 Parallel judicial systems at work

Many attributes of the tribal way of life revolve around or relate to personal honor. They can also be correlated with material gain or political advantage.¹³¹ In addition, personal honor is considered of utmost importance, so that violation of this may cause the loss of political advantage. Willard Berry discusses how honor and shame are the essential attributes a man must possess in the tribal context.¹³²

Although a reputation acquired through measurement by this gauge is an important factor in the acquisition of political support, honor is the basic force behind all personal activity, whether its definition is rooted in psychological drives, familial or sectarian ties, or tribal and national sentiment.¹³³

Anyone who goes against tribal custom has violated the honor code and must be dealt with accordingly. It is at this point that the concept of *badla* (vengeance) comes into play. This vendetta form of justice is the only way of preserving honor in the tribal context. Honor can be challenged by three sources: women,

¹³¹ Berry, *Aspects of the Frontier Crimes*, 18.

¹³² Ibid.

¹³³ Ibid.

gold, and land.¹³⁴ Berry distinguishes the different ways honor is derived from these three sources by explaining that women are vital because they are supposed to uphold the honor of the family, that gold is important due to its monetary importance in maintaining authority and its potential for use in bribes, and that land is essential because it serves as the main source of income in the rural areas.¹³⁵ However, women are most often considered the central component to the honor code: hence, compromising that honor calls for retaliation in the form of a blood feud. If such a situation arises, the woman's relatives have every right and the backing of the tribe to kill the woman and the male involved in the infringement of the honor code.¹³⁶ Consequently, we see how the fabric of tribal customs is tightly interwoven and how the British colonizers used this to their advantage by giving validity to tribal justice.

In Balochistan, for example, the head of the judicial system is the Deputy Commissioner (DC), as stipulated in the FCR and Ordinance 11 of 1968. The DC operates with four other members on a tribunal that is subject to the PPC. However the DCs have the full right to exercise their own powers over such cases.¹³⁷ Therefore, the customs of the area are preserved whenever laws outlined in the PPC do not match with the framework of the tribe or group. The power of autonomous groups is not kept in check because they have no higher authority to

¹³⁴ Ibid., 19.

¹³⁵ Ibid.

¹³⁶ Ibid., 21. This also has justification in *Qisas* or retaliation on Islamic law. Therefore, in this case the tribal custom corresponds with the implementation of the Shariah.

¹³⁷ Ibid., 48.

report to and their cases are dealt with almost entirely independently.¹³⁸ As S. Ali points out, these forms of legislation were not directly made by the tribes but were introduced by the elites in Pakistan.¹³⁹ They allow for such judicial systems to function, thereby denying basic legal rights to rural people, especially women.¹⁴⁰

The Provincially Administered Tribal Areas (PATA) system also serves as another form of judicial arbitration in Pakistan. Nevertheless, its duties are unclear and its jurisdiction in the area vague. For example, the PATA elects members who answer to parliament and who are involved in nationwide policy-making, but they have very little say in the PATA region specifically because again *jirgas* hold all precedence in the legal affairs of the region.¹⁴¹ Changing the term *jirga* to “tribunal” rationalized such steps by giving the *jirga* more formal recognition and moving it beyond only a rural entity.

2.6 *Faisla* (Decree/Settlement): The Decision Making Process in the Tribal System

The *faisla* system exists within the tribal system as a means of decision making. This process affects the way in which crimes are deemed important enough to be dealt with. This structure has strong ties with the commodity system; that is, material possessions can sway decision making. Women and girls

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ S. Ali discusses how Ordinance 11 coincides with FCR Section 30 in that women as the guilty parties in issues of adultery. This demonstrates how the Government of Pakistan has taken adverse steps in safeguarding the rights of women. They have preserved the colonial legislation and have made little changes to eradicate such stipulations.

¹⁴¹ Ibid., 50.

are included in the commodity system and are often used as blood money.¹⁴² For instance, women's rights are sometimes ensured before birth by various betrothals which force her into the category of "married woman" prior even to entering this world. Thus, a woman's mobility is controlled for her by the tribal structure and any "violations" of the decision making process would be prosecuted accordingly.

Furthermore, crime is related mostly to issues of land and women's honor. Hence the two issues are inextricably tied to one another. Issues of honor are so deeply rooted within the tribal system that even if the state tries an honor crime and the accused is imprisoned, the *jirga* will not feel satisfied until the crime has been settled within the tribe.¹⁴³ The tribes feel their judicial system holds precedence and anything that is tried in the state system does not provide adequate justice for issues of honor because honor is a personal matter for the tribes to deal with.

2.7 After Zia ul-Haq: Progress?

The constant battle throughout Zia's era could not be resolved and his reforms continued until his accidental death, on August 17, 1988 in a plane crash. In the subsequent election, Benazir Bhutto and her Pakistan People's Party (PPP) regained control after 11 years. The death of Zia ul-Haq marked an obvious transition point in the history of Pakistan as his Islamizing campaign was assumed to have completely changed its course. Women's rights, however remained a key issue that needed to be addressed. Benazir may have been motivated by the fact

¹⁴² Nafisa Shah, "*Faislo* The Informal Settlement System and Crimes Against Women in Sindh," in *Shaping Women's Lives*. 228.

¹⁴³ Ibid., 240.

that her father Zulfikar Ali Bhutto, was ousted and later killed by Zia in 1977, showing the antithetical role she held with respect to Zia. She was even imprisoned by him for no apparent reason and this too must have bolstered support for Benazir. Through this, Benazir received sympathy as a martyr from the masses thereby becoming a symbol of opposition to Zia's regime. Thus, she was seen as someone who challenged Zia's regime and triumphed. This surely had psychological implications, that is, if Benazir was able to prevail over Zia, then of course Pakistan would be about to embark upon a widespread transition away from Islamization.

Moreover, her gender implied that she would work towards gaining more rights for women and reversing the negative effects Zia instituted through constitutional amendments. Benazir promised to overturn the *Hudood* ordinances and immediately manifested her devotion to the cause of women's rights by releasing all female prisoners from prison, except those who were convicted murderers.¹⁴⁴ That this was no more than a gesture, however, was later shown in the fact that by 1993, according to some accounts, 75-80% of all women in jails were being held due to offences that violated the *Hudood* ordinances.¹⁴⁵ Therefore, we see a distinct split in relation to Benazir and women's rights. She failed in the end to deliver tangible results. As an empowered woman she was unable to materialize her goals, perhaps partially

¹⁴⁴ Charles Kennedy, "Islamic Legal Reform and the Status of Women in Pakistan." *Journal of Islamic Studies* 2,1 1991:45.

¹⁴⁵ Shahnaz Rouse, "The Outsider(s) Within: Sovereignty and Citizenship in Pakistan". in *Appropriating Gender: Women's Activism and Politicized Religion in South Asia*. edited by: Patricia Jeffrey and Amrita Basu. New York: Routledge, 1998, 61.

due to the unstable political terrain she was operating in. Her platform included a restructuring of laws that would benefit women, whereas they had been suffering from the reintroduction of the *Hudood* ordinances.¹⁴⁶

Benazir and the PPP released a number of reforms for the Pakistani people that would strengthen their position and grant them more rights. The PPP government vowed to eliminate all forms of inequity towards women.

Their plan was as follows:

- (1) sign the (United Nations) convention on the Elimination of all forms of discrimination against women;
- (2) actively support women's right to work, to free choice of employment, to just; and favorable conditions of work, to protection against unemployment, to equal pay for work of equal value, and payment of maternity leave;
- (3) repeal all discriminatory laws against women;
- (4) reform Personal Law and bring it in line with the demands of contemporary socioeconomic realities;
- (5) ensure that the law enforcing machinery would be made effective to protect the modesty of women;
- (6) take special measures to promote the literacy of women; and
- (7) Jahez (dowry/bridal trousseau) would be eradicated by enlarging social consciousness and enforcing the relevant laws and Dowry Act.¹⁴⁷

These stipulations did not explicitly mention tribal laws; they only vaguely hint at rural women through literacy and dowry practices. Thus a change in tribal laws was not ardently followed by Benazir either. The tribal laws served as the root to the compromise of women's honor yet mainstream Pakistani

¹⁴⁶ Anita Weiss, "Benazir Bhutto and the Future of Women in Pakistan." *Asian Survey* 30, 5 1990: 433.

¹⁴⁷ *Benazir Bhutto: The Way Out: Interviews, Impressions, Statements, and Messages*, Karachi: Mahmood Publications, 1988, 75.

politics have failed to effectively address the tribal laws. This is most definitely due to the continuing power of the landholding tribal and rural families.

Furthermore, these objectives were not realistic, at least in Benazir's first term in office. Rather, they simply served as a means of legitimating her transition after Zia. Such proclamations, claiming the legal framework would be restructured for the benefit of the disenfranchised sectors of society, were a means to obtaining more votes.¹⁴⁸ Benazir and her government ultimately failed to produce results due to ongoing corruption which tarnished her reputation in politics.

According to Hilda Saeed and Ayesha Khan, if Benazir had made such changes, the Jama'at and other religious parties would have caused more trouble for her.¹⁴⁹ Whatever the case may be, the laws were not changed and women were increasingly subjected to them. Benazir's second term (1993-1996) did not lead to much change either; therefore, her contributions to the cause of woman were marginal, despite her grandiose public statements emphasizing that they would be a central issue for her administration.

The *Hudood* ordinances, which could not be removed from the Pakistani constitution, were supplemented in 1991 with the Shariat Act. This basically strengthened the 'ulama's power. Shahla Zia describes the Act as follows, "While it does not directly address women's rights, except in terms of giving

¹⁴⁸ Weiss, "Benazir Bhutto and the Future of Women in Pakistan," 435.

¹⁴⁹ Hilda Saeed and Ayesha Khan, "Legalised Cruelty: Anti-Woman Laws in Pakistan," in *No Paradise Yet: The World's Women Face the New Century*, ed. Judith Mirsky and Marty Radlett London: The Panos Institute, 2000, 133.

protection to their constitutional rights, it poses a real threat to women by directing the courts to observe Shariah as the supreme law in the decision of cases.”¹⁵⁰ Taking into consideration the religious establishment’s view of women, the Shariat Act can do nothing to advance the cause of women’s rights in Pakistan.

There has been much irregularity and instability in the Pakistani legal system over the decades. As demonstrated by laws passed over the last fifty years or so, this system is clearly struggling with the dichotomy between the traditionalists and the modernists. This ongoing struggle complicates the law in general but particularly so in cases involving women’s rights. The patriarchal assumptions under which the legal system is operating do not allow much breathing space for women, and tribal women are especially targeted. These latter must live by the laws of the *jirga* and, coupled with the government’s legal policies, their struggle is an upward battle.

In the rural areas, tribal laws and Islamic laws have molded into one unified legal system. For example, under the FCR cases involving *zina* were dealt with using similar methods of *rajm*. The patriarchal elements of tribal laws and the *Hudood* ordinance are obvious. The sheer fact that retribution and blood money are paid to family members and murderers is not a new concept. They root from preexisting tribal practices that have received new relevance today. The fusion of tribal and Islamic elements allows for these elements to be

¹⁵⁰ Shahla Zia, “Some Strategies of the Women’s Movement: Strategies for Success,” in *Shaping Women’s Lives: Laws Practices & Strategies in Pakistan*, ed. Farida Shaheed, Sohail Akbar Warraich, Cassandra Balchin, and Aisha Gazdar Lahore: Shirkat Gah, 1998, 382.

justified on two levels. The fact that family honor has been given such a high place in Pakistani society adds to the argument. This honor stems from tribal honor and has infiltrated through society. Women are the main bearers of the family's honor and thus cultural remnants make their way into the political and legal processes based on this long tradition. Informality is given precedence as well. The informal nature of tribal law also works against women's rights. For example, if a girl is murdered or if any crime is committed, as long as the two parties involved forgive each other the national judicial system may not get involved. This strengthens and cements the patriarchal nature of tribal law in that women are left as the victims and no justice is meted out for the crimes committed. Moreover, such examples show the unwillingness of the central government to involve itself in crimes of this nature. They remain "personal" issues despite their fatal natures.

More recently, in 1998, the 15th Constitutional Amendment Bill was passed. This was dubbed the "Shariah Bill" and it aimed at granting the federal government absolute power by eliminating such concepts as federation, parliamentary democracy, and supremacy of the judiciary.¹⁵¹ However, with Pakistan's uncertain political future the implications of such laws cannot be fully analyzed. That is, the political landscape is never stable and this limits women's access to concrete changes made through the judicial framework.

Moreover, little has been done to curtail honor killings. The ideas perpetuated by the *Hudood* ordinances still hold much validity today in the rural

¹⁵¹ Ibid.

areas. It can also be said that it is quite difficult to regulate the legal dialogue in the rural areas due to the continuing strength of the tribal law system. Legal and procedural changes are extremely difficult to implement due to such factors. Even if legal change were to occur, many women in rural areas would be afraid to assert their rights due to the consequences that other family members would make them face. Therefore, women's voices remain silent due to fear of further violations against their human rights. Women are not able to use the agency that is available to them due to such intimidation tactics. The situation is not completely hopeless, however; perhaps through strict enforcement of laws there will be a reversal. That is, fear will be felt by the violators rather than by the victims.

The struggle between activist groups and religious groups seems unending. The two parties are so distinct that a middle ground seems virtually impossible to find. The present economic situation in Pakistan also complicates the situation, in that different sectors of the population are so widely divided. The nation's elites wield ultimate power whereas the much more numerous masses are left absolutely incapable and powerless. Though we see a small number of elites ruling in most countries, the case of South Asia must specifically be highlighted.

The power struggle among the elites is the main issue and thus plays out in the legal framework. Violations of women's rights are written off as part of the "cost of war." Corruption and political struggles sideline such issues or

utilize them to reinforce the prevailing ideology. Zia and his predecessors used this model to support their governments and when the political ropes tightened, it made it easier to remain in power. But this can be the case for only so long; indeed it will be interesting to see what the future holds for Pakistan and its legal system, especially in regard to women's rights.

Chapter III: The Effects of State Legislation on Women: Some Case Studies

3.1 The Survival of Tribal Power

Land as a token of honor has maintained its hold on members of the tribes; hence, tactics to obtain land may at times be merciless, especially when land can be obtained by questioning women's honor. Tribal leaders may sometimes accuse women of adultery or illicit sexual acts as a means towards obtaining land, usually by blackmailing her family with a false accusation. Furthermore, since honor is held in such high esteem, the family may have no other choice but to acquiesce to the tribal leaders' demands. The tribal leaders and landlords have long maintained their position of power and continue to utilize it to their advantage. Since issues of land and honor are often interconnected, the mobility of tribal leaders increases at the expense of people with a lower social status. The FCR facilitates this cycle and although it has been challenged many times, it still holds precedence in the FATA.¹⁵²

The FCR is quite unjust to women. Section 30 of the FCR is still widely applied in the FATA, despite its statement that women are solely responsible for adultery. It can be inferred from this statement that the woman is the violator in cases of adultery and the man is no more than an innocent witness of her illicit sexual acts. The punishment for this is usually death or severe beating. Women's honor thus remains in the hands of men. And even though the Balochistan High

¹⁵² Ibid., 47.

Court has found the FCR to be against Islam, and this during the Islamization drive, it still continues to hold strong sway.¹⁵³ This is because much judicial legislation is superficial and because the *jirgas* have held such an independent position for so long that subjection to state law does not coincide with the tribal agenda. Tribal leaders hold such absolute power in the rural areas; that there is little the central government can do to combat such actions. Further, the networks of personal connections that function within the government also allow for such crimes and violations of human rights to go ignored. Bribery through land and money likewise favors the safeguarding of tribal interests.

3.2 Victims of Customary Laws and *Hudood* Ordinances: Some Examples

Customary law still dictates the norms of the rural areas. Also, grave and sudden provocation constitutes a defense for people involved in cases of honor killings. A few cases are cited below:

(i) Mohammad Yunis vs. The State.

Mohammad Yunis killed his wife because he suspected her of adultery. His actions were entirely justified in a legal system based on the criteria of custom and culture. The court found that a man in his “culture” would never kill the mother of his children unless she provoked him to do so. The provocation in this case was her alleged adultery; thus, his actions were not punished. The court documents state, “...she must have done something to enrage him to such an extent.”¹⁵⁴

¹⁵³ Ibid.

¹⁵⁴ Quoted in Farida Shahid, “Engagements of Culture, Customs, and Law.” 66.

(ii) Safia Bibi's Case

In 1983, Safia's case promulgated the application of the *zina* ordinances. Safia Bibi was a young blind woman who worked as a domestic servant. She became pregnant as a result of multiple rapes. Her punishment as prescribed by her local *jirga* was 15 lashes for being in violation of the *zina* ordinance. The two men involved in the rapes, a father and son, faced no punishment because of the lack of evidence. This case is an example of how the law of evidence could be combined with the *zina* ordinance to shift the blame to the victim. Many arguments resulted from this case. It was disputed that women could be punished simply because of an illegitimate birth. This was proof for their "immoral" act, whereas the men went unpunished for a "hidden" act. By such close questioning of the ruling, the FSC reversed its judgment by distinguishing the difference between rape and adultery.¹⁵⁵

(iii) Lal Mā'ī's Case:

A less promising case did not have the same outcome. In September 1983, Lal Mā'ī, a 35 year old woman was the first to be publicly lashed for adultery. Approximately 8,000 people watched her receive the beating. Another woman facing similar charges was given 80 lashes.¹⁵⁶ In both cases the men went completely unpunished. Several cases similar in nature came to the public notice at this time, whereas little had been heard of them before.

¹⁵⁵ Anita Weiss, "Implications of the Islamization Program for Women." in *Islamic Reassertion in Pakistan: The Application of Islamic Laws in a Modern State*. edited by, Anita Weiss. Syracuse: Syracuse University Press, 1986, 101.

¹⁵⁶ Ibid.

The *Hudood* ordinances belittle women to an unimaginable degree by restricting and curtailing most of their rights. Even despite the larger context of political power, such isolated cases can serve as a reassertion of tribal customs and norms.

(iv) Mukhtār Mā'ī Case:

The issue of rape was transformed completely in the post-*Hudood* ordinance period. The problem still carries much relevance even today. The most recent case of Mukhtār Mā'ī (2004), who was gang raped by her village, has received international media attention. The five men accused of raping her were initially acquitted in 2002, but when she appealed they were finally tried over this past summer.¹⁵⁷ Therefore, we can see a distinct carry-over from Zia's times; indeed, far from having been rooted out, these cases are still fairly common. Although in the pre-Zia period these cases were not unusual, but the frequency by which they increased in the post Zia period is alarming. Rape in the pre-*Hudood* legal system was a crime for which only men could be punished; therefore, the dynamics have obviously changed.

The Mukhtār Mā'ī case proved to be controversial in another sense. In an interview with the Washington Post newspaper, Pakistan's President Pervez Musharraf stated that many women make up such cases in order to get media attention.¹⁵⁸ Though he later apologized for his comments, the sheer fact that he was able to make such remarks sheds considerable light on the ruling elite's

¹⁵⁷ For more on Mukhtār Mā'ī news visit:
http://news.bbc.co.uk/2/hi/south_asia/4404022.stm

¹⁵⁸ Mukhtār Mā'ī was monetarily compensated by the government as retribution for the negative comments made in regard to her case

view of women in Pakistan. Moreover, the government put pressure on her not to go abroad and speak about her ordeal. This obviously demonstrates the Pakistani government's awareness of the human rights violations that occur daily and their unwillingness to see it become more public. Most though are usually not so lucky as to receive the support that Mukhtār Mā'ī did.

It is also amazing to see that the public interest in such cases was so high. Though there were protests, the high number of spectators at the beatings is absolutely appalling. Such a perspective could only be damaging to women's equity. This is also true of the tribal encouragement of such punishments, which are legitimized through the state's application of such practices as law.

What is more, the local police or legal bodies do not consider such cases crimes due to their connection with honor. When honor is violated, they would argue, the necessary steps had to be taken. In some cases men will willingly announce that they have killed their wives or daughters or sisters because of their illicit deeds.¹⁵⁹ Thus, grave and sudden provocation proves to be a damaging provision in cases of female honor. Using this plea, men are granted immunity and are subject to no legal provisions. Unless the case receives outside attention, the tribe does not consider such actions criminal.

Cultural practices prevent women from seeking agency and bind them to a customary system which does not allow them to have any freedom of mobility within the tribe or rural area. They are confined to the *purdah* system and are bound to the rulings of the *jirga* to determine their fate if they are accused of such

¹⁵⁹ Ibid.

an honor-based crime. The main issue revolves around the lack of external pressure in such issues. These independently administered areas dictate their own proceedings, thus silencing women.

Patriarchal norms are upheld and customary practices are substantiated at all levels. The remnants of colonialism are even more poignantly felt today because such violations continue to be on the rise.

3.3 Reward and Punishment for Honor Killings

Crimes of honor are seen as necessary to the survival of the tribe and thus rewards are also given for eradicating offenders against the honor code. Thus economic transactions such as these also allow for more monetary gains in the tribe. The distribution of such funds usually goes partially to tribal leaders and the victims of the honor crime.¹⁶⁰ Some examples include a man in Ghotki, Sindh, who was paid 30,000 rupees for killing his niece who was accused of violating the honor code (being a *kari*).¹⁶¹ The local landlord was the one who rewarded the uncle, thus illustrating the intense economic and social power of the landlords. Their rulings are also held in such high esteem because they function as tribal leaders, who reward people for killing a *kari*. They decide what the rulings are and what the appropriate punishments and rewards are. Thus, being on good terms with a landlord can allow for upward mobility in the tribe as well as monetary and land advantages.

¹⁶⁰ For more see Nafisa Shah's *Faislo*. I use the term victims here as the people whose honor was supposedly tarnished. That is, the real victim's family. They receive compensation if they kill the woman and man accused of the illicit acts. However, men can be exonerated easier than women. Women face harsher penalties (death) because they are seen as the perpetrators and cause for the crime. The accused man can usually get away with just paying a fine to the *jirga*.

¹⁶¹ Shah, *Faislo*, 241. The term *karo kari* literally mean black person or someone who has committed a dark deed. This term is used in Sind in relation to honor killings.

Crimes of honor also go beyond the tribal context, for but the same codes follow tribe members to the more urban areas. Members of the tribe may shift to the city but they still hold strong ties to the landlords and *jirgas*, thus allowing them to dictate all cases even outside of the tribal context. The tribal leaders have close ties to police forces in the urban areas as well. Thus, when the accused is fined by a *jirga*, he is left in a compromised situation because of the collaborative relationship between landlords and urban officials.

The man accused of violating the honor code with a woman often faces steep fines. If he is not able to pay these fines he is left to the mercy or lack of mercy of the tribal leaders. The accused can sometimes get away easily if he has connections to the tribal leaders or through bribes. However, if he is a powerless member of the community he often has to give up anything he owns to the tribe or if he has nothing these instances can take a fatal turn. Women are conversely seen as expendable and are not given a chance even to pay to save their lives. What is more, the family of the woman may have to actually pay the *jirga* in addition to accepting the death sentence meted out to their female relative.

A case that represents such scenarios is that of Shah Khatoon (age 16) and Amina (age 13) from Shahdampur in 1996. These two girls were murdered by Shah Khatoon's husband. The two girls left the town with another man and were subsequently murdered. Mohammad Chandio was forced to pay 6 lakh rupees as compensation for taking the girls. His family was also asked to relocate to another part of the village. In the end the Chandio family also gave alms money to which the killers who supposedly acted with Chandio also contributed. Thus,

their function as murderers was seen as a charitable deed. Shah Khatoon's husband also needed to be compensated and thus he was rewarded financially. Therefore, the accusation turned out to be beneficial to the murderer because he was given large sums of money.¹⁶²

This system of retribution proves to be quite complex. There are varying stipulations that determines the varying amounts of money given. Reparations given to the murders do not come in the form of petty cash. These sums are quite substantial ranging from 150,000 rupees to 600,000 rupees. These amounts greatly exceed the income of most families therefore murdering in the name of honor can be quite lucrative. Also, the principal murderer receives more money while the different forms of murder are rewarded accordingly.¹⁶³

Consequently we see ideals of custom and culture overtaking any attempt at constitutional developments. The state keeps itself isolated from the tribal areas and thus these sorts of crimes are able to flourish then. Since the customary system has become so deeply rooted in the rural areas, change is hard to come by. That is not to say that all aspects of customary law must be rooted out. Only practices adverse to basic human rights need to be eradicated. Many cases of honor killings are transmitted through "hearsay" and formal documentation is significantly lacking. In many cases the tribes do not find the need to document such crimes of honor because they are necessary in upholding the honor system. Honor killings are seen as duties rather than crimes which make legal action null

¹⁶² Ibid., 242.

¹⁶³ Ibid., 243.

and void due to the cultural and traditional aspects associated with honor. Thus the conflict between culture and law deepens.

3.4 *Jirga* Arbitration Continues

In 1991, Veena Hayat, an urban resident of Karachi belonging to a noble family was raped in her home due to her husband's political alliances with the Pakistan People's Party. This case proves to be a template for the general trend of such abuses of women's honor. Intriguingly, her father (Sardar Shaukat Hayat) did not wish for the state judicial system to prosecute the case; instead, he consulted his ancestral *jirga*. That was the only way for the family's honor to be restored.. Thus, Veena's family and that of her rapist (Irfanullah Marvat) settled the case amongst their respective *jirgas*.¹⁶⁴ The interesting part of this revolves around the fact that Sardar Shaukat Hayat was a member of the landed aristocracy and held a position of high political power. Irfanullah Marvat also from the Marvat tribe, also served as director of the CIA (Crime Investigating Agency). They relied on this tribe's honor codes to settle the dispute, exemplifying how tribal politics transcended national politics.

Also this case was the first time that a crime of women's honor was brought to the forefront of Pakistani society. Never before had a case been publicized at such a level. This was the beginning of the outcry against violations of women's dignity. This catapulted the advocacy for Khurshid Begum, who was raped while in police custody. Her husband was a PPP supporter and thus

¹⁶⁴ Shahla Haeri, "The Politics of Dishonor: Rape and Power in Pakistan," in *Faith and Freedom: Women's Human Rights in the Muslim World*, ed. Mahnaz Afkhami, Syracuse: Syracuse University Press, 1995, 164.

differing political ties become the basis of this rape. When her family came to know of her rape, they advised her to commit suicide because she had committed adultery. Her family belonged to the Baloch tribe, which also follows a strict moral code in regard to women's honor. This left Khurshid Begum in a difficult situation. Luckily, women's rights activists came to her aid and helped her with her case.¹⁶⁵

These cases exemplify how men in positions of power become the custodians of women's honor based on political alliances. Women's rights are jeopardized based on feuding entities and old tribal enmities. They control all forms of women's agency through control of their bodies. They remain confined to the male authorities without free movement and are punished for the crimes of men. The concept of *badla* plays out in men taking revenge against other men through women. In the tribal system this is the most potent way to deliver retribution. By dishonoring the opposition's women, a tribe may feel that it can get its message across and more easily gain political mobility. This can also be acquired through land; however, land is often an afterthought because the dishonoring of women leaves the victimized party in a helpless situation often willing to go to any means in order to restore their family's honor.

In 2003, the Mahar and Jatoh tribes were about to settle a feud over agricultural land, a dispute that dated back to 1987. It was reported in the Dawn newspaper that at least 100 people's lives had been claimed due to the feud.¹⁶⁶

¹⁶⁵ Ibid., 165.

¹⁶⁶ "Jirga to settle Mahar-Jatoh feud on 17th" see <http://www.dawn.com/2003/01/08/nat38.htm>.

Many victims were probably women who were caught in the middle and victimized through this feud. Each tribe was fined 8.3 million rupees. This amount of money exemplifies the amount of capital the tribes possessed. Such fines are feasible for the tribes due to their tight hold on power and economic resources.

Furthermore, many women are subjected to honor killings based only on rumor or as a means to acquire property. It seems that the government functions as a natural ally to the feudal landowning class and thus a complete eradication of *jirga* arbitration over such cases seems bleak. A bill to punish perpetrators of honor killings for example was dismissed in 2003. The Government and primarily the Majlis-i 'Amal¹⁶⁷ criticized the bill as being a manifestation of President Pervez Musharraf's "moderation."¹⁶⁸ Also, there are many flaws within the current legal discourse against honor killings. The Laws of Evidence (grave and sudden provocation) remain. Therefore, this stipulation can always protect a supposedly "enraged" man. Many believe that such legislation is passed to keep activist groups quiet. It has been suggested that when legal action is taken to combat honor killings, it serves merely as a façade. The justice still remains in the hands of the tribal areas whether FATA, PATA, Sindh, or rural Punjab.

3.5 Increases in Crimes of Honor

¹⁶⁷ Moderate oppositional Islamist group in current Pakistani Politics.

¹⁶⁸ "Honour Killing Bill Rejection Criticized" see <http://www.dawn.com/2005/03/04/nat1.htm>.

In 2000, there were 129 reported honor killing cases. This number is probably much lower than the actual amount. Also, many of the cases are dropped because the families settle the disputes informally.¹⁶⁹ Reasons for this increase are hard to isolate but stem from the historical and political terrain of Pakistan. The *zina* ordinance has affected society by emphasizing the chastity of women in such a potent way that this has led to incorporating it into state legislation. The police have a lot to do with the growth of crime. They do not adequately provide law enforcement and can benefit through ignoring such crimes (i.e. bribes). It is proving to be increasingly difficult for rural women to achieve their rights, and activism is also resented. If a woman does speak up against wrongful actions, she is often punished in a worse way than had she remained silenced.¹⁷⁰

Also religious conservatism is on the rise in the rural areas, especially with the recent increased United States presence in the Muslim world. The need to reassert tribal and Islamic elements has become stronger. Thus, severe punishments are growing more commonplace and justified in the contexts of both tribe and religion. This mutual relationship is beneficial only to the patriarchal order which builds itself upon power acquired through land, political alliances, and the upholding of honor. The landlords continually acquire power through such practices, while women are denied not just power but basic rights as victims of the cycle of custom.

¹⁶⁹ Patel, *Woman Versus Man*, 174.

¹⁷⁰ Ibid., 176.

General Musharraf finally did pass the bill that made honor killings criminal acts in early 2005. Pakistani newspapers and magazines such as *Dawn* and *The Herald* respectively, have called such action ineffective because they state this legislation serves as a way to make Pakistan appear a moderate Muslim nation to the West. The power dynamic comes into play yet again. The West, primarily the United States, has formed an alliance with Pakistan due to its cooperation in the “War on Terror.” Thus concessions made on the domestic front may be empty and a means to regulate and maintain Musharraf’s power.

The number of honor killings is steadily increasing. Despite attempts by women’s rights organizations to intervene and despite regardless of recent bans on the practice, the situation remains uncertain. The British colonizers, the landlords, and the politicians of Pakistan have indeed kept women’s honor in their hands. Women have been subject to this historical process and are left with little hope. Increased media attention may slightly change the current situation. The spotlight on Pakistan in recent years has allowed for increased action and changes, although as previous noted, there is much criticism within the country in regard to various steps towards women’s rights. Hopefully, with time, advocacy and the programs developed by women’s activist groups such as Shirkat Gah can fully reach the rural areas and convince the tribes to abandon the honor code that violates the rights of its members.

In more recent news, sections of the *Hudood* ordinances are increasingly being questioned. Changes have come in the form of the Protection of Women Bill, which is currently being reviewed by the National Assembly of Pakistan.

Sections 11-16 are being amended and aim to define any sexual relations with a girl under the age of 16 as rape. Moreover, girls under this age would not be tried for adultery or *zina*. More specifically, Section 12 deals with *qazf* (wrongful accusations). If the bill is passed then a man can no longer accuse his ex-wife of *zina*.¹⁷¹

The Majlis-i-Amal strongly opposes the passing of the bill. The party claims that the bill will increase the rate of adultery within the country. They also declare that cases of *qazf* will increase because the four witnesses prescribed by Islamic law would no longer be required. Deliberations on the Bill will continue into September or October 2006 so that all objections or promotion of the Bill can be voiced. Furthermore, it has been noted that Assembly members from Punjab and Sindh are not actively participating in the dialogue because of various disputes with their respective Chief Ministers.¹⁷² The power dynamic continues to expend its force on internal conflict leaving women as casualties of the political process.

¹⁷¹ "Hudood Amendment Bill in NA Today," August 18, 2001, http://www.dailytimes.com.pk/default.asp?page=2006\08\18\story_18-8-2006_pg1_1.

¹⁷² "Govt to Table Hudood Amendment Bill Today," August 21, 2006, http://www.dailytimes.com.pk/default.asp?page=2006\08\21\story_21-8-2006_pg1_1.

Conclusion

The legacy of honor killings survives to this day. The access to women in the rural areas is heavily monitored by their male relatives. Outside sources of education and advocacy are not welcomed with open arms because they are seen as compromising the honor code. Honor proves to be a strong concept that weaves together the entire rural community. The combination of land and honor as is relevant today as it was during the British period. These concepts grow out of the unstable political terrain of Pakistan which has not been able fully to establish its sovereignty; thus, the hinterland is left to its own devices and way of life.

The lifestyle present in the rural areas, as it is based on honor, promotes an unfair equilibrium at the expense of women and landless peasants. These two parties have no access to power or agency and this leaves them in a subservient position which completely paralyzes them. The fact that the government turns a blind eye to such injustice also strengthens the informal systems of justice. It must be noted that Pakistan suffers in its infrastructure from factional groups and various political instabilities. However, throughout the various problems with the state, the rural areas have retained and even strengthened their power. It has to be admitted that the rural areas possess the most stability in that their honor code ties the community together, despite various violations of human rights and unbalanced power. Dissent in the rural areas and within tribes is uncommon because of the long legacy that gives tribal leaders and tribal customs such high

esteem and unparalleled respect. This translates also into the government's dealings with these areas as well. Though the colonial legacy to tribal autonomy has been outlined, the potency of this policy is shown by the inferior position of women within the tribal system. This also filters through into mainstream Pakistani society, which is why such crimes also occur in the urban areas.

The state built itself upon alliances with the economically productive sectors of society in order to gain support and consolidate power. Strength in the form of land and resources could only be acquired through alliances with the tribes and landlords. The landlords had the utmost position of power in that they had the peasants and political leaders at their disposal. These landlords dictated religion, honor, culture, politics, and economics. This vast power highlights their abuse of it in terms of honor killings and other violations of human rights.

The power of the landlords was left almost entirely unchecked. Rural issues remained just that: rural issues; therefore, what the state viewed as petty crimes were allowed to be dealt with locally sometimes with fatal results. The legitimization of such practices through the FCR also elucidates this relationship. When the state needed rural support they were willing to participate in any way necessary; however, when issues of crimes of honor arose, there would be no intervention or mediation. The rural areas also use the state apparatus to give backing to their practices as well. With the advent of Islamization in the late 1970s, for example, tribal practices were given religious sanction and on the surface did not contradict the religious order. This conflicting and ambiguous relationship between all parties allowed for inconsistencies in laws and also the

codification and preservation of harsh laws. Using Islamic precepts to justify tribal customs was another tool used by the state and tribal leaders to exercise power and control and gain legitimacy. Thus the all-encompassing mechanism that was justified in all arenas could not be easily threatened. The realization of tribal power continues and various political parties still support repressive tribal leaders and landlords.

What is more, government functionaries routinely participate in and condone such crimes. Thus, if rural and government participation is on this level, how and when will progress come about? This is the most perplexing dilemma in regard to rural rights and autonomy, if all parties involved consider women as bearers of honor and a form of property. The post-colonial state of Pakistan has done little to eradicate this long-lasting colonial legacy. If women remain the symbols of so-called Muslim identity based on un-Islamic precepts, an obvious conundrum is at work. This sort of allegiance has only tended to benefit the ruling parties, whether the colonizers, the state, or the landlords.

The colonial context built upon and allowed for the flourishing of age-old rivalries and created a new discourse that granted them legality. These were carried over into Pakistan and in fact the situation at present is so deeply ingrained within the culture that its reversal seems a bleak prospect. Not to say that it is impossible, but advocacy would have to be raised to such a level as to create new conditions would forge human and women's rights. *Jirgas* and *panchāyats* operate independently which contradicts the whole notion of statehood, given that these parallel systems that do not consider state law as their own. Thereby, this

creates factions and a sort of “state within a state” scenario. Harsh tribal laws function at such a high level and serve as harmful and locking instruments of arbitration keeping the powerless in a servile position. Illegal rulings are appearing in the tribal councils without any government interference. Ignoring the problem only increases the number of women whose honor is violated in such a brutal fashion.

Reflections and Hope for the Future

Murder for the sake of male honor remains a major problem in Pakistani society. It stems from issues that go beyond “barbaric” tribal practices whose foundations lie in political power, land, and the post-colonial arena. Though these practices are in extreme infringement of human rights, one must not take the problem outside of its historical context. Activists must realize that this problem cannot simply be made to disappear through legislation only. The legacy of tribal autonomy dates back to the creation of *jirgas* and *panchāyats* by the British and thus cannot be seen as a separate issue. The deliberate divisions within society made by the British have remained until today and thus any attempt to bridge such entities would involve negating legacy colonial legislation with any connection to the FCR and invalidate laws that have been developed based on such regulations.

Not only do the tribes define women’s honor but they also retool Islam to suit their own needs. Thus, the tribes maintain autonomy in all realms. Therefore, to isolate women’s honor as one issue may not be effective because the tribes control all aspects of daily life and the honor code. Stating that honor

killing is justified in Islam simply bolsters the strength of the tribes. This is because they receive legitimization on all levels---allowing for further clout and power. All subsequent governments after the departure of the British have accommodated the tribes and made their satisfaction part of their agenda. Many women activists call for an end to the *jirga* system. However, this seems unrealistic because of the deep and strong relationships between the tribal areas and the central government. Legislation by the central government rarely affects the tribal areas adversely.

In regard to government legislation, many call for the complete eradication of the *Hudood* ordinance in order to help women's rights. However, while repealing the ordinance would formally erase severe punishments for crimes, the legacy would still remain. Reversing such practices must be dealt with at the grass roots level in order to achieve a full realization of women's and human rights. Curtailing the ultimate and absolute powers of tribal councils and landlords may alleviate the situation. However, such action would cause great dissent in an already unstable political climate. The issue remains complex and the adverse affects of colonialism are felt at such a personal level. Honor also lay in the hands of the colonizers, even if indirectly. Thus their control permeated to all levels and since the rural areas were dealt with differently than the central areas, the results evolved based on this.

The Legacy of Colonialism

The colonizers wished to alter the structure of the conquered people's society to suit their needs and as a result increase and consolidate the power of the

Empire. By reworking the norms of the people to fit economic requirements, a volatile atmosphere was the result. By exploiting the peasants they thus furthered the rift between classes in South Asia. Women became the most oppressed and demoralized entity in society.

Much post-colonial feminist scholarship deals with the eroticism used by the West to depict Muslim women. This ignores the fact that the images are also shrouded in visions of violence, seclusion, and immobility. This dichotomy coincides with nationalist discourse because the nationalists functioned similarly to the Orientalists. The woman was idealized by both entities, creating symbols of honor that were to endure after independence.¹⁷³ The colonial discourse in the urban areas did associate these two parallel images of Muslim women; however, in the rural areas the idea of seclusion dominated. The tribes maintained their honor code and thus became the transmitters and voice for females in the rural areas. The silenced woman was not subjected to the "harshness" of Islam but to the severity of the tribal conduct codes.

It is obvious that the practice of tribal violence against women does not stem from Islamic precepts. The honor code became adapted into a form of local Islam that differed greatly from doctrinal Islam. Thus, the British achieved their mission to create rifts within society. This also threatened the power of the religious establishment by allowing for the constitutional acceptance of customary practices and law. Thus when the Islamists began gaining power, they too had to

¹⁷³ For a more detailed discussion see Chatterjee, *The Nation and its Fragments* and Julie Stephens, "Feminist Fictions: A Critique of the Category 'Non-Western Women,'" in *Feminist Writings on Indian Women*, in *Subaltern Studies* 6, ed. Ranjit Guha, Delhi: Oxford University Press, 1989.

take into consideration support from the local tribesmen. The underlying message remains one of power and access to it could only be gained by such relations.

The present situation has evolved to one rooting from these factors. The post- colonial context of Pakistan allowed for instability and issues of violence towards women became sidelined or dealt with using the informal sector. The distance created by the British between the tribal law system and the centralized law system works in a complex manner. Though the two function separately, intermixing between them does exist. Thus, to say that the two systems are detached from one another is not entirely accurate. The need to attain power has forced the two to overlap and has allowed for the permeation of tribal concepts into the national framework.

A unified legal system would help prevent such intense power feuds and change the power dynamic. The tribal leaders would not have the same mobility in cases that involve human rights. They would have to report to the federal government without all the loopholes currently present.

Concepts of honor and shame should remain personal institutions rather than be put in the hands of men who use such concepts to their own advantage. Due to such moral codes, women are left helpless and the suicide of women accused of honor crimes is on the rise. They are placed in a position of such desperation that they would rather kill themselves than be placed in police custody where they could very likely face further sexual abuse.

Honor of the women must be preserved in a way in which she is not made victim to the historical or power dynamic context of her surroundings. She must

not become the injured party when men can move freely within society living without fear of such fatal consequences. There should no longer be the fear of the entity of power. The peasants should be able to exercise their basic rights because they are the real source of income for the landlords and tribal leaders. The patriarchal order must be reworked so that women are accommodated and placed in positions of real power. They must not be underreported because this also denies their rights and access to agency. Allegations should no longer dishonor families and rumors should not grow so rampant as to lead to such brutal murders of innocent girls. The tribal system must alter its framework in order to create a hospitable climate for women and allow for their unrestricted access to rights and mobility.¹⁷⁴

This study elucidates the factors behind the present situation and traces them to the British presence. The victims of this have remained silenced. Countless women have suffered due to this legacy. With all the cases that are reported thousands remain hidden and tribal arbitration receives further autonomy.

Further, the tribal code is so harsh that many family members kill perpetrators of honor “crimes” without consulting the *jirga*. Supposed illicit acts are so shameful that many fear even facing the *jirga*. Therefore, women’s honor causes such fear that such drastic steps are often taken and women become erased members of their families. Honor is so ingrained into society that women are left as shamed members of the tribe who possess no honor what so ever. An

atmosphere of suspicion also revolves around women's activity. Their access to agency or a voice is controlled. Many women's lives are also further compromised by the practice of Qur'an marriages¹⁷⁵ which is said to be practiced because of the social custom involved with dowry. Therefore, the family is not responsible for payment of dowry which also serves as an evil in Pakistani society. Such discriminatory customs must be eradicated because they have no basis in Islam and have stemmed out of tribal customs which intimidate families leaving them with no other option

¹⁷⁵ Though this practice is rare it should be mentioned. It occurs in the tribal areas when a family may not have enough money to pay dowry. Therefore the girl is "married off" to the Qur'an. This practice does not stem from Islam. It is instead a response to cultural pressures.

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