



A Historical Study of Religious and Constitutional Law's Impact on Women in Pakistan (1947–Mid-1980s)

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Abstract:

This study examines how the fusion of religious law and constitutional law in Pakistan from its inception in 1947 through the mid-1980s has shaped—and in many ways diminished—the daily lives and rights of Pakistani women. Focusing on key political regimes that significantly altered constitutional provisions, the research traces how the formal incorporation of Shari'a Law into the Constitution corresponded with a gradual erosion of women's legal protections and social freedoms. While Shari'a Law is grounded in Islamic faith, this study contends that certain constitutional amendments and statutory interpretations diverge from the Qur'an, Hadith (recorded oral traditions), and Sunnah (the practices of Prophet Muhammad, peace be upon him), who urged compassion and fairness toward women.

By historically mapping constitutional changes against lived realities, and tracing select Shari'a-based laws to their origins, the study interrogates whether these laws safeguard or undermine women's welfare. The findings suggest that the persistent gender inequities in Pakistan are less a reflection of religious doctrine and more a manifestation of cultural patriarchy, which has appropriated religion to legitimise discrimination. This distortion not only contradicts the egalitarian spirit of Islam but also conflicts with the constitutional promise that "all citizens are equal before the law." Ultimately, the study raises a critical question: how can Pakistan reconcile gendered interpretations of Shari'a Law with the constitutional mandate for equality, ensuring that legal frameworks protect rather than endanger women's lives?

Keywords: *History, Religious law, Constitutional law, Women's rights, Pakistan.*

Introduction:**1. Pakistan's Turbulent History: A Brief Synopsis**

“On the tree of peace we hope they will be a leaf” — Syed Ali Abbas Zaidi

Religion is arguably one of the most powerful forces shaping societies throughout history. The rigid exclusiveness with which some interpret faith can unleash violence and discrimination—especially against women. This study emerges from the conviction that the treatment of women in Pakistan, and the relationship between Islamic religious texts and the Pakistani Constitution, must be critically examined.

Since its incorporation into the Constitution, Shari'a Law has often been used to justify poor treatment of women—representing a distortion of Islam's true teachings. While the Qur'an, Hadith (recorded oral traditions), and Sunnah (practices of Prophet Muhammad) advocate kindness toward women, male chauvinism rooted in culture rather than religion has driven gender discrimination. The constitutional claim of equality (Preamble, Clause 8) remains at odds with certain discriminatory laws.

1.1. Colonial Legacies and Legal Dualism

Many Muslim countries, including Pakistan, inherited hybrid legal systems from colonial rule—combining religious family law with secular commercial and criminal law. This duality persists, with personal status codes often rooted in Shari'a, while other areas draw from common law. The role and status of women are tied to a nation's political, economic, and social evolution. Since 1947, Islam has been a recurring political theme in Pakistan, often mobilized to consolidate state power. In the fifty years before independence, progressive Muslims advocated women's rights within an Islamic framework. Post-independence, reactionary forces monopolized religious interpretation to restrict women's rights.

1.2. Independence and Early Politics

On 14 August 1947, Muhammad Ali Jinnah became Pakistan's first Governor-General. Women had played an active role in the Pakistan Movement, breaking purdah and participating in rallies and elections (1945–46). Jinnah stated in 1944: “No nation can rise to the height of its glory unless your women are side by side with you... There is no sanction anywhere for the deplorable condition in which our women have to live.” However, conservative leaders like Maulana Maududi, founder of Jama'at-e-Islami (JI), opposed women's public participation. Thus, from the outset, women's political agency was paradoxically both celebrated and contested.

1.3. Constitutional Experiments and Political Shifts

From 1947 to 1977, Pakistan saw four constitutions (1946, 1956, 1962, 1973) and multiple military interventions. The 1956 Constitution reserved assembly seats for women, but the 1962 Constitution under General Ayub Khan removed them. Ayub introduced the Muslim Family Laws Ordinance (1961), granting limited protections in marriage and divorce, but implementation remained weak due to social pressures, lack of awareness, and faulty legal

machinery. Ayub opposed Fatima Jinnah's presidential candidacy (1965), arguing a woman could not be head of state in Islam—ironically soliciting religious edicts from ulama he had previously sidelined. Conversely, conservative parties temporarily supported her candidacy for political gain, underscoring the opportunistic use of religion in politics.

1.4. Bhutto Era Reforms

In 1971, after the separation of East Pakistan (Bangladesh), Zulfikar Ali Bhutto came to power, introducing the 1973 Constitution. This document granted equal rights to men and women, prohibited discrimination based on sex, and reserved ten assembly seats for women. Bhutto opened civil services and foreign service to women, established the Commission on Women's Rights (1975), and encouraged women's participation in public life. However, reforms mainly benefited urban, educated women and failed to address deeper social and economic inequalities. Religious parties resisted these changes, contributing to political polarization. In 1977, General Zia ul Haq overthrew Bhutto.

1.5. Zia's Islamization and the Backlash Against Women

Initially promising elections within 90 days, Zia postponed them, instead embarking on a program of Islamization. Aligning with conservative religious parties, he sought legitimacy by targeting women's rights. He pledged to return women to the *char divari* (four walls of the home) and introduced laws that rolled back decades of progress.

Key among these were:

- Hudood Ordinances (1979) – Penalizing zina (adultery/fornication) and zina-bil-jabr (rape) with severe punishments, requiring four male Muslim witnesses for conviction in hadd cases. This excluded women's testimony, making rape victims vulnerable to prosecution for adultery.
- Law of Evidence (Qanun-e-Shahadat) – In certain cases, a woman's testimony was valued at half that of a man.
- Proposed Qisas and Diyat Laws – Compensation for a female victim's death was set at half that of a male.

Zia's focus on punishment over justice disproportionately affected women, legitimizing their subordinate status under the guise of religious authenticity. These measures reinforced patriarchal norms while consolidating political power.

From independence to the mid-1980s, Pakistan's political history reveals a pattern: women's rights have been advanced or curtailed according to political expediency. Leaders across the spectrum—whether modernist like Ayub, populist like Bhutto, or conservative like Zia—have invoked Islam selectively, often subordinating women's constitutional rights to cultural patriarchy. The contradictions between constitutional guarantees of equality and discriminatory Shari'a-based laws remain unresolved, raising the enduring question: How can Pakistan reconcile religious interpretations with the constitutional promise of parity for all citizens?

2. Understanding the Tribal Area of Pakistan

Before addressing the conditions of women in Pakistan's "tribal cultures," it is essential to understand the local environment, social structures, and political history of these communities. This helps distinguish the Western media portrayal from the realities of life in the Federally Administered Tribal Areas (FATA), comprising seven tribal agencies in the North-West Frontier Province (NWFP, now Khyber Pakhtunkhwa). Geographically, FATA runs 1,200 kilometers along the border with Afghanistan, forming a wedge between Afghan territory and the settled areas of NWFP. The 1893 Durand Line, dividing Pashtun tribes between British India and Afghanistan, has long been resented by the Pashtuns and remains a point of tension between Pakistan and Afghanistan. Except for invasions by Genghis Khan and Tamerlane, the Pashtuns have largely resisted conquest over their 3,000-year history. There are about 60 major tribes and over 400 sub-clans, the largest including Afridi, Durrani, Khattak, Mohmand, Orakzai, Shinwari, Yusufzai, and Waziri.

Pashtunwali, the pre-Islamic tribal code, emphasizes hospitality, generosity, honour, and revenge for wrongs. These values outweigh the "idea of Pakistan" in shaping tribal identity, even though the NWFP and tribal agencies opted to join Pakistan in 1947. FATA remains semi-autonomous, functioning as a legacy of the British Raj when it acted as a buffer between empires. Governance is handled through jirgas (councils of elders), with Pakistani courts and law enforcement having little jurisdiction. Until 1997, a few elected tribal leaders represented FATA in the National Assembly, typically voting with the ruling party. The region's 3.5 million residents live in a 27,220 sq km area with few basic amenities but abundant weaponry from the Afghan war of the 1980s. Only 7% of land is cultivable; much of the economy depends on smuggling, car theft, drug trafficking, and illegal arms sales. Political agents represent the federal government, providing stipends to local maliks. Electricity is free, taxes are not collected, and religious conservatism, influenced by foreign militants who settled through marriage, shapes local life.

The Khyber Agency derives its name from the Khyber Pass, linking Pakistan and Afghanistan. Home to about 500,000 people, its key tribes are the Afridis—respected fighters aligned with Barelvi Sunnis and opposed to pro-Taliban Deobandi groups—and the Shinwaris, engaged mainly in trade and based partly in Afghanistan's Nangarhar province. While moderate elements exist, the agency has also hosted illegal pro-Taliban radio stations.

The Kurram Agency has about 450,000 residents, mostly from the Turi and Bangash tribes. Fertile and scenic, it is predominantly Shiite, earning it a pro-Northern Alliance, anti-Taliban reputation. The Turis, of Turkic origin, are known horsemen and have clashed with nearby Deobandi groups. Some extremist elements remain, though with limited influence.

The Bajaur Agency, the smallest in size but with around 600,000 people, borders Afghanistan's Kunar province, a Taliban stronghold. Its main tribes are the Tarkani and Utman Khel. The religious political alliance Muttahida Majlis-e-Amal (MMA) has significant influence here, with elected representation in both the National Assembly and Senate. Media reports have linked Bajaur to Al-Qaeda figures, including an unconfirmed 2006 CIA airstrike targeting Ayman al-Zawahiri.

The Mohmand Agency, with around 350,000 residents, is home to the Mohmand tribe—renowned guerilla fighters who often wage wars under the leadership of clerics. Some still practice primitive customs, such as fire-walking for determining guilt or innocence. Politically, the Mohmands resisted joint Pakistan–U.S. inspections in 2003, backed by the MMA-led NWFP government, though they avoided direct military confrontation.

The Orakzai Agency is inhabited mainly by the Orakzai and Daulatzai tribes, numbering about 240,000. It is unique for its mixed Shiite–Sunni population, though frequent sectarian clashes undermine stability. It is the only agency without a border with Afghanistan. Despite higher literacy rates and producing several high-ranking officials, Orakzai was the first to ban NGOs, labelling them anti-Islamic. The local Taliban also banned television. Confusion over governance, pro-Taliban leanings, and contradictory rulings dominate public life.

The North Waziristan Agency, the second largest by area, has about 375,000 people, primarily Waziris and Dawars. Historically defiant toward outside control, Waziris have supported Pashtunistan and maintained ties with Afghanistan. Many have served in Pakistan’s armed forces since the 1970s. The agency has been central to Pakistan–Taliban dynamics, exemplified by the North Waziristan Peace Pact of September 2006. Under the pact, the Pakistani Army dismantled recent checkpoints, released detained tribesmen, and returned confiscated weapons. In return, tribal representatives and local Mujahideen agreed to halt attacks on military and law enforcement, end cross-border militant infiltration into Afghanistan, and expel foreign militants unless guaranteed by locals. The government pledged to lift sanctions, remove new checkpoints, return seized property, and compensate for civilian casualties and property damage. Both sides agreed to form a 10-member joint committee to maintain communication and ensure compliance.

This tribal mosaic reflects a complex interplay of autonomy, traditional codes, sectarian divides, militancy, and selective engagement with the Pakistani state. Understanding these dynamics is crucial for assessing the condition of women in these areas, where both Pashtunwali traditions and religious conservatism shape social norms, often overshadowing constitutional rights and leaving women particularly vulnerable.

3. The Creation of Islam and the Development of Islamic Jurisprudence

Since the death of the Prophet Muhammad in 632 CE, the Qur’an, Sunnah, Hadith, and Fiqh have remained central to the structure of Muslim civilization. At the heart of the Islamic ethos is Shari’a law—a comprehensive code encompassing all spheres of life: international, constitutional, administrative, criminal, civil, family, personal, and religious. For Muslims, Shari’a is both a legal framework and a moral compass, regulating society while also addressing the private sphere, incorporating divine guidance alongside personal conscience. Ritual obligations such as prayer, almsgiving, fasting, and pilgrimage are integral to its framework.

Unlike secular legal systems that emerge from social needs and evolve over time, Shari’a is considered the expression of divine will, fixed with the cessation of revelation after the Prophet’s death. Its interpretation was systematized in medieval legal manuals, creating a static

framework that poses challenges for adaptation to modern contexts—especially in addressing women’s rights.

3.1. Qur’anic Foundations and the Prophet’s Role

When the first Muslim community emerged in Medina, Qur’anic revelations laid out standards of conduct, though fewer than 80 of the 114 surahs dealt directly with legal matters. During his lifetime, the Prophet resolved legal issues through interpretation and contextual application of these verses. For example, as narrated by Rafi ibn Khadeej, the Prophet once advised against artificially pollinating date palms, later clarifying, “If I tell you something pertaining to religion, accept it; but if from my own opinion, remember I am a human being.” Such precedents became part of the Sunnah and Hadith, transmitted by his Companions (ṣaḥābah). After the Prophet’s death, legal development accelerated under the Umayyad and Abbasid dynasties (8th–9th centuries), expanding the scope of Islamic jurisprudence.

3.2. Defining Shari’a and Fiqh

Shari’a literally means “a straight path” or “a waterhole where animals gather,” referring to divine guidance for all aspects of life. Fiqh, meaning “true understanding,” refers to the science of deducing specific laws from Shari’a’s foundational texts. The Prophet said, “To whomever Allah wishes good, He gives true understanding of the religion” (Bukhari, Vol. 1, Hadith 71). Shari’a is broader than fiqh, encompassing not just laws but tenets of faith. It is fixed and unchangeable, laying down general principles. Fiqh is specific, derived by jurists (mujtahidun) through ijtihad—the process of legal reasoning—and can change with time and context.

Key distinctions:

1. Shari’a covers both faith and law; fiqh focuses on legal rulings.
2. Shari’a derives directly from the Qur’an and Sunnah; fiqh addresses situations not explicitly covered in these sources.
3. Shari’a is immutable; fiqh is adaptable.
4. Shari’a offers principles; fiqh applies them to concrete cases.

3.3. Sources of Islamic Law

The primary source is the Qur’an, providing ethical and legal foundations for individuals, society, and governance. The second is the Hadith, authenticated through the isnād (chain of transmission), preserving the Prophet’s sayings, actions, and approvals. The Hadith supplements the Qur’an and provides practical application of its principles.

Following the Prophet’s death, scholars faced the challenge of verifying authentic traditions, leading to the emergence of four major Sunni schools (madhāhib):

- Hanafi – Emphasized personal judgment (ra’y) and reasoning.
- Maliki – Relied on the practices of Medina’s early community.
- Hanbali – Focused strictly on Qur’an and Hadith.
- Shafi’i – Balanced textual evidence with legal reasoning, integrating civil and canon law.

The third source is *ijmāʿ* (consensus), literally “collecting or assembling,” referring to the unanimous agreement of the Prophet’s Companions or later scholars on a legal matter. This could be expressed through formal declarations, established practice, or tacit assent.

When neither the Qur’an, Hadith, nor *ijmāʿ* addressed an issue, jurists turned to *qiyās* (analogical reasoning)—applying established rulings to new cases based on shared underlying causes. *Qiyās* is used in Shari’a-based states to extend existing principles to unprecedented problems.

3.4. Ethical and Social Reforms in Early Islam

Islam retained beneficial pre-Islamic customs while abolishing harmful practices. Interest on loans was banned to protect the poor; fornication was prohibited to safeguard family structure; alcohol was forbidden due to its societal harm. Trade was restructured to require mutual consent and prohibit fraud. Marriage was regulated, certain forms abolished, and divorce restricted to fair limits.

The Qur’an’s legislative framework addressed four key domains:

1. Religion – Ensuring laws protect and propagate Islam, including jihad (armed or personal struggle).
2. Family Law – Regulating marriage, divorce, and inheritance.
3. Trade Law – Governing contracts, business ethics, and economic fairness.
4. Criminal Law – Defining offenses and punishments.

3.5. Evolution of Fiqh and Schools of Thought

As Islamic civilization expanded, *madhāhib* emerged, reflecting diverse interpretations shaped by political, social, and economic contexts. Three trends characterized early jurisprudence:

- *Ijtihad* – Rigorous reasoning by scholars to deduce laws.
- Hadith Scholarship – Growth in narration, alongside fabrication, prompting critical authentication methods.
- Codification of Fiqh – Early compilations aimed to preserve the jurisprudential heritage of the Companions.

During the transition from caliphate to monarchy, rulings increasingly diverged from earlier precedents, prompting scholars trained by the Companions to safeguard authentic legal principles. Although none of the earliest compilations survive in original form, their influence is preserved through citations in later works.

3.6. The Role of the Ulama

The *ulama* (scholars) became custodians of legal interpretation, issuing *fatwas* (legal opinions) applying Shari’a to specific cases. Fiqh thus represents juristic opinions derived from divine revelation, while Shari’a itself is the immutable divine command. In Islam, there is no

centralized ecclesiastical authority akin to the Christian Church, nor an official creed enforced by priesthood. This decentralization allowed for diversity in legal opinion but also led to varied applications of Shari'a across regions.

3.7. Contemporary Relevance

The enduring challenge is how to adapt traditional Shari'a to the realities of modern Muslim societies, particularly in ways that address gender equity. The historical process of deriving fiqh—from Qur'an, Sunnah, *ijmā'*, and *qiyās*—shows that flexibility exists within the framework. However, political and cultural factors have often restricted reinterpretation, leaving women vulnerable to patriarchal distortions of Islamic principles.

Understanding the origins, structure, and development of Islamic jurisprudence is essential for evaluating how Shari'a-based laws have been implemented in contexts like Pakistan, and how these interpretations have shaped the lived experiences of women—issues explored further in subsequent chapters.

4. The Status of Women in Pakistan

The status of women in Pakistan varies greatly by class, region, and rural–urban divides. Uneven socioeconomic development, combined with the influence of tribal, feudal, and capitalist systems, has produced significant disparities. In some areas, Shari'a law is applied more stringently, shaping social development and women's rights differently across the country. While Pakistani women in urban centers may enjoy more freedoms than women in some other Islamic countries, systemic subordination persists. In tribal regions, women's status is so diminished that they are often not considered full citizens.

For generations, women's roles as citizens, family members, and homemakers have been constrained by outdated legal and cultural frameworks, limiting choices in lifestyle, vocation, and marriage. Founded on the two-nation theory, Pakistan emphasizes Islamic values over secular law. While Islam provides a balanced code of life for women, fundamentalist reinterpretations have turned religious teachings into tools for male advantage, undermining women's rights. Rural women in Khyber Pakhtunkhwa face particular hardship, navigating both survival and strict tribal expectations.

5.1. Health, Demographics, and Inequality

Women's health in Pakistan is directly tied to their low social status. The country's demographic profile has historically been marked by high fertility, low life expectancy, young population structure, and high maternal and child mortality. In the 1980s, fertility averaged 6.5 children per woman; by 1995 it declined to 3.9, yet population growth remained high at 3% annually. Poor maternal health leads to 25% of children being born underweight; 10% die before age one.

Malnutrition disproportionately affects women and girls, who are often fed less than male family members and face barriers to healthcare. Girls between one and four years of age die at higher rates than boys. Common preventable diseases—tuberculosis, diarrhea, pneumonia,

tetanus—are major killers, with many women also suffering recurrent reproductive and bladder infections due to stigma against seeking medical care.

5.2. Cultural and Religious Influences

Religious interpretation in Pakistan is often dominated by mullahs educated in madrasas. Many enforce patriarchal concepts such as *chaadar* and *char divari* (veil and four walls), framing women's confinement as divine decree. These views are reinforced through Friday sermons, shaping public perception and limiting acceptance of women's independence.

In tribal areas, women's roles are confined to the home. Viewed as economic burdens, daughters are often denied education and earning opportunities, while sons are valued for their potential contribution to family income. In poorer rural households, women may work in fields or as domestic help in urban areas.

5.3. Islamic Law and Gender Rights

Across 14 centuries of Islamic history, women's legal status has varied. While the Qur'an grants equality before God and bases human worth on piety, traditional Islamic law often accommodates gender inequality. Historically, women's testimony in court counted as half that of a man's; men could marry up to four wives and marry outside the faith, while Muslim women could not. Practices such as obligatory veiling and gender segregation in mosques have been justified as religious but are deeply rooted in patriarchal control.

The Qur'an, however, contains numerous verses affirming women's rights:

- “Whosoever does good deeds, whether male or female... shall not be dealt with unjustly” (THQ 4:124).
- “They (women) have rights similar to those against them” (THQ 2:228).
- “To women a share of what parents and relatives leave” (THQ 4:7).

Pre-Islamic customs such as female infanticide are condemned: “When the birth of a daughter is announced... shall he keep it with disgrace or bury it in the dust? Evil is what they judge” (THQ 16:58–59).

Despite this, the liberating message was diluted over centuries as ulama incorporated local customary law (*adat*) and questionable hadith into Shari'a, entrenching male dominance.

5.4. Contested Qur'anic Interpretations

One controversial verse reads:

“The men are placed in charge of the women... you may beat them as a last resort” (THQ 4:34). Some scholars interpret this as male authority over women; others argue it imposes a duty of material support, not superiority, and that “beating” refers to a symbolic, non-violent gesture. Interpretations vary widely, with tribal areas often adopting the most restrictive readings.

Polygamy is another debated topic. The Qur'an permits up to four wives "if you can treat them with equity" (THQ 4:3), but warns to marry only one if equity is doubtful. Some scholars see this as a limitation rather than an endorsement. Marriage requires a woman's consent, explicit or implied. Bride wealth (mahr) is divided into two parts—one paid before marriage, one due upon divorce—and remains the woman's property. Contracts may stipulate conditions such as a prohibition on additional wives.

5.5. Marriage, Divorce, and Custody

Muslim men may marry Christian or Jewish women; Muslim women cannot marry outside the faith. Men may divorce unilaterally by pronouncing talaq three times; women must seek divorce through the courts on specific grounds, which vary by legal school. The Qur'an discourages divorce but, if unavoidable, demands kindness and the return of the woman's property.

Custody generally goes to the mother unless she is deemed morally unfit. In the Hanafi school, a girl stays with her mother until puberty; a boy until age seven. In the Maliki school, girls stay until marriage, boys until puberty. If the mother remarries, custody may transfer to the father.

5.6. Inheritance and Property

The Qur'an grants women inheritance rights, though daughters receive half the share of sons due to men's obligation to financially support the household. Women may inherit from multiple relatives, and their property remains exclusively theirs. Attempts to circumvent women's inheritance rights—by transferring assets before death—persist, though legal remedies exist.

5.7. Social Roles and Education

Mothers hold strong influence in Muslim societies, controlling children's upbringing until sons reach school age. Among poorer and tribal families, girls' education is minimal, and early marriage is common to protect family honor. Virginity is highly guarded, with brothers serving as protectors; shame is tied solely to female sexuality. Extended families, especially in rural areas, play a large role in raising children. Elder women teach girls domestic skills and pass down social traditions. Gender roles are reinforced early, with girls taught cooking and sewing, boys mathematics and trades. Even in schools with identical curricula, girls may be given "home economics" while boys are not.

5.8. Domestic Responsibilities

Household labor, food preparation, cleaning, and elder care are considered women's work, even if they are employed outside the home. Rural women often shoulder agricultural work in addition to domestic duties. In tribal areas, strict purdah confines women indoors, and deviation from norms can result in severe punishment, even death.

5.9. Historical Shifts

Since independence in 1947, women's legal and social status has fluctuated with political changes. Debates over Islam's role in governance, ethnic tensions, and military dominance

have shaped policies affecting women. Relations with India and Afghanistan, as well as domestic Islamization drives, have influenced the trajectory of women's rights—sometimes advancing them, often setting them back. Today, 75% of Pakistani women live in rural areas, facing illiteracy, poor health, and limited autonomy. While Islam grants them dignity and rights, entrenched patriarchal interpretations, reinforced by tribal customs and political agendas, continue to restrict their potential. The ongoing struggle for gender equality in Pakistan thus remains a complex interplay of religion, culture, law, and politics.

5. What is Karo Kari? The Price of Honour

Karo Kari, often referred to as an "honour killing," is a deeply entrenched practice in parts of Pakistan, particularly in Sindh, Balochistan, and adjoining tribal areas. While many today believe it originated in Balochistan—especially in the Shahdadkot border area near Larkana—its roots may trace back to the Arab settlers in Balochistan, whose long-standing influence reinforced pre-Islamic patriarchal traditions hostile to women (Crime or Custom, HRW). Over time, migration and seasonal economic exchanges with regions like Jhal Magsi and Khuzdar spread the practice, embedding it within local custom.

6.1. Origins and Social Foundations

Some scholars and interviewees connect Karo Kari's legitimacy to the rise of patriarchal norms that emerged alongside systems of ownership and inheritance. Women came to be seen as possessions—repositories of male and tribal honour—making control over their sexuality a critical element of preserving a family's reputation. In this framework, 'honour killings' became a socially sanctioned mechanism to defend male standing.

Pakistani society's gender order is rooted in the sexual division of labour: men occupy public, productive roles; women are confined to private, reproductive ones. This arrangement results in low resource investment in women—exacerbated by purdah, mobility restrictions, and internalised patriarchy—producing structural inequalities (Islam Awareness, n.d.). The public-private divide is maintained by associating male honour (izzat) with women's sexual behaviour, legitimising control through segregation and violence.

6.2. Women's Status in Tribal Societies

In tribal regions, patriarchal structures are particularly rigid. Women are exchanged, sold, and used to settle disputes. Socialisation processes perpetuate gender ideology, with women themselves reinforcing these norms through child-rearing. Hundreds of women are killed each year in the name of honour, often with impunity. Violence ranges from domestic abuse and mutilation to ritualised killings.

Within this logic, a woman accused of damaging male honour—whether wife, sister, or daughter—must be killed to restore it. The killer is viewed not as a criminal, but as *ghairatman* (a man of honour), gaining moral and often legal support from his kin. Public, even ritualised killings are common, while the family of the alleged male (*karo*) may paradoxically gain prestige by abducting another man's female relative.

6.3. Honour, Possession, and Control

In tribal thought, a man's honour is tied to possession of zan (women), zar (gold), and zameen (land). The transfer of a woman from father to husband is a transfer of honour's guardianship. Marriage customs—including satta-watta (exchange of brides) and cousin marriages—are designed to keep property within the paternal family. In the absence of suitable male kin, women may undergo haq-baksh-wai (marriage to the Qur'an) to prevent property dispersal. In Punjab, women may remain unmarried into menopause to safeguard estates.

Women are also commodities in the form of bride price—vulver in Khyber Pakhtunkhwa and Balochistan, verkro in Sindh—paid by the groom's family to the bride's father. Prices vary by status, beauty, and age. In disputes, women may be exchanged as khooon baha (blood money), sometimes involving manipulation of a girl's stated age to reduce the number exchanged. The Pashtun code, Pashtoonwali, integrates honour (nang) alongside hospitality (malmastya), revenge (badal), and asylum (nanawaty) (Women of the Mountains, n.d.). In this worldview, female chastity is paramount; any suspicion of illicit sexual interest can lead to execution. Kari women are denied posthumous dignity—buried in secret graveyards without mourning—while men may be buried in communal sites.

6.4. Mechanisms of Enforcement

Male control extends beyond sexuality to women's movements, speech, and behaviour. In Kand Kot, a kari woman may be dressed in red, henna applied, and executed by the river. Punishments may also target minor perceived defiance, such as answering back or delaying meals. While both karo and kari are expected to die, men often flee; their survival may depend on faislo or jirga settlements, involving compensation in money or women. These traditional forums aim to restore "balance" rather than establish guilt, and their decisions are frequently violated.

6.5. Legal Context and State Response

Multiple factors sustain Karo Kari: the replacement of formal law by tribal codes, gender norms legitimising private justice, public brutalisation under regimes like Zia-ul-Haq's, and increased weapon availability post-Afghanistan conflict. Economic decline, poor education, and reactionary resistance to "westernisation" contribute to heightened suspicion and violence against women.

Laws such as Hudood, Qisas, and Diyat have indirectly fuelled the problem by enabling perpetrators to settle cases privately. Police bias, weak investigations, abusive medical examinations, and judicial inaction reinforce impunity. Although public discourse—supported by Amnesty International and statements from leaders like President Musharraf—has condemned honour killings, legislative action has been limited. Bills addressing gender discrimination, such as the PPP's 2004 proposal, have failed to overhaul the system. In 2005, bada-i-sulah (women given in peace deals) was criminalised under Section 310A of the Penal Code, punishable by up to ten years' imprisonment. Yet enforcement remains minimal.

6.6. Exploitation and Misuse

Honour killings are often manipulated for personal gain: to seize land, settle debts, or cover unrelated murders. For example, a man may kill a female relative and accuse another man as

karo to extort compensation. Even poor families mimic this pattern for tribal parity. In some cases, women are killed to avoid repayment of loans.

6.7. Other Harmful Practices

Customs such as vani or swara—giving women in marriage to settle disputes—are prevalent, often linked to Karo Kari cases. Other practices include Pait Lekhai (pledging an unborn daughter) and Aar/Aas (ordeal by fire to prove innocence). Bigamy is common, with first wives rarely consulted. While Islamic law allows khula (divorce initiated by a woman), procedural and social barriers are immense. Everyday restrictions reinforce women's subjugation: in some areas, women are denied shoes to limit mobility, given minimal clothing, or forbidden from washing clothes for months. Access to education is severely restricted, with illiteracy rates as high as 85% in certain tribal regions.

6.8. Impact on Women's Lives

Child marriage remains widespread, causing denial of education, health risks from early pregnancy, and complications like fistulas due to obstructed labour. Young brides face heightened vulnerability to sexually transmitted infections and sexual violence. Abuse is common, particularly from in-laws, and infertility can lead to remarriage or further violence.

Domestic quarrels may be sparked by economic hardship, with unemployed husbands relying on wives' earnings or wealth. In-laws often play a role in provoking abuse. In some cases, marital disputes are resolved through coercion, threats of murder, or divorce. Women accused of violating customary honour norms have few refuges. While shrines or sardars' homes may offer temporary safety, they do not facilitate independence or long-term protection. Shelters are scarce, restrictive, and lack vocational training, leaving women economically dependent and vulnerable to retribution. Many resort to suicide.

6.9. Reform Efforts and Ongoing Challenges

Judicial and governmental actors have occasionally moved to address the issue. In 2002, the Chief Justice of Pakistan declared vani and swara un-Islamic, instructing lower courts to reject such settlements. The Law and Justice Commission in 2004 proposed Article 366-C, criminalising marriage by compulsion as part of dispute resolution, but parliament has yet to pass it.

While Section 310A offers a legal framework to punish certain practices, inadequate investigations, poor enforcement, and entrenched informal systems continue to protect perpetrators. Honour killings thus remain a tool of social control, economic exploitation, and personal vengeance. Karo Kari is more than a custom—it is a system embedded in patriarchal property relations, tribal codes, and state complicity. Women's lives are conditioned on obedience to restrictive norms, with any perceived defiance punishable by death. Legal reforms without enforcement are symbolic; the persistence of informal justice systems undermines formal law. Effective eradication requires not only legislation but also education, empowerment, and dismantling of the socio-economic structures that perpetuate women's commodification and subjugation. Until then, Pakistani women—especially in rural and tribal regions—will continue to bear the heaviest costs of a distorted notion of “honour.”

6. Analysis of Hudood and Zina Laws

7.1. Political and Social Context

Pakistan was founded in 1947 under the two-nation theory, with Muhammad Ali Jinnah envisioning a secular state. Over time, however, political leaders have invoked religion to serve their own agendas. Under General Zia-ul-Haq's martial law (1977–1988), Islamisation became a tool for political legitimacy. In 1979, he introduced the Hudood Ordinances, including the Zina Laws, aimed at enforcing a state-defined ideal of the “pure and chaste Pakistani woman.” In practice, these laws operate in a context of police corruption, male violence, weak legal protections, and widespread poverty. The justice system is overburdened, with many detainees held pre-trial longer than the sentences they might receive if convicted. Misuse is common—Human Rights Watch notes that around 95% of women accused of zina are acquitted after lengthy, damaging detentions.

7.2. Structure and Punishments under Zina Laws

Zina covers adultery, fornication, and rape, with two categories of punishment: Hadd (fixed, maximum penalty) and Tazir (discretionary, lesser penalty). Hadd for Muslims requires either a confession or testimony from four adult, pious Muslim men who witness penetration. For married offenders, this carries a sentence of death by stoning; for unmarried offenders or non-Muslims, 100 lashes. Although no hadd sentence has been carried out by the state, tribal areas sometimes enforce them extrajudicially. Tazir applies when evidence falls short of hadd requirements, but guilt is established. Penalties include up to 10 years in prison, 30 lashes, and fines for fornication/adultery, and up to 25 years for rape. Women may testify under tazir, but courts often discount their evidence, viewing them as complicit and extending the benefit of doubt to male defendants.

7.3. Discriminatory Impact on Women

By subsuming rape under zina, the Hudood Laws make it extremely difficult for women to prove sexual violence. Failure to prove coercion can result in the victim being charged with adultery or fornication. Women cannot testify in hadd cases, and at the tazir level their testimony is undervalued. These legal structures have led to a sharp rise in female imprisonment, most often for zina-related charges, exposing women to further police abuse.

Even with medical evidence, courts often require women to demonstrate extreme physical resistance, an unrealistic and discriminatory standard. The burden of proof is lighter for the prosecution in fornication cases than for the defence in rape cases, and courts regularly downgrade charges against men.

7.4. Broader Legal Framework and Gender Inequality

The Hudood Ordinances apply to all citizens, Muslim and non-Muslim, and form part of five sections: Offence of Zina, Offence of Qazf (false accusation), Prohibition (of alcohol), Execution of Whipping, and Offences Against Property. The 1984 Law of Evidence further diminished women's legal standing, valuing the testimony of two women as equal to one man in financial cases. Under Qisas and Diyat laws, women's life and bodily harm compensation is

set at half that of a man. In family law, women face inequality in inheritance, divorce, guardianship, and citizenship rights. Polygamy is not banned, and citizenship through descent passes only through fathers. These intersecting legal discriminations amplify women's vulnerability.

7.5. Systemic Barriers to Justice

Socioeconomic dependence, complex legal procedures, court delays, and judicial corruption make it extremely difficult for women to litigate. Medical evidence is often perfunctory, and legal representation is weak. Lawyers may fail to challenge flawed reports, and judges often allow invasive or irrelevant questioning. As Hina Jilani notes, medical reports are typically "brief and have minimal impact" on judicial understanding.

7.6. Consequences and Need for Reform

The combined effect of the Hudood and Zina Laws has been to deter women from reporting crimes, criminalise victims of sexual violence, and entrench gender discrimination. These laws have not only failed to protect women but have actively enabled abuse, wrongful imprisonment, and social stigma. Reform requires more than amendments—it demands enforcement of protections, equal evidentiary standards, accessible legal aid, medical and shelter services, and the dismantling of structural biases in the justice system. Pakistan's obligations under its constitution and international law compel it to take decisive action to eradicate gender discrimination embedded in its legal framework.

7. Conclusion and Recommendations

Until 2001, the Constitution of Pakistan provided no reserved seats for women in local elections. In some villages, women were allowed to vote, but in most cases, male family members cast votes on their behalf. This absence of political voice meant no genuine female representation at the local level. In certain areas, clerics even elected their wives as proxies, controlling their decisions for personal political gain. The government's failure to address gender disparities—through fair access to resources, legal protection, and social services—has led to women's continued deprivation, exclusion, and abuse. Violence against women remains a systematic tool for silencing those who resist injustice. True equality demands that women live free from fear, with dignity and self-respect accorded to all citizens. Laws that entrench gender bias are themselves a form of violence.

A society where violence against women is normalised cannot develop socially or economically. Such violence erodes women's confidence, damages health, and restricts participation in building a safe and progressive society. While Pakistan has engaged in discourse on gender issues and introduced policies like the Gender Reform Action Plan, the gap between commitments and reality is wide. Although Islam offers a balanced and just framework for both genders, interpretations have been manipulated to serve patriarchal interests. The Constitution, through Articles 25 and 34, promises gender equality, and Pakistan is a signatory to CEDAW. Yet discriminatory practices persist, from healthcare inequities and early marriages to violence, illiteracy, and biased legislation. Reform requires ensuring women's equal legal status, fair treatment by police and courts, abolition of the Hudood

Ordinances, political freedoms, expanded shelter services, and an end to harmful customs such as the sale or exchange of women.

These challenges are acute in regions like Khyber Pakhtunkhwa, but they also reflect a global issue. Poverty, ignorance, and gender-based oppression are intertwined. Education is a key tool for empowerment, yet fear and social conservatism continue to resist change. Harmful practices—trafficking, forced prostitution, honor killings, and marriage to the Qur'an—cannot be defended under tradition or culture.

The Prophet Muhammad (PBUH) held women in the highest regard, repeatedly instructing believers to honor their mothers above all others. There is no basis in the Qur'an for honor killings, Hudood punishments, or violence against women; these are man-made injustices. Pakistan must re-evaluate its treatment of women to unlock its social and economic potential, particularly in conflict-affected areas.

Amnesty International's recommendations urge Pakistan to:

- Criminalise participation in or initiation of jirga trials.
- Enforce these laws strictly and prosecute offenders.
- Strengthen the criminal justice system to eliminate reliance on jirgas.
- Ratify and implement core human rights treaties, including ICCPR and UNCAT, and make them part of domestic law.
- End secret detentions, repeal laws allowing cruel punishments, and place a moratorium on the death penalty.

Violence against women is not confined to Pakistan—it is a global human rights crisis cutting across cultures, religions, and economic systems. In Pakistan, hundreds of women are killed each year in so-called honor crimes; many more face domestic abuse, marital rape, and psychological harm. According to the Human Rights Commission of Pakistan, around 80% of women experience some form of abuse within the family. Despite advocacy, laws criminalising such violations remain absent.

Civil society, NGOs, and welfare systems must move beyond political rhetoric to practical action. Women are an untapped human resource whose empowerment would strengthen the nation. Yet the state continues to prioritise military spending over basic needs like healthcare, clean water, and housing. Weak institutions perpetuate this cycle, leaving women especially vulnerable.

Empowerment requires:

- The ability to make independent decisions.
- Access to information, resources, and a range of choices.
- Assertiveness and a belief in one's ability to create change.
- Education and skill development.
- Overcoming social stigma and fostering a positive self-image.
- Moral discernment based on universal principles of right and wrong.

To the women of Pakistan: gender equality is both a divine right and an international standard. The burdens you have carried must now be met with empowerment—through faith, trust, and belief in your own strength.

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