



Honour Crimes and Violence against Women

Preventing and Punishing Honour Crimes

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Foreword

There is no Honour in Honour killings

A few years ago I watched a documentary, *Banaz, a love story*, about honour crimes. I was always very curious about the motives behind such crimes and how can victims of honour crimes be supported and helped in their recovery. Or better yet, how can we prevent such crimes. Despite the fact that there are many international legal instruments to protect women's rights, honour crimes still occur. After watching several documentaries and reading more about the subject, I realised that the problem lies in the fact that those victims are being treated as perpetrators and the perpetrators as saviours. And also that International Law does not provide the complete answer when fighting such crimes.

So before you lies my master thesis of the master Victimology and Criminal Justice. Which hopefully will help you gain more insight about the subject honour crimes.

I sure have learned a lot through the various courses during the master Victimology and Criminal Justice. The one thing I am most grateful for is how during my bachelor and master years I was trained to think critically.

I would like to express my deepest appreciation and thanks to Dr. Felix Ndahinda, for his patient and feedback during the writing of this thesis. I also want to thank my family and friends for their support. And last but never the least my mother and my father for always motivating and believing in me.

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Wafaa Abdelhadi

1. Introduction

“Now that I am giving this statement what can u do for me...?”

This is the question that a victim of honour crimes Banaz Mohamed asked the police officer after she filed a report¹. Banaz’s story is one of the most frequently cited cases when it comes to honour crimes. Banaz was 20 years old when she was killed by her cousins on her uncle’s and father’s orders. According to her family she had brought shame to them by having a relationship that was disapproved. Despite the fact that Banaz filed a report against her ex-husband and her family, her life could not be saved.

Banaz is one of the many victims of honour crimes. Honour crimes involve taking or harming the life of an individual as a response to behavior perceived as unacceptable by the perpetrators. It is often culturally sanctioned homicides or forced suicides that restore the family honour. According to an ‘honour’ based society, the man is the head of the family and he is the defender of their honour. For that reason it is his duty to defend his family’s honour against any behavior which may seem shameful or humiliating by the rest of the community².

The United Nations Population Fund (UNPF) stated that there are likely about 5.000 women and girls that are killed each year worldwide in the name of “honour” by members of their families³. Even rape is considered dishonouring to the family. Such murders mainly occur in the Middle East and North Africa and parts of South Asia⁴. Nonetheless, the issue is a global one where other cases have been reported in Great Britain, Brazil, Ecuador, Israel, Italy, Sweden, Turkey and Uganda⁵.

Honour crimes, concerning the murder or mutilation of immigrant or second-generation immigrants are now also an issue in North America and Europe. This has forced these countries

¹ Documentary Banaz a love story 2012

² Aisha Gill, ‘Honour Killings and the Quest for Justice in Black and Minority Ethnic Communities in the UK’ [2009] United Nations, EGM/GPLHP/2009/EP.03

<http://www.un.org/womenwatch/daw/egm/yaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Aisha%20Gill%20revised_.pdf> accessed 17 September 2014.

³ UN Commission on Human Rights, *Civil and Political Rights, Including the Question of Disappearances and Summary Executions: Extrajudicial, summary or arbitrary executions / Report of the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 2000/31 E/CN.4/2001/9* [2001] <

<http://www.refworld.org/docid/3b00f5540.html>> accessed 17 September 2014

⁴ *Ibid.*

⁵ Amnesty International, ‘Culture of Discrimination: A Fact Sheet on “Honor” Killings’ [2012]

to slowly recognize honour killings as a distinct crime and to question the limits of multicultural tolerance⁶.

In 1970 the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN General Assembly. The former focuses on discrimination against women and sets up an agenda for national action to end such discrimination⁷. In 1982 the United Nations Committee on the Elimination of Discrimination against Women CEDAW, an expert body was established. The Committee watches over the progress for women made in countries that are the state parties to the 1979 CEDAW. The Committee also makes recommendations on issues that are affecting women and to which the States parties should devote more attention⁸. Despite much success in empowering women, numerous issues regarding women human rights still exist. According to Amnesty International, “Governments are not living up to their promises under the Women’s Convention to protect women from discrimination and violence”.⁹ Governments have now acknowledged that honour crimes are a growing problem which requires urgent attention.

As mentioned above there are laws that prohibits honour-based crimes. The states parties are obliged to invest in infrastructure that ensures women to enjoy their human rights and protect women against violence and discrimination¹⁰. However, majority of the state parties fail to protect women’s rights.

The aim of this thesis is to answer the following question: *“What are the internationally recognized obligations and responsibilities of the States on preventing and punishing honour crimes and how can they be implemented?”*

⁶ Phyllis Chesler, ‘Are Honor Killings Simply Domestic Violence?’[2009] Middle East Quarterly Spring, <<http://www.meforum.org/2067/are-honor-killings-simply-domestic-violence>> accessed 19 September 2014. And Veena Meeto & Heidi Mirza, ‘There’s nothing honourable about honour killings: Gender, violence, and the limits of multiculturalism’ [2007] Women’s Studies International Forum, 30 <<http://eprints.ioe.ac.uk/2018/1/meetooandmirza2007nothinghonourable187.pdf>> accessed 19 September 2014. Anna Korteweg & Gökçe Yurdakul, ‘Islam, gender, and immigrant integration: Boundary drawing in discourses on honour killing in the Netherlands and Germany’[2009] Ethnic and Racial Studies, 32, 218

⁷ Committee on the Elimination of Discrimination against Women, <<http://www.un.org/womenwatch/daw/cedaw/committee.htm>> accessed 20 October 2014

⁸ *Ibid.*

⁹ Amnesty International, ‘20th anniversary of Women’s Convention; Time to take women’s human rights seriously’ (News Service December 1999) <<http://web.amnesty.org/library/index/engior510061999>> accessed 19 September 2014

¹⁰ M.A. Freeman, B. Rudolf and Christine Chikin (eds.), The UN Convention on the Elimination of All Forms of Discrimination Against, A Commentary, Oxford Commentaries on International Law 2012

This thesis will discuss issues regarding the victimization of women related to honour crimes. This thesis aims to explore international women's rights in theory and practice. This thesis considers the main provisions of international law on women's rights. In addition, this thesis tries to look at the ways by which honour crimes can be prevented. A special focus of this thesis is how women who are victims of these crimes should be treated based on both international law and taking into consideration their needs. A comparative analysis on how honour crimes are addressed in England and Pakistan will help in answering the central research question.

1.1 Methods of research and structure

The thesis will first provide an examining and analyses of the important provisions of the International Human Rights Law related to violence against women. This research will be carried out on the basis of international instruments, such as The Universal Declaration of Human Rights the CEDAW, the Declaration on the Elimination of Violence against Women and The Committee's General Recommendations on violence against women. Beside these primary sources on human rights also secondary sources such as case law and reports and academic articles, books will be used in investigating the fundamental human rights and states' responsibility to prevent and punish acts of violence against women. Secondly, the issues regarding honour crimes and honour killings will be discussed and analyzed. The sources on honour crimes and honour killings in this research will include interpretations and comments written on this subject and academic articles regards of the honour crimes in different societies. Because this thesis is discussing the victims of honour crimes, the needs of victims will be outlined. Furthermore, challenges of protecting the victims of honour crimes will be analyzed based on relevant academic literature and on jurisprudence. The cases that I will choose offer important insights on how to tackle and prevent honour crimes. To prevent and response to those crimes, a different approach may be needed in the Western world where the problem is limited to immigrants, than in the some non-western states where honour crimes find their roots in customary law. For that reason honour crimes in a Western state (England) and a non-Western state (Pakistan) will be discussed and analyzed. Examining and analyzing the approach of different states can provide insights on how to prevent and deal with the issue.

After the introduction, honour crimes and honour killing will be clarified and outlined. The history and motive of these crimes will be explained. In chapter 3, international law related to

violence against women and honour crimes will be outlined and how the former relate to states obligations under human rights law will be discussed. To determine which recommendations are needed in countries in the western areas where the problem is limited to immigrants, honour crimes cases England will be discussed. Thereafter, honour crimes cases in Pakistan will be also be discussed. Based on the abovementioned angles of discussion and investigation, responses will be discussed on how to prevent and response to honour crimes. This will be followed by brief conclusion.

2. Perspectives on Honour crimes

In this chapter the issue of honour crimes will be explained. Also an outline of the history of honour crimes will be provided. Furthermore this chapter will address the significant social and cultural influence which may trigger a criminal behavior regarding honour crimes.

2.1 Definitions

2.1.1 Honour crimes and Honour Killing

The concept of *honour crimes* includes all forms of violence directed towards individuals in the name of honour¹¹. Honour crimes implies that a victim has brought the crimes upon their self by besmirching their own honour and that of their family¹². It is an action that aims at removing the stain of dishonour through the use of emotional, social or physical coercion over a person whose actions have brought dishonour. Physical force may even involve the killing of the transgressor of the code of honour¹³.

Honour killing is in general defined as: “the murder of women for suspected deviation from sexual norms imposed by society”¹⁴. Perpetrators are not only the husbands or partners of the victim, but other male or female family or community members can carry out the act¹⁵. It is carefully planned and executed with the help of multiple family members. Human Rights Watch defines “*honour killings*” as an act of revenge committed by usually male family members against usually female family members. The latter are held to have brought dishonour upon the

¹¹ M.M. Idriss, Honour, ‘Violence, women and Islam an Introduction’, in in Mohammad M. Idriss & Tahir Abbas (eds.), *Honour, Violence, women and Islam* (Routledge 2011) p.1.

¹² A. Gill, Reconfiguring ‘Honour’- based Violence as a Form of Gendered Violence, in Mohammad M. Idriss & Tahir Abbas (eds.), *Honour, Violence, women and Islam* (Routledge 2011) p.222.

¹³ P. Sen, ‘Crimes of Honor, value and meaning’, in Lynn Welchmann and Sara Hossain (eds.), *‘Honour’ Crimes, Paradigms, And Violence Against Women* (London and New York: Zed Books 2005 p. 50

¹⁴ F, Faqir, ‘Intrafamily Femicide in Defence of Honour: The Case of Jordan’ [2001] *Third World Quarterly*, Vol. 22, No. 1, p. 65.

¹⁵ Veena Meeto & Heidi Mirza, ‘There’s nothing honourable about honour killings: Gender, violence, and the limits of multiculturalism’ [2007] *Women’s Studies International Forum*, 30 <<http://eprints.ioe.ac.uk/2018/1/meetooandmirza2007nothinghonourable187.pdf>> accessed 19 September 2014.

family by refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce or accused of committing adultery¹⁶.

2.1.2 Shame and Honour Culture

Research shows that honour crimes are not likened to any religion but it is more cultural practice. The term culture refers to historical derived and socially transmitted ideas and practices as well as artifacts and institutions that are simultaneously products of human action and producers of future action¹⁷. Culture includes the thought, experiences, patterns of behavior, values and assumptions about life that guide a certain behavior¹⁸. The values at place and their affective charge are not open for discussion. Those values are advocated by a majority of their members or in those who have a high status within the society¹⁹. Culture helps in interpreting and understanding other people. A person's cultural identity does not provide complete or reliable information about the individual. However, knowing a person's culture does help in understanding the opportunities and challenges that each individual in that culture has to deal with²⁰.

Shame is the feeling that arises when a person is being negatively evaluated by others because one has failed to meet the standards and norms within a community²¹. It is an *emotion that follows after either disgraceful behavior by the self or intimates others or the withdrawal of social respect*²². Shame is linked as an emotion which is connected to the face which leads to feelings of failure.²³ A person needs to protect one's face by maintaining and following tradition²⁴. Shame is an emotion which is experienced more intensely in honour cultures than in other cultures. A person who has a sense of honour is concerned with reputation issues and fears of being undermined in the eyes of others²⁵. There is a dual-relationship between honour

¹⁶ Human Rights Watch, 'Honor Crimes under Jordanian Law' [2004] <<http://www.hrw.org/reports/2004/jordan0404/4.htm>> accessed 19 September 2014

¹⁷ Alfred.Kroeber & Clyde Kluckhohn, *Culture: A Critical Review of Concepts and Definition*, New York: Meridian Books 1952. p.181

¹⁸ F. E. Jandt, *An Introduction to Intercultural Communication: Identities in a Global Community*, Sage Publications Inc. March 2012, p. 5

¹⁹ *Ibid* p.6

²⁰ *Ibid* p.7

²¹ H.B. Lewis, *Shame and guilt in neurosis*. Oxford,UK: International Universities Press. 1974

²² Patricia M. Rodriguez Mosquera, A. S. R. Manstead, & A. H. Fischer, 'The role of honor concerns in emotional reactions to offenses' [2002]. *Cognition and Emotion*, 16 (1) < http://psych.cf.ac.uk/home2/manstead/2002_R-M,%20M,%20F,%202002,%20Cognition%20and%20emotion,%2016,%20p143.pdf> accessed 20 October 2014

²³ T.J. Scheff, 'Shame and the social bond: a sociological theory' [2000] *Sociological Theory*. < <http://www.soc.ucsb.edu/faculty/scheff/main.php?id=2.html>> accessed 20 October 2014

²⁴ W. B. Gudykunst, (2003). *Cross-cultural and intercultural communication*. Thousand Oaks, CA: Sage.p.22.

²⁵ Mosquera (n 21) p. 143

and shame²⁶. Males experience shame and loss of face when their honour is violated by a female's behavior.

2.1.3 Family honour and Honourable behavior

As mentioned above, honour crimes are committed when a victim has brought shame and besmirching their own honour and their family honour. An individual must act honourably according to the values and norms, to uphold a good reputation and protect the honour of the family²⁷. Thus, one must be concerned with the social evaluations, the impact of one's behavior²⁸.

An *honourable behavior* is based on the honour code. The honour code involves a set of values and norms that define honourable and dishonourable behavior. Such an honour code prescribes those things which an individual with a sense of honour should be concerned about. The honour code stresses the importance of family honour, social interdependence, masculine honour, and feminine honour²⁹.

2.2 Historical Background on Honour Killing

Throughout history, women were considered and treated as inferior to men in most societies. Some of this stems from the conclusion of the Darwinian worldview. Males are more evolved because they are more exposed to a far greater selective pressure, while females remain protected³⁰. That is why men ran governments and managed the economy, administered the courts and schools, manipulated theology and the ritual, and therefore women generally were treated as second-class citizens without power, privilege, or status³¹. Furthermore, it seems that the idea that women are inferior to men stems from the ancient interpretation of religion. Based on the story of Adam of Eve, some believed that only males were created directly by God and therefore given souls and on the other hand, Eve is viewed as the original sinner³².

²⁶ David W. Augsburger, *Conflict mediation across cultures: pathways & patterns*. (Louisville, KY: Westminster John Knox Press. 1992)

²⁷ Mosquera (n 21) p. 143

²⁸ *Ibid.* p.147

²⁹ *Ibid.* p .146

³⁰ G. Bergman, 'The history of the human female inferiority ideas in evolutionary biology' [2002] *Riv Biol.* 95 (3):37 <<http://www.ncbi.nlm.nih.gov/pubmed/12680306>> accessed 15 November 2014

³¹ Leonard Swidler, 'Women in Judaism, The Status of Women in Formative Judaism' [1976] <

<http://astro.temple.edu/~swidler/swidlerbooks/womenjudaism.htm#T000003B>> accessed 2 January 2015

³² *Ibid.*

Honour-Based violence has occurred in many societies and throughout different historical periods. Honour Based Violence can be found for example in the Codes of Hammurabi (1772BC) and the Assyrian law (1075BC). Beliefs that a husband had the right to kill his unfaithful wife can be traced to the Codes of Hammurabi, Nesilim, and Assura³³. According to the Codes of Hammurabi and Assura, honour culture is expressed in many ways; for example, a woman's virginity belongs to the family and if a virgin voluntarily gives herself to a man, the father shall do with his daughter what he pleases³⁴. If a married woman commits adultery with another man, she can be executed or her punishment can be decided by her husband³⁵.

In the Ancient Roman, Marcus Cato (234-149BC), has declared during a speech that; *'the husband has power and if his wife has done something wrong she should be punished. If she had done something wrong with another man, she is condemned to death. However a women as stated: cannot dare to lay a finger on her husband if he had committed adultery, nor is it the law'*.³⁶ This statement was reflective with the status of women in Roman society. A father held the power of life and death over his daughter. However upon marriage that power was transferred to the daughter's husband³⁷. A married or marriageable woman was seen as a property of the father or husband, for that reason men were allowed to kill or punish their wives in whatever manner they desired. Female adultery was a felony under Roman law and the state actively prosecuted family members and others for not taking action against adulterous female relatives³⁸.

Under the legal code of Medieval Albania, called Kanun of Lekë, women could be killed in the case of adultery. The honour of the woman was a property-part of the honour of the man. If he was dishonoured, this was the heaviest injury to the honour of a man³⁹.

³³ Matthew A. Goldstein, "The biological roots of heat-of-passion crimes and honor killings" [2002] *Politics and the Life Sciences* vol. 21, no. 2 ,P. 29 < <http://www.jstor.org/stable/4236668>> accessed 17 October 2014

³⁴ G. R. Driver and J. C. Miles, *Babylonian laws Oxford* (Clarendon Press, vol. 2 1955). G. R. Driver and J. C. Miles, *Assyrian laws* (Oxford, Clarendon Press, 1975) p. 384

³⁵ *Ibid.* p. 384

³⁶ Marcus Cato, quoted in Aulus Gellius, *Attic Nights*, 10.23, 200 AD

³⁷ Goldstein (n 32) p. 29

³⁸ *Ibid.* p. 29

³⁹Z. Ahmeti, 'The criminal law in the 'Kanun of Lekë Dukagjini, The Albanian customary law' [2012] < http://www.shkoder.net/en/kanun_en.htm> accessed 20 January 2015.

In Geneva, under control of John Calvin, women who were accused of committing adultery, would be thrown in the Rhone River as a punishment⁴⁰. On the other hand, in ancient American cultures, similar norms regarding adultery already existed thousands of years before the Babylonian, Hittite, Assyrian and Roman eras even began. In the Valley of Mexico, between 150 B.C.E. and 1521 A.C.E., death sentences for female adultery were performed by strangulation or stoning.⁴¹ This sentence could be carried out only after a husband proved there was an offense.

Even in Western societies like Italy, the notion of honour killing was abolished from the Italian Penal Code in 1981. Until then, the murder of a woman in order to preserve a man's honour, was given a milder sentence, compared to a similar offence with a different motive⁴². A man who killed his wife, daughter or sister in order to defend their honour or the honour of their family was given a reduced sentence⁴³. This law was instituted because the common belief was that the injury to the man's honour caused by dishonourable acts was considered as a serious provocation. Women were treated as objects, whereas honour was the prerogative of men, women related to the men through this honour code and were therefore only a projection of it.⁴⁴ In the United States, until recent times, wife killings by husbands were not considered a crime in some jurisdictions⁴⁵. Furthermore, the Germanic tribes of Western Europe, as well as the Chinese, Japanese, and other Asian cultures legally sanctioned the killing of unfaithful wives by their husbands to protect family honour⁴⁶. Women's position in the West began to improve starting from the Age of Enlightenment and the Industrial Revolution in the 18th and 19th centuries. However Honour crimes are still committed in some western countries and around the world.

⁴⁰ John Witte & Robert M. Kingdon, *Sex, Marriage and Family in John Calvin's Geneva I: Courtship, Engagement and Marriage* (Wm B. Eerdmans Publishing, Grand Rapids, MI, 2005) p. 70

⁴¹ Goldstein (n 32) p.29

⁴² GVEI, National Report: Italia, DAPHNE PROJECT "PROPOSING NEW INDICATOORS: MEASURING VIOLENCE'S EFFECTS. GVEI", Italia, July 2007 <http://www.surt.org/gvei/docs/national_report_italy.pdf> accessed 20 January 2015.

⁴³ Article 587 Italian Penal Code; He who causes the death of a spouse, daughter, or sister upon discovering her in illegitimate carnal relations and in the heat of passion caused by the offence to his honour or that of his family will be sentenced to three to seven years. The same sentence shall apply to whom, in the above circumstances, causes the death of the person involved in illegitimate carnal relations with his spouse, daughter, or sister.

⁴⁴ GVEI, National Report: Italia, DAPHNE PROJECT "PROPOSING NEW INDICATOORS: MEASURING VIOLENCE'S EFFECTS. GVEI", Italia, July 2007 <http://www.surt.org/gvei/docs/national_report_italy.pdf> accessed 20 January 2015.

⁴⁵ Goldstein (n 32) p. 32

⁴⁶ *Ibid.* p. 32

2.3 Honour Crimes Today

In September 2000 The UNPF estimated that there are roughly 5.000 victims of honour killings globally each year⁴⁷. Honour crimes mainly occur in the Middle East and North Africa and parts of South Asia⁴⁸. However one must keep in mind that many honour crimes go unnoticed and are never recorded. In other cases family members report the honour killings as suicide or accidental death⁴⁹. According to women's advocacy groups, the figure of honour crimes could be around 20,000. Even reported cases are rarely investigated and the law is rarely enforced. When enforced, the sentences can be far less than those for equally violent crimes without the honour dimension⁵⁰. However, because of the widespread urbanization, the proliferation of media and the changing roles of women, such killings are becoming more visible⁵¹.

In some states honour killings are still considered acceptable and excusable and perpetrators are excluded from any punishment. In states such as Jordan the law has loopholes in which perpetrators are essentially excused. For example, in Article 340 of the penal code of Jordan, reduces the sentence for killing a relative caught in an 'illicit' sexual act, and article 98 provides for reduced sentence if the perpetrator committed his crimes in a state of rage. Furthermore, if the victim's family waives its personal right to litigate, then the court may reduce the sentences by up to half⁵². In honour crimes, the victim's family is in most cases also the perpetrators' family and the perpetrators get in most cases support from their family and community. In Jordan the efforts to reform the penal code which allows reduced penalties for murder based on family honour, have repeatedly failed.

⁴⁷ State of the World Population 2000 'Ending Violence against Women and Girls' (New York: United Nations Population Fund, 2000), chap. 3.

⁴⁸ UN Commission on Human Rights, *Civil and Political Rights, Including the Question of Disappearances and Summary Executions: Extrajudicial, summary or arbitrary executions / Report of the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 2000/31 E/CN.4/2001/9* [2001] <<http://www.refworld.org/docid/3b00f5540.html>> accessed 25 January 2015.

⁴⁹ Nicole Pope, 'Honour Killings: Instruments of Patriarchal Control', in Shahrzad Mojab and Nahla Abdo (eds.), *Violence In The Name Of Honour: Theoretical And Political Challenges* (Istanbul: Istanbul Bilgi University Press 2004) p. 29

⁵⁰ *Ibid.* 29

⁵¹ Azza. Baydoun, *Killing of women in the name of honour: An evolving phenomenon in Lebanon* [2011] New York, p. 3 <<http://daleel-madani.org/sites/default/files/1320848770-Killing%20of%20women%20in%20the%20name%20of%20honour%20-%20Azza%20Charara%20Baydoun.pdf>> accessed 24 January 2015

⁵² Human Rights Watch 'Jordan: Tribunals no substitute for reforms on 'honor killings'', [2009] <<http://www.hrw.org/news/2009/09/01/jordan-tribunals-no-substitute-reforms-honor-killings>> accessed 24 January 2015

In the Western hemisphere, honour crimes have emerged with immigration flows. Reports submitted to the UN Commission on Human Rights, confirm that honour killings is a global problem and it occurs in different parts of the world. For instance in Bangladesh, Great Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda⁵³.

2.4 Justifications used for honour crimes

Honour crimes are rooted in certain traditional customs and have become socially acceptable in some societies. In some states, under the existing laws, perpetrators receive reduced sentences for committing honour crimes. For example, The Jordanian Penal Code accepts that the “purifying” of a wrong done to a tribe is necessary. In Syria, the penal code grants immunity or a greatly reduced sentence to a man who kills a female relative, which he witnessed committing adultery or in an suspicious situation with a male who is not a relative⁵⁴. Honour killings rarely reach the courts and if they do, sentences average six months⁵⁵.

Men can be victims of honour crimes as well, because of dishonouring their family by refusing to enter a marriage, for being homosexual or by the family of the woman with whom they are supposed to have an inappropriate relationship. A report by Human Rights Commission of Pakistan concluded the deaths of 97 men and 158 women victims as honour killings cases in Pakistan⁵⁶. However, men are more likely to escape to other parts of the country or finding sanctuary with other friends and family.⁵⁷ Women in this case are dependent and controlled by their family and have little or no refuge or resources to help them escape. Their freedom, money and lives are controlled by the men⁵⁸. Another reason why women are frequently blamed for breaching the honour code than men is because to kill a male from another family may create feuds in community structures because men are regard more ‘honourable’ than women⁵⁹.

⁵³ Amnesty International USA: *Culture of Discrimination: A Fact Sheet on “Honor” Killings* [2012]

⁵⁴ Robert Kiener, CQ Global Researcher, ‘Honor Killings: Can Murders of Women and Girls be Stopped?’ [2011] Published by CQ Press, A Division of Sage, Volume 5, Number 8, p.187 < <http://www.cqpress.com/product/CQ-Global-Researcher-Honor-Killings-v5.html>> accessed 23 December 2014

⁵⁵ U. Smartt, ‘Honour Killings’ [2006] JUSTICE of the PEACE Volume 170, p.5. < <http://ursulasmartt.com/pdf/JustPeace%5B1%5D.HonourKillings.9.1.06.pdf>> accessed 9 January 2015

⁵⁶ Amnesty International, 1999: Pakistan: Violence against Women in the Name of Honour, London: Amnesty International. AI Index: ASA 33/17/99

⁵⁷ Idriss, (n 10) p.2.

⁵⁸ *Ibid.* p.2.

⁵⁹ *Ibid.* p.2.

According to the perpetrators, honour crimes are justified by the immoral behavior of the women. Behaviors that are considered to violate honour are for example: adultery or being suspected of adulterous behavior. In addition, pregnancy outside marriage and not marrying the person that the family chooses is also seen as a justification to punish the woman. Marrying without permission is considered an offense to the honour of the family or the tribe⁶⁰. A common example is when a young woman falls in love with a man of another religion, caste or sect. Once the community hears of such instances, it is obligated to council the head patriarch to take action so as to avoid any 'shame' on the broader family⁶¹.

Women as victims of incest and rape, can also carry the burden for the shame of the male violations of their sexual 'honour' and in many cases even killed because they have been pregnant as a result⁶².

In some contexts the range of female behavior considered to violate honour goes beyond sexual conduct and includes other behaviors that challenge male control⁶³. Examples of this include being too independent, leaving the house without permission or living away from home, smoking or wanting a divorce from an abusive husband⁶⁴.

Chelser sums up other reasons for families to commit honour crimes. He cites: refusal to cover their hair, their faces, or their bodies or act as their family's domestic servant; wearing makeup or Western clothing; choosing friends from another religion and seeking to obtain an advanced education⁶⁵. The abovementioned justifications belong to the honour code which is believed that once it has been broken it brings shame upon the family and by punishing the women the family honour can be restored. However, this list only gives an assumption of things that might trigger a perpetrator to commit honour crimes. There are other factors involved which trigger a perpetrator to commit honour crimes. Such as the society, culture and family. Immoral behavior is a broad definition and it depends on the interpretations of the society and family members who determine when a behavior of a female family member has brought shame to the family's honour.

⁶⁰ Kiener (n 52) p. 185

⁶¹ *Ibid.* p. 2

⁶² Lyn Welchman & Sara Hossain (Eds.), *Honor; Crimes, Paradigms and Violence Against Women* (London & New York: Spinifex, Press, Zed Books 2005) p.5

⁶³ *Ibid.* p. 5

⁶⁴ P. Chelser, 'Are honor killings simply domestic violence? Middle East Quarterly' [2009] Spring Volume XVI: Number 2, p. 61.< <http://www.meforum.org/2067/are-honor-killings-simply-domestic-violence>> accessed 14 January 2015

⁶⁵ *Ibid.* p. 61

2.5 Shame and Honour Culture

Cultural anthropologists have divided societies into two cultures, a shame based culture and a guilt based culture⁶⁶. Honour and shame are expressions of social and cultural relations. In a shame based culture, an individual represents the family or the tribe all the time. Honour is determined by the public recognition of one's social standing. It is inherited from the family at birth and is not based on something that the individual has done. However individuals can damage their family's honour with their behavior. Anger and shame are the two emotions that are especially associated with the loss of honour⁶⁷. Males experience shame and consequent loss of face when their honour is deemed violated by a female's behavior⁶⁸.

Shame is a controlling force. The society expect an honourable behavior and based on that, a person gets recognition from others in the society. Social groups are developed through self-identification and sharing similarities and affinities of belonging to a particular group which upholds the same values⁶⁹. Acting in a way which is not aligned with the honour code leads to a dishonourable behavior that can be eliminated by revenge.

Even people who immigrate expect that their children behave according to the cultural norms of their homeland. Collective controls over individual's action through shame and honour have been deemed as characteristics of backwards cultures which have no place in contemporary societies and are not made for those who seek to join the club of enlightened, secular and rational society⁷⁰.

2.6 Male dominance

Throughout history, the pattern has been the subordination of women and the dominance of men. Gender determined the roles and behavior of individuals. Men are supposed to be dominant and women weak and subordinate. However this pattern is still in force in many

⁶⁶ Ying Wong, and Jeanne Tsai, "Cultural Models of Shame and Guilt." In Handbook of Self-Conscious Emotions. Jessica Tracy, Richard Robins and June Tangney (ed.) (New York: Guilford Press, 2007) p. 209

⁶⁷ Mosquera (n 21) p. 143

⁶⁸ K. Kailo, Honor, shame, culture and violence. From the Hidden gender contract towards ecosocial sustainability and peace. [2005] UNESCO Conference on International Education. <http://www.kaarinakailo.net/kirjoituksia/Honour_shame.htm> accessed 5 March, 2015

⁶⁹J.E. Stets & P.J. Burke, *Identity theory and social identity theory* (Sociological Psychology Quarterly 63:3) p. 225

⁷⁰ Sen (n 12) p.45

Middle Eastern societies⁷¹. There are different forms of explaining certain human behaviors. First there is the sociological explanation, which accounts for cultural force and group behavior. Second, there is the proximate cause, which focuses on how a certain behavior is immediately brought by stimuli⁷².

Kordvani, explains men's violence against women in Middle Eastern societies from a sociological point of view. Violence in this context includes physical, mental and emotional abuse, with aims to control, dominate and express authority and power⁷³. Honour cultures promote a view of manhood in which expression of toughness, strength and status in public behavior are even more desirable than is the case in individualistic cultures⁷⁴. Honour code which is related to male gender is expressed in terms of protecting and maintaining authority over the family. Therefore men are seen as safeguards of the family's social position and should control the female members.

Female honour code is associated with sexual shame and the expression of their sexual behavior. It is a demand that a woman stays virgin until she is married. Being modest, dressing modestly and acting with a sense of shame in social relations with men are all part of the female honour code⁷⁵. Female members occupy the private and the domestic sphere. They are often seen as emotional and incapable of making important decisions on their own⁷⁶. For that reason women are seen as the property of the family and marriage is the only institution that legitimizes the possession of this object by a stranger⁷⁷.

Men dominate female members of the family is related to their economic status and their sexuality⁷⁸. Men manipulate the public opinion regarding perspectives on honour and shame. Men must defend their masculinity in order to maintain their honour as a men. Men should therefore be able to defend the chastity of women under their dominance and protection. Having the female members behave in an honourable way shows that they are under control and are

⁷¹ A.H. Kordvani, Hegemonic Masculinity, Domination and Violence Against Women, "Expanding Our Horizons" Conference, Sydney, 2002, p. 2.

⁷² Goldstein (n 32) p. 32

Owen Jones, *Sex, Culture and the Biology of Rape: Towards Explanation and Prevention* [1999]*California Law Review* Vol. 87, p. 827, 884, 875 < <http://ssrn.com/abstract=611908>> accessed 8 January 2015

⁷³ Kordvani (n 69) p. 2

⁷⁴ Mosquera (n 21) p. 145

⁷⁵ *Ibid.* p. 147

⁷⁶ Kordvani (n 69) p. 3

⁷⁷ *Ibid.* p4

⁷⁸ *Ibid.* P.3

well protected and that the men's domination has been well established⁷⁹. If the male relatives fail to control and protect a female relative, a shame will be brought to the whole family. The men of the family would have failed to defend their family's honour. It proves that they do not have control over the female members, therefore another man has put his hand on their 'property'⁸⁰, which can be seen as a threat to their masculinity⁸¹. In most cases, the woman is the one to blame and to restore their family's honour, the woman must be punished. The men of the family must act to regain their family's honour or else they will be branded by others of the society as 'cowards or careless' for their dereliction of this duty⁸². Based on the latter honour crimes may be committed under pressure of the society.

2.7 Conclusion

In this chapter, an outline of honour crimes and honour killing has been given. As mentioned before, honour crimes include all forms of violence directed towards individuals in the name of honour. It is an action that aims to remove stain of dishonour through the use of emotional, social or physical coercion over a person who engaged in actions deemed to be dishonourable by the community. It is believed that the victim has caused the family shame and for that reason by killing the victim, the honour of the family can be restored. *Honour killing* is the murder of women for suspected deviation from the honour code that is imposed by society. Perpetrators are often relatives of the victim. Honour crimes and honour killing are often committed in an honour and shame based society. In an honour and shame culture, individuals find it very important what other people of the society think about them. Men are guardians of the family's honour. If a women of the family behaved in an immoral way, to prove their masculinity, men of the family have to punish this women. If the latter does not happen, the family may be excluded for the rest of the society. Honour killing is in some cases a pressure from the society. Honour crimes are a global issue and reports state that the rate of such crimes is becoming higher. In the next chapter, international law and states obligations related to women violence and honour crimes will be discussed.

⁷⁹ *Ibid.* p.6

⁸⁰ *Ibid.* P.5

⁸¹ Mosquera (n 21) p. 144

⁸² H. Kordvani, Hegemonic Masculinity, Domination and Violence Against Women, "Expanding Our Horizons" Conference, Sydney, 2002, p. 5

3. Honour Crimes under International Human Rights law

In this chapter International human rights law related to discrimination against women and honour crimes will be discussed.

3.1 Sources International Law

The UDHR contains provisions which grant both sexes the enjoyment of the universal rights and freedoms⁸³. This principle of non-discrimination and equality is also invoked in the other international conventions such as the ICESCR and the ICCPR⁸⁴. However, women are still unable to enjoy their rights. As a response to the unequal treatment, the first world conference on women was held in Mexico. The 1975 World Plan of Action was then adopted. The latter contained guidelines for states to establish full gender equality, integration and full participation of women in development and to increase contribution by women in the strengthening of world peace⁸⁵. The World Plan of Action also drew attention to the need for ways to solve family conflict that ensured dignity, equality and security to every family member⁸⁶.

3.2 Foundations of International Human Rights Law

One of the basic foundations of international human right law is equality and non-discrimination. Before 1945 women were in many countries protected by law as property, by extension or as dependents on men⁸⁷. So even law confirmed the stereotypical role women had in society, which consisted of the prioritization of motherhood and domesticity. Several international conventions did not treat women equally to men. Such as the international labor

⁸³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 2

⁸⁴ International Covenant on Economic, Social Cultural Rights (adopted 16 December 1966, Entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2 (2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2 (1)

⁸⁵ United Nation Public Department of Public Information, Women, Gender Equality, Development and peace for the Twenty-First Century, June 2000, <<http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm>> accessed 6 November 2014

⁸⁶ S. Aleem, *Women, Peace and Security: An International Perspective* (Xlibris Corporation 2013) p. 52.

⁸⁷ Dianne Otto, 'Women's right, University of Melbourne' [2010] Melbourne Law School p. 3 <<http://ssrn.com/abstract=1576229>> accessed 29 January 2015

convention which prohibited women from certain type of work, for it interfered with their domestic and reproductive responsibilities⁸⁸.

However after the Second World War women were granted the same rights as men. The UDHR contains provisions which grant both sexes the enjoyment of the universal rights and freedoms⁸⁹. This principle of non-discrimination and equality followed in the other international conventions such as the ICESCR and the ICCPR⁹⁰. Article 3 of both conventions was included to ensure that the states would undertake action to ensure that men and women would equally enjoy their rights⁹¹. The latter does not only suggest that the states treat women and men alike when they are in a comparable situation, but the outcome of the treatment must also be equal. However states parties were slow to acknowledge this⁹².

Men and women were also granted equality with regard to marriage, during marriage and at its dissolution⁹³. With such provisions included, the responsibility of states was extended to the private sphere. These provisions served by revealing the shield under which many human rights violations against women occurred in the private of the family, and which were kept from public scrutiny, reinforcing impunity for perpetrators⁹⁴.

However the provision which underlined the responsibility of the states to protect the family as a fundamental group unit of society was in tension with other provisions in the same Covenants which stated that the States should respect and not interfere with privacy, family and home⁹⁵. Accordingly, women's equality and non – discriminatory treatment was granted and promoted by the various covenants but not granted in practice. The covenants did not define the principles of equality and non-discrimination, for that reason many states interpreted their obligation narrowly. Choosing for formal equality, which suggest likes must be treated alike⁹⁶, rather than

⁸⁸ *Ibid.* p. 6

⁸⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 2

⁹⁰ International Covenant on Economic, Social Cultural Rights (adopted 16 December 1966, Entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2 (2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2 (1)

⁹¹ International Covenant on Economic, Social Cultural Rights (adopted 16 December 1966, Entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 3; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 2 (1)

⁹² Dianne Otto, *Women's right*, Read in David Harris, Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, David Harris, *International Human Rights Law* (Oxford University Press 2010) p. 349

⁹³ Article 16 (1) UDHR

⁹⁴ Otto (n 90) p. 320

⁹⁵ Art 12 and 16 3 UDHR and Art. 17 1 and 23 1 ICCPR

⁹⁶ Daniel Moeckli, *Equality and Non-discrimination in International Law*, Read in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, David Harris, *International Human Rights Law* (Oxford University Press 2010) p. 191

substantive equality, which argue that equality must go beyond consistent treatment of likes, however equality of opportunity and equality of results⁹⁷.

In order to protect women's right and deal with women's human rights violations, the UN General Assembly had adopted the Convention on the Elimination of all forms Against Women (hereafter referred to as CEDAW).

3.3 The CEDAW

In 1979, the UN General Assembly adopted the CEDAW in order to protect women's rights. The CEDAW entered in 1981 into force. The aim of the Convention is to provide and ensure equal opportunities for women in every aspect of society and to guarantee all human rights and fundamental freedoms for women. It outlines important aspects of women's' rights and is often described as an international bill of rights for women⁹⁸. By accepting the Convention, the States agreed to undertake a series of actions in order to eliminate all forms of existing discrimination against women and to set an agenda for national action to end such discrimination⁹⁹.

One of the challenges faced when promoting women's rights, was that many states interpreted their obligation narrowly. At the same time, the interpretation of non-discrimination and equality did not force human rights bodies to rethink their own gender framework¹⁰⁰.

Article 1 of the CEDAW convention attacks the latter by defining *discrimination against women*. Discrimination has been defined as any distinction, exclusion or restriction made on the basis of sex which prevents women from enjoying their rights in various fields¹⁰¹.

By including a definition of discrimination which covers direct, indirect, intended and unintended discrimination, it is clear that discrimination against women should be interpreted widely. This non-discrimination principle promotes substantive equality, by underlining that

⁹⁷ *Ibid.* 192

⁹⁸ Convention on The Elimination of all Forms of Discrimination against Women.

<<http://www.un.org/womenwatch/daw/cedaw/>> accessed 9 February 2015

⁹⁹ *Ibid.*

¹⁰⁰ Otto (n 85) p. 12

¹⁰¹ Definition of Discrimination against women : Discrimination has been defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field' Article 1 Convention Elimination of All Forms of Discrimination Against Women.

women should be able to enjoy and exercise their human rights and fundamental freedoms, in the public and the private sphere¹⁰².

The Convention urges States to undertake all appropriate measures to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men¹⁰³. Those measures include legislation, by repealing all provision that discriminate against women¹⁰⁴ and by adopting legislative and other measures which prohibit discrimination against women and ensure equality of men and women¹⁰⁵. Furthermore, States are obliged to provide legal protection for women's right on an equal basis with men and to ensure effective protection through competent national courts and other public institutions¹⁰⁶.

In 1980 as the States met in Copenhagen to review the World Plan of Action, it had been recognized that there is a gap between adopting rights which secures women and the ability of women to exercise these rights. The Conference remarked three areas which were essential for establishing the goals that were set. These three areas were equal access to education, employment opportunities and adequate health care services¹⁰⁷.

3.4 The Committee on the Elimination of Discrimination against Women

In 1982 the Committee on the Elimination of Discrimination against Women (hereafter the Committee), which is an expert body, was established. The Committee watches over the progress of women made in countries that are state parties to the 1979 convention. The Committee also makes recommendations on any issues affecting women to which it believes the States parties should devote more attention¹⁰⁸.

However, it was not until the in 1985 Nairobi World Conference that the dialogue on violence against women was finally given attention. The UN Document: *Nairobi forward looking Strategies for the Advancement of Women*, linked the promotion and the maintenance of peace

¹⁰² Otto (n 85) p. 12

¹⁰³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, art 3 <<http://www.refworld.org/docid/3ae6b3970.html>> accessed 8 January 2015

¹⁰⁴ Article 2 (g) CEDAW

¹⁰⁵ Article 2 (b) CEDAW

¹⁰⁶ Article 2 CEDAW

¹⁰⁷ UN Women, Gender Equality, 'Development and peace for the Twenty-First Century', June 2000, <<http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm>> accessed 6 November 2014

¹⁰⁸ Committee on the Elimination of Discrimination against Women, <<http://www.un.org/womenwatch/daw/cedaw/committee.htm>> accessed 6 November 2014

to the eradication of violence of strategies to address violence against women in the family, in armed conflict and against women subject to detention or penal law¹⁰⁹.

3.4.1 General Recommendations

The Committee's General recommendation No.12 on Violence against Women, recommended States to report information about the legislation in force to protect women against violence, the existing of support services and statistical data on the incidence of violence against women¹¹⁰. In the General recommendation No. 14 the Committee expressed its concerns about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women and listed recommendation for the States parties to apply.¹¹¹

In the General Recommendation No. 19, the Committee stated that Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Gender-based violence is defined as violence that is directed against a woman because she is a woman or that affects women disproportionately, occurring in private or public life.¹¹²

This definition was introduced to pressure states and recognize their responsibility to eliminate violence against women and disqualified honour as a legal defense for honour crimes. It predicates accountability for public acts of violence committed by the state as well as some acts committed by non-state actors in the private sphere. Hence, "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and for providing compensation"¹¹³. The Committee has made the

¹⁰⁹ Jane Connors, 'United Nations approaches 'crimes of honour'', in Lynn Welchmann and Sara Hossain (eds.) *Honour' Crimes, Paradigms, And Violence Against Women* (London and New York: Zed Books, 2005) p 23

¹¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 12: Violence against women*, 1989, <<http://www.refworld.org/docid/52d927444.html>> accessed 8 January 2015

¹¹¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 14: Female Circumcision*, 1990, A/45/38 and Corrigendum, available at: <<http://www.refworld.org/docid/453882a30.html>> accessed 18 February 2015

¹¹² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992 <<http://www.refworld.org/docid/52d920c54.html>> accessed 8 January 2015. Violence against women: Violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty whether occurring in private or public life.

¹¹³ Connors (n 107) p. 25 See also Kiener (n 52) p. 184

obligation of states parties clear, which is to act with ‘due-diligence’ to ensure that also the private actors do not violate the CEDAW¹¹⁴.

The Committee has also explained that states parties must implement their obligations ‘*in an integrated fashion and extend it beyond a purely formal legal obligation of equal treatment*’¹¹⁵. However the Committee elaborated that the position of women will not improve as long as the underlying causes of discrimination and inequality are not also addressed¹¹⁶.

The Committee has also made a comment on Articles 2(f), 5 and 10(c) of the Convention by stating that;

*‘Traditional attitudes by which women are regarded as subordinate to men or involving violence...may justify gender-based violence as a form of protection or control of women...the effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms’*¹¹⁷.”

So according to the Committee religious teaching and cultural practices can be a part of the underlying causes of discrimination and inequality; and for that reason they must be tackled. Also social change must be promoted by eliminating prejudice and customs which are based on the idea of the inferiority or the superiority of either of the sexes or stereotypical roles of men and women¹¹⁸. Moreover, social change can also be promoted through education by removing gender stereotypes from school programs and textbooks¹¹⁹.

The Committee also added that an important measure which is necessary to overcome family violence includes “*legislation to remove the defense of honour in regard to the assault or murder of a female family member*”¹²⁰.

¹¹⁴ Otto (n 85) p. 13

¹¹⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004 <<http://www.refworld.org/docid/453882a7e0.htm>> accessed 8 January 2015

¹¹⁶ S. Cusack, L. Pusey, ‘CEDAW And The Rights To Non-Discrimination and Equality’ [2013] *Melbourne Journal of International Law*, Volume 14, page 10

¹¹⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992 <<http://www.refworld.org/docid/52d920c54.html>> accessed 8 January 2015

¹¹⁸ Article 5 and 5(b) CEDAW

¹¹⁹ Article 10 (c) CEDAW

¹²⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992 <<http://www.refworld.org/docid/52d920c54.html>> accessed 8 January 2015

Years later, the Committee has discussed and expressed its concerns about the provisions which are included in the Penal Code that allowed less rigorous sanctions or penalties for ‘honour killing’ in states like Turkey, Jordan, Israel, Iraq, Egypt, Netherlands, Uruguay, Yemen and Brazil¹²¹. The Committee found that those provisions contravened the principle of respect for human life and security of persons and continue to discriminate women.

3.4.2 The UN Declaration on the Elimination of Violence against Women

In 1993 The United Nations General Assembly has adopted the Declaration on the Elimination of Violence against Women. The declaration recognize the urgent need for the universal application of women’s rights and principles regard equality, security, liberty, integrity and dignity of all human beings¹²². The aim of this declaration is to strengthen and complement the process of the elimination of violence against women, because violence against women is an obstacle to the achievement of equality, development and peace¹²³. The Declaration states that:

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination of gender-based against women and should exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or private persons"¹²⁴.

The UN declaration on the elimination of violence against women defines the term as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.¹²⁵

After various attentions from different quarters such as the rapporteurs of the Commission of Human Rights and by various the human right treaty bodies, the issue of honour crimes has been brought to the attention of the political bodies of the UN¹²⁶. The General Assembly held

¹²¹ Connors (n 107) p. 29-30

¹²² <http://www.un.org/documents/ga/res/48/a48r104.htm>

¹²³ UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104 <<http://www.refworld.org/docid/3b00f25d2c.html>> accessed 8 January 2015

¹²⁴ UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104, art 4 <<http://www.refworld.org/docid/3b00f25d2c.html>> accessed 8 January 2015

¹²⁵ UN General Assembly, *Taking action against gender-related killing of women and girls: resolution / adopted by the General Assembly*, 11 February 2014, A/RES/68/191. <<http://www.refworld.org/docid/532066034.html>> accessed 8 January 2015

¹²⁶ Connors (n 107) p. 25 p 33

its twenty third Special Session at the UN Headquarters in New York in 2000. The Session, entitled "*Women 2000: Gender equality, development and peace for the 21st century*". Delegates negotiated and adopted an outcome document¹²⁷. The governments were urged to develop, adopt and fully implement laws and other measures such as policies and educational programs to eradicate harmful customary or traditional practices which are violations of the human rights of women and girls and which represent obstacles to the full enjoyment of women of their human rights and fundamental freedoms. The session also turned attention to the importance of raising collective and individual awareness on how these harmful traditional or customary practices violate women's human rights¹²⁸.

3.4.3 The United Nations General Assembly Resolution 55/66

In 2001 the United Nations General Assembly has adopted the Resolution 55/66 "Working towards the elimination of crimes against women committed in the name of honour". The latter reaffirms the obligation of all States to promote and protect human rights and fundamental freedoms¹²⁹. It is the first General Assembly resolution that specifically addresses the elimination of crimes against women committed in the name of honour. The resolution states that crimes against women committed in the name of honour are a human right issue and that States are obliged to exercise due diligence to prevent, investigate and punish the perpetrators of such crimes and to provide protection to the victims¹³⁰. By identifying honour crimes as a violation of human rights, it is considered a human right violation in case the States fails to prevent them, to protect the victims or to punish the perpetrators¹³¹. Member States are also obliged to intensify legislative, educational, social and other efforts to raise awareness of the need to prevent and eliminate "honour"-based crimes. However to fully eliminate honour

¹²⁷ "Review and appraisal of progress made in the implementation of the 12 critical areas of concern in the Beijing Platform for Action, and Further actions and initiatives for overcoming obstacles to the implementation of the Beijing Platform for Action," (A/S-23/2/Add. 2, as amended by A/S-23/AC.1/L.1/Add. 1-42).

¹²⁸ Article 69 of the Resolution adopted by the General Assembly on the report of the Ad Hoc Committee of the Whole of the Twenty-third Special Session of the General Assembly (A/S-23/10/Rev.1) S-23/3. Further actions and initiatives to implement the Beijing Declaration and Platform for Action.

¹²⁹ Working towards the elimination of crimes against women committed in the name of honour, UNGA Res A/RES/55/66 (31 January 2001) <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/66&Lang=E> accessed 25 January 2015

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

crimes there is an urgent need to investigate, document and prosecute honour crimes to eliminate crimes against women¹³².

In 2003 the Resolution “Working towards the elimination of crimes against women and girls committed in the name of honour” was adopted by the UN General Assembly. In 2005 the Resolution “Working towards the elimination of crimes against women and girls committed in the name of honour was adopted by the UN General Assembly”. Both resolutions aim the same. They underline the States’ obligations and encourage the States to continue making efforts to prevent and eliminate crimes against women and girls committed in the name of honour, by using legislative, administrative and programmatic measures. Moreover, the resolution claims that honour killings are incompatible with all religious and cultural values. It also emphasized the need to treat and punish all forms of violence against women as a criminal offence¹³³.

3.5 Conclusion

There have been various attempts in International Law to address violence against women and honour crimes. States are required to implement legislations related to violence against women. States are required to protect their citizens. The responsibility of the states is extended to the private sphere. So states have the responsibility to protect women in the public and the private sphere. States must act with due diligence to prevent violations of rights or to investigate and punish acts of violence. States may also be required to provide compensation. Furthermore, the Committee emphasized that the position of women will not improve as long as the underlying causes of discrimination and inequality are not addressed. For this reason states must also take action to attack harmful traditional or customary practices that violate women’s rights. In the next chapters an examination of how states deal with honour crimes will be elaborated.

¹³² Working towards the elimination of crimes against women committed in the name of honour UNGA, Res 57/179 (18 December 2002) < <http://daccess-ods.un.org/TMP/9110714.19715881.html>> accessed 15 January 2015

¹³³ Working towards the elimination of crimes against women and girls committed in the name of honour, UNGA, RES/59/165 (10 February 2005) < https://www.zwangsheirat.de/images/downloads/un/UN_Working_towards2004.pdf> accessed 15 January 2015

4. Honour crimes in England

This chapter provides a focus on honour crimes in England. The estimated number of honour killing per year in the United Kingdom is about 12.¹³⁴ Heshu Yones's case was the first murder that was labeled as honour killing by the Metropolitan police in 2002¹³⁵. After Heshu's murder, over 100 cases of murder which had remained unsolved in the previous decade were reopened¹³⁶. In 2003, the Metropolitan police held a seminar on honour killing¹³⁷. The concept "honour killing" received a great attention and various actors within the criminal justice system, the police, the prosecution, lawyers, judges and other public servants attempted to understand the meaning of it to prevent it.

4.1 Honour crimes in English Courts and the Cultural defense

In this section honour crimes in English Courts will be discussed. This to give an overview about how courts in England deal with honour crimes cases.

4.1.1 Legislation

In the England there is not a single codified constitutional document which signifies the legal rights of those within its borders and providing the rights, roles and responsibilities of the states. The case law and Acts of Parliament make up the constitutional rules in England. England does not have a bill which is designed with the intention of dealing with Honour based violence. There is a Sex Discrimination Act 1975 which aims to provide equality between men and

¹³⁴ Honour Based Violence Awareness Network, Statistics and Data. <<http://hbv-awareness.com/>> accessed 5 April 2015.

¹³⁵ Hanna Siddiqui, 'There is No 'Honour' in Domestic Violence, Only Shame! Women's Struggles Against "Honour" Crimes in the UK', in Lynn Welchmann and Sara Hossain (eds), *'Honour' Crimes, Paradigms, And Violence Against Women* (London and New York: Zed Books 2005) p.269

¹³⁶ Pope (n 47) p. 133

¹³⁷ Siddique (n 132) p.269

women related to equality in employment and education¹³⁸. The Government have also made efforts to improve responses to specific types of honour based violence, female genital mutilation and forced marriage by creating the Forced Marriage Act 2007 and the Female Genital Mutilation Act 2003¹³⁹. However there is still no specific legislation which address specifically the issue of honour based violence. Honour based crimes are being covered by various existing legislation, such as criminal law. Honour based crimes are often dealt with in the context of domestic abuse legislation and policy¹⁴⁰. And just like in a domestic violence case, honour crimes perpetrators could be prosecuted under the criminal law. Honour crimes perpetrators could be prosecuted for murder, rape, manslaughter, and harassment or threatening behavior¹⁴¹.

4.1.2 Honour crimes in Court

An examination of honour killings in the English's Courts shows that almost all of the defendants put forward a cultural defense. According to Gill, this allowed them to distance their behavior from violence against women. When using the cultural defense, the defendants invoke the traditions of their culture to explain or mitigate their actions¹⁴². Cultural defense maintains "that persons who are socialized in a minority culture, who regularly conduct themselves in accordance with their own cultural norms, should not be held fully accountable for conduct that violates official law, if that conduct conforms to the prescriptions of their own culture"¹⁴³. Some argue that the reliance on cultural tradition is widely regarded as legitimating crimes against women and the use of cultural justification weighs the interest of the defendants above those of the victims and undermine universal principles¹⁴⁴. When using cultural defense, the defendants attempts to plead not guilty to murder but guilty to manslaughter by reason of provocation.

¹³⁸ Idriss (n 10) p. 9

¹³⁹ S. Walker, How is Honour Based Violence Managed in England and Wales, [2012] (Internet Journal of Criminology ISSN 2045-6743) , p.16 < http://www.internetjournalofcriminology.com/Walker_How_is_Honour_Based_Violence_Managed_in_England_and_Wales_IJC_Feb_2012.pdf> accessed 5 April 2015

¹⁴⁰ *Ibid.* p. 1

¹⁴¹ A. Matczak, E. Hatzidimitriadou, and J. Lindsay, 'Review of Domestic Violence policies in England and Wales', [2011] (Project Report) London, U.K. : Kingston University and St George's, University of London. p 10-12 < <http://eprints.kingston.ac.uk/18868/1/Matczak-A-18868.pdf>> accessed 18 april 2015

¹⁴² A. Phillips, 'When culture means gender: issues of cultural defence in the English courts' [2003] *Modern law review*, 66 (4). p. 512 < [http://users.utu.fi/freder/philipps\).pdf](http://users.utu.fi/freder/philipps).pdf)> accessed 14 April 2015

¹⁴³ *Ibid.* p. 515

¹⁴⁴ *Ibid.* p. 513

4.1.3 Provocation

Provocation is a partial defense of the murder, which aims to reduce the conviction to manslaughter¹⁴⁵. Provocation is developed as a common-law defense and now it is stated in the Homicide Act 1957 in section 3. Provocation acknowledges that a person can be provoked by things said or done, which may trigger this reasonable person to commit a crime. It is up to the jury to determine whether the provocation was enough to make a reasonable man to do what he did. In examining the validity of the provocation defense, both subjective and objective elements must be examined.

4.1.3.1 *The subjective test*

Subjective elements determine whether the evidence shows that there was in fact a sudden and temporary loss of self-control on the part of the defendant. The main legal authority of the subjective test can be found in the case *R v. Duffy*¹⁴⁶. The homicide must be committed in timely connection after the perpetrator has been provoked. However if the perpetrator did not react immediately and there is a time lapse between the provocation and the crime, the subjective test will fail. It would be seen as evidence that the perpetrator could have regained their self-control and acted in revenge as opposed to anger¹⁴⁷.

4.1.3.2 *The objective test*

The objective element questions whether a reasonable man would have acted in the same way as the perpetrator¹⁴⁸. The approach of the objective test diverse in court cases. The main legal authority is that of the case *DPP v. Camplin*. Herein it is stated that “a reasonable man is a person having the power and control to be expected of an ordinary person, but in all other respects sharing such of the accused’s characteristics as they think would affect the gravity of the provocation”¹⁴⁹. Hence, a reasonable person is expected to maintain a level of self-control,

¹⁴⁵ A. Carline, ‘Honour and Shame in Domestic Homicide: A Critical Analysis of the Provocation Defence’ in M. Idriss and T. Abbas (eds), *Honour, Violence, Women and Islam*, (London: Routledge, 2011) p.83

¹⁴⁶ *R. v. Duffy* [1949] 1 All E.R. 932

¹⁴⁷ Carline (n 142) p.86

¹⁴⁸ Rupa Reddy, ‘Gender, Culture and the law: Approaches to ‘Honour crimes’ in the UK’, [2008] *Fem Leg Stud* (2008) 16:3 p. 314. < <http://jthomasniu.org/class/781/Assigs/reddy-honorcrim1.pdf>> accessed 15 April 2015

¹⁴⁹ *DPP v. Camplin* [1978] 2 All ER 168.

despite their ethnicity, sexuality or disability¹⁵⁰. However the level of provocation is so high that it caused this person to react beyond his/her self-control. In the case *R v. Smith* it is stated that any of the characteristic of the accused is relevant and should be taken in to consideration, when determining the loss of self-control is ‘reasonable’¹⁵¹. However, this was rejected in the case of *Attorney General for Jersey v. Holley*¹⁵². According to this case not all characterises are relevant for determining the loss of self-control. Culture and ethnicity are only relevant in terms of the gravity of the provocation.

The court in both the *Smith* and *Holley* cases recognized the difficulties in the concept ‘a reasonable man’ and favored the phrase ‘ordinary person’. An ‘ordinary person’ means” a person of either sex, not exceptionally excitable or pugnacious, possessed of such powers of self-control as everyone is entitled to expect that his fellow citizens will exercise in society as it is today”¹⁵³. The courts also have recognized that the power of self-control is not universal and static.

4.1.4 Reform Coroner’s and Justice Act 2009

One of the reasons behind the decision to retain the notion of a ‘loss of self-control is to ensure that ‘honour killings are not mitigated’¹⁵⁴. The reforms under the Coroner’s and Justice Act 2009 appear to have a major impact on Honour Based Violence. Section 54(4) of the 2009 Act states that loss of self-control defense “does not apply if it is acted in a considered desire for revenge”¹⁵⁵. This is often the case in honour crimes where the aim is to restore the honour that has been lost because of an act of the victim. It usually also involve planning and premeditations and for that reason falls within the category of revenge killings¹⁵⁶. Section 55 (6) (c) excludes the control of sexuality and a woman’s infidelity. The latter is also often a justification of the perpetrators to kill the victim.¹⁵⁷ However, Anna Carline argues that, it would be a mistake to assume that there is little point in further considering the defense of provocation when looking at honour killings. First, the predicament of abused women who kill their partners has led to a

¹⁵⁰ Carline (n 142) p. 88

¹⁵¹ *R v Smith* [1959] 2 QB 35

¹⁵² *Attorney General for Jersey v. Holley*. 2005 2 AC 580.

¹⁵³ *R v Camplin*, A.C. 705 (1978)

¹⁵⁴ Carline (n 142) p. 90

¹⁵⁵ section 54(4) of the 2009 Act

¹⁵⁶ Siddique (n 132) p.269

¹⁵⁷ Idriss (n 10) p. 2

loosening of the time constraints: a time lapse between the last provocative act and the homicide will not by law prevent a plea of provocation. The notion of slow-burn anger and ‘the last straw’ analogy, seems to have been accepted within the law, and this could be used in ‘honour killing cases’.

4.2 Honour crimes cases in England

4.2.1 Tasleem Begum

One of the earliest honour killings cases in England involved Tasleem Begum, killed in 1995, by her brother in law Shabir Hussain, who was also her cousin, after hearing about her affair. Shabir Hussain killed Tasleem while she was waiting for her lover, by running her over with his car and then reversing back over her body¹⁵⁸. At the initial trial in 1996, Hussain denied any involvement in the murder of Tasleem. He was convicted of the murder of Tasleem and sentenced to life imprisonment by the Leeds Crown Court.

However at his retrial in 1998, he entered a plea of guilty to manslaughter for reason of provocation. The judge acknowledges that the fact that Tasleem was having an affair “would be deeply offensive to someone with your background and your beliefs”¹⁵⁹. And that “something blew up in your head that caused you a complete and sudden loss of self-control¹⁶⁰”. Based on this, Shabir Hussain sentence was reduced to six and a half years due to the mitigating factors that have been identified. Even though the judge did not explicitly state that the loss of self-control was caused by adultery of the victim or that it brought shame to the defendant, the judge did acknowledge that this would be offensive to someone with the defendant’s background and religious belief¹⁶¹. It seems that the provocation was clearly because of the cultural factors¹⁶². It is very unlikely that a person without the defendant’s background and religious belief would have successfully applied for a plea of provocation. As mentioned before, Hussain had suffered a loss of self-control when seeing her. He stated that “something blew up in your head that caused you a complete and sudden loss of self-control”. Historically speaking, it would have been understandable for a man to become angry and kill a woman due to her infidelity or due to contraventions of the perceived and approved scripts of

¹⁵⁸ Reddy (n 145) p. 316

¹⁵⁹ R v Shabir Hussain, Newcastle Crown Court, 28 July 1998.

¹⁶⁰ R v Shabir Hussain, Newcastle Crown Court, 28 July 1998.

¹⁶¹ Phillips (n 139) p. 541

¹⁶² *Ibid.*

female sexuality. However there is usually a material relationship between the man and the woman. Based on Tasleem and Shabir relationship (cousins), it is questionable if a plea on provocation would have succeeded, if it was not for their cultural background.

4.2.2 Shahida Mohammed

Shahida Mohammed, a 24 year old girl, was killed by her father Faqir Mohammed in June 2001. The father was, according to the evidence given by his children, a man of violent disposition. Fearing his disapproval, Shahida kept her relationship with her boyfriend Bilal Amin secret. After returning from the mosque, Faqir Mohammed found his daughter's boyfriend in her room. Faqir Mohammed fetched a knife from his bedroom and returned to Shahida's bedroom. Her boyfriend was then leaving through the upstairs window. He then went downstairs, grabbed Shahida in a headlock and stabbed her multiple times in the head and stomach. The pathologist counted at least 19 knife injuries. Her sister Majida witnessed the scene. After she failed to prevent her father from killing her sister, she tried to alarm the police. Faqir Mohammed argued that he had been provoked in murdering his daughter through shame but pleaded guilty¹⁶³. However, he stated that killing his daughter was reasonable and is in accordance with his religion. He stated that the Quran prohibit such a behavior between a man and a woman. He claimed that he was acting in accordance with custom and tradition.

Faqir Mohammed submitted a plea of provocation of manslaughter. The provocation in this case also based on his religious beliefs. He claimed that he had been depressed after the death of his wife and that he acted according to his religion. The judge directed the jury to follow the ruling in *R v Smith*. This case ruled that certain characteristics of the defendant could be taken into account in assessing both the gravity of the provocation and level of self-control expected¹⁶⁴. The jury was instructed to take into account the defendant's depression and his cultural and religious beliefs on sex outside marriage. Therefore, whether the defendant's loss of self-control was excusable or whether his application for plea of provocation fails. By instructing the jury to take the defendant's cultural and religious belief into consideration, the judge accepted the evidence on the defendant's cultural background, attitudes to female

¹⁶³ R v Faqir Mohammed, Manchester Crown Court, 18 February 2002

¹⁶⁴ Reddy (n 145) p. 316

sexuality and behaviour towards the victim¹⁶⁵. This indirectly illustrates the Pakistani community as homogenous and uniformly restrictive in its attitudes towards sex outside marriage and honour and shame¹⁶⁶. The effect of accepting the latter as evidence will not only perpetuate ideas of culture as determinative of the ethnic minority, but also present a male-dominated and static view of the culture under scrutiny¹⁶⁷.

The belief in question here is concerned with the fact that a daughter should not have a boyfriend without his consent and that sex outside marriage was a major sin¹⁶⁸. The jury rejected his plea of provocation and Faqir Mohammed was found guilty and sentenced to life imprisonment. In this case, the presented evidence showed that Faqir Mohammed was a violent father and husband. Faqir Mohammed's appeal was also rejected. However the Appeal Court¹⁶⁹ ruled that *H. M. Attorney General for Jersey v Holley*, should have been followed instead and that the judge should have instructed the jury to decide whether a person of the same age and sex as the applicant and with ordinary self-control, would have acted as the applicant did¹⁷⁰. So to determine whether Faqir Mohammed loss of self-control is excusable, the jury should not take into account this religious beliefs and cultural characteristic. It seems that the courts are willing to view cultural characteristics as less fixed and not in the same way as an innate characteristic such as age, which the defendant has no control over¹⁷¹. However, cultural characteristics can still be used to determine the gravity of provocation in the same way as impotence¹⁷².

4.2.3 Heshu Yones

Heshu Yones, was a 16 year old Iraqi Kurd, who was murder in September 2002 by her father Abdalla Yones, who feared she was becoming too western as she began dating a Lebanese young man. Abdalla Yones, had received a letter which informed him that his daughter was bringing shame to his family. A teacher of Heshu, contacted her family and inadvertently informed them that Heshu had a romantic relationship, which resulted in bad grades. In response her father took her to Iraqi Kurdistan and arranged for her to marry her cousin. Upon subjecting her to a virginity test, he found that her hymen was ruptured and that an 'honourable' marriage

¹⁶⁵ Reddy (n 145) p. 316

¹⁶⁶ *Ibid.* p. 316

¹⁶⁷ *Ibid.* p. 316

¹⁶⁸ Phillips (n 139) p. 541

¹⁶⁹ R v Faqir Mohammed [2005] EWCA Crim 1880

¹⁷⁰ R v Mohammed [2005] EWCA Crim 1880

¹⁷¹ Reddy (n 145) p. 314

¹⁷² *Ibid.* p. 315

would be impossible¹⁷³. After returning to England, Heshu feared for her life. For that reason, she reached out and contacted various agencies to help her. However they all failed to adequately apprehend the risk to her life. Heshu was stabbed 11 times with extreme violence by her father.

Yones argued before the Central Criminal Court of England and Wales that his actions were triggered by Heshu's Western dress, her Lebanese boyfriend and a letter he received which labelled Heshu as a 'prostitute'. He pleaded guilty. The defense argued that Yones had been 'forced to kill', that the stain on his 'honour' had put him in an 'untenable position'¹⁷⁴. After the murder of Heshu, the notion of 'honour killing' received a great attention and entered the lexicon of the press for the first time¹⁷⁵.

In this case, Abdulla Yones cultural issues were invoked. The sister of the victim witnessed her father saying that if he ever found out that Heshu had a boyfriend, he would either kill her or himself. There was evidence that Heshu had suffered abuse. Abdulla argued that he was 'provoked' by Heshu's Western dress and her Lebanese boyfriend and the letter her received which informed him about Heshu's shameful behavior to the community. In his defense he also argued that he was "forced to kill" his daughter because she had put him in an "untenable position" by bringing a "stain" on the family honour¹⁷⁶.

Judge Denison stated that: "The killing and the manner of it was an appalling act". This is in any view a tragic story arising from irreconcilable differences between traditional Kurdish values and the values of Western society. It's plain that you strongly and genuinely disapproved of the lifestyle in this country of your daughter but it must not be an excuse to kill.¹⁷⁷" Judge Neil Denison accepted the grounds of provocation as mitigation and accordingly reduced the sentence from 20 years to 13, citing the 'irreconcilable cultural difficulties between traditional Kurdish values and the values of Western Society'¹⁷⁸.

¹⁷³ J. Payton, "Collective crimes, collective victims; A case study of the murder of Banaz Mahmud", in M. Idriss and T. Abbas (eds), *Honour, Violence, Women and Islam*, (London: Routledge, 2011) p. 75

¹⁷⁴ Smartt (n 53) p. 4-7

¹⁷⁵ Payton (n 167) p.75

¹⁷⁶ Smartt (n 53) p 6

¹⁷⁷ R v. Abdulla M. Younes, Central Criminal Court, 29 September 2003 [2003]

¹⁷⁸ Reddy (n 145) p. 314

4.2.4 Case Banaz Mahmud

One of the most frequently cited cases of honour crimes stories is the one of Banaz Mohamed. Banaz was a 20 when she was raped and killed by her 3 cousins following orders from her uncle and her father in 2006. She immigrated to Britain from Kurdish Iraq in 1998. Banaz married her husband Ali Abbas when she was 17 years old. It was a marriage arranged by their families. Banaz left her husband and ended their marriage after few years because he was a violent and brutal man. He would often beat and sexually abuse her. Afterwards, Banaz had filed a police report and stated that she was followed by associates of her husband and that she feared for her life. After her divorce, Banaz met Rehmat Suleimni, and the two started a romantic relationship. Banaz and Rehmat relationship was disapproved by her family. After Banaz was seen kissing Rehmat at the Micham Underground station in South London, by a cousin of Banaz, the family decided that Banaz should be killed because she had brought shame to the family. The first attempt to kill her was in New Year's Eve at her grandmother's house. Her father gave her a bottle of brandy to drink. After that he came on to her wearing gloves. Right at that moment, she realized that her father was trying to kill her and ran away. The officers did not believe her story. Banaz returned home, because she believed that as long as her mother was by her side, she would be safe. However on January 24, Banaz was left alone at her home. Her three cousins raped her, strangled her and buried her body. Her body was found 3 months after her boyfriend Rehmat reported her missing. Although the father was getting a lot of attention from the press, in the court the uncle was identified as the dominant force. Apparently Ari Mahmud who had wide range of business activities and contacts in the community had more status to lose through the perceived loss of family honour¹⁷⁹.

Following the guilty verdict by the Central Criminal Court Judge Brian Barker told the perpetrators: "This was a barbaric and callous crime. You are hard and callous men who were quite prepared to assist others in killing in the so-called name of honour and who placed respect from the community above life, tolerance and understanding. Judge Barker remarked in

¹⁷⁹ Payton (n 167) p. 71

sentencing: ‘This was designed to carry out a wider message to the community and designed to discourage the legal behavior of girls and women in this country.’¹⁸⁰

4.2.5 Case Shafiela Ahmed

Shafiela was murdered in 2003 by her parents Ifitikar and Farzana Ahmed. There was a lot of tension between Shafiela and her parents. Shafiela’s case was reported in 2002 to Warrington social services when the teachers heard that Shafiela was being hit and kept out from school. Shafiela refused any intervention of the social service. This was partly because she was frightened and concerned about her brothers and sisters. In February 2003, Shafiela parents drugged her and took her to Pakistan. Shafiela deliberately harmed herself to frustrate her parents’ plan of marrying her off. On the evening of 11 September 2003 Shafiela spent the evening at her family’s home with her parents and siblings. Shafiela was not seen alive again after this evening, and was reported missing by a former teacher.

The disappearance of Shafiela was treated suspiciously. Shafiela’s parents were arrested in December 2003 but denied any kind of involvement in the disappearance of their daughter and were released on police bail. In February 2004, Shafiela’s body was found on the banks of the River Kent.

Iftikar and Farzna Ahmed were questioned by the police but released without charge. The Crown Prosecution ruled that there was insufficient evidence to provide a conviction. However this changed in 2010 when Alesha, Shafiela’s sister, was taken in to custody on suspicion of having arranged a robbery at her parents’ house. Alesha then claimed that she and her other siblings had witnessed her parents kill Shafiela.

Alesha said her mom started arguing with Shafiela and got angry. Her mother started to push Shafiela on to the settee and said “Just finish it here”. Ifitikar went to Shafiela and pulled her on the settee. Alesha stated that she saw her mother grab a thin white carrier bag. Then both her parents forced the entire bag into Shafiela’s mouth. Each placed a hand over her mouth and

¹⁸⁰ *Ibid.* p. 77

nose. Her legs kicked, but Iftikar put his knee up on the settee to pin her down until she stopped struggling¹⁸¹.

The next morning Alesha and her other siblings were sent to school and were instructed to say that Shafiela ran away. Alesha recalled that the next day she broke down and told some friends that her father had killed her sister. When the teachers asked her about that, she recanted, because she was scared to tell the truth. Shafiela's brother denied all accusation and told the jury that nothing out of the ordinary happened on that night.

The jury at the Chester Crown Court accepted Alesha's version of the events and Shafiela's parents, Iftikar and Farzana Ahmed were convicted of murder and received life sentences.

4.3 Discussion

4.3.1 Honour crimes in Courts and Cultural defense

Based on the abovementioned cases, it can be stated that cultural defense has been used and in some cases accepted, to justify a criminal act in order to reduce the punishment. It is troubling that cultural characteristics can be used to assess the gravity of the provocation in the same way as impotence¹⁸². Accepting cultural defense in the abovementioned cases, implies that the whole culture or community has a tradition of 'honour' that can lead to murder¹⁸³. As in the trial against Faqir Mohammed, the judge accepted the defendant's cultural background, attitudes to female sexuality and behavior towards the victim in a manner that portrayed the Pakistani community in question as homogenous and uniformly restrictive in its attitude towards sex outside marriage, honour and shame. In this case the cultural evidence have a harmful result by promoting the male-dominated view and diminishing the victim's right. Cultural evidence that are being used in those cases, have the aim to control women by men¹⁸⁴. By allowing cultural evidence as defense, patriarchal practices could be encouraged and sustained¹⁸⁵. In the trial against Abdulla Yones, the judge stated that this case is "a tragic story arising out of irreconcilable cultural difficulties between Kurdish values and the values of Western

¹⁸¹ A. Gill, Author's personal notes related to court attendance at Chester Crown Court, 21 May 2012 to 3 August 2012, Read in Aisha K. Gill, Carolyn Strange, Karl Roberts, Honour Killing and Violence Theory, Policy and Practice, Palgrave Macmillan, 2014, p. 186

¹⁸² Reddy (n 145) p. 314

¹⁸³ J Rose, A Piece of White Silk, Vol. 31 No. 21. London Review of Books, November 2009 p. 5-8.

¹⁸⁴ Okin 'Feminism and Multiculturalism: Some Tensions', University of Chicago Press, Vol. 108, No.4, July 1998, p 667

¹⁸⁵ Phillips (n 139) p. 518

society”¹⁸⁶. However, the reasoning seems to be based upon the stereotyping of minority communities. It is accurate that there is a difference between British culture and Pakistani cultures. Nevertheless, does it always lead to murder? In the case of Shafiela Ahmed, her sister witnessed her parents kill her sister because according to them she was embracing the British culture and bringing them shame. Her sister testified in court against her parents and stated that when she went to college; she then came to be aware that even other parents from the same culture as her family were not treating their children the same way. So is it only a clash of cultures or is it a case that should just be treated as any other murder case? Abdulla Yones and Fariq Mohammed, were both known to be violent husbands and fathers. Culture should not always become the catch-phrase for all explanations. In the abovementioned cases, culture was used in explaining the rationale for the killings. The question is to what extent should cultural evidence be involved in determining the punishment? Furthermore, even if honour killing has been culturally accepted in some countries, it should not mean that such horrendous murders ought to be given the same treatment in Western jurisdiction¹⁸⁷. It is not to say that cultural evidence should not be used, however it should not be abused to gain legal advantage. A criminal who has committed a murder in the name of honour may wish to ‘take advantage’ of the law by pleading the loss of self-control defense, arguing that his characteristics and culture drove him to the killing¹⁸⁸. And therefore receive a conviction for manslaughter instead of murder. Furthermore, cultural evidence should not have superiority above the majority of community and the law. Focusing on culture as the sole or key factor in the motivation and perpetration of such crimes, fails to recognize that such crimes are patriarchal violence against women¹⁸⁹.

4.3.2 Failure to protect

In the abovementioned cases, Banaz, Heshu and Shafiela contacted and reached out several time to the social services and police for help. However, protecting these young women who were in fear, failed. Before her death, Banaz contacted the police five time. She even provided a note with the names of the people who were threatening to kill her. Unfortunately, the police did not do much about Banaz’s allegations against her family. After her father tried to kill her on New Year’s Eve, by forcing her to drink a bottle of brandy before the attack, Banaz was able

¹⁸⁶ R v. Abdulla M. Younes, Central Criminal Court, 29 September 2003

¹⁸⁷ Smartt (n 53) p 6

¹⁸⁸ Idriss (n 10) p. 10

¹⁸⁹ Reddy (n 145) p. 314

to escape and was taken into the hospital. When she contacted the police and was interviewed by the police, PC Angela Corne, the attending officer, characterized Banaz's as 'melodramatic and manipulative' from the outset. Core response in court, displayed a lack of knowledge of 'honour crimes. When Banaz claimed that her father had been trying to kill her, and that she was facing threats from four men, this was taken by PC Corne as evidence of inconsistency and exaggeration¹⁹⁰. The fact that Banaz was in a drunken state, was another reason for Corne to question her story. Furthermore, Corne made a follow-up visit at Banaz's family home and shared with them Banaz's allegations. In the IPCC report which investigated the contact between Banaz and the Metropolitan police, the investigation concluded that Corne showed little empathy and conducted a cursory and insufficiently diligent investigation and that her actions fell far below the standard which any person reporting a crime is entitled to expect¹⁹¹. When Banaz and Rehmat went to the police for the last time to report the threats that were made against them, Banaz was offered a safe home. However Banaz refused the offer assuming that while having her mother by her side she would be safe. Banaz was killed by her family the next day, after her family knew she had contacted the police. Banaz died not only because of the actions of her family, but due to the multiple failures of those who were expected to protect her¹⁹². The IPCC investigation clearly demonstrated that Banaz was let down by the police as this latter demonstrated a lack of awareness about the trigger factors of domestic violence and the impact that cultural issues can have on the outcomes. The IPCC recommended that police forces should recognize that so-called "honour based violence" is more prevalent than previously understood and that this type of crime crosses cultural boundaries. It is therefore important for police forces to raise awareness on these issues¹⁹³. Banaz case is a clear example of how such cases are often under investigated until the victim is murdered.

The 'death zone' for Heshu started after her father found out that his daughter had a boyfriend and was no longer a virgin. This according to him would make an honourable marriage impossible. After learning that her life was at risk, Heshu reached out to her teachers and various agencies. However, they all failed to adequately apprehend the risk to her life¹⁹⁴. In some cases the police fail to protect, however sometimes it is the victim who refuses the help that has been

¹⁹⁰ Payton (n 167) p.71.

¹⁹¹ IPCC Report, Independent Investigation Executive Summary Contact between Banaz Mahmod and the Metropolitan Police Service and West Midlands Police September 2005 - January 2006. (IPCC Report)

¹⁹² Payton (n 167) p.72

¹⁹³ IPCC Report p.12-13

¹⁹⁴ Payton (n 167) p.72

offered. Banaz was offered a safe home, however assuming that her mother would protect her, she refused. In the case of Shafiela, her teachers contacted the social services and arranged a meeting. Shafiela refused any intervention from the social services, thereafter her case was closed and no further actions were taken. In another case, Afshan was threatened and attacked by her father and brother after suspecting her having a relationship with a non-Muslim. Afshan was able to flee from home and make a statement to the police. However, later Afshan dropped the charge against her father and pleaded the judge to give her brother a lenient sentence, because she has forgiven him and did not want him to be locked up¹⁹⁵. The court also heard that Afshan did not support the prosecution despite giving the police an initial statement at the start of their investigation. Victims sometimes underestimate the danger or are frightened and concerned about the consequences and for that reason refuse the help that has been offered or withdraw the accusations¹⁹⁶.

4.4 Conclusion

In England there is still no specific legislation to address solely the issue of honour based violence. Honour based crimes are often dealt with in the context of domestic abuse legislation and policy. An examination of honour killings in the English Courts shows that defendants put forward a cultural defense. When using culture defense, the defendants attempts to plead not guilty to murder but guilty to manslaughter by reason of provocation. In examining the validity of the provocation defense, both subjective and objective elements must be satisfied. In 2009 the Coroner's and Justice Act 2009 came into force. One of the reasons behind the decision to retain the notion of a 'loss of self-control is to ensure that 'honour killings are not mitigated. Cases of revenge were ruled out. A revenge case can be identified by determining whether there was planning and premeditation of the crime. However as seen in the case of Faqir Mohammed and Shabir Hussain, this is not always the case. For that reason, the question remains whether honour killings are not mitigated under this act.

Cultural defense has been used to justify a criminal act and to reduce the punishment. In court, it is sometimes acknowledged that cultural differences and clashes can cause distress. Furthermore it is stated that it is understandable that an act can lead to a loss of self-control of

¹⁹⁵ E. Dyer, 'Honour' Killings In The UK, [2015] The Henry Jackson Society. p. 22 < <http://henryjacksonsociety.org/wp-content/uploads/2015/01/Honour-Killings-in-the-UK.pdf>> accessed 8 April 2015

¹⁹⁶ *Ibid.* p 23

a person with a certain culture and background. Therefore the perpetrator receives a conviction for manslaughter instead of murder. However, the reasoning seems to be based upon the stereotyping of minority communities.

Not only is the cultural defense an issue when it comes to honour crimes in England, but the prevention of such crimes is also an issue. In the abovementioned cases the victims contacted and reached out several times to the social services and police for help. However, these young women could not be protected because of the lack of awareness of honour crimes.

In this chapter the law and policy related to honour crimes have been analyzed. Based on the discussed cases it can be concluded that in England, the obstacle in preventing such crimes lies in the fact that the services concerned and the police were not familiar with honour crimes and did not always know how to recognize a victim of such crimes. Furthermore, cultural defense when accepted in court, can lead to failure in recognizing that such crimes are patriarchal violence against women. In England, honour crimes are related to immigrants. In the next chapter, honour crimes cases in Pakistan will be discussed. Pakistan is a state where honour crimes are part of customary law.

5. Honour crimes in Pakistan

5.1 Honour crimes in Pakistan History and Justification

Honour crimes have been a part of the Pakistani social and legal history for centuries despite the various legal approaches by the State to put an end to the phenomenon.¹⁹⁷ Traditionally the perpetrators justify their actions by stating that honour killings are aimed as sanctioning the individuals for their extramarital sexual activities¹⁹⁸. However, nowadays justifications have widened to include women who express any form of autonomy, who exercise independence or who engage in what is considered as dishonourable behaviors. For instance, women who want to marry a man who is not approved by the family or women who decide to seek divorce from their husband¹⁹⁹. One example is the death of Farzana Praveen who was stoned to death in 2014 in front of the Lahore court by her family, for marrying without their consent²⁰⁰.

Many honour crimes are based on rumors and victims are actually innocent²⁰¹. Perpetrators spread rumors about the victim, so the murder of the victim would be excusable. In 2004 Shahul was shot dead by her husband allegedly for disrespecting him. After murdering his wife he came up with the rumor that his wife was having a relationship with another man. Another example is in the case of Tasleem Solangi, who was killed in 2008, by her husband (also her cousin) because of conflict between the families regarding a property. However, her husband

¹⁹⁷ S. A. Warraich, 'Honour Killings' and the Law in Pakistan', in Lynn Welchmann and Sara Hossain (eds), *'Honour' Crimes, Paradigms, And Violence Against Women* (London and New York: Zed Books 2005) p. 78.

¹⁹⁸ *Ibid.* p. 78

¹⁹⁹ *Ibid.* p. 79

²⁰⁰ Zohra Yusuf, HRCPC appalled by woman's murder outside LHC, (Human Right Commission Pakistan, Lahore 28 may 2014) <<http://hrcp-web.org/hrcpweb/hrcp-appalled-by-womans-murder-outside-lhc>> accessed 8 May 2015

²⁰¹ M. Hussain, "Take My Riches, Give Me Justice": A Contextual Analysis Of Pakistan's Honor Crimes Legislation"[2006}, Harvard Journal of Law & Gender, Vol. 29 p. 227 <<http://www.law.harvard.edu/students/orgs/jlg/vol291/hussain.pdf>> accessed 25 May 2015

spread rumors that she had been caught with another man and the tribal council declared the dead woman an adulterer²⁰².

This highlights the manner in which honour is socially constructed and that it is actually irrelevant whether the victims are innocent or guilty²⁰³. Some argue that in this society some individuals use honour crimes for financial and property gains²⁰⁴. For example killing a widow to prevent her from remarrying and transferring her wealth to another family. Or a man may kill his wife under the guise of an honour crime to remarry another woman who brings a new dowry²⁰⁵. Just like in other countries, in Pakistan many honour crimes cases are not reported and in the limited number of cases that reach courts, the perpetrators benefit from low sentences²⁰⁶. Despite the fact that many cases are not reported, other sources indicate that there is an increase in such crimes, while convictions remain nominal²⁰⁷. According to the Report of the Human Rights Commission Pakistan²⁰⁸ there were 869 women killed in 2013 in the name of honour²⁰⁹. In 2014 the rates of honour killing was higher, namely 1.026 women were victim of honour killing²¹⁰.

5.2 Preventing honour crimes

There seems to be a lot of obstacles to tackling honour crimes in Pakistan. These include the police, tribal councils but also the legal system. In the rural areas in Pakistan the tribal councils are the first authoritative decision makers. These rural areas often maintain their own autonomy because of the poor communication, the tribes are isolated and are not well informed or updated about the law and policy of Pakistan²¹¹. Therefore, the tribes live by their own laws, without interaction with others. In some rural areas, the tribal council punishes the offender outside of

²⁰² M. Zia Ullah, 'Honour killings in Pakistan under killings in Pakistan under killings in Pakistan under Theoretical, Legal and Religious Perspectives Theoretical, Legal and Religious Perspectives theoretical, Legal and Religious Perspectives An Analytical Study of Honour killings Abuse and Disconnecting Islam from This Ancient Brutal Tradition Author' (Thesis Malmö University Malmö 2010) p.9

²⁰³ Rachel A. Ruane, 'Comment, Murder in the Name of Honor: Violence against Women in Jordan and Pakistan' [2000] 14 EMORY INT'L L. REV. 14 P. 1531-32.

²⁰⁴ Tahira Khan, Honor Killings: A Definitional and Contextual Overview, <<http://usconsulate-istanbul.org.tr/reppub/vawo/tkhan.html>> accessed 15 June 2015).

²⁰⁵ *Ibid.*

²⁰⁶ Warraich (n 191) p.80

²⁰⁷ *Ibid.* 80

²⁰⁸ The Human Right Commission Pakistan a Non-Governmental organisation established in 1987

²⁰⁹ Report Human right commission Pakistan, state of human right 2013, march 2014 p, 6

²¹⁰ Report Human right commission Pakistan, state of human right 2014 march 2015 p, 7

²¹¹ Marie D. Castetter, 'Note, Taking Law into Their Own Hands: Unofficial and Illegal Sanctions by the Pakistani Tribal Councils' [2003] 13 Ind. Int'l & Comp. L. Rev. 543 P. 552

the Pakistani law and the State fails to take any action against the tribal councils for their human rights violations²¹².

In 2002, Muktar Mai, was sentenced to be gang raped in order to restore the honour of an opposing tribe²¹³. An unofficial tribal jury, decided on the sentence her in order to punish the her brother. Muktar Mai's brother was accused of having an unlawful affair with a Mastoi woman, who was from a tribe of a higher caste²¹⁴.

Those councils are often composed by only men. The government seems to have a limited authority over these tribes and therefore the federal court system is entirely neglected in favor of the tribal council arbitration in rural areas²¹⁵. Some argue that the tribal council should be reformed, for it can be an asset in serving justice. For example by composing the council with men and women. However, there should also be a form of supervision of the council by local governing bodies.

Besides the tribal council, the police can be a threat to the equality and fairness in terms of the treatment of women. Victims may be turned away or harassed by male police officers. For that reason many cases go unreported. Women's police stations were instituted to address complaints against male officers' harassment and insensitivity. However most of these stations were rendered ineffective and were under equipped due to a lack of funding²¹⁶.

In the case of Muktar Mai, after she had filed a police report, the police arrested the suspects after a week²¹⁷. A member of the police force was arrested for failing to file a report of the victim being gang-raped²¹⁸. Local human rights activists accused the police of knowing about tribal council meetings, but they failed to stop attacks on women²¹⁹.

Even in court women can be victimized by the legal procedures, such as in the case of rape, if women are unable to prove that it was forcible, they may face punishment for adultery. Even

²¹² *Ibid.* P. 556

²¹³ Muhammad Saleem Sheikh, The Meerwala Incident: Shame in the Name of Justice, You (July 26, 2002) in Hussain (n 193)

²¹⁴ Brian Bennett, A Violation of Justice, (TIME - ASIA MAGAZINE, July 15, 2002)

<<http://www.time.com/time/asiamagazine/article/0,13673,501020715-300692,00.html>> accessed 15 June 2015

²¹⁵ Castetter (n 205) P. 552-53

²¹⁶ Ruane (n 197) P. 1543

²¹⁷ Muhammad Saleem Sheikh, The Meerwala Incident: Shame in the Name of Justice, You (July 26, 2002), in Hussain (n 193)

²¹⁸ *Ibid.*

²¹⁹ Castetter (n 205)

when an honour crime conviction is obtained, eighty-five percent of perpetrators are either acquitted or given lenient sentences²²⁰.

5.3 Honour killings and Pakistani Law

After the independence of Pakistan, a process of political islamisation began. In 1978 Pakistan proclaimed itself an Islamic state and instituted the Sharia courts²²¹. The Supreme and Federal Courts of Pakistan continue to exist and were tasked to ensure that existing laws do not contradict the teachings of Islam²²².

5.3.1 The law of Qisas and Diyat Ordinance

In 1990 Pakistan promulgated the Qisas and Diyat Ordinance. In 1997 the Qisas and Diyat Ordinance became an act of parliament through the Criminal Law act 1997²²³. The Qisas and Diyat Ordinance is a codification of Islamic law into national law. The Ordinance places the choice of prosecution in the hands of the victims or their heirs and not in the hands of the government²²⁴.

The Qisas and Diyat Ordinance is based on Islamic teachings. Many argue that the Qisas and Diyat Ordinance is confusing and is riddled with exceptions and offense distinctions, particularly when it is known that the offender is a family member²²⁵. After a crime the victims and their heirs may choose qisas; retribution, diyat; compromise or total forgiveness²²⁶. The Qisas and Diyat Ordinance has repealed other provisions that reduced homicide due to “grave and sudden provocation” from murder to manslaughter. This provision was often used to justify honour killings²²⁷. Qisas which entails a punishment equal to the offence committed is in a case

²²⁰ Editorial, Why We Are Not Making Whoopee, (SHE MAG., Nov. 2002)

<http://www.shemag.com.pk/newsite/2002/nov/editorial.html> read in Hussain (n 193) p. 232

²²¹ Chre Michelson Institute Development Studies and Human Rights, Are Knudsen, License to Kill: Honour Killings in Pakistan 10 (Working Paper No. 1, 2004), < <http://www.cmi.no/publications/file/?1737=license-to-kill-honour-killings-in-pakistan>> accessed 15 May 2015

²²² *Ibid.*

²²³ Islamic Criminal Justice in Pakistan: The Emerging Problems and issues p. 509 Read in Comparative Criminal Justice Systems: Global and Local Perspectives, Shahid M. Shahidullah.

²²⁴ Ruane (n 197) P. 1540

²²⁵ Stephanie Palo, ‘A Charade Of Change: Qisas And Diyat Ordinance Allows Honor Killings To Go Unpunished In Pakistan’ [2008] University of California, Davis, Vol:15:1, p. 97 < <http://jilp.law.ucdavis.edu/issues/volume-15-1/Palo.pdf>> accessed 15 June 2015

²²⁶ Amnesty International, Pakistan: Honour Killings of Girls and Women, supra note 12, at 12; see also Mubashir Bhutta Human Rights (MBHR), Struggling for the betterment of humanity and working for the human rights in Pakistan, <http://www.humanrightspakistan.com/honor_killing.htm> accessed 19, 2015) Read in Hussain (n 193) p. 232

²²⁷ Chre Michelson Institute Development Studies and Human Rights, Are Knudsen, License to Kill: Honour Killings in Pakistan 10 (Working Paper No. 1, 2004) < <http://www.cmi.no/publications/file/?1737=license-to-kill-honour-killings-in-pakistan>> accessed 15 May 2015

of murder only liable if the accused confesses to the satisfaction of the court, or the requisite number of credible eyewitnesses are available²²⁸. If there is not enough proof, the death of the victim, is liable to tazir, a discretionary punishment²²⁹. For example a sentence of life imprisonment or the death penalty under another provision. If the victim's killer is a parent, grandparent, or spouse survived by children born within the marriage, then the perpetrator will not get the death penalty under Qisas and Tazir and can receive maximum of fourteen years imprisonment²³⁰.

Islam does not permit murder unless it is a case in which the person who was murdered committed an act that is punishable by death under Islam, or the act is carried out in self-defense²³¹. Islamic law does not condone honour killings. So it is to say that if for example, a man would kill a woman, Islam does permit a death penalty as a sanction for this man. Despite the fact that she may have committed adultery. However, in Pakistan the punishment for adultery is death, therefore the perpetrator will be exempted from death under Qisas²³².

In Pakistan the courts have ruled that Islam does not permit the killing of one who is *masoom ud dam* (one whose life is sacred or whose blood is protected)²³³. This protected category is not clarified in the judgment of the case Gul Hassan. Thus, women who are killed under the motive of honour, are the ones whose life is not sacred or whose blood is not protected because of their behavior. In later judgment the interpretation of the concept of *masoom ud dam* was interpreted to include someone who was not entirely innocent. This interpretation is in favor of those men who kill women and claim that it is based on honour²³⁴. The wider interpretation of the concept *masoom ud dam* allowed the perpetrators to declare their victims as *masoom ud dam* and receive lesser sentences²³⁵. In some cases while using this as a reason for mitigation, compensation for the heirs of the victims were set aside, as the victims were not *masoom ud dam*²³⁶.

In most cases honour crimes are committed on the orders of the family of the victims. For that reason it is most likely that the victims' heir will compromise with the murderer and the crime will go unpunished. For example, "A son could forgive his father for murdering his mother, a

²²⁸ Warraich (n 191) p. 85

²²⁹ *Ibid.* 85

²³⁰ Amnesty International, Pakistan: Honour Killings of Girls and Women, supra note 12, at 12 read in Hussain (n 193)

²³¹ Warraich (n 191) p. 87

²³² M.Z. Lari, 'A Pilot study on honour killing in Pakistan and compliance of law' [2011] Published under Legislative Watch Programme for Women's Empowerment, Aurat Foundation P. 29 < http://www.af.org.pk/pub_files/1366345831.pdf> accessed 19 June 2015

²³³ Warraich (n 191) p. 87

²³⁴ *Ibid.* 90.

²³⁵ Lari (n 226) P. 29

²³⁶ *Ibid.* P.30

mother could forgive her husband for killing their daughter, and a father could forgive his brother²³⁷. In some cases honour crimes are considered personal family matters, that is the reason why most family members are either forced to silence or are themselves involved to the crime²³⁸. Another reason why many families of the victims choose for the procedure of Qisas and Diyat, despite their sadness and anger, is because of the financial benefit, especially due to poverty in Pakistan. Compensation for the heirs of the victim is prioritized over the unlikely possibility of legal consequences²³⁹. Statistics show that chances of successfully pursuing a case against an honour crime perpetrator are extremely low and that it is estimated that only three percent of honour crime cases actually result in convictions²⁴⁰. This allows a murderer to commit honour killings without fearing the legal consequences.

In the case of Samia Sawar, who was killed for divorcing her cousin, her relatives hired an assassin to kill her. Even though it was most apparent that her mother and her uncle were behind the murder, they remained free. Under the Qisas and Diyat Ordinance, Samia's parents forgave the murderer they hired to kill their daughter²⁴¹.

5.3.2 Pakistan's Penal Code

Pakistan had made several amendments to the Penal Code, to introduce legislative reforms in order to end honour killings. As among those reforms are the Criminal Law Amendment Act of 2004 and The Women's Protection Bill of 2006.

The Criminal Law Amendment Act of 2004 made honour crimes illegal. However, it does not consider the statutory reprieves for family members who carry out honour killings²⁴². Relatives of the victim can still pardon the perpetrator under Qisas and Diyat Ordinance. The act of 2004 fails to prevent the latter. The Bill did not address the real issue of waiver or compounding in which the perpetrators were given the advantage of seeking forgiveness from the heir of the victim.

²³⁷ Hussain (n 193) p. 232

²³⁸ Ruane (n 197) P. 1534.

²³⁹ *Ibid.* P. 1534.

²⁴⁰ Wendy M. Gonzalez, Karo Kari: Honor Killing,[2000] 9 Buff. Women's L.J. p.25.

²⁴¹ Palo (n 219) p.1

²⁴² Warraich (n 191) p. 105

In 2006 The Women’s Protection Bill was adopted. The latter seeks to combat discriminatory laws pertaining to rape and women who survive accusations of adultery²⁴³. It creates a more fair procedure for the investigation and prosecution of adultery. However it does little to prevent honour killings or to attain justice for the victims of honour killings²⁴⁴. The act underlines that certain crimes in the private sphere are out of reach of Pakistan’s constitution²⁴⁵. Despite the attempts made by the government, the Qisas and Diyat Ordinance continue to be in force and used by offenders to escape punishment.

5.4 International Law

Pakistan is bound by global instruments of International law, such as the Universal Declaration of Human Rights and the ICCPR²⁴⁶. In 1996 Pakistan ratified the CEDAW and signed in 1996 the Declaration on the Elimination of Violence against Women. The implementation of the Qisas and Diyat Ordinance in honour killing cases violates International law and the constitution of Pakistan .Article 25 of Pakistan’s Constitution, guarantees that “all citizens are equal before the law and are entitled to equal protection of the law”. It also states that there shall be no discrimination on the basis of sex alone²⁴⁷.

The latter fails to protect victims of honour crimes and prevents them from having a fair trial. Pakistan acknowledges that violence against women which is based on honour is a violation and a discrimination against women’s right, however they hide behind a shield of cultural relativism to justify such practices and their failure in preventing such killing. ²⁴⁸ This dominant culture is usually constructed from male histories, traditions, and experiences²⁴⁹. Despite the fact that States should not “invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women²⁵⁰, such traditions continue to exist. Thus, based on the latter culture justification is not acceptable excuse for Pakistan to keep ignoring the Declarations. However, this dominant culture continues of exist because of the persistent

²⁴³ Palo (n 219) p.77

²⁴⁴ Human Rights Watch, World Report 2007: Pakistan < <http://hrw.org/englishwr2k7/docs/2007/01/11/pakist14756.htm>> accessed 19 June 2015

²⁴⁵ Protection of Women (Criminal Laws Amendment) Act of 2006 read in Palo (n 219) p 99

²⁴⁶ Human Rights Watch, Crime or Custom? Violence against Women In Pakistan, 1999 < available at <http://www.hrw.org/reports/1999/pakistan/>> accessed 15 June 2015

²⁴⁷ Pakistan Constitution article 25(1)-(2) (1973)

²⁴⁸ Palo (n 219) p 103

²⁴⁹ H. Charlesworth & C. Chinkin, “The Boundaries Of International Law: A Feminist Analysis” [2000] Manchester University Press, p. 225

²⁵⁰ Declaration of the Elimination of Violence against Women, G.A. Res. 48/104, art. 4, U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. E/CN.6/W6.2/L3 (Dec. 20, 1993)

interest of men in having and exercising power²⁵¹. While women are left without a representation or a voice. Furthermore the states tend to justify their reluctance to apply international human law because of protective governmental rhetoric. The latter defends discriminatory cultural practices by claiming that maintaining those same practices protects women from cultural backlash and confusion, which will cause women to suffer more²⁵².

Under the diverse international norms, states are required to condemn discrimination against women and provide an equal protection for women before the law. Women in Pakistan do not enjoy the latter. For example, if the defendant claims that the woman had committed adultery and for that reason was killed, in some cases the court does not investigate whether this accusation is the truth or not. In other cases the family will pardon the perpetrator. Or, based on the cultural norms, the perpetrator receives a lenient treatment for killing the victim. Honour killing victims are devalued and deprived of justice²⁵³.

5.5 Cases of Honour crimes

There are various judgements when it comes to honour crimes in Pakistan. The Supreme Court of Pakistan underlined that the acceptance of honour killings under the *Qisas* and *Diyat* laws are aligned with the religion or the laws of Pakistan²⁵⁴. In the case *Mahammad Akram Khan v. The State in 2001*, the Court held that honour killings are murders and violate “*fundamental rights as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, which provides that no person would be deprived of life and liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution*”²⁵⁵. However, in especially the lower courts, cultural norms of gender inequality are considered in the legal proceedings²⁵⁶.

5.5.1 The lower Courts

In the case of *Daimuddin and others vs. The State*, the court rejected the bail of the perpetrators who killed the victim for marrying a person of her own choice. Also the court provided legal protection to the prosecution witnesses. Judge Syed Shafqat Ali Shah Masoomi argued that

²⁵¹ Arati Rao, The Politics of Gender and Culture in International Human Rights Discourse, in Women’s Rights, Human Rights: International Feminist Perspectives in Julie Peters & Andrea Wolper (eds.), *Women’s Rights, Human Rights: International Feminist Perspectives*, (Routledge 1995) p. 167, 170-71

²⁵² Palo (n 219) p 104

²⁵³ *Ibid.* p 108

²⁵⁴ U.N. Economic & Social Council Commission on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, E/CN.4/2005/NGO/12,p.3 <<http://aitpn.org/UN/61st-G0510559.pdf>> accessed 16 may 2015

²⁵⁵ Warraich (n 191) p. 107

²⁵⁶ Amnesty International, Pakistan: Honour Killings of Girls and Women, supra note 12, at 14 Read in Palo (n 219) p 102

honour killings were increasing and that innocent girls were being killed under the worst tradition based on false and frivolous allegations. He also noted that the girls have no right in such situations and in order to prevent such crimes the Courts of Law should have to take judicial notice while trying to prevent such crimes²⁵⁷.

In the case, *Bashir v. The State*, the Lahore High Court gave a statement against honour killing. The court stated that “*Neither law of the land nor religion permitted so called honour killing which amounted to murder and that honour killing was violation of fundamental rights enshrined in Article 8 and Article 9 of the Constitution*”²⁵⁸. Furthermore, the court acknowledges that grave and sudden provocation is not an acceptable motive for suspicion of illicit relationship and that the contention of honour as a mitigating circumstance was not justifiable²⁵⁹.

However, in many other honour crimes cases the Lahore Court did accept the plea of grave and sudden provocation to reduce sentences. Based on the understanding that perpetrators kill for their family’s honour. In the case *Nasir Abbas v. The State*, the court stated that if a victim is killed based on honour, the perpetrator is allowed a lessened punishment²⁶⁰. The latter have been confirmed in the case *Muhammad Imran v. The State*, where the court have stated that in a case concerned with family honour, the perpetrator should not receive the capital sentence. The court also stated “*that family honour on provocation has been accepted as an extenuating ground for grant of lesser punishment*”²⁶¹. In another case the court even removes the concept of premeditation and stating that “*if a person is being provoked then his act is premeditation falling under the definition of cold-blooded murder*”²⁶². In another case the court stated that traditions and customs *where men sacrifice their lives to safeguard the honour of their womenfolk*, cannot be ignored and that *no religion allowed widespread immorality to destroy the fabric of a family life*²⁶³.

As the murder has been committed out of suspicion of immorality, the perpetrator should get a lesser sentence because it is seen as proper act. The latter has been confirmed in other cases

²⁵⁷ Daimuddin and others vs. The State, 2010 M L D 1089, Karachi read in Lari (n 226)

²⁵⁸ Bashir v. The State, 2006 PCRLG 1945 read in Lari (n 226)

²⁵⁹ Lari (n 226) P. 56

²⁶⁰ Nasir Abbas v. The State, 2006 PCRLJ 497 Lahore read in Lari (n 226)

²⁶¹ Muhammad Imran v. The State, 2008 Y L R 1290 read in Lari (n 226)

²⁶² Sarfraz v. The State, 2008 YLR 969, Lahore Read in Lari (n 226)

²⁶³ Sabir Hussain alias Pehlwan v. The State, 2007 PCRLJ 1159 read in Lari (n 226)

where the court noted that if the accused have committed murder due to honour, it cannot be ignored and the court should accept a reduction in the sentence²⁶⁴.

5.5.2 The Supreme Court

Based on various judgements of The Supreme Court in Pakistan, the plea of grave and sudden provocation is still acceptable also in honour killings cases²⁶⁵. However, there should not be any suspicion that it was a premeditated act. The killing must have been occurred in a heat of passion.

In the case *Muhammad Ameer v. The State* post 2004 Judge Muhammad Nawaz Abbasi stated that “*the commission of an offence due to family honour must be differentiated from the grave and sudden provocation in consequence to which crime is committed in the light of facts and circumstances of each case*”²⁶⁶. The perpetrator can only apply for plea of grave and sudden provocation, if the crime is not committed with premeditation. Judge Muhammad Nawaz Abbasi did not deny the cultural norms, however he did underline that it is not an excuse to commit murder based on a suspicion. In this case the court did not accept the perpetrators application for grave and sudden provocation. Therefore he did not satisfy the requirements for the mitigation of sentence²⁶⁷. In the case of *Abdul Jabbar v. The State*, the perpetrator and his cousin had killed a woman because she married without the permission of her family. In this case the court stated that “*In the Pakistani society nobody forgives any person who marries his sister or daughter without the consent of his parents or his near relations.*”²⁶⁸ And seeing the victim with her husband caused grave and sudden provocation. Furthermore, they referred to the earlier case *Mohib Ali v. The State* and stated that “*A mere allegation of moral laxity without any unimpeachable evidence to substantiate would not constitute grave and sudden provocation. If such pleas, without any evidence are accepted, it would give a license to people to kill innocent people*”²⁶⁹. Moreover the Supreme Court has set a standard in cases of murder for a mitigation of sentence. The perpetrator must be able to prove that he has been “*deprived*

²⁶⁴ Muhammad Farooq v. The State, 2008 Y L R 2319 and Muhammad Akhtar, 2009 YLR 1092

²⁶⁵ Lari (n 226) P. 53

²⁶⁶ Muhammad Ameer v. The State 2006 PLD 283 Read in Lari (n 226)

²⁶⁷ Lari (n 226) P. 51

²⁶⁸ Abdul Jabbar v. The State, 2007 SCMR 1496 Read in Lari (n 226)

²⁶⁹ Mohib Ali v. The State Read in Lari (n 226)

*of the capability of self-control or was swayed away by circumstances immediately preceding the act of murder or there was an immediate cause leading to grave provocation*²⁷⁰.

5.6 Conclusion

Honour crimes in Pakistan often go unreported. This is because of the less confidence in the police and criminal justice. The case of Mukhtar Mai demonstrates the latter. If this incident did not receive the media attention, the police would probably have not arrested the perpetrators and the case would not have reached the courts. However in this case, after almost 10 years and multiple trials the Supreme Court acquitted all but one of the accused. Unfortunately, the criminal justice system seems to fail many other victims. In Pakistan the police themselves can be a threat to the equality and fair treatment of women. The reason why there are so many honour crimes in Pakistan is that the perpetrators know that their actions will not be punished. Because in many cases the officials agree with the perpetrators or do not have the tools and freedom to investigate such crimes. As seen in the honour crimes cases, the motive to commit such a crime is often a pressure of the society and most offenders remain unpunished or subject to extreme leniency. The use of the law of Qisas and Diyat in Pakistan is not appropriate and seems to violate the victims' rights. Some people choose the Qisas and Diyat law, because of their need of money. The consequences of the law of Qisas and Diyat, violates International Human Rights. There is inconsistency in the judgements of the lower courts in Pakistan. In some cases the court does accept the plea of grave and sudden provocation to reduce sentences and in other cases the court acknowledges that grave and sudden provocation is not an acceptable motive and does not justify killing. The Supreme Court of Pakistan on the other hand, does acknowledge that honour killings under the *Qisas* and *Diyat* laws defeats the purpose of the laws because it is not aligned with the religion or the laws of Pakistan. It seems that when honour crimes cases are being presented in courts there is hope that the victims' right will be upheld. However, the biggest challenge in Pakistan seems to be before a case is being presented in court. Many victims do not live to tell their story and because of the use of Qisas and Diyat, the victims' family 'forgives' the perpetrators. Even if the victims survive, many do not report the crime because they do not have any confidence in the criminal justice and even if they do the criminal justice fails them.

²⁷⁰ Muhammad Zaman v. The State P L D 2009 Supreme Court Read in Lari (n 226)

6. Discussion

In the previous chapters the concepts of honour crimes have been clarified. Also the legal instruments that have been adopted regarding honour crimes have been analyzed. In this chapter a comparative analysis regarding honour crimes in England and in Pakistan will be made. Furthermore, some responses regarding preventing and protecting the victims of honour crimes will be discussed.

6.1 States obligations

States are obliged to exercise due diligence to prevent, investigate and punish acts of violence against women committed by the State or by private actors. States have the responsibility to protect their citizens both in the public and in the private sphere. Thus, states incur responsibility for private acts if they fail to act with due diligence to prevent the violation of rights or to investigate and punish the perpetrators²⁷¹. States have the responsibility to protect their citizens both in the public and in the private sphere. States that have ratified CEDAW agreed to undertake a series of actions in eliminating all forms of existing discrimination against women and set up an agenda for national action to end discrimination. States should use the same level of commitment in relation to preventing, investigating, punishing and providing remedies for acts of violence against women as they do with other forms of violence.²⁷² Honour crimes constitute human rights violations. The CEDAW acknowledges that traditional attitudes may justify violence against women and that the latter deprive women from enjoying equal

²⁷¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992 <<http://www.refworld.org/docid/52d920c54.html>> accessed 8 January 2015

²⁷² United Nation Economic and Social Counsel, Special Rapporteur on Violence Against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, U.N. Doc. E/CN.4/2006/61 (2006). Paragraph 35. <<http://www.refworld.org/pdfid/45377afb0.pdf>> accessed 25 July 2015

treatment. Hence, legislation is not enough. States need to raise awareness about the need to prevent and eliminate honour crimes. By raising awareness in the community and by promoting social change in terms of the prejudice and the customary laws which are used as justifications, violence against women can be eliminated. It also emphasizes the need to treat and punish all forms of violence against women as a criminal offence²⁷³. Raising collective and individual awareness can be included in police and educational programs. The States should encourage and continue to make efforts to prevent and eliminate crimes against women and girls committed in the name of honour, by using legislative, administrative and systematic measures.

After discussing honour crimes cases in England and in Pakistan it can be concluded that both countries deal with the same issues on a different level. The challenges can be summed up in legislations, awareness and social change. In England, perpetrators are being punished. However in some cases cultural defense can be used and is also accepted to justify a criminal act and reduce the punishment. Some may argue that the cultural evidence have a harmful result by promoting the male-dominated view and diminishing the victims' right. Focusing on culture as the sole or key factor in the motivation and perpetration of such crimes, fails the recognition that such crimes are patriarchal violence against women²⁷⁴. As mentioned above states are obliged to eliminate traditional and customary values which harm and violate women's rights. However those same values are being used to gain legal advantages. Another challenge in England is protecting the victims of honour crimes. The cases discussed point out that police and social services were not familiar with the concept of 'honour crimes' and for that reason they failed to protect the victims.

In Pakistan the challenges of eliminating honour crimes include legislation and cultural values which violates women's rights. In the ruler areas in Pakistan the tribal councils are the decisions maker and the government seems to have a limited authority over these tribes. The police can also be a threat to the equality and fairness treatment of women. Victims may be turned away or harassed. Even in court women can be victimized by the legal outcomes because of the law of Qisas and Diyat.

6.2 Legalisation

²⁷³ UN General Assembly, *Working towards the elimination of crimes against women and girls committed in the name of honour*, 10 February 2005, A/RES/59/165, <<http://www.refworld.org/docid/426905194.html>> accessed 12 January 2015

²⁷⁴ Reddy (n 145) p. 314

A starting point in preventing and addressing honour crimes should be to criminalize them. It is obvious that killing or hurting a person in the name of honour is illegal. However the question remains, if most states agree that honour crimes is illegal how come that until today there are still many victims of honour crimes, some we know about and others we will never know about..

The aim of criminal law is to prevent any particular kind of crime, and to improve a sense of security throughout the society and rehabilitate the offenders. However, a legal basis only is not enough..

Political structure, legislation and regulation as well as information and awareness have an effect on society's behavior²⁷⁵. An important method to enforce law is first formulating and telling people what is allowed and what is prohibited. The media is the communication channel that spreads information and ideas which can influence and persuade people's attitudes and beliefs to change²⁷⁶. Second these commands must be taken as valid and binding to the members of the community. Third the commands must be to subject one or more sanctions for disobedience and the community must be prepared to enforce it.

To accomplish the aim of the legislations, the officials must have knowledge of the criminal conduct and the relevant respects. The officials must be able to comply with the legislations and have the will to implement them. In addition, the official must have the freedom to deal with crime offence and to enforce the law.

6.2.1 Legislation and case law in England

Some argue that it is important that England designs a legislative reform in the shape of the creation of Acts of Parliament and that there should be a Bill.²⁷⁷ The Bill should address the issues of Honour crimes, such as stating equality between men and women, criminalize honour crimes and stating the roll and duties of the State²⁷⁸. However, one of the main reasons why such a Bill would be helpful in tackling honour crimes, is that it would enable courts to impose higher maximum penalties for offences committed in the name of honour²⁷⁹. In England the

²⁷⁵ David Knott, Stephen Muers and Stephen Aldridge *Achieving Culture Change, A Policy Framework* (2008) Strategy Unit P.6 <https://crawford.anu.edu.au/sparc/pdf/2010/achieving_culture_change.pdf> accessed 4 May 2015

²⁷⁶ *Ibid.* P.6

²⁷⁷ Idriss (n 10) p.8

²⁷⁸ *Ibid.* p. 9

²⁷⁹ *Ibid.* p. 9

average sentence for murder is 14 years. By enabling judges to impose a tougher sentence this will deter future offenders; and hopefully less crimes based on honour would be committed.

England has reformed their law on provocation²⁸⁰. Some argue that the Bill should also include a provision that does not allow a lesser sentence based on the loss of self-control. This is to make sure that an offender will not take advantage of this defense. However, thanks to the reform of 2009, many honour crimes cases are being ruled out. Since the loss of self-control does not apply in cases of revenge or if the perpetrator is triggered by the sexual infidelity of the victim. So in such cases the offender cannot plead the defense on the basis the loss of self-control. It is noticed in some cases that the plea of provocation can still be applied. When discussing revenge, one may assume that there has been planning and premeditation of the crime, however this was not the case, as seen in the case of Faqir Mohammed. Furthermore, in line with his religious convictions and culture it may be seen as an “extremely grave” matter and a ‘justifiable sense of being wronged’. The jury may consider this a revenge killing which is already prevented by legislation²⁸¹.

Even though the loss of self-control does not apply in cases of revenge or if the perpetrator is triggered by the sexual infidelity of the victim, some argue that the loss of control requirements reveals the gender bias. Since it reflects a typically male reaction to provocation but one which women very unlikely to display. The government however is concerned that the removal of the loss of control requirement entirely could open the defense up to unmeritorious cases, such as honour killings gang related homicides and some battered spouse cases.²⁸² However one of the recommendations made is that, killing in anger should not be justified in criminal law. So, instead of trying to differentiate between acceptable and non-acceptable murders there should simply be a firm stand made by state that it is never an appropriate response to getting angry. This was recognised last year by New Zealand which abolished classic provocation based on anger²⁸³. This would prevent that cultural defense would be used to lessen the punishment.

²⁸⁰ Coroners and Justice Act 2009 < http://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpga_20090025_en.pdf > accessed 12 June 2015

²⁸¹ Vincent McAviney, ‘Coroners and Justice Act 2009: Replacing Provocation with Loss of Control’ (INHERENTLY HUMAN 28 OCTOBER 2010) <<https://inherentlyhuman.wordpress.com/2010/10/28/coroners-and-justice-act-2009/>> accessed 15 July 2015

²⁸² B. Mitchel, ‘Loss of Self Control under the Coroners and Justice Act 2009: Oh No!’, in A. Reed and M. Bohlanders (eds.), *Loss of Control and Diminished Responsibility: Domestic, Comparative and International Perspectives*, (Ashgate 2011) p. 44

²⁸³ McAviney (n 235)

6.2.2 The Pakistani legal landscape

The reason why there are so many honour crimes in Pakistan, is that the perpetrators know that their actions are likely not be punished. Because in many cases the officials agree with the perpetrators or do not have the tools and freedom to investigate such crimes. So to say, the perpetrators know they can get away with murder. As seen in the honour crimes cases, the motive to commit such a crime is often a pressure of the society and most offenders remain unpunished or subject to extreme leniency²⁸⁴.

In Pakistan the police themselves can be a threat to the equality and fair treatment of women. Victims may be turned away or harassed by the often exclusively male police instituted and many cases go unreported. Most women's police stations were found to be ineffective and were under equipped due to a lack of funding²⁸⁵. Also there is corruption of the police officials that needs also to be challenged²⁸⁶. Even if cases make it in courts women can be victimized by the legal proceedings. Such as in the case of rape, when women are unable to prove that it was forced they may face punishment under adultery.

There is the need of the sense of justice in Pakistan, so that all persons, whether male or female can feel safe. There is a need for well-trained police and judiciary at a community level to strengthen law and order in region. The police need to perform their assigned roles in the community and prevent crime and injustice. If women trust the police officers in Pakistan, more honour crimes cases can be reported, prevented and handled according the law²⁸⁷. Access to the court should be easier.

Victims must be fully informed about the legal possibility and encouraged to enforce their rights²⁸⁸. The latter is so important because a lot of victims are discouraged to report a case, because of the fear they will be harassed and victimized by the officers or court. The latter

²⁸⁴ Connors (n 107) p. xii, xiii

²⁸⁵ Ruane (n 197) P. 1543

²⁸⁶ Castetter (n 205) P. 575.

²⁸⁷ *Ibid.* p. 575

²⁸⁸ United Nation Economic and Social Counsel, Special Rapporteur on Violence Against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, U.N. Doc. E/CN.4/2006/61 (2006). Paragraphs 50-52. < <http://www.refworld.org/pdfid/45377afb0.pdf>> accessed 25 July 2015

can be prevented by providing training for the police and other professional groups, to prevent dismissive attitudes by police or other enforcement agencies²⁸⁹.

6.3 Preventing Honour crimes and protecting victims

Another challenge in England and Pakistan is protecting the victims of honour crimes. The cases discussed in show that the victims contacted and reached out several time to the social services and police for help. However, protecting these young women failed. The reason for failure in England was mainly because the police and social services were not familiar with the concept of ‘honour crimes’. The various actors within the criminal justice system, the police, healthcare professionals, the prosecution, lawyers, judges and other public servants must have full knowledge of ‘honour crimes’²⁹⁰. This can be achieved by organising workshops, training and educational programmes to get familiar with honour crimes and recognize the signals of the victims in an early stage. Also, other procedures may include drafting a guideline which explains the meaning of honour related violence, how to respond and advise suspected victims. Victims should also be provided with information about their availability of state resources, help and legal aid in certain areas of the law²⁹¹.

The most important actors in this case are the police and the healthcare professionals as they are often the first point of contact for the victims²⁹². In Banaz’s case the police did not take her allegations seriously and it was not investigated. In England female officers from minority ethnic backgrounds can be of a greater help to deal with complaints of honour related violence. “Language and culture can be an obstacle so there needs to be a drive to recruit female officers from a variety of backgrounds who can appreciate the cultural and language difficulties that accompany complaints, as well as helping to identify cases which are not related to HRV”²⁹³.

In addition, schools are also an important actor when it comes to honour crimes. As seen in the discussed cases teachers can notice when a student suffers from problems at home. Just as when

²⁸⁹ *Ibid.* 53-54.

²⁹⁰ Rabia Ali, ‘The Dark Side of ‘Honour’: Women Victims in Pakistan’ [2001] Special Bulletin, p. 44 <http://www.atria.nl/eazines/IAV_606755/IAV_606755_2001.pdf> accessed 15 July 2015

²⁹¹ Idriss (n 10) p. 11

²⁹² *Ibid.* P.11

²⁹³ *Ibid.* P.12

a child is being abused the schools should be responsible to report it, when teachers are familiar with honour crimes, they can report this to social services in case it occurs. In the case of Heshu the teacher told her parents that she was having a relationship and her school performances were suffering. The teacher did not know, that Heshu's culture does not allow her to have a boyfriend and that her father strictly frowned upon it. When being familiar with such phenomenon, schools can deal with such problems in a different manner, without putting lives at risk. Victims of honour crimes must be protected in an early stage or else it might be too late. For that reason there needs to be appropriate guidelines on intervention by the police, healthcare professionals and schools²⁹⁴.

Victims of honour crimes, often disclose their abuse. However when being familiar with the honour related violence healthcare professionals or schools can refer suspected victims to relevant agencies before circumstances become serious or life-threatening or report their cases to the police²⁹⁵. Also both can be used as witnesses in a court case. Education on a national scale is also important to raise awareness and to help society to also recognize honour related violence abuse and help and support the victims.

So raising awareness in society can be helpful. People can be triggered to start thinking about the issues and hopefully to change their opinion about such crimes. But also by raising awareness the community can recognize signs and that can be helpful to help a victim or the police.

6.4 Tradition and Cultural practices

Honour crimes and violence against women is mostly associated with cultural practices²⁹⁶. The General Recommendation Number 19, stated that custom and tradition practice should be respected by the states. However the latter should not be used as an excuse to avoid the states' obligation to eradicate violence against women. Criminal justice is incomplete without the social justice. It is not only up to public officers to enforce the law, however the community itself must be able and prepared to enforce the punishment of the crime. Most of the community

²⁹⁴ Rabia Ali, 'The Dark Side of 'Honour': Women Victims in Pakistan' [2001] Special Bulletin, p. 44 <http://www.atria.nl/eazines/IAV_606755/IAV_606755_2001.pdf> accessed 15 July 2015

²⁹⁵ Idriss (n 10) P.11

²⁹⁶ Connors (n 107) p xii, xiii

members are not seeing that killing in the name of honour is actually a crime and they see the offenders as heroes who are protecting for the family's honour. This is because of their cultural values. Cultural values, which are often manifested as social norms, are rules and guidelines in a society to steer human behavior²⁹⁷. Cultural values are developed by interacting with factors of the immediate environment that have influence their behavior. Factors can be such as parents, peers and role models, but also our neighbors, school and workplace has an effect on an individual²⁹⁸.

6.4.1 Cultural practice and law

Culture and religion in communities can go contrary to international legal standards. Culture is most often used as an excuse by the Government that fails to act energetically to promote gender quality²⁹⁹. However, some argue that culture should not be eliminated or criticised, as it is important in shaping human rights. Human rights law is a matter of persuasion rather than force, of cultural transformation rather than coercive change³⁰⁰.

In the ruler areas in Pakistan the tribal councils are the first authoritative decision makers. Those councils are being represented and often composed by only men. The government has limited authority over these tribes and therefore the federal court system is often neglected. As mentioned before, the tribal council is an important part of the rural area in Pakistan. The community trusts the tribal council with their 'legal' issues. The government of Pakistan can ensure that the tribal council does not violate any Pakistani law or other international human rights laws.

An amendment in the Pakistan Constitution can provide legislation to be used by the tribal council as a reference or guidance. Furthermore, there is a need for a proper system and procedures that can be followed by the tribal council. The state should also provide the tribal council with training. This will prevent the tribal council to violate the Pakistan law or other international human rights laws. However, the tribal council should still be monitored by the State judiciary system³⁰¹.

²⁹⁷ Knott (n 269) P.23

²⁹⁸ *Ibid.* p.6

²⁹⁹ Sally Engle Merry, "Human Rights And Transnational Culture: Regulating Gender Violence Through Global Law" [2006] Osgoode Hall Law Journal, Volume 44, Number 1 p. 64 <<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1311&context=ohlj>> accessed 17 July 2015

³⁰⁰ *Ibid.* p. 65

³⁰¹ Castetter (n 205) P. 537

Furthermore, the tribal council must be composed with men and women, as this would asset to the arbitration of justice, this will also empower women as members of the tribal council for they will be able to form opinions and address issues according to the female perspective³⁰². Such a tribe system can be easier to accesses than a court in Pakistan.

Also the law of Qisas and Diyat in Pakistan is not the problem itself, but the use of it. When the custom is important in a society, the elimination is not an option. Often the use of the custom is being abused because of other reason such as, economic or political conditions. As discussed in the previous chapter, some people choose the Qisas and Diyat law, because of their need of money. In many states some customs are rooted in their culture and the elimination of it is not open for discussion. For that reason one must have respect for the customs and cultures of others. And in cases where the use of it is not appropriate and may cause harm to individuals, the Committee of the CEDAW and the State in question should focus on why such a practice is not working according to its aim. So in this case if the Qisas and Diyat law is not working according its aim, which leads to unfortunate consequences, the State must adopt a new legislation or exclude it in cases of honour crimes.

6.4.2 Cultural practices and Community

Culture has been used as a defence in courts in England as well as in Pakistan. Honour/ shame culture is used as a motive and excuse to kill women. The way culture is conceptualized determines how social change is imagined. If culture is fixed and unchanging, it is simply a barrier that needs to be removed through, for example, education³⁰³. In this case the government should strive for cultural change, by using a combination of incentives, such as legislations, regulations and information diffusion, to encourage and persuade the public to adopt different forms of behavior and change the society's behavior³⁰⁴.

Abdullah AnNa'im states that there is a need for intra-community dialogue aimed to challenge violence against women. According to the author, the term community discourse is used to denote discussion of every aspect of crimes of honour within the local communities where they occur. Tools which can help to start this discussion would also include the media, formal and

³⁰² *Ibid.* p 537

³⁰³ Merry (n 293) p. 64

³⁰⁴ Knott (n 269) P.6

informal education in school, sports and youth clubs and women's or other community associations. The term discourse indicates all possible range of activities and opportunities for discussion of all aspect of honour crimes within the community at every level, including the public and the private spheres. This is different in every community. The key is first to find what is the most important and influent in a community. There must be an understanding of the environmental circumstances in which the cultural capital is formed³⁰⁵. The motive of women violence is different in various states. For example in some states honour crimes is used to cover up the real reasons which is sometimes linked to money and goods and not to the family's honour. However to tackle a certain behavior, it is important to understand where it is coming from, and based on that to organize a public intervention to address the problems and to discuss the matter and promote solutions. There is compelling evidence that, over the long term, investment in interventions at the attitudinal level is more effective at reducing criminal behavior than punitive measures³⁰⁶.

Some believe that honour crimes practices are supported by the Islamic law. Members of the Sharia establishments in different countries can be invited to make public statements on the issue as an effort to persuade constituents against the idea of religious endorsement of violence in the name of honour³⁰⁷. Or for example at a discussion about the issue can be held on Friday sermon at local mosques. Such approach would be very successful in a society where religion is influential on a society and its behavior. Explaining how honour crimes and violence against women are not in alignment with a certain religion or the idea of a religion, can challenge people to think about honour crimes and hopefully change their ideas about this issue. There is a fine line between culture and religion, for that reason it is also important to explain and discuss the cultural circumstances and underlying rationales that might cause the practice to continue in a particular community³⁰⁸.

In history, education has often been used as a social control mechanism, however it can also be used as a tool to achieve social change. According to Sameul Koeing, education is a process whereby the social heritage of a group is passed on from one generation to another. Francis J. Brown remarks that education is a process which brings about changes in the behavior of

³⁰⁵ *Ibid.* P.25

³⁰⁶ *Ibid.* P.31

³⁰⁷ Lynn Welchmann and Sara Hossain (eds.) *Honour' Crimes, Paradigms, And Violence Against Women* (London and New York: Zed Books, 2005) p 14-15

³⁰⁸ *Ibid.* p 15

society³⁰⁹. It is a process which enables every individual to effectively participate in the activities of society and to make positive contributions to the progress of society.

Education helps in sharing knowledge and spreading awareness on societal issues. It triggers the mind and prepares the minds of people to welcome and adopt desirable social changes, if they are convinced of its utility and desirability³¹⁰. School is usually the first place for young children to learn about appropriate behavior and has an important influence on our attitude. It is the tool that enables young people to think critically with reason and rationality about their lives and how they relate to a wider society³¹¹.

Education is also very important for social growth. The Ministry of Finance of Pakistan conducted an economic survey indicating that education is the cornerstone of economic growth and poverty reduction³¹². As mentioned before, poverty causes relatives of the victim to apply the Qisas and Diyat Ordinance, in order to receive a compensation because of financial needs.

Change of perception is where it all has to start. It is the beginning of transforming the community's attitude towards honour crimes. In order to prevent honour crimes, the community, and especially the state officials who can enforce the law, must hold perpetrators accountable.

States should respect the culture and traditions of their people, for that reason it is important to initiate dialogue with the community. By providing space for the community to come up with solution and help in attacking this crime, enforcing the law would be made easier. The community, including the national local authority and state officials who are supposed to devise and implement the necessary measures and who are also a product of the same culture, will support and have an agreement to generate and sustain political will and to allocate resources and implement policies for combating crimes of honour and punish perpetrators and deny them any moral or material benefit from their crimes.

³⁰⁹ S. Samuel Ravi, *A Comprehensive Study of Education*, (PHI Learning Pvt. Ltd., New Delhi, 2001) p. 446

³¹⁰ *Ibid.* p. 448.

³¹¹ Knott (n 269) P.55

³¹² Castetter (n 205) p. 576

7. Conclusion

“Now that I am giving this statement what can u do for me...?”

As mentioned in the introduction, this question was asked by Banaz after reporting her case to the police. Unfortunately the police has failed to protect her and Banaz was killed by her own family shortly after her visit to the police. The aim of this thesis is to answer the following question: *“What are the internationally recognized obligations and responsibilities of the States on preventing and punishing honour crimes and how can they be implemented?”*

Honour crimes include all forms of violence directed towards individuals in the name of honour. It is usually based on a belief that the victim has shamed the honour of the family and for the stain to be diminished, the victims must be punished. The latter can lead to honour killing, which means the murder of mostly women for suspected deviation from norms imposed by society. Honour crimes are often committed in an honour and shame society. In an honour and shame culture, individuals find it very important what other people of the society think about them. Men are guardians of the family’s honour. If a women of the family behaved in an immoral way, the men of the family have to punish this women. If the latter does not happen, the family may be excluded for the rest of the society. Honour killing is in some cases a pressure from the society.

The UDHR contains provisions which grant both sexes the enjoyment of the universal rights and freedoms. The principle of non-discrimination and equality is also in the ICESCR and ICCPR. States should not only treat women and men alike when they are in a comparable situation, but the outcome of the treatment must also be equal. The responsibility of states is not limited to the public sphere but includes also the private sphere. States that have accepted the CEDAW agreed to undertake a series of actions in eliminating all forms of existing discrimination against women and sets up an agenda for national action to end discrimination. States are required to prevent, investigate and punish violation of human rights or provide compensation. This is to make sure that private actors do not violate the CEDAW. It is considered a human rights violation if States fail in preventing, protecting the victims or punishing the perpetrators³¹³.

³¹³Working towards the elimination of crimes against women committed in the name of honour, UNGA Res A/RES/55/66 (31 January 2001) <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/66&Lang=E> accessed 25 January 2015

States are also obliged to consolidate legislative, educational, social and other efforts to raise awareness of the need to prevent and eliminate honour crimes. However to fully eliminate honour crimes there is an urgent need to investigate, document and prosecute honour crimes to eliminate crimes against women³¹⁴. The Committee also required that the states should remove the defense of honour in regard to the assault or murder of a female family member from their legislation. However the Committee does acknowledge that although legislation can help in attacking honour crimes, there are cultural practices that can be a part of the underlying causes of discrimination and inequality. Such cultural traditions which cause violations of women's right should be addressed and challenged.

Honour crimes is a universal issue that many states have to deal with. Despite the fact that States are different, they deal with the same underlying problems. One may think that countries such as England and Pakistan deal with diverse issues and for that reason there must be different responses made for those states. However after analyzing honour crimes in both countries it became clear that the underlying issues are the same however they manifest in a different level and form. The challenges are related to legislation, lack of awareness and the need of social change. In England perpetrators can use cultural defense to justify their criminal act and to reduce the punishment. As mentioned before the states should eliminate traditional and customary values that harm and violate women's right. Such traditional and customary values are mostly a male dominated view that accepts women violence. Hence, this should not be used to gain legal advantages. Furthermore, because of the lack of awareness and of understanding of honour crimes, police and social services failed to protect the victims. The rural area in Pakistan and the tribal councils are the decisions makers and the government have a limited authority. The police can also be a threat to the equality and the fair treatment of women. Victims may be turned away or harassed. Even in court women can be victimized by the legal outcomes because of the law of Qisas and Diyat. It seems that the problem is in enforcing the law. The members of the community must take commands as valid and binding. Furthermore, the public officers must suppress the crime.

Some argue that England should design a legislative reform in the shape of the creation of Acts of Parliament and that there should be a Bill to tackle the issues of honour crimes. One of the main reasons to design such a Bill is to impose higher maximum penalties for offences committed in the name of honour. By enabling judges to impose a tougher sentence this will

³¹⁴ Working towards the elimination of crimes against women committed in the name of honour UNGA, Res 57/179 (18 December 2002) < <http://daccess-ods.un.org/TMP/9110714.19715881.html>> accessed 15 January 2015

deter future offenders and hopefully less crimes based on honour would be committed. Some argue that the Bill should also include a provision that does not allow a lesser sentence based on the loss of self-control. Honour killing in anger should not be justified. So instead of trying to differentiate between acceptable and non-acceptable murders there should simply be a stand made and state that it is never an appropriate response to getting angry. This would prevent that cultural defense would be used to lessen the punishment.

In Pakistan the perpetrators know that their actions will not be punished because in many cases the officials agree with the perpetrators or do not have the tools and freedom to investigate such crimes. So to say, the perpetrators know they can get away with murder. Pakistan needs to exercise justices so that all persons, whether male or female can feel safe. There is need for well-trained police and judiciary at a community level to strengthen law and order in region. The police need to perform their assigned roles in the community and prevent crime and injustice. If women trust the police officers in Pakistan, more honour crimes cases can be reported, prevented and handled according the law.

Another challenge in England is protecting the victims of honour crimes. The reason for failure was mainly because the police and social services were not familiar with the concept of 'honour crimes'. The various actors within the criminal justice system, the police, healthcare professionals, the prosecution, lawyers, judges and other public servants must have full knowledge of 'honour crimes'. This can be achieved by organising workshops, training and educational programmes to get familiar with honour crimes and recognize the signals of the victims in an early stage. The most important actors in this case are the police and the healthcare professionals as they are often the first point of contact victims.

Both states have ratified the CEDAW. So based on the latter the states should raise awareness to prevent and eliminate honour crimes. By raising awareness in the community and by promoting social change the prejudice and customary which justify violence against women can be eliminated. Honour crimes are mostly associated with cultural practice. The latter is used as a defence in courts in England as well as Pakistan. States are obliged to respect customs and traditions. However, if the latter should cause harm and violation of women's right, such customs and traditions should be eliminated. The latter is can be removed through education or an intra-community dialogue. To tackle a certain behavior it is important to understand where it is coming from, and based on that organize a public intervention to address the problems and to discuss the matter and promote solutions.

Education is a process which brings about changes in the behavior of society. It also helps in spreading knowledge and awareness issues. Education is also very important for social growth. As mentioned before, poverty causes relatives of the victim to apply the Qisas and Diyat Ordinance, in order to receive a compensation because of financial needs.

Both countries may need to reform their legislation, to ensure the right of the victims and punishment of the perpetrators. Also training the officers and the other actors involved is a very important. For England training police officers is important because many do not know what honour crimes entail and how to deal with the latter. In Pakistan the aim is however different. There the officers need first to understand that honour crimes is not allowed and even if the victims has had a 'bad behavior' that should not be a justification to file a report or investigate the case. The police in Pakistan also need training on how to effectively investigate and handle a crime. The latter is often due lack of funds not possible. There is also a need for Social services. Victims may find it terrifying to immediately file a report. Social services can inform the victim about their rights and in an urgent case even offer a shelter. This to prevent possible murders. Furthermore, the community whether in England or in Pakistan should be educated on the issue. This is best achieved by starting a dialogue. Change is best achieved when the community is involved.

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