

## Chapter 14

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# A woman's honour and a nation's shame

## 'Honour killings' in Pakistan

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'The right to life of women in Pakistan is conditional on their obeying social norms and traditions'.<sup>1</sup>

### Introduction

On 6 April 1999, Samia Sarwar, a twenty-nine-year-old woman, was shot dead by a man hired by her own family in her lawyer's office located in a bustling business district of Lahore, Pakistan. Why was she so callously summarily executed, in public, in broad daylight? Married off to her cousin as a seventeen-year-old, in a match arranged by her family, Samia had been seeking a divorce from her husband after enduring years of abuse and domestic violence by him.<sup>2</sup> Having failed to get the divorce through family deliberations, she had sought help from the law firm AGHS, and taken refuge in the AGHS-run women's shelter, Dastak.<sup>3</sup> While staying at the shelter, Samia, fearing for her life, had refused to meet with male relatives but had reluctantly agreed to a meeting with her mother (who was allegedly going to hand over papers needed for the divorce) at the office of her lawyer, Hina Jilani.<sup>4</sup> Samia's mother had arrived at Jilani's office accompanied by her brother and a driver. The lawyer asked the men to leave the room but Samia's mother objected, averring that she could not walk and needed the driver's assistance.<sup>5</sup> In the next moment, the driver pulled out a gun and shot at both Samia and her lawyer. While Samia died instantly, Hina Jilani narrowly escaped injury.

Samia's family believed that by seeking a divorce Samia had brought shame and dishonour to the family and that such a brazen act of defiance called for punitive action in order to restore the family name and honour.<sup>6</sup> It can be argued that the fact that the killing was carried out so overtly denotes that the 'perpetrators were convinced they were doing the right thing, were not afraid of publicity' and felt no need to hide their identity, as they felt sure that they could count on widespread support and that the state would not hold them to account.<sup>7</sup> In light of the events that followed, it seems that the perpetrators were not wrong in their belief.

If there is anything more shocking than the killing itself, it is the impunity with which the act was carried out. Although Samia was clearly murdered, no one has been convicted for her death. Thus, despite the fact that Samia's parents had hired a man to kill their daughter, and that Samia's mother and uncle had even accompanied the killer, the law in Pakistan allowed them to escape conviction.<sup>8</sup> Moreover, when the case went to court, Samia's parents appeared as her heirs, and, under the Qisas and Diyat Ordinance, forgave the murderer whom they had hired to kill their daughter in the first place.<sup>9</sup>

In contrast, however, there was overwhelming support for the perpetrators from the Pakistani public, a number of politicians and provincial leaders and some segments of the press. Many contended that since the killing was in accordance with tradition, it could not amount to a crime.<sup>10</sup> Others simply emphasised that the parents should have first obtained a local tribal council verdict as this would have given the act 'legitimacy' and avoided any subsequent procedural issues.<sup>11</sup> Thus, the issue was not the premeditated murder of a woman but the procedural oversight by the parents. In light of this immeasurable backing, the meta-message that emerges here is that Samia's death was a natural occurrence in the cultural order.

Indeed, even during the associated parliamentary discussion at the time, much sympathy was evoked for Samia's parents who were regarded as upstanding members of the community, acting to safeguard social traditions and their family's honour.<sup>12</sup> Samia's behaviour, conversely, was deemed to be honour-defying, self-serving and egotistical.<sup>13</sup> In addition, this event triggered bitter religious-tribal agitation against Samia's lawyer, whereby there were calls from members of certain groups not only her arrest but also for her death because of her (supposed) role in corrupting women by encouraging them to rebel against traditional norms and customs.<sup>14</sup> Negative sentiments against Hina Jilani were voiced in the Pakistani Senate too, where one senator asserted, 'We have fought for human rights and civil liberties all our lives but wonder what sort of human rights are being claimed by these girls in jeans.'<sup>15</sup> Moreover, members of the Government accused human-rights organisations supportive of the lawyer of 'spreading vulgarity and obscenity in the name of human rights' and threatened to penalise such groups.<sup>16</sup>

Nonetheless, this one high-profile incident did place the practice of 'honour killings' (which until then had been occurring in Pakistan with limited public attention) firmly within the country's national discourse, with reverberations across the global media. The case sparked vigorous discussion, debate and open demands for action from individuals and groups, both nationally and internationally. As one Pakistani politician put it, 'Samia in her death has no doubt become a metaphor for all honour killings. She has become a symbol for all brutalities against women.'<sup>17</sup>

Since 1999, besides myriad activities undertaken by various non-governmental organisations (especially women's groups) and other human-rights activists to try and bring to an end the practice of honour killings, there have been a

number of legislative changes in Pakistan that purport to effect the prevention of such gender-based violence and other discriminatory practices against women and girls. Irrespective of such notionally promising changes, the country continues to be notoriously prominent as a state where the number of honour killings remains amongst the highest in the world.<sup>18</sup> While reliable data providing a true representation of the extent and magnitude of the problem is virtually impossible to obtain, a recent report estimates that between 2004 and 2007 there were 1,957 incidents of honour killings of women reported in the media.<sup>19</sup> It must be remembered, though, that this figure is just the tip of the iceberg, as significantly more occurrences of honour-related killings actually go unreported.<sup>20</sup>

In its investigation into the phenomenon of honour killings against women in Pakistan, this chapter analyses three aspects of the issue.<sup>21</sup> First, the concept of honour killings is outlined. Second, the rationale behind honour killings is examined, paying particular attention to the notions of honour and its corollary shame, masculine and feminine divides and power and control. Third, the regulation of honour killings is delineated, focusing on both the state law and non-state adjudicatory mechanisms. This chapter concludes that within the Pakistani context the right to life of women is intrinsically linked to their obeying social norms and traditions where the concept of honour is represented by male 'honour'.

### The concept of honour killings

Defining the term 'honour killings' is not a straightforward task. This is largely because cultural understandings of the term vary locally depending upon who kills whom and upon what the perceived transgressions of social norms leading to the killings are.<sup>22</sup> At its most basic, the term is commonly used as shorthand, to flag an extreme type of gender-based violence against women 'characterized by (claimed) "motivation" to preserve familial codes of honour.'<sup>23</sup> A more comprehensive definition, and the one used for the purposes of this chapter, is that it comprises of ritualised acts of violence in the form of murders, committed usually by male family members (including extended family members) against female family members who are perceived to have brought dishonour and shame to the family.<sup>24</sup> Furthermore, the 'dishonourable and shameful behaviour' that triggers such killings need not be actual. It can be merely perceived or suspected.<sup>25</sup> In other words, because such behaviour is something imputed by others, material truths concerning what is real and what is not become irrelevant.

At this stage, it is worth pointing out that the very terminology – honour killings – is in itself problematic for two reasons. First, for taking the description articulated by the perpetrators and thereby not only retaining the ideological emphasis on 'male' honour, but also masking the high levels of violence involved.<sup>26</sup> And, second, for concealing, in some instances, the real motivation

behind the act, as it is argued that a whole 'honour killing industry' has sprung up wherein the excuse of honour is regularly used 'as a blanket cover for a multitude of [other] sins'.<sup>27</sup> For example, men have been known to manipulate the tradition of honour killings to settle land disputes and old enmities.<sup>28</sup> In such contexts, the underlying motive is clearly not the restoration of honour. Accordingly, in light of this, feminists have argued for the rejection of the term 'honour killings' in search of another more suitable phrase which does not allude to a misconceived ideology of honour that disguises the true nature of the violent manifestations.<sup>29</sup> However, in the absence of a better alternative phrase, this chapter shall continue to use the expression 'honour killings' to describe this gender-based murder of women.

Although a common occurrence in various cultures and communities, the practice of honour killings seems to be most prevalent in more collectivist societies where the sentiment of honour is lived out openly before other people and any dishonourable conduct of an individual is taken to reflect upon the rest of the family and other members of the community.<sup>30</sup> That being said, owing to the extensive media reports in the past few years about the frequency of honour killings in places such as Pakistan, Jordan, Palestine, Turkey and certain other Islamic states, and amongst Muslim diaspora communities (including those in Western Europe), a popular belief exists that this practice is somehow based on the tenets of Islam. Such a view is erroneous and misplaced.<sup>31</sup> Put simply, if certain Muslims have committed honour killings, or if honour killings have been carried out in some Islamic states, it does not automatically follow that the practice is prescribed, condoned or tolerated by Islam. On the contrary, Shari'ah (Islamic) law repeatedly condemns murder.<sup>32</sup> Rather, it prescribes respect for human life and human dignity and discourages interference with other people's lives and speculation about other people's affairs.<sup>33</sup> Additionally, Shari'ah law is highly critical of individuals falsely accusing others of crimes they did not commit. Such behaviour is called *al-kadf*, which literally means to throw something at someone.<sup>34</sup> So, for instance, those who falsely point the finger at chaste women and fail to bring forth witnesses to prove allegations should be lashed eighty times and their testimony should never be accepted again, unless they repent and admit their wrongdoing.<sup>35</sup>

What is more, family killings and other forms of violence committed in the name of honour are by no means tied to a particular religion or group: 'Murder of kin on the justification of restoring family honour is frequent not only in ... Muslim society, but also in other societies ... for example ... Sardinia and Sicily. This does not mean that Roman Catholicism encourages it.'<sup>36</sup> In fact, the notion of honour was certainly a part of the legal history of Western civilisation before its institutionalisation in Muslim countries, and, as a result, honour killings existed even before the advent of Islam.<sup>37</sup> For instance, honour played an important part in the structure of Roman society and in the evolution of Roman law, and, accordingly, justifications for honour killings can be found in the family law of the Roman Empire.<sup>38</sup>

In Pakistan, honour killings occur in all four provinces of the country and in the tribal areas adjoining the border with Afghanistan.<sup>39</sup> Nonetheless, it must be pointed out that the phrase 'honour killing', as understood by many, is of the English language. In the various languages and dialects spoken in Pakistan, this extreme manifestation of violence has historically been mentioned in ways that directly brand the victims of the act as 'black'. For instance, in Sindh it is called *karo kari* and in the Punjab it is referred to as *kala kali*. Both literally mean 'black male' and 'black female', traditional metaphoric terms for adulterer and adulteress. The branding as 'black' implies that the community must be cleansed of the deed that blackens it.<sup>40</sup> Traditionally, honour killings were socially sanctioned to punish women for (often allegedly) engaging in extramarital sexual activity. However, over the years, claimed justifications for the practice 'have widened to include women's expressions of autonomy by, for example, exercising choice in marriage or a decision to seek divorce'.<sup>41</sup>

There is no definitive local consensus regarding the origins of honour killings in Pakistan.<sup>42</sup> For instance, some allege that it originates from the various Baloch tribes of Balochistan and spread to other communities when members of these tribes migrated to different parts of the country.<sup>43</sup> On the other hand, Pathans of the North Western Frontier Province claim that the Muslims adopted this practice from the Hindus since the subcontinent had been home to both Muslims and Hindus.<sup>44</sup> Despite the uncertainty about the origins of the custom, it would be fair to deduce that in Pakistan the killing of women in response to perceived breaches of honour finds endorsement in local (tribal) traditions and culture.<sup>45</sup>

### Rationale behind honour killings

Within local traditions, the perception of honour used to rationalise killings 'is founded on the notion that a person's honour depends on the behaviour of others and that behaviour, therefore, must be controlled'.<sup>46</sup> As a result, other people's conduct (as opposed to one's own) becomes a key factor in one's own feelings of self-worth and community regard. Hence, honour acts as a pivotal link between the individual and the community. In this context, it offers a moral framework for behaviour, norms and rules that provide a basis for acceptance in collective life.<sup>47</sup> Indeed, within Pakistan, it is through the holding of honour, in the form of familial respect (*izzat*) and social prestige (*ghairat*), that individuals find a place in their community.<sup>48</sup> Consequently, in this regard, honour is imbued with great power and becomes foundational to the individual's identity.<sup>49</sup> What is more, once an act deemed to be shameful becomes public knowledge (as in Samia's case when she sought the help of the law firm AGHS), this can adversely affect the individual's and family's standing in the community, and therefore, the transgressor of the dishonour must be punished as almost a matter of social inevitability.<sup>50</sup>

In addition, in collectivistic cultures such as Pakistan, the family is the 'core unit that the individual identifies with and is naturally a powerful institution in the way communities are organized'.<sup>51</sup> Thus, here honour is not something that is simply important and achieved individually; rather, it encapsulates the whole worth of the family and the community. In other words, honour is shared and belongs to the collective.<sup>52</sup> It also transcends time in that the lives of the unborn members of the community depend upon it as well. Therefore, losing honour invites ridicule and disgrace and subjects not only the family but also the entire community to shame. Such a collective attitude of honour, for example, was certainly evident following Samia's death when members of the Pashtun community vigorously defended Samia's parents' actions and alleged that Samia, by her actions, was responsible for her own demise.<sup>53</sup>

Moreover, just as honour can be lost, it can also be regained by avenging the offensive act.<sup>54</sup> Accordingly, actions, including murder, carried out to restore the honour and remove the shame, are not only condoned but often valorised. In many instances, perpetrators of honour killings are viewed as victims by fellow members of the community because, in their view, 'what the perpetrator had to go through was worse than death'.<sup>55</sup> What is more, by carrying out the act of killing, it is considered that the perpetrator displayed courage and lived up to expectations, i.e. became *ghairatmand* (possessing honour and brave).<sup>56</sup> In a nutshell, a Pakistani folk saying says it all: *Daulat khonay pur kuch naheen khota; sihat khonay pur kuch kho jaata hai; ghairat khonay pur sub kuch kho jataa hai* (When wealth is lost nothing is lost; when health is lost something is lost; when honour is lost everything is lost).<sup>57</sup>

It is further argued that collectivist societies can be fiercely patriarchal and hegemonic. In this context, honour becomes the operative perspective of the power-holding group that relies on the behaviour of others.<sup>58</sup> More to the point, such patriarchal structures are modulated by a gender construct whereby women and their activities are taken to represent the behaviour that must be controlled.<sup>59</sup> In other words, women are seen as the repositories of their family's honour and men are considered to be the protectors of this honour.<sup>60</sup> But, rather than possessing honour themselves, women are merely symbolic vessels of male honour, and for that reason all of their actions are seen to reflect upon male family members. Hence, the behavioural qualities that are deemed to be honourable for women and men contrast dramatically, and the qualities required of women are anchored in the assumptions underlying male definitions and expectations of appropriate female behaviour.<sup>61</sup> One scholar maintains that in this patriarchal setting women are bestowed with immense negative power for the reason that any 'misbehaviour on their part can bring shame and dishonour to the male members of a whole community, lineage or family'.<sup>62</sup> There is a powerful sense in which, just as the concept of honour does for men, it is primarily a woman's shame, or potential for shame, that summarises her public reputation and social position.<sup>63</sup> As a result, in order to prevent the dishonouring of the manliness of men, the quality required of women is, in essence, shame. Therefore,

while men have honour, women have shame.<sup>64</sup> And, for men, female shame and dishonour must be responded to, violently if necessary, if male reputation and social prestige are to survive.

What is more, in order to protect their shame and men's honour, women are expected to behave modestly. In fact, modesty and chastity are considered essential components to preserve male, and thereby the family's, honour. Besides, female chastity also represents the 'symbolic capital' of male hegemony.<sup>65</sup> Women are regarded as an object of value that is worthy of possession and that must be controlled. Basically, 'women are considered the property of the males in their family ... [and] the owner of the property has the right to decide its fate'.<sup>66</sup> So, by engaging in behaviour that compromises her chastity, a woman undermines the ownership rights of her male family members and loses her inherent value as an object worthy of possession.<sup>67</sup>

It is also averred that in many societies, including Pakistan, the very 'ideal of masculinity is underpinned by a notion of "honour" – of an individual man, or a family or a community – and is fundamentally connected to policing female behaviour and sexuality'.<sup>68</sup> In this context, honour can be understood in terms of dominance and a male-derived social interest. Consequently, because of the vesting of such an interest in the conduct and body of a woman, in order to protect it, men accord themselves complete authority and control over their female family members.<sup>69</sup> Thus, a man who is unable to take authoritative action against a transgressive female family member becomes ungended, as he has failed to exert his power and, therefore, his masculinity. Indeed, within the Pakistani context, it can be argued that a man who fails to kill the woman of his household who has damaged his honour would be regarded, by other male family members and by members of the community as 'socially impotent and *beghairat* (without honour)'.<sup>70</sup> Furthermore, it can be argued that while femininity is an ascribed status masculinity is something that must be achieved, i.e. a process that can only be realised through the effective control and punishment of female misbehaviour.<sup>71</sup> And such control, like other forms of oppression, is often deeply rooted in violence.

### Regulation of honour killings

Within Pakistan, due to the existence of plural adjudicatory systems which comprise both formal and informal laws, the regulation of honour killings evokes competing spheres of simultaneous legal subjection. In turn, such pluralism gives rise to different, competing normative systems that seek to order human behaviour.<sup>72</sup>

The formal justice system in Pakistan today operates as a hybrid of secular and religious models, and, therefore, like in many Islamic states, there is a secular court system as well as Shari'ah courts.<sup>73</sup> However, 'tribal council arbitration, although not part of the formal justice system, [also] wields incredible control over all manner of disputes'.<sup>74</sup> Such arbitration systems, in the form of

*jirgas* and *panchayats* (tribal and community councils) have existed in South Asia for centuries and their decisions have been handed down from one generation to the next, resulting in sets of codes delineating acceptable standards of social conduct.<sup>75</sup> These traditional codes of conduct, as can be seen from Samia Sarwar's case, for instance, continue to have a more commanding hold on the behaviour of the members of contemporary Pakistani society than the state's formal laws.

In addition, the governance of communities through *jirgas* and *panchayats* has allowed the development of a lasting informal, non-state parallel system of regulation in Pakistan. At present, a high proportion of the population in Pakistan live in rural areas as opposed to urban centres.<sup>76</sup> For such members of society, the tribal and community councils (which continue to operate in all the provinces) remain the first, and more often, than not, the final source of authoritative adjudication.<sup>77</sup> Such forums are composed solely of men, particularly those who already exert great financial and/or inherited power.<sup>78</sup> Women are not allowed to appear before these gatherings, either as the accused or the complainant, nor can they be witnesses.<sup>79</sup>

*Jirgas* and *panchayats* deal with a variety of issues that not only consist of resolving disputes between members of the community but also involve passing pronouncements on matters deemed to be of relevance to the honour of the community – including (alleged) acts by women that defy the traditionally formed social order and morality. The pronouncements delivered in cases involving women who have supposedly transgressed the cultural normativity are 'gendered articulations of patriarchal privilege' that resonate structurally inbuilt inequities towards women.<sup>80</sup> In other words, in a quest to preserve communal solidarity and (male) collective honour, tribal and community councils are known to order the killing (frequently on the slimmest suspicion) of female transgressors or to endorse the murder of such women by male family members.<sup>81</sup> Here the goal is not to elicit the truth and punish the culprit but, rather, to restore the balance disturbed by a woman's (often assumed) indiscretion.<sup>82</sup>

The Government seems to have little control over the activities of *jirgas* and *panchayats*. On the contrary, it is reported that many members of parliament have been or are actually part of such councils.<sup>83</sup> Moreover, as demonstrated by the reaction of some members of the Pakistani Senate to Samia Sarwar's murder, there is endorsement for the preservation of traditional social codes and customs even in the country's highest law-enacting body. Consequently, the rule of tradition becomes more powerful than the rule of law. Notwithstanding the fact that this cultural ideology generally remains relatively intransigent in Pakistan, in early 2000, intent on promoting an enlightened and moderate image, the then Government stipulated that it was determined to take strict measures to curb violence against women in the name of culture and tradition and to ensure the safety of women in Pakistani society.<sup>84</sup> As a result, a number of legislative changes have been introduced.



In the context of honour killings, one such change that is of particular relevance is the Criminal Law (Amendment) Act 2004. In fact, this Act is the first piece of legislation that officially acknowledges the problem of honour-related violence in Pakistan.<sup>85</sup> It prohibits offences 'committed in the name or on the pretext of honour' and introduces a number of modifications to the laws relating to murder via amendments to the Pakistan Penal Code.<sup>86</sup> During its enactment, one government minister hailed it as 'a landmark decision as the law protects the rights of women and eliminates ... archaic rituals'.<sup>87</sup>

However, women's-rights advocates have criticised the Act as 'defective and incomplete'.<sup>88</sup> Critically, the Act does not address the crucial problem of 'statutory concession' available to perpetrators through the *Qisas* and *Diyat* laws which posit 'forgiveness' powers in the hands of the victim and his or her legal heirs. The *Qisas* and *Diyat* Ordinance was promulgated in 1990, following the Supreme Court Shariat Appellate Bench's decision in the case of *Federation of Pakistan v. Gul Hassan* 1989, where the court found certain sections of the Pakistan Penal Code and the Criminal Procedural Code concerning deliberate murder and deliberate hurt to be contrary to Islam.<sup>89</sup> In introducing major changes to penal provisions dealing with such offences, the Ordinance had (and still has) far-reaching consequences for the legal prosecution of honour killings as it shifted the emphasis of murder as a crime against the state to a private offence against the individual.<sup>90</sup> Accordingly, the charge of implementing legal justice for a wrongful death is effectively placed in the hands of the deceased's *wali* (legal heir[s]) rather than the government.

In a nutshell, the heirs may seek *qisas* (retribution), *diyat* (i.e. enter into a compromise with the accused in return for compensation – often referred to as compounding) or total forgiveness of the accused.<sup>91</sup> In addition, even if the case is being heard under *qisas*, any one of the heirs may, at any stage of the prosecution, waive their right of *qisas* and invoke the other options available to them.<sup>92</sup> Furthermore, the court is obliged to accept the decision unless it exercises its discretion under Section 311 of the Pakistan Penal Code which grants the court discretion to prosecute in certain circumstances (irrespective of whether there is a waiver, compromise or pardon). However, in reality, this provision has rarely been applied.<sup>93</sup> In fact, in the context of honour killings, due to the familial structure in which such crimes occur, perpetrators walk away free (as evident in Samia Sarwar's case). Consequently, the message that emerges here is that murders of family members are a family affair and that prosecution and legal redress are not inevitable but are open to negotiation.

## Conclusion

As explored in this chapter, the right to life of women in Pakistan is indeed conditional on their obeying social norms and traditions. The structures that perpetuate honour killings are socially constructed, and the related rhetoric of violence is a product of a historical and cultural process that is neither essential

nor time-bound in its manifestation. The concept of honour in such a process is represented by the ideological construction of male 'honour', whereby killing transgressive females is deemed essential not only for the restoration of the family's *ghairat* and *izzat* but also to ensure the collective identity. What is more, this masculine hegemony is reinforced by the regulation of honour killings within both the formal legal system and the non-state adjudicatory mechanisms.

## Notes

- 1 Hina Jilani, lawyer and human-rights activist in Pakistan, quoted in Amnesty International, *Pakistan: Violence Against Women in the Name of Honour*, ASA 33/017/99, 1999, p. 2. Available online at <http://www.amnesty.org/en/library/asset/ASA33/017/1999/en/5d9201f4-c0f2-11dd-be39-2d4003be4450/asa330171999en.pdf> (accessed 30 January 2010).
- 2 K. Lason, 'Bloodstains on a "Code of Honor": The Murderous Marginalization of Women in the Islamic World', *Women's Rights Law Reporter*, 30 (3) (2008/9): 407–41; p. 418.
- 3 In fact, when Samia spoke with her parents about her intentions to seek a divorce, rather than offering support they threatened her life; see S. Palo, 'A Charade of Change: Qias and Diyat Ordinance Allows Honor Killings to Go Unpunished in Pakistan', *UC Davis Journal of International Law and Policy*, 15 (1) (2008/9): 93–101; p. 94. AGHS (Law Firm) Legal Aid Cell is the first law firm established by women in Pakistan.
- 4 R. A. Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan', *Emroy International Law Review*, 14 (3) (2000): 1523–80; p. 1524.
- 5 Amnesty International, *Pakistan: Violence Against Women*, p. 22.
- 6 T. S. Khan, *Beyond Honour: A Historical Materialist Explanation of Honour Related Violence* (Karachi: Oxford University Press Pakistan, 2006), p. 274.
- 7 Amnesty International, *Pakistan: Violence Against Women*, p. 22.
- 8 K. N. Ahmed, 'Concurrent Session B-1, Gender (In)justice, Comments', *SPDI Research and News*, 6th Special Bulletin, 10 (6) (2003): 42–4. Available online at [http://www.sdpi.org/help/research\\_and\\_news\\_bulletin/SDPI\\_%20research\\_and\\_news\\_bulletin\\_nov\\_dec\\_2003/articles/Day%20three%20articles/Gender%20\(In\)%20justice.htm](http://www.sdpi.org/help/research_and_news_bulletin/SDPI_%20research_and_news_bulletin_nov_dec_2003/articles/Day%20three%20articles/Gender%20(In)%20justice.htm) (accessed 30 January 2010).
- 9 Ahmed, 'Concurrent Session'. It is also argued that the family's financial status and social and political influence allowed them to take the law into their own hands and murder Samia; see Khan, *Beyond Honour*, p. 275.
- 10 Amnesty International, *Pakistan: Violence Against Women*, pp. 22–3.
- 11 In Pakistan, alongside the formal legal system, there exists an informal adjudicatory system as well where non-state forums such as tribal and community councils play a highly influential role in regulating and resolving various issues. R. A. Ruane, 'Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan', *Emroy International Law Review*, 14 (3) (2000): 1523–80; p. 1525.
- 12 A. H. Jafri, *Honour Killing: Dilemma, Ritual, Understanding* (Karachi: Oxford University Press Pakistan, 2008), p. 92.
- 13 Jafri, *Honour Killing*, p. 92.
- 14 Jafri, *Honour Killing*, p. 2.
- 15 M. Hussain, '"Take My Riches, Give Me Justice": A Contextual Analysis of Pakistan's Honor Crimes Legislation', *Harvard Journal of Law and Gender*, 29 (1) (2006): 223–46; 242–3.
- 16 Hussain, 'Take My Riches, Give Me Justice', p. 243.

- 17 Jafri, *Honour Killing*, p. 3.
- 18 See, for instance, Khan, *Beyond Honour*, p. 135; A. Knudsen, *License to Kill: Honour Killings in Pakistan* (Bergen: Chr. Michelsen Institute, 2004), p. 2. Available online at <http://www.cmi.no/publications/filc/1737-license-to-kill-honour-killings-in-pakistan.pdf> (accessed 17 January 2010); and Lasson, 'Bloodstains on a "Code of Honor"', p. 418.
- 19 M. Nasrullah, S. Haqqi and K. J. Cummings, 'The Epidemiological Patterns of Honour Killing of Women in Pakistan', *European Journal of Public Health*, 19 (2) (2009): 193–7, p. 194.
- 20 Asian Human Rights Commission, *Pakistan: Conditions for Women are More Precarious on International Women's Day 2009*, Statement, 8 March 2009. Available online at <http://www.ahrchk.net/statments/mainfile.php/2009statements/1926/> (accessed 26 January 2010).
- 21 In this chapter, the term 'women' also includes girls.
- 22 S. A. Warraich, "'Honour Killings' and the Law in Pakistan", in L. Welchman and S. Hossain (eds.), *'Honour': Crimes, Paradigms and Violence Against Women* (London: Zed Books, 2005), pp. 78–110; p. 78.
- 23 L. Welchman and S. Hossain, "'Honour', Rights and Wrongs", in L. Welchman and S. Hossain (eds.), *'Honour': Crimes, Paradigms and Violence Against Women* (London: Zed Books, 2005), pp. 1–21; p. 4.
- 24 Sometimes female family members are involved as well, as can be seen, for example, from Samia Sarwar's case where a mother was a major participant in the killing of her own daughter. Although less common, men can also be the victims of honour killings. Knudsen, *License to Kill*, p. 1; and Human Rights Watch, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and 'Honor' Crimes*, Intervention Before the 57 Session of the UN Commission on Human Rights, 6 April 2001. Available online at [http://www.hrw.org/prcss/2001/04un\\_oral12\\_0405.htm](http://www.hrw.org/prcss/2001/04un_oral12_0405.htm) (accessed 26 January 2010).
- 25 Welchman and Hossain, "'Honour', Rights and Wrongs", p. 5.
- 26 Welchman and Hossain, "'Honour', Rights and Wrongs", p. 8; P. Baxi, S. M. Rai and S. S. Ali, 'Legacies of Common Law: "Crimes of Honour" in India and Pakistan', *Third World Quarterly*, 27 (7) (2006): 1239–53; p. 1239.
- 27 Welchman and Hossain, "'Honour', Rights and Wrongs", p. 8; Amnesty International, *Pakistan: Violence Against Women*, p. 25.
- 28 Amnesty International, *Pakistan: Violence Against Women*, p. 26. Shirkat Gah, *There is No 'Honour' in Honour Killing: National Seminar Report* (Lahore: Shirkat Gah, 2002), p. 26.
- 29 See, for instance, U. Chakravarti, 'From Fathers to Husbands: Of Love, Death and Marriage in North India', in L. Welchman and S. Hossain (eds.), *'Honour': Crimes, Paradigms and Violence Against Women* (London: Zed Books, 2005), pp. 308–31; p. 308.
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- 74 Hussain, 'Take My Riches, Give Me Justice', p. 233.
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- 77 Khan, *Beyond Honour*, p. 230; Hussain, 'Take My Riches, Give Me Justice', p. 233.
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- 85 Hussain, 'Take My Riches, Give Me Justice', p. 239.
- 86 Criminal Law (Amendment) Act, 2004, para. 2.
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- 90 Knudsen, *License to Kill*, p. 8.
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- 92 Warraich, '“Honour Killings” and the Law', p. 86.
- 93 Warraich, '“Honour Killings” and the Law', p. 87.

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## Chapter 15

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# Supranational criminal prosecution of sexual violence

*Anne-Marie de Brouwer*

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### Introduction

During practically every conflict in the world, from time immemorial, rape and other forms of sexual violence against women have taken place on a massive scale.<sup>1</sup> Men too fall victim to sexual violence in conflict, although seemingly in smaller numbers than women.<sup>2</sup> The consequences of sexual violence are severe and enduring: many survivors contract sexually transmitted diseases including HIV/AIDS, face unwanted pregnancies and health complications resulting from botched abortions and suffer from sexual mutilations and other injuries. In addition, they often face stigma, isolation and severe trauma. Typically, they are confronted by poverty and by having to take care of orphans as well as their own children.

This chapter addresses the adequacy of the supranational criminal-law system (on both a substantive as well as a procedural level) of the International Criminal Tribunal for the former Yugoslavia (ICTY or Tribunal) and Rwanda (ICTR or Tribunal) and the International Criminal Court (ICC or Court) from the perspective of victims/survivors of sexual violence.<sup>3</sup> In particular, the ICC's Rome Statute, Rules of Procedure and Evidence (RPE), Elements of Crimes (EoC) and case law are examined and compared to the ICTY and ICTR Statutes, RPE and case law, in the necessary light of the reality of sexual violence taking place in conflict situations.<sup>4</sup> Recommendations are offered in regard to how sexual violence can and should be prosecuted before the ICC, which is currently examining the situation of Uganda, the Democratic Republic of the Congo (DRC), Sudan and the Central African Republic (CAR).

### Sexual violence in supranational criminal law

Article 5 of the Rome Statute stipulates that 'the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole', namely genocide, crimes against humanity, war crimes and the yet-to-be-defined crime of aggression. What do these first three crimes entail and to what extent can sexual violence be prosecuted as such? In order to address this