

**Pakistan's Terror:
Identification and Awareness Regarding the
Harmful Cultural Practice of Swara**

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Submitted to
Central European University
Department of Legal Studies

In partial fulfillment of the requirements for the degree of
Master of Arts in Human Rights

MA Capstone Thesis
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Vienna, Austria

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June, 2022

Abstract

The purpose of this capstone project is to explore and examine the practice of Swara in different areas of Pakistan. There has been a dearth of literature and debates on the problems of women who became victim of Swara. Researchers have not treated and addressed the issue in detail. Hence, the evidence is inconclusive on this dimension of research. Therefore, this study will develop an understanding of the role and interrelationship of the actors involved in this practice. This research will significantly contribute to women studies by offering insights and increasing extant knowledge of the practice of Swara. The presented data assess the effectiveness of the former policies on the existing system and suggest adopting new practices in place of former frameworks and policies. Finally, it will draw a holistic picture by identifying the missing link between proposed program and implementation to offer pragmatic solutions for policymakers and practitioners.

Acknowledgments

This project is the final part of my masters which leads it to its completion and therefore there are a few people I express my gratitude and respect for all those individuals who have helped me, inspired me and allowed me to grow and become a better version of myself.

Firstly, I express my gratitude towards my parents (Aftab and Rizwana), and my sisters (Khadija and Minahil) because it was their encouragement, love and understanding that I was able to get through the hard times and perform the best to my abilities.

Secondly, I express my gratitude towards Professor Oswaldo Ruiz Chiriboga. He was one of the best professors I came across and it was an honor being his student. He not only inspired me but also helped me to learn a lot of new and different concepts and understand Human Rights in a much better way. I'll always be indebted to him for the impact he had on me.

Thirdly, I am grateful towards Judit Minczinger, who helped me overcome a lot of my problems and provided guidance during my capstone research till the end.

Last but not the least I express my gratitude towards my friends and my Human Rights cohort who have been a source of continuous support, love and motivation.

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FSC	Federal Shariat Court
KPK	Khyber Pakhtunkhwa
CRC	Convention on the Rights of the Child
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
SSDO	Sustainable Social Development Organisation
ICCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
FATA	Federally Administered Tribal Areas of Pakistan
PHC	Pakistan Penal Code
PPC	Pakistan High Commission

Introduction

Pakistan is a gender unequal society where women have to suffer. These facts help to explain the country's current conditions concerning women. Moreover, they portray a picture of a country where many women and girls are deprived of their fundamental human rights and experience different acts of violence and inequalities. Pakistan is a culturally rich state, and it has many cultural practices established in different parts of the country but most of them are against women. This means that the women in Pakistan are continuously discriminated against in various domains, including economic, social, cultural, and political spheres.¹ This has led to the establishment of different practices against women and are currently violating their rights. These practices include Watta Satta, dowry, honor killing, badal, marriage with Holy Book, vani, forced marriage, child marriage and Swara, among other practices.² Other practices encompass child trafficking, rape, kidnapping, and sexual and workplace harassment.³

According to the Human Development Report 2016 issued by UNDP, Pakistan ranked 144th out of 188 countries⁴. In 2021, Pakistan scored 153rd position out of 156 countries on the Global Gender Gap 2021 index report showing 0.7% points increase in gender gap, issued by the World Economic Forum⁵ which is based on the economic, political, social and health spheres. Furthermore, as reported by the Human Rights Commission of Pakistan (HRCP), around 1096 women became a victim of honor killings in 2015 alone.⁶ Pakistan was also listed down as the

¹ Syed et al., 2019 "Relationship Between Patriarchy And Customary Social Practices Affecting Women's Life In Pakistan," *Pakistan Journal of Gender Studies* 14 (December 22, 2019), <https://doi.org/10.46568/pjgs.v14i1.143>.

² Syed et al., 2019 "Relationship Between Patriarchy And Customary Social Practices Affecting Women's Life In Pakistan."

³ "Situation Analysis of Children in Pakistan.Pdf," accessed June 21, 2022, <https://www.unicef.org/pakistan/media/596/file/Situation%20Analysis%20of%20Children%20in%20Pakistan.pdf>.

⁴ "Overview: Human Development Report 2016: Human Development for Everyone," n.d., 40. The report is published by the Human Development Report Office of the United Nations Development Programme and is a measure of the development in key indicators like healthy life, having a decent standard of living and being knowledgeable.

⁵ "World Economic Forum _Global Gender Gap Report_2021.Pdf," accessed June 20, 2022, https://www3.weforum.org/docs/WEF_GGGR_2021.pdf.

⁶ "State of Human Rights in Pakistan in 2015," accessed June 9, 2022, <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2016-State-of-human-rights-in-2015-EN.pdf>.

sixth most dangerous country for women facing risks from cultural, religious and traditional practices.⁷ Relatedly, out of 189 countries, Pakistan was listed 154th on the Human Development Index⁸, demonstrating the country's worse condition regarding gender equality condition for women.

These are the facts discussed on a more global scale; as we move towards the regional statistics of the country, the deteriorating condition of women in Pakistan becomes even more evident. A report published by the Sustainable Social Development Organisation (SSDO) provides a comparative analysis of three major regions, including Punjab, Sindh and Islamabad, over the years 2020 and 2021. This comparative analysis report has been put together through an analysis of nine indicators enlisting child abuse, child marriage, violence against women, and honour killing, among others. The reported numbers compare the increase and decrease in the different regions across the different indicators regarding women and children through the reported number of cases in the two consecutive years. In the comparative analysis of 2020 and 2021, there were 1422 reported cases of child abuse in 2020 as compared to 1649 cases in Punjab during 2021, representing a 15% increase.⁹ Similarly, it is noted that the reported cases of child marriage in 2021 were 30, which is 95% more than the cases reported in the year 2020, which was only 1.¹⁰ The report also mentions a 255% increase in the cases of violence against women in Punjab. It depicts a 47% increase of honour killings in 2021 and 197 women becoming the victim of honour killing in 2021, which is 63 more cases than in 2020.¹¹

⁷ "Factbox: Which Are the World's 10 Most Dangerous Countries for Women?," *Reuters*, June 26, 2018, sec. Big Story 10, <https://www.reuters.com/article/us-women-dangerous-poll-factbox-idUSKBN1JM01Z>.

⁸ UNDP, ed., *The next Frontier: Human Development and the Anthropocene*, Human Development Report 2020 (New York, NY: United Nations Development Programme, 2020). It includes statistics depending on different factors to rank the development of countries.

⁹ "Tracking Numbers. State of Violence against Women and Children in Pakistan," accessed May 23, 2022, https://www.ssdo.org.pk/_files/ugd/5668b5_8341106bb07e4aba907fc214c18da6f7.pdf.

¹⁰ "Tracking Numbers. State of Violence against Women and Children in Pakistan."

¹¹ "Tracking Numbers. State of Violence against Women and Children in Pakistan."

Even in the region of Sindh, the Sustainable Social Development Organisation's (SSDO) report analyzes the number across all the various indicators. A 393.33% increase is witnessed in the reported number of child abuse cases in 2020, which was 90; in 2021, it was 444.¹²

The statistics for the capital Islamabad are worse than imaginable. In the capital territory, there is a 334.21% increase in the reported cases of violence against women, which went from 38 in 2020 to 165 in 2021. Child abuse cases increased twice as much in 2021, which was 108 as opposed to 48 reported cases in 2020.¹³ Although the frequency of these crimes varies from region to region, all these facts reflect an increasing trend of crimes committed against women and children. Another important fact to note here is that these are just the reported cases, the actual number of cases could be more than mentioned in this report.

Another practice against the women and girls in Pakistan is femicide. Out of 1200 reported cases, 90% were girls, showing an increase in the crimes committed against women and girls in Pakistan in 2010.¹⁴ According to Sustainable Social Development Organization's report covering district wise analysis from January to December 2021, there were 25751 cases of violence against women reported in Punjab. Analyzing the numbers of the different districts further, 218 in Sindh, 918 in KPK, 67 in Balochistan and 165 cases were reported in Islamabad.¹⁵ These reported numbers only include the cases which were either reported or highlighted by the media coverage. It is suspected that the actual number might be more than the ones present in the report.

¹² "Tracking Numbers. State of Violence against Women and Children in Pakistan."

¹³ "Tracking Numbers. State of Violence against Women and Children in Pakistan."

¹⁴ "Infanticide in Pakistan on the Rise | Women's Views on News," accessed May 17, 2022, <http://www.womensviewsonnews.org/2011/07/infanticide-in-pakistan-on-the-rise/>.

¹⁵ Izza Faheem, "Tracking Numbers - State of Violence against Women & Children District Wise Analysis | January - December 2021," 2021, 57.

Furthermore, Pakistan as a state reflects a patriarchal society, which means that men have established many cultural practices to maintain their dominance and superiority over women.¹⁶

This capstone project focuses on the cultural practice of Swara with the aim of understanding the factors which have led to its presence and practice. The capstone project also aims to create awareness among the readers regarding the harmfulness of this practice. This research aims to act as an exploratory study and understand the practice of Swara along with the different elements which contribute to its existence. The lack of statistics, proper existence of a database of the case laws, under reporting of cases, lack of research, lack of media coverage, weak writ of the government in the rural areas along with the application and passing of laws and regulations by the government are some of the significant limitations of this research and important reasons to consider why the research and understanding of the problem is still limited. This study, therefore, aims to go through them and find out possible solutions to help solve this problem. My research will examine the practice through human rights perspective by offering insights and increasing actual knowledge about the practices of Swara in Pakistani society. Furthermore, the study can be utilized to assess the effectiveness of the former international and national frameworks of laws and suggest adopting possible solutions to combat this practice which violates numerous rights of women and girls.

Swara is considered to be a prevalent practice in Pakistan, especially along the Afghanistan–Pakistan border region in the Khyber Pakhtunkhwa (KPK). It has actively contributed to the creation of child brides all over the country.¹⁷ In addition, this practice is known as 'Swara' or 'Vani' in the regions of Khyber Pakhtunkhwa (KPK) and Southern Punjab, but it is not restricted to these two regions. It can be found in almost all rural and urban areas of the

¹⁶ Deniz Kandiyoti, "Bargaining with Patriarchy," *Gender and Society* 2, no. 3 (1988): 274–90.

¹⁷ Dr Mudrasa Sabreen, "Swara Marriages and Related Legal Issues," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, January 2, 2015), <https://doi.org/10.2139/ssrn.3641315>.

country.¹⁸ This is a practice where women and girls are simply deprived of their rights and left to suffer at the hands of the men of society. They are the ones who decide the fate of the women of their families, and the women are bound to follow it without question even though there is a reasonable amount of violation of their fundamental rights.

Swara refers to a tradition in which a girl is given over to an aggrieved family as compensation for blood feuds. The practice has been created and evolved as a gesture of goodwill which could help end any possible blood feuds or conflicts arising between two parties.¹⁹

To stop this practice, an amendment was passed in 2011 in the Criminal Law Act (Third Amendment) and the Pakistan Penal Code to apply the punishments effective immediately. It is also referred to as the Prevention of Anti-Women Practices Act.²⁰ According to this act, the law forbids discriminatory practices directed at women, which undermine women's integrity, and also violate human rights and contradict Islamic injunctions.²¹ There are different customary practices which have been criminalized in this act and include depriving women from the inheritance of property, forced marriage, marriage with the Holy Quran, and the giving away of a woman in badla-e sulh, wanni or even swara.²²

¹⁸ Dr Fazal Hanan, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan," 2017, 4.

¹⁹ Nazir Ahmad, "Pakistan: The Tension between Culture and Human Rights," *Journal of Law and Society (University of Peshawar)* 29, no. 42 (2003): 1–10.

²⁰ "Prevention-of-Anti-Women-Practices-Act-2011.Pdf," accessed June 21, 2022, <http://shrc.org.pk/laws/Pakistan/16-Prevention-of-Anti-Women-Practices-Act-2011.pdf>.

²¹ "Prevention-of-Anti-Women-Practices-Act-2011.Pdf."

²² "Prevention-of-Anti-Women-Practices-Act-2011.Pdf."

Section 310A considers such practices as non-compoundable offences and states,

*'Under section 310-A, there shall be punishment for giving a female in marriage or otherwise in badla-e sulh, wanni or swara or any other custom or practice under any name in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to a fine of five hundred thousand rupees.'*²³

This law clearly states that these behaviors and practices are used against women to assert power over them, discriminate against them, while violating their basic rights. Still, the law has been regularly influenced by different stakeholders like culture, political leaders and jirga members to ignore these activities as 'crimes,' allowing criminals to go free.²⁴

Also, in 2021, a three-judge bench of the Federal Shariat Court declared the custom of Swara un-Islamic and unconstitutional. The FSC decision stated that the practice is against the Holy Quran and Sunna principles.²⁵ The three bench judges relied on the precedent given by the Supreme Court of Pakistan in the case of *National Commission on Status of Women v. Government of Pakistan*, where the Court held that Jirgas and Panchayats do not acquire civil or criminal court jurisdiction without legitimate authorization and any order or decision made by any person or group of people in this regard is deemed illegal and contrary to the Constitution violating Articles 4,8,10-A, 25 and 175 (3).²⁶

²³ "Prevention-of-Anti-Women-Practices-Act-2011.Pdf."

²⁴ "Prevention-of-Anti-Women-Practices-Act-2011.Pdf."

²⁵ Rida Tahir, "Federal Shariat Court of Pakistan Declares the Custom of Swara as Un-Islamic and Unconstitutional | OHRH," accessed March 18, 2022, <https://ohrh.law.ox.ac.uk/federal-shariat-court-of-pakistan-declares-the-custom-of-swara-as-un-islamic-and-unconstitutional/>.

²⁶

"Supreme Court of Pakistan_Annual_Report_2018_2019.Pdf," accessed June 21, 2022, https://www.supremecourt.gov.pk/downloads_judgements/all_downloads/annual_reports/SCP_Annual_Report_2018_2019.pdf.

The Court further maintained that the Jirgas and Panchayats violate UDHR, ICCPR and CEDAW, which Pakistan is bound to follow as an international responsibility.²⁷ As per these international commitments, it is the responsibility of the State to provide everyone with access to courts and ensure that they are treated equally before the law in all proceedings.²⁸ Hence, this further maintains the stance that the practice of Swara is illegal and unlawful in the eyes of the Courts and the Constitution of Pakistan. These have been some of the attempts made to control the practice of Swara which will also be discussed in further detail in chapter 3.

The project starts with defining the background of Swara, what the practice actually is, why is it present, and who practices it. It then explains when and where the practice originated and how it negatively affects women and girls. This chapter also discusses the cultural perspective and aims to define the cultural values and concepts that not only led to the development of the practice but have helped to continue it for several years. Finally, this chapter is important because it talks about the important reasons for the existence of the practice. The next chapter addresses the 'legal perspective' and is divided into two parts: the international laws and frameworks and the second, national laws, including discussing of different case laws. This chapter establishes that international and national laws are present and implemented in the country against this practice. However, only a small percentage of cases reach the courts. The cases that do reach the Court are immediately ordered to be unlawful practices against women. In the last chapter, I discuss the policy recommendations in order to resolve the issue, which is followed by a conclusion.

²⁷ "Supreme Court of Pakistan_Annual_Report_2018_2019.Pdf."

²⁸ "Supreme Court of Pakistan_Annual_Report_2018_2019.Pdf."

The Cultural Practice of Swara

This chapter discusses the practice of Swara and touches upon the aspect of culture and the significant role it plays in the continuation of the traditional practice in the north-western region of the country, along the Afghanistan–Pakistan border in the Khyber Pakhtunkhwa (KPK) province.²⁹

A strong factor in promoting this practice is Pakistan's patriarchal setup. In a patriarchal society, the common concept is that men are dominant and have more control and power, from family to political institutions. They are the key decision-makers in all situations and can exercise their powers on the women present in their families and society. On the other hand, women are considered to be the weaker part of society. Tabassum and Afzal (2017) explains how Pakistan has been a patriarchal society for a long time. They mention that men in this patriarchal society have the power to legitimize all these harmful practices, which violate the rights of the women and girls involved, who are also labelled as a subordinate group.³⁰ Women are usually considered to be submissive to their male counterparts, and this is a concept followed between all the family systems regardless of their status, which means it includes daughters, mothers, sisters or even wives. Since they are considered to be the subordinate group, it means that less priority is given to their development and empowerment.³¹ This power dynamic also facilitates the various forms of physical violence and structural violence to be present within the institutional framework of society.³²

²⁹ Fazal Hanan and Shah Mussawar, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan," March 1, 2017, 1–8.

³⁰ Syed, Tabassum, and Afzal, "Relationship Between Patriarchy And Customary Social Practices Affecting Women's Life In Pakistan."

³¹ Syed, Tabassum, and Afzal.

³² Kazi S., "Women's Participation in the Formal Sector in Pakistan," (Lecture presented at the "National seminar on women in mainstream development, New Directions for Policy". Islamabad, 1990).

Another factor for the prevalence and promotion of this practice are the cultural reasons. But Before looking at Swara and cultural perspectives, it is essential that I first define and explain culture to understand better the concept I will be dealing with in this chapter. Culture is a difficult term to define. In this project I draw on the definition of Lenard and Balint (2022), who defines culture as a set of norms, practices, behaviours or interests..³³ He sheds more light to the issue by referring to white settler colonists associating unknown cultural habits and practices to the indigenous people to develop a stereotypical impression of the indigenous community.³⁴ The author uses the example to further explain the power of narrative imposed to undermine someone's rights. Hence, the members of a society or a group of people have a set culture, and they are raised according to the customs and traditions of their surroundings and communities which are then adopted by them as a particular way of life to help them stay connected to their roots and traditions.

Pakistan is a developing country with a recorded population of 207.7 million and 63.6% of its population lives in the rural areas where most of them follow the traditions and culture of their ancestors.³⁵ It is also essential to understand that culture is indeed one of the vital driving forces which have contributed to the way people live their life in Pakistan. In the Pakistani culture, honor is considered to be very important, and women are known to be the most vital part of the honour. Honor (ghairat/izzat) and dishonor are Pakistani's culture's building blocks.³⁶ While anything related to the women is labelled as 'dishonor', it is equally expected from them

³³ Patti Tamara Lenard, Peter Balint, and Senior Lecturer in International & Political Studies Peter Balint, *Debating Multiculturalism: Should There Be Minority Rights?* (Oxford University Press, 2022).

³⁴ Peter Balint and Patti Tamara Lenard, "What Is Culture? Why Political Inclusion?," in *Debating Multiculturalism* (New York: Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780197528372.003.0003>.

³⁵ "Pakistan National Census Report 2017.Pdf," accessed June 22, 2022, https://www.pbs.gov.pk/sites/default/files/population/census_reports/ncr_pakistan.pdf.

³⁶ Fazal Hanan and Shah Mussawar, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan," March 1, 2017, 1–8.

to follow a set code of conduct in and out of the house to avoid bringing shame to the family.³⁷ However, the same code of conduct and standards of honour are not fully applied to men, and they have the luxury to do whatever they like. In provinces like KPK or Balochistan, women can be murdered on a mere allegation of having an 'illicit relationship' or on the counts of insubordination, but men often go unpunished for their wrong acts.³⁸ There have been numerous cases where women were buried alive or murdered because it was suspected that they would bring shame to the family. A case was brought into light by Asian Human Rights Commission (AHRC) where five women were badly beaten, shot at, and then buried alive only because they wanted to marry in the court with their own choice.³⁹

Munir and Akhtar (2014) mention how cultural diplomacy is used with the patriarchal system to effectively suppress women and deprive them of their fundamental rights including right to property or right to marriage. This also means that they are also denied of any kind of equality in this male dominated society and are left to suffer.⁴⁰ Furthermore, Hannan and Mussawar explain how the cultural influence lead to the existence of various cultural practices in Pakistan. According to them, women are considered to be 'blood money as per the cultural values. It is taken as a sign of an apology from the culprit when they are given away.⁴¹ This is also an example of patriarchy where men are seen in control while women are expected to follow their orders quietly.⁴² These are some of the basic reasons why different cultural practices are present in Pakistan, but there are also other factors contributing to this cause.

³⁷ "Honor Killing in Pakistan: The Case of 5 Women Buried Alive.Pdf," accessed June 22, 2022, <https://www.humiliationstudies.org/documents/AkbarHonorKillinginPakistan.pdf>.

³⁸ "PAKISTAN INSUFFICIENT PROTECTION OF WOMEN by Amnesty International," accessed June 22, 2022, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa330062002en.pdf>.

³⁹ "PAKISTAN: Five Women Buried Alive, Allegedly by the Brother of a Minister," Asian Human Rights Commission, accessed June 22, 2022, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-182-2008/>.

⁴⁰ Arshad Munir and Ghulam Ali Khan, "A Social Custom 'Vani': Introduction and Critical Analysis," n.d., 8.

⁴¹ Hanan and Mussawar, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan."

⁴² Hanan and Mussawar.

On the institutional level, the Jirga also plays a strong role in establishing these cultural values. Also referred to 'local courts', it plays a role in upholding the cultural practices. It is a council of male local leaders, religious clerks who are tasked with solving the communal and interpersonal conflicts which can be related to various issues, including honour issues, blood feuds and even water or land disputes.⁴³ The Jirga considers its utmost responsibility to be involved in a dispute between the two parties until it is resolved.⁴⁴ This traditional '*Jirga*' is found in most tribal areas and still plays a significant role in the administrative and justice system.⁴⁵ For example, they decide the penalty of a crime committed in their tribe. The executive summary of the 2021 Human Rights Report also mentions the use of the Jirga system and labels it as an informal justice system present in the rural areas, which is a major cause for the human rights abuses. It further mentions the jirga systems holding local council meetings outside the legal system.⁴⁶ These systems then settle feuds and inflict the tribal penalties including swara and even death penalty at times. The 2021 Human Rights Report further mentions how these informal justice systems are very common and popular in the FATA and KPK region. Although the Supreme Court passed judgement about the illegality of the Jirga system, it is still in use. Purr (2009) 'asserts that the idea of justice delayed is justice denied acts as a major reason used by people to justify the judgments of the panchayats or Jirga as a replacement for the long and lengthy procedures of the legal system. Since the criminals have different ways of swaying the Judge to their side through altering the documents, misplacing crucial documents or even by manipulating the legal investigation.⁴⁷ In April 2020, a high

⁴³ Masood Khan, "An Ethnographic Investigation of Swara among the Pashtun People of Jalalabad, Afghanistan: Exploring Swara as a Conflict Settlement Mechanism from the Perspective of Men," n.d., 219.

⁴⁴ Khan.

⁴⁵ Khan.

⁴⁶ "PAKISTAN 2021 HUMAN RIGHTS REPORT," n.d., 72.

⁴⁷ Kripa Pur et al., *Formal Perceptions of Informal Justice (Chapter 4) Strengthening Governance through Access to Justice* (PHI Learning Pvt. Ltd., 2008).

profile case was solved through Jirga since the two tribes refused to refer their matter to the court or the government commission.⁴⁸ Similarly, if in the pursuit of settling a dispute, the Jirga gives the decision of a girl being given away as Swara, that decision is non-reversible, and this is where the bond between Jirga and Swara begins along with the violation of rights of the women and girls.

In the following, I will briefly elaborate on the history of Swara and the reason why is it associated with a girl. Swara is a Pashto word which refers to a female riding a carriage or a horse/camel. In the past, the palanquin was carried through these animals, which is how the practice got its name. Later, the females given off in Swara were sent to their new home after marriage in the same way; therefore, the word became more famous.⁴⁹ Swara then became a custom actively practised in the tribal areas of Pakistan and Afghanistan to end blood feuds between two parties by marrying off young girls to the members of the offended party to provide compensation for the crime committed by the men of the family and settle the dispute between them.⁵⁰

According to Ahmad (2003), this tradition started several years ago after a fight broke out between two Pashtun tribes, and a jirga had to be called, which consisted of elderly members from both sides, to end the bloody dispute.⁵¹ It was then the Jirga decided to end the dispute by giving away girls from both sides as a punishment, and ever since, Swara has been used to settle crimes committed by men.⁵² This tradition is centuries old and is in practice in almost all the

⁴⁸ “PAKISTAN 2021 HUMAN RIGHTS REPORT.”

⁴⁹ Ahmad, “Pakistan.”

⁵⁰ N. Rehan and K. Qayyum, “Customary Marriages in Rural Pakistan,” *The Medical Journal of Malaysia* 72, no. 3 (June 2017): 175–78.

⁵¹ Ahmad, “Pakistan.”

⁵² Ahmad.

areas of Pakistan. The differences lie where the practice's name is different, and so is the age of the girls who are offered to be given and taken in Swara.

In some cases, the Jirga decides how to settle the dispute by providing three options to the offended party: forgiveness (*baksheesh*), blood money (*qisas*) and Swara.⁵³ After discussion and careful decision-making, if Swara is selected, then virgin girls are given away and these 'Swara' brides, who are usually children (under the age of 14 years) at the time of the exchange, are wed to men who are far older.⁵⁴ The girls who are given away in this practice often face physical or mental violence. Their fate depends on the decision of the Jirga and what the offended party decides. Young girls are given away without their consent, and all of this is done to settle the dispute they have played no part in from the start. Samar Minallah, a Pakistani anthropologist exploring the practice of Swara highlighted that young girls (6 to 13 years of age) are more likely to be offered away in Swara.⁵⁵

Three girls of two different age groups are offered to the offended party. Among the girls offered, one is *urnay* (girl between the ages of one and two years), and two are *paighle* (two girls older than urnay).⁵⁶ While the two older girls are to be brought home immediately by the aggrieved party, the infant girl symbolizes the guilty party's helplessness.⁵⁷ Therefore, she is not taken to the home of the aggrieved party on the day of the jirga judgment. The accused party or the one who is held accountable has the option to keep the young girl only after they

⁵³ Khan, "An Ethnographic Investigation of Swara among the Pashtun People of Jalalabad, Afghanistan: Exploring Swara as a Conflict Settlement Mechanism from the Perspective of Men."

⁵⁴ Abid Ali, "The Heinous Practice of Vani or Swara in Pakistan | Eqbal Ahmad Centre for Public Education," accessed March 18, 2022, <https://eacpe.org/the-heinous-practice-of-vani-in-pakistan/>.

⁵⁵ "SWARA_report.Pdf," accessed May 13, 2022, http://ethnomedia.pk/pdf/SWARA_report.pdf.

⁵⁶ Khan, "An Ethnographic Investigation of Swara among the Pashtun People of Jalalabad, Afghanistan: Exploring Swara as a Conflict Settlement Mechanism from the Perspective of Men."

⁵⁷ Khan.

pay half of the bride price, known as *walwar*, to the offended party and only then is the dispute resolved.⁵⁸

The critical part to understand is that young girls are demanded in Swara, and the age range can differ from situation to situation and region to region. A father does not have any decision-making power in Swara marriages. In addition, the guilty party does not have a choice of which girl they offer in Swara.⁵⁹ If there are absolutely no young girls in the immediate family, then a girl in the extended relationship is given away in Swara. Even if there is no girl after this option, then the party considered guilty has to pay the bride price for the number of girls that were supposed to be given away in Swara.⁶⁰

One of the reasons why jirga members commonly practice Swara is that it is believed to turn hatred into friendship, dependent on the women given away. Women are expected to improve the relationship among the two families.⁶¹ However, Swara results in the opposite of improving the relationship between the two parties. In fact, the prospective role of women in establishing good connections between parties in conflict is limited by the men themselves.⁶² Men from both the receiving and providing sides exert such power over them that women cannot play an active role in creating good relations between both parties.⁶³ There is little hope for the girl to stay happy because there is no respect or honour for that girl in the family.⁶⁴ This also means that she is humiliated and taunted by her in-laws for being a swara bride.

⁵⁸ Khan.

⁵⁹ Khan.

⁶⁰ Khan.

⁶¹ Abid Ali, "The Heinous Practice of Vani or Swara in Pakistan | Eqbal Ahmad Centre for Public Education."

⁶² "Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas," accessed May 13, 2022, <https://core.ac.uk/download/pdf/33421831.pdf>.

⁶³ "Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas."

⁶⁴ "Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas."

Furthermore, the girls face disadvantages as a result of Swara. One is that the offended party has the option to choose a much younger girl, which can lead to different problems for the girl, including marital rape, early childbirth, and teenage pregnancies.⁶⁵ Secondly, as per the rules of Swara, the girl given in Swara and the man she is about to marry should not have any physical disability or chronic disease, but this is not strictly followed on the groom's side.⁶⁶ Third, because there is anger in the offended party, they are not an ideal match for the girl since there could be risks related to her well-being.⁶⁷ Based on the research, it is evident that she might be stopped or refrained from keeping any connection with her birth family, which might be the only source of support and love for her, and she loses that vital connection with them.

Moreover, there are chances that the husband who are usually over age, might get married again without providing any viable reasons to his 'Swara' bride. When the man ends up marrying again, it increases her chance of becoming a victim of violence from her husband and the entire family of in-laws.⁶⁸ For the rest of her life, the innocent girl has to bear the punishment of a crime she never even committed.

All of this leads to a worse situation for the girl given in Swara because she loses the connection and support of her birth family, is dependent on her husband and in-laws, susceptible to physical and mental violence and is without any moral or financial aid. Still the concept of divorce is engraved in their minds to be unlawful, illegal and against the cultural values, which means she has to endure the problems and pain to refrain from getting divorced. Moreover, there is a strong expectation of giving birth to a son, which means that the lack of sons can also

⁶⁵ Khan, "An Ethnographic Investigation of Swara among the Pashtun People of Jalalabad, Afghanistan: Exploring Swara as a Conflict Settlement Mechanism from the Perspective of Men."

⁶⁶ Khan.

⁶⁷ Khan.

⁶⁸ Khan.

worsen her living conditions.⁶⁹ Risse defined in his research, that the community and the families of the Swara bride concede and authorize these practices to the extent that the girls affected by this consider it as their duty to protect their families which only proves his words, 'women are rarely prisoners of conscience, but they are always prisoners of culture.'⁷⁰

The practice of Swara is considered a violation of women's and children's rights.⁷¹ This stance is further strengthened by the Concluding Observations of the Committee on eliminating discrimination against women (CEDAW Committee) regarding Pakistan in its thirty-eighth session.⁷² The CEDAW Committee showed concerns about the violation of women's rights, urging the State to pay special attention to rural women's needs and rights. The Committee also displayed concern over the presence of jirgas and suggested that the State ensure the dissolution of forums like these and hold them accountable for their actions which often lead to severe violation of women's rights.⁷³ The Committee also provided a general recommendation 21 to the State on providing proper equality in marriage, family relations and the measures to eliminate the problem of forced marriages.⁷⁴

The influence of the culture and the patriarchal system helps set the cultural practices and guides the conduct of men and women to deal with the daily life practices. This means that the dominating group(men) has the political and societal power to not only start the practices but continue them if it serves their interests, even if they are against the submissive group(women). The submissive group is prevented from raising their voice against these

⁶⁹ Khan.

⁷⁰ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change*, Cambridge Studies in International Relations (Cambridge: Cambridge University Press, 1999), <https://doi.org/10.1017/CBO9780511598777>.

⁷¹ "Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas."

⁷² "Concluding Comments of the Committee on the Elimination of Discrimination against Women: Pakistan," n.d.

⁷³ "Concluding Comments of the Committee on the Elimination of Discrimination against Women: Pakistan."

⁷⁴ "Concluding Comments of the Committee on the Elimination of Discrimination against Women: Pakistan."

practices.⁷⁵ The submissive group is prevented from raising their voice against these practices.⁷⁶ This can be further supported by a study conducted by Hanan and Mussawar in 2017 where they use quantitative methods to understand why women are used as a compensation practice in the region of Swat, Kohistan. The results showed that 90.7% of respondents were in favor of understanding that the practice of Swara is a cultural practice, 95.6% agreed that it exists in their area, 81.5% agreed that their ancestors were involved in the practice, while only 85.4% disagreed that Swara was a family norm. The end results of the study clearly showed that Swara was a part of the cultural practice which came from the ancestors and this practice is deeply engrained in their culture due to its continuous practise, therefore it is essential to break the continuity of this practice. was embedded in them from reoccurring so many times and was to be done continuously.⁷⁷

Culture played a significant role in the creation and promotion of various cultural practices and the use of women and girls as compensation is and remains a culturally accepted practice for resolving any problems or related disputes between two parties. The girls given in Swara are used as a commodity and sacrificed for men's benefit. The fact that women are the most valuable entity to be given in Swara to terminate feuds and settle disputes shows that they are the available scapegoats to pay for men's crimes. There are numerous violations of the rights of women and girls due to such practices. While international and national laws in the country deem it unconstitutional and against religion, the practice continues to this day. To fully

⁷⁵ Syed et al. (2019), "Relationship Between Patriarchy And Customary Social Practices Affecting Women's Life In Pakistan," *Pakistan Journal of Gender Studies* 14 (December 22, 2019), <https://doi.org/10.46568/pjgs.v14i1.143>.

⁷⁶ Syed et al. (2019), "Relationship Between Patriarchy And Customary Social Practices Affecting Women's Life In Pakistan," *Pakistan Journal of Gender Studies* 14 (December 22, 2019), <https://doi.org/10.46568/pjgs.v14i1.143>.

⁷⁷ Hanan and Mussawar, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan."

comprehend Swara, more thorough and detailed research must be conducted to have a clearer idea about the practice.

Legal Perspective

This chapter presents the legal perspective covering the international and national laws that seek to strengthen women and children's human rights and offer protection to them.

International Laws

As a state, it is the responsibility of Pakistan under international and national laws to protect the human rights of its citizens and to take action against any practice which is against basic human rights. As a signatory to the UDHR, Pakistan must ensure that the various articles in the declaration are implemented. Pakistan has also ratified multiple treaties, which also include the major human rights covenants, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), aiming to safeguard the rights of the residents of the State including women and children. This sub chapter talks about all the relevant articles of these declarations and treaty bodies to look at how the law aims to provide protection to women and girls.

Article 23 (3) of the International Covenant on Civil and Political Rights clearly mentions that no marriage shall be entered into without the consent of both individuals.⁷⁸ Furthermore, article 23 (4) states that all the State parties are bound to take the necessary steps to ensure the equality of rights: "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."⁷⁹

⁷⁸ "International Covenant on Civil and Political Rights," OHCHR, accessed May 27, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁷⁹ "International Covenant on Civil and Political Rights."

Concerning women and children's rights, the major treaty bodies are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in March 1996, and the Convention on the Rights of the Child (CRC), among others.⁸⁰ Similarly, Article 23 ICCPR states, "No marriage shall be entered into without the free and full consent of the intending spouses."⁸¹ Furthermore, Article 10 ICESCR stipulates that "marriage must be entered into with the free consent of the intending spouses."⁸²

CEDAW also lists several important articles that protect women's rights and can guide relevant amendments to the existing laws and regulations to protect women from discrimination arising from traditional and harmful practices in different areas of the country. Article 2 condemns discrimination against women and mentions the adoption of relevant measures to avoid discrimination at all costs. It requires providing legal protection against all kinds of discrimination, use of appropriate measures, which can include modifying of laws, customs and practices directed against women and repeal of all the national penal provisions which might result in discrimination against women.⁸³ Article 5 (a) requires state parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."⁸⁴ Article 16 CEDAW focuses on problems arising from marriage or family relations. The article states that even in marriage, it is essential to provide women with equality and without any

⁸⁰ "Treaty Bodies Treaties," accessed May 9, 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN.

⁸¹ "International Covenant on Civil and Political Rights."

⁸² "International Covenant on Economic, Social and Cultural Rights," OHCHR, accessed June 9, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

⁸³ "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979," OHCHR, accessed June 9, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

⁸⁴ "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979."

discrimination. They have the right to decide to marry, choose a spouse, have free will, have equal rights and responsibilities as spouses and parents. In no way, shape or form does it intend to discriminate against the women but instead aims to provide an equal environment for them.⁸⁵

Different articles of the Convention on the Rights of the Child (CRC) focus on protecting children in cases of violence and any sort of sexual abuse: namely, Articles 2 & 3 on nondiscrimination, Article 19 on the protection of children against violence, and Article 34 on protection from sexual abuse. All of these provisions aim to protect children and women from harmful or illegal practices.

As per the joint general recommendation No. 31 of CEDAW/general comment No. 18 of the Committee on the Rights of Child on harmful practices, they discuss the payment of dowries and bride costs, which vary by community, and make women and girls more vulnerable to violence and other harmful practices. In the case of families who fail to meet the demands of the dowry, there are chances that the spouse or his family members may resort to physical or psychological abuse, including murder, burning, and acid attacks.⁸⁶

In the concluding observations on the fifth periodic report of Pakistan, the CEDAW committee notes the concern of the presence and practice of harmful practices against women and girls along with the different crimes like child marriage or forced marriage, all committed in the name of 'honour'.⁸⁷ The Committee heard statements from different civil society

⁸⁵ "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979."

⁸⁶ "Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices," UN Treaty Body, accessed June 24, 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f31%2fCRC%2fC%2fGC%2f18&Lang=en.

⁸⁷ "Concluding Observations on the Fifth Periodic Report of Pakistan.Pdf," accessed June 9, 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/062/12/PDF/N2006212.pdf?OpenElement>.

organizations in 2020. The Nation Forum for Women with Disability expressed concern over protecting women's rights in the country and mentioned how the State had failed to protect young girls and women from crimes like forced marriages and even human trafficking. The statement by the civil society organization also mentioned how the government was completely ignoring the recommendations of the UN Treaty Bodies.⁸⁸

The CEDAW committee, in the fifth periodic review, addressed the need of Pakistan for gender equality policies and other programmes to be applied equally. The Committee also showed concern over the issues of forced marriages, gender-based violence and honour killings in the country. Another concern was the lack of any national policy solely for women's rights as this lack led to the unequal application of numerous policies.⁸⁹

The conventions collectively offer equal and free rights for women and children, but the traditional practices like Swara cannot be ended just by the presence of these legislations; further changes need to be introduced in the society to bring attention to such practices and bring them to an end.

National Laws

In relation to discussing women's rights in Pakistan, particularly looking at Swara from a legal perspective, the Constitution of Pakistan, 1973 and several other laws are relevant at the national level. The Constitution of Pakistan in Article 8 (1) endorses the same article of

⁸⁸ "CEDAW Hears from Civil Society Organizations on the Situation of Women in Latvia, Pakistan, Zimbabwe and Eritrea," OHCHR, accessed June 9, 2022, <https://www.ohchr.org/en/press-releases/2020/02/cedaw-hears-civil-society-organizations-situation-women-latvia-pakistan>.

⁸⁹ "Committee on the Elimination of Discrimination against Women Warns against 'Uneven' Application of Policies and Programmes in Pakistan," OHCHR, accessed June 9, 2022, <https://www.ohchr.org/en/press-releases/2020/02/committee-elimination-discrimination-against-women-warns-against-uneven>.

CEDAW and states that “any law or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall to the extent of such inconsistency, be void.”⁹⁰ The Constitution seeks to protect women and children.⁹¹ It also talks about Badl-i-Sulh (blood-money) given that a female is not given in marriage and can be used to protect women and children from harmful traditional practices.⁹² However, it does not mention practices *like* Swara explicitly.⁹³

The Pakistan Penal Code Act XLV, also known as the Prevention of Anti-Women Practices Act, 2008, was amended in 2011. The new chapter was numbered XXA, including a new clause 498B stating that forced marriages are illegal in Pakistan and that anyone who would be found involved would be arrested without bail and imprisoned and fined.⁹⁴ This law addresses forced marriages, but it can be considered that it talks about Vani and Swara to some extent because it talks about compelling a woman to enter into marriage. However, the PPC does not clearly define Swara or other harmful traditional practices. Pakistan Penal Code under section 310 A stipulates ten years imprisonment, but it has been implemented in some cases discussed in the subchapter below.⁹⁵ The above-discussed international and national laws emphasize that the practice of forced marriages is against the law. This brief discussion represents some of the steps which have been taken to deal with this issue and minimize the effect on women who are suffering from the harmful practice of Swara.

⁹⁰ “Constitution of Pakistan 1973,” accessed May 18, 2022, https://na.gov.pk/uploads/documents/1549886415_632.pdf.

⁹¹ “Constitution of Pakistan 1973.”

⁹² “Constitution of Pakistan 1973.”

⁹³ “Constitution of Pakistan 1973.”

⁹⁴ “Pakistan Penal Code 2017.Pdf,” accessed May 18, 2022, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64050/88951/F1412088581/PAK64050%202017.pdf>.

⁹⁵ “PAKISTAN PENAL CODE (ACT XLV OF 1860).Pdf,” accessed May 18, 2022, <https://www.malaw.org.pk/pdflaw/PAKISTAN%20PENAL%20CODE.pdf>.

Court Decisions

This section discusses some of the important cases and decisions held by the Courts in Pakistan that established the Jirga's and Swara as illegal.

- **The Bakht Mana's case**

In 2000, the Peshawar High Court declared the practice of *Swara*, where girls and women were to be given off to settle conflicts, as unlawful. The applicant Bakht Mana filed a suit against her husband Hamesh Gul in Buner intending to dissolve the marriage. She claimed that she was given to him in marriage 25 years ago during the settlement of a blood feud, and after the Nikah, her husband had been reluctant to organize her "*rukhsathi*" (sending away the bride to her in-laws after a proper ceremony) or agree to divorce her and had married a second time. The Judge decided the case by relying on the presence of section 310 PPC, where the practice was declared to be 'humiliating, and degrading' and mentioned how there was no acceptance for any settlement of blood feuds through practices like these.⁹⁶

The court gave the following judgement,

"Whoever gives, abet, instigate, demand or receive a female in marriage as a Badl-i-Sulh should be awarded rigorous punishment which may extend up to 14 years, but is not be less than ten years".⁹⁷

The court ordered the dissolution of the marriage. This was the first time that the Criminal law (Amendment) Act, 2004 had been used and Swara was declared a crime. By adding section 310A in PPC, the offence was made punishable for three to ten years. Although

⁹⁶ Waseem Ahmad Shah, "Time to Strengthen Laws to Curb Forced Marriages," DAWN.COM, May 21, 2012, <https://www.dawn.com/2012/05/21/time-to-strengthen-laws-to-curb-forced-marriages/>.

⁹⁷ Shah.

Mr. Gul, Bakht Mana's husband later filed writ petition before PHC and mentioned the violation of the trial court order, his petition was dismissed by PHC.⁹⁸

- **2004 Sindh High Court Judgement**

Sindh Child Protection Authority Chairperson suggested a sexual abuse victim to approach the Jirga for an out-of-court settlement since the courts took a lot of time to complete the proceedings.⁹⁹ It was after this incident which came into light that the Sindh High Court gave an order regarding the presence of Jirga system in Pakistan.¹⁰⁰

Therefore, on 23 April 2004 the Sindh High Court, in its judgement, declared *Swara* 'illegal, unlawful and against the laws of the Constitution' and further stated very clearly that the Jirgas have zero jurisdiction over any matters and are not above the judicial system.¹⁰¹

- **Supreme Court Judgement in 2019**

In the case of *national commission on status of women v Government of Pakistan*, the Supreme Court of Pakistan declared panchayats¹⁰² and Jirgas to be illegal and did not allow them to act as parallel courts in any capacity.¹⁰³ The petition was submitted under article 184(3) of the Constitution of Pakistan, which asked on the legality of jirgas/panchayat and stated that

⁹⁸ Shah.

⁹⁹ "How the Jirga System Leads to Child Abuse in Sindh," The Express Tribune, November 1, 2021, <http://tribune.com.pk/article/97499/how-the-jirga-system-leads-to-child-abuse-in-sindh>.

¹⁰⁰ "How the Jirga System Leads to Child Abuse in Sindh."

¹⁰¹ "How the Jirga System Leads to Child Abuse in Sindh."

¹⁰² Panchayats are synonyms used for Jirgas as well. The concept is the same. Only the terminology is different based on the area under focus.

¹⁰³ "NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice," NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice, accessed June 24, 2022, https://pakistanlaw.pk/case_judgements/2969/national-commission-on-status-of-women-versus-government-of-pakistan-through-secretary-law-and-justice.

the kangaroo courts were in violation of Articles 4,8,9,10-A,14,25,34 and 37 of the Constitution. Apart from the Constitution there were different articles mentioned with regards to ICCPR, UDHR and CEDAW.¹⁰⁴

In the final decision, the Supreme Court held that Jirga and Panchayats were illegal system and did not work within the parameters of law or the Constitution.¹⁰⁵ It further stated that they were in violation of the articles mentioned in the petition.¹⁰⁶ Furthermore, it granted only six months to the KPK government, so they could create a proper infrastructure and spread a uniform system in the province to ensure that the rule of law is being observed.¹⁰⁷

- **Federal Shariat Court Judgement in 2021**

On 25th October 2021, a three-judge bench gave a landmark judgement in the case of *Sakeena Bibi v. Secretary Law, Government of Pakistan*, by stating that Swara is an un-Islamic and unconstitutional practice and against the teachings of the religion.¹⁰⁸ The FSC based its decision on the Supreme Court's decision in *National Commission on Status of Women v. Government of Pakistan*. In the decision it held that a Jirga cannot assume the jurisdiction of a criminal court and any order issued by them is illegal and unconstitutional.¹⁰⁹ Moreover, it also stated that the practice violated numerous rights of women and girls leaving them at higher risk of violence.¹¹⁰

¹⁰⁴ "NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice."

¹⁰⁵ "NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice."

¹⁰⁶ "NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice."

¹⁰⁷ "NATIONAL COMMISSION ON STATUS OF WOMEN Versus GOVERNMENT OF PAKISTAN through Secretary Law and Justice."

¹⁰⁸ Syed Tahir Hussain, "8. ADDITIONAL DISTRICT MAGISTRATE, UPPER KURRAM PARACHINAR. 9. SYED IFTIKHAR HUSSAIN,," 2017, 12.

¹⁰⁹ Hussain.

¹¹⁰ Hussain.

While Swara is ubiquitous, its existence cannot be denied or stopped despite it being illegal. It is painful to recognize and understand that although these international conventions are present and ratified by the State, harmful traditional practices like Swara still seem to prevail actively for girls and women in Pakistan. However, there are different reasons for the existence of these practices against girls or women. Some of the reasons are that these practices are part of the socio-cultural values of the areas are part and parcel of people's way of life.¹¹¹ Although international and national laws are present in the form of treaties, legislation and regulations, it seems like women's and girls' rights cannot be protected since these practices are deeply ingrained and have been part of the traditional practices of these communities.

The lack of implementation of human rights treaty bodies ratified by the country puts women and girls in a vulnerable situation. Women and girls are the ones who experience violation of their rights the most because of the different harmful practices like Swara, child marriages, honour killings, and forced marriages. Moreover, perpetrators who get caught, at times go free, because of the lack of government accountability and corruption, which creates a culture of impunity, as mentioned in the executive summary of the Pakistan 2021 Human rights report.¹¹² The report also mentions the reasons for the denial of fair public trials, including a backlog of cases in all the courts undermining their right to an effective remedy and a fair trial. Moreover, the courts are inefficient, and implementation is slow. Also, these courts are easily influenced by various political parties and figures, which contributes to denying the people a fair trial.¹¹³ This can be supported by the statement mentioned in a report published by

¹¹¹ Hanan and Mussawar, "Cultural Involment in Dispute Settlement Through Women as Compensation in District Swat Kohistan-Pakistan."

¹¹² "2021 Country Reports on Human Rights Practices: Pakistan," *BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR United States Department of State* (blog), accessed June 9, 2022, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/pakistan/>.

¹¹³ "2021 Country Reports on Human Rights Practices: Pakistan."

UNDP in 2011. It mentions how "customs and religious beliefs can be deliberately mixed with the law to consolidate political, economic and social power to the detriment of led powerful men and women." ¹¹⁴

The country's government and citizens must take the necessary steps to avoid Swara and its harmful effects on women and girls. Therefore, the next chapter touches upon some important policy recommendations which the governments and human rights organizations can adopt to take steps toward ending the cultural practice of Swara.

¹¹⁴ "UNDP Rule of Law Annual Report.Pdf," accessed June 24, 2022, <https://www.undp.org/sites/g/files/zskgke326/files/publications/RuleofLawAnnualReportweb2013v3.pdf>.

Conclusion and Recommendations

Addressing society by employing a strong communication strategy is very important. The Pakistani government should develop a strategy to ensure a smooth transition of the legal system from Jirga to the rule of law. The government must devise different plans to eliminate the de facto Jirgas institution. The Pakistani government needs to realize how important it is to end the practice of Swara.

In addition, Pakistan can take the example from the most effective initiative of Girls Not Brides to stop the practice of child marriage, the "Theory of Change".¹¹⁵ The philosophy is built around a four-pronged strategy: empower girls from the target demographics; convince families and engage communities; work with society by offering valuable services, and make the law speak and be put into practice.¹¹⁶ Although it appears like the ideal way to deal with the problem, a few elements like mobilising of families and communities and the establishment and implementation of law and policies of the approach can be adapted to deal with the issue.

Regarding specifically to the problem of *Swara* in Pakistan I further elaborate on the policy recommendations which might help to reduce the percentage of Swara.

Recommendations:

- **Implementing policies:**

Recognizing and protecting girls' rights involves improving, administering, and supporting laws and policies prohibiting Swara.

¹¹⁵ "Theory of Change," Girls Not Brides, accessed June 29, 2022, <https://www.girlsnotbrides.org/learning-resources/theory-change/>.

¹¹⁶ "A Theory of Change on Child Marriage," Girls Not Brides, accessed June 29, 2022, <https://www.girlsnotbrides.org/articles/theory-change-child-marriage-girls-brides/>.

Because the legal system of Pakistan is pluralistic, customary law frequently conflicts with and supersedes official law, making enforcement challenging. Moreover, particularly when it comes to matters involving parental consent, the ability to property, divorce, and access to professional services and assistance, gender discrimination and legal loopholes continue to be rampant.

Governments should create strict laws and policies, as well as the funding and institutions necessary to implement them, to show their commitment to ending Swara. A larger legal framework that safeguards women's and girls' rights, including protection from violence, and support for individuals desiring to end a marriage, must include legislation on the minimum age for marriage. Any gaps must be closed, such as those involving customary laws. Systems for observing the application of these laws and regulations are needed. These should be open, pertinent, and answerable to the girls and their families.

- **Providing services to the affected girls:**

Many institutional obstacles can force girls into Swara and keep them from getting post-marriage support. The government should offer cross-sectoral services that complement one another and are specialized to meet the requirements of girls at risk of Swara.

Service providers must exercise tailored programs for married and unmarried girls while taking into account all hurdles across the education, health, justice, and protection sectors. As for assisting married girls who wish to end their marriages, service providers should set up procedures to recognize the warning signals of Swara marriage.

- **Mobilizing communities:**

Communities continually shape societal attitudes and behaviours that pressure girls into Swara. Hence, it is essential to engage families and communities, young people, and the media to change attitudes and behaviours associated with Swara to address these deeply ingrained values and traditions.

The government should address deeply ingrained beliefs and practices among all groups, including parents, men, traditional, religious, and community leaders, who impact the decision to put girls under the rule of Swara and assist the marriage taking place. In addition, the media and broader cultural attitudes that shape the attitudes and behaviour of these groups must likewise reflect this.

Practical Component

As part of my practical component, I chose to create digital art. I have amalgamated the concept of human rights and art to create the drawings which can be used later as well and sent out to different platforms and as submissions to create awareness. My main aim is to create awareness about the cultural practice which violates the rights of women and girls. Also, I think that art is an evolving and a growing field and can be used to create awareness to fight against countless problems for mankind.

The link to view the digital art is below:

<https://www.behance.net/gallery/147102553/Swara-A-harmful-Cultural-Practice>

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