

JUDICIARY AS A CATALYST FOR SOCIAL CHANGE

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“Laws are a dead letter without courts to expound and define their true meaning and operation.”

Alexander Hamilton.

This paper will show how a proactive role of the judiciary has helped in the uncovering of cultural practices such as Swara, Vanni or Sang Chatti, from the shadows of silence, denial and taboo, as a fundamental human rights abuse. A culturally sanctioned form of violence, Swara, Vanni or Chatti is an indigenous means of alternative dispute resolution mechanism whereby disputes (often resulting from murders) are resolved by the traditional peace keeping institutions without having to invest time and money in lengthy judicial processes. The price of this dispute settlement is paid in the form of women/girls from the family of the aggressor who enter the house of the bereaved family by way of unceremonious wedlock, to remind the aggressors of the injustice their men bestowed upon the bereaved family.

It is only recently that the role of the traditional parallel judicial system called *jirgas* or *panchayats* that facilitate injustice in the garb of 'peace' has been questioned in the Honourable Supreme Court of Pakistan. These institutions encroach upon the rights of the weak and the powerless; that section of the society on behalf of whom the judiciary has raised its voice.

Introduction

The vast majority of people, especially women, are not aware of their inherent human rights that are being snatched away from them in the name of religion and culture. There is widespread silence towards many culturally sanctioned forms of violence and no worthwhile debate exists on such issues. It is an aspect of our patriarchal society that outweighs egalitarian laws. Such customs or traditions are used to perpetuate the status quo, and for men to dominate women. Lack of legal awareness among the majority of people, not just in the rural areas, but also in the urban areas has remained an impediment towards development and empowerment.

According to a study ,1 "Most women across the country remained oblivious of even their most basic rights, with a newspaper survey conducted in August 2000 finding that over 80 percent of young women between eighteen and twenty four in Lahore had no idea of the clauses contained in the 'nikahnama' (marriage contract). Almost 90% percent, including those educated to graduate level and beyond, did not realize that they had any rights at all, such as those of

divorce",

A study by the Punjab Women Development and Social Welfare Department released in October 2001 stated that around 42% of women accepted violence as part of their fate, over 33% felt too helpless to stand up to it; only 19% protested and only 4% took action against it. The report also stated that only some five percent of rape and 'honor' crimes were reported.

The rural population on the other hand, is predominantly dependant on parallel justice based on indigenous norms and rules. The very fact that the formal legal system is not applied in all areas of Pakistan perpetuates lack of accessibility to justice and human rights violation in general.

Violation of 'Justice' through 'Parallel Justice'

¹ Access and dispensation of justice are problematic issues in Pakistan's governance paradigm. The situation is particularly alarming at the level of the district judiciary where the "common" people approach courts to get justice.

² According to a Situation Analysis Research, conducted in two of the districts of the Northwest Frontier Province, in case of conflict around 69 percent members of the civil society relied upon the jirga system for resolution of the matter.

³ Similarly, a research study carried out in Punjab asserts that, 'Among the respondents interviewed, there was a very high level of satisfaction expressed with justice provided by the jirga or panchayat system and of one hundred and eighteen respondents, 79 % said they would continue to use the jirga system in the future. Fairness (31.5 %), speediness (30.6%), and expense (26 %) were the reasons cited for this confidence in the traditional system of justice.

In other parts of Pakistan as well, a large number of the members of civil society express their confidence in the panchayat system in case of a dispute. This level of resort to parallel justice as a viable means of conflict resolution is due to lack of faith in the effectiveness of the formal institutions. It further leads to a certain segment of society even handing over their daughters to make amends for crimes if so decreed by the jirgas. People from rural areas generally find it difficult to access the formal justice system because of the prohibitive costs and delays associated with litigation.

The police are viewed as partial in favoring the influential. Hence, people prefer to have their disputes resolved locally through the jirga. Even if some do approach the formal legal system, they are often forced to abandon it due to impediments.

From an informal community based body that was meant to settle small claims, the 'jirga', or council of tribal elders has in Pakistan, been allowed to emerge as a powerful force protecting

the interests of the powerful. This all male body is often called upon to adjudicate on matters pertaining to women whose views are never sought.

Since our democratic institutions are dominated by feudal chiefs or Sardars who themselves conduct jirgas in their localities, how can one expect that they will legislate against these vices which will ultimately restrain their own powers and influence over the weaker section of the society.

Back in 2002, in 'Aba Khel Vanni Case (2002)' in Mianwali, Nawab of Kalabagh played a vital role in the decision of handing over eight girls as compensation to resolve an age old dispute. The victims of an age old custom called 'vanni' were rescued by the suo-motu action of the Supreme Court of Pakistan.

In June 2006, an incident took place in Kashmore where five minor girls were to be handed as compensation to the rival party. Again, a parliamentarian and the District Nazim were part of the members of the tribal council. The Honourable Supreme Court once again took *suo motu* action in this regard.

In rural Baluchistan, a large number of people approaching the tribal areas police for registration of an FIR have to pay a monetary fine to the tribal chief or Sardar. Such practices are an effective deterrent against access to justice. According to a research report ⁴'Honour Killings'; murder in the name of honour is in many instances based on taking revenge from the enemy or to grab land or to earn money from a rich man by accusing him as Karo. Under the decision of the jirga chief, the life of the accused is spared in return for a big amount of money. The jirga therefore has become an important part of this lucrative affair.

The jirga system was undoubtedly a viable way of handling administrative work in the past, but now it is becoming synonymous with culturally sanctioned forms of violence against women like Swara also called Khoon Baha, Vanni and Sang Chatti in other parts of Pakistan. The fact that no such cases are brought to formal judicial processes, that is they are neither reported to the police nor taken to the courts for legal prosecution, leaves the offender unaccountable. Therefore, to a certain extent, it is viewed as acceptable to demand women as compensation. Such a mind-set continues to support social acceptance of this practice.

According to the Universal Declaration of Human Rights', everyone has the right to an effective remedy by competent national tribunals/or violations of their human rights as granted to him/her by the constitution or law. '

Jirgas do not use established legal procedures nor can they be referred to as competent national tribunals. Instead of doing away with them there have been moves to revalidate the jirga

system in the past. The Sindh government gave the directive- for the drafting of the Sindh Amicable Settlement of Disputes Ordinance (SASDO) 2004. This was done despite a ruling by the Sindh High Court (SHC), Sukkur bench on April 24 2004, which explicitly banned the holding of jirgas in the province and declared them illegal and unconstitutional. This was directly aimed at undermining the SHC verdict, and giving jirgas a legal cover. In the past, jirgas have been held in government Circuit Houses, residences of high government officials in complete defiance of the SHC orders.

Allowing parallel systems of justice like jirgas and panchayats to operate with impunity denotes the fact that judiciary or judicial systems and the law applicable to the rest of the country is not available to the vulnerable. These tribal courts flourish with the blessings of the local police and civil administration that are happy if the crimes are not recorded. Feudal lords, politicians, police, the bureaucracy and parliamentarians all join hands to keep the tribal justice system alive and flourishing.

Humaira, daughter of a member of the ruling party refused to marry a person whom her parents were forcing her to as he was not of a good character. Instead, she wanted to marry another person but was not granted permission. Humaira quietly married in 1997. The father, a member of the Parliament, used the Sindh and the Punjab police to get the girl back. Finally, however, the court passed the judgment that was highly favorable to women. Justice Tassaduq Hussain Jilani gave a very progressive view:

“Let there be no contradiction in our thoughts and actions, male chauvinism,feudal bias and compulsions of a concealed ego should not be confused with Islamic values. An enlightened approach is called for, otherwise obscurantism in this field may break the social fabric.” (Human Rights Commission of Pakistan, 1998;2210).

In late June 2001, a jirga in Thatta district ruled that two young girls from the murderer's family would be given to the victim's family: the eleven year old daughter of one accused was married to the forty six year old father of the murdered man, and the six –year old daughter of the other accused was married to the murdered victim's 8 year old brother.

In August 2003, a jirga in Mardan district decided to hand over seven year old Gul Rukh to the family of Fehmida, who had eloped with Gul Rukh's brother. Fehmida's family at that time violated the jirga's ruling saying that the girl be given away after attaining maturity. They took away seven year old Gul Rukh by force.

One six-year-old Asma from Sukkur, in 2000, married a sixty year old man in lieu of an unpaid debt by her family.

Who can forget the Meerwala jirga in 2002, which pronounced the 'judgment' of gang rape on a woman whose 14-year-old brother was accused of having molested the woman of an 'upper caste' family?.

The custom of Swara and vanni is a violation of fundamental human rights. Raising the question of validating Swara/Vanni/Chatti on a traditional peace building premise has not met with any success. The notion that Swara has taken root as an effective alternative dispute mechanism for blood [murder] is therefore seriously questioned here. While analyzing the judicial premises on Swara, again there is clear evidence for containment and aversion to this practice. The Pakistan Penal Code has criminalized "Swara" in a 2004 amendment. Now under Section 310 PPC, entitled compounding of qisas (Sulh) in Qatl-i-amd the code declares:

"In the case of 'qatl-i-amd', an adult sane 'wali' may at any time on accepting 'badal-i-sulh' compound his right of qisas (Provided that a female shall not be given in marriage or otherwise in badal-i-sulh)."

This means that the aggrieved party, i.e. the wali of the murdered person, may if she/he so wishes, forgive the murderer and accept compensation provided that a female shall not be given in marriage or otherwise as badal.

Section 31 O-A contains the punishment for the giving of a female in Badl:

"Whoever gives a female in marriage or otherwise in badal-i-sulh shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than three years".

Therefore the penal code is clear on the issue of what constitutes the crime. It states unequivocally that a female given in exchange for murder constitutes the crime of "Swara". Whether this act is done with the consent of both the parties, or it is done with the consent of the female herself, it stands criminalized. According to Islamic jurisprudence a punishment should have four characteristics. It should be punitive, retributive, reformatory and a deterrent. Swara does not have any of these desired features, because the criminal himself goes free and instead, an innocent girl pays the price. According to Islam, there is no vicarious liability. Every soul must bear the burden of his/her own actions. 'Nikah' (the marriage contract) is a social contract.

Here consent based on free will is mandatory. Moreover, if a girl herself is not willing to marry someone, then the nikah or marriage will be considered 'void ab initio'. The key component of any marriage is consent and willingness of the spouses. However, in such marriages, the marriage is forced upon the woman, making it completely unacceptable. In

essence, the 'Swara' arrangement amounts to zina-bil-jabr, and women forced to marry under this custom need the protection of law. The said custom is in direct violation of section 6 of Offences of Zina (Enforcement of Hudood) Ordinance, 1979.

The custom of swara is violative of Article 9 of the Constitution. Right to life enshrined in the said article guarantees right to marry with free consent. In December 2005, eleven year old Fauzia from Mardan was given as Swara when her father killed someone. The victim's family would not accept another settlement. She was made to live in the enemy's home wedded to his son for a month and a half till her father begged a jirga to help him bring her back. Though, they managed to bring her back with the help of village elders, Fauzia continues living in fear. She knows that she has been returned temporarily till she turns sixteen. Fauzia is now living at her parents home, waiting. for the day when she will be sent back.

Under swara, the personal liberty of a woman is restricted for the rest of her life against all norms of justice therefore contravening Article 9 of the Constitution that guarantees the freedom of liberty. It also offends Article 4 of the Constitution that guarantees every citizen the inalienable right to enjoy the protection of the law and to be treated in accordance with law. It is also in clear violation of section 5 of the Child Marriage Restraint Act, 1929 which provides that if a minor girl is given in marriage by her father or guardian before she turns 16 years of age, she shall be entitled to obtain a decree for the dissolution of marriage before attaining the age of 18 years, provided that the marriage is not consummated. This “option of puberty” is not applicable to the Dissolution of Muslim Marriages Act, 1939.

Section 2 of the said Act deals with women given as compensation. Under this Act, a woman has no choice but to admit to an imposed marriage in order to save her brother or father. Rarely does anyone exercise the right of dissolution.

A news report published in daily Dawn (June 06,2006), reported the murder in Swabi of a young boy Shamshad after he filed a suit for the dissolution of marriage of his sister who was given as compensation for her father's crime. The girl's in-laws who were annoyed with the suit have been nominated in the FIR. The girl was only three year old at the time when the jirga gave her as compensation.

Judicial Activism in Action

To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. In spite of the fact that no law in the country permits the customary practice of swara, it is being blatantly used in various parts of this country to the detriment of women. A Jirga which draws its strength from the local customs and practice can never prevail over the

Constitution or the law of the land. However, if girls are given as compensation, the decision attempts to overrule the Constitution and is, therefore, unlawful. Similarly in criminal matters, a jirga has no jurisdiction and cannot assume the role of a parallel judiciary. Here the parties involved in the dispute are not seen as victim and culprit, but simply as people seeking a solution to a problem. Hence, the character and direction of proceedings is closer to arbitration than litigation.

Despite considerable progress on recognizing and curbing violation of human rights in Pakistan, especially violence against women and girls, practices such as Swara exist even today. It is a socially sanctioned crime that is not geographically restricted to one region. Seeing it from a historical and cultural perspective one finds that Swara being practiced today has evolved with time. It has been redefined by economic and social forces. The economic disparity has led to its deterioration into a form of 'badal' (revenge) rather than a form of peace keeping measure as it was originally devised.

The past presented Swara as a symbolic ritual but the present scenario makes it seem like an easy way for hiding a father, brother or uncle's crime which can be avenged by marrying a girl to the rival group. Economic disparity actually contributes towards accepting Swara or Vanni as a viable means of match making in some instances. In the words of Plato, 'Justice is nothing other than the interest of the stronger'. One does not hear of an influential person giving daughter as compensation for the crime committed by his son. However, on the receiving end one mostly finds people with sound social and economic standing for whom accepting a girl as compensation is more like a status symbol. Such cases are often not reported therefore gauging the rate of prevalence has always been an impediment to any form of outside intervention.

In the past, the government or the administration rarely stepped in to prevent such illegal and unlawful exchanges because questioning age old customs, values and beliefs. Due to the sensitive nature of the custom of Swara, the subject in the past was confined to the guarded four walls of home and the cautious surroundings of a 'hujra' where a jirga took place. Perceived as 'private' matters, the cases never penetrated through the defended cultural boundaries into the outside world.

In a world where this outmoded tribal jirga system still prevails, the courts are burdened with a huge backlog of cases and physical access to the courts is limited in semi urban, rural and remote areas, women are further impeded by social barriers and inequalities. They are expected to endure and remain silent. Every device, including emotional blackmail is used to prevent the aggrieved from seeking redress through litigation. Due to such factors people in

general lose faith in the formal judicial system.

There is a famous saying that 'Because Justice is not executed speedily men persuade themselves that there is no such thing as justice'. James Anthony Froude.

In the absence of accountability and lack of faith in the institutions Public Interest Litigation can bring justice within the reach of the oppressed or the poor masses. By doing so, the Judiciary can play a vital role in establishing the writ of law in the state. And so it did in the case of the swara and vanni petition.

For protection of Human Rights in the country, the Supreme Court of Pakistan undertook cases under Article 184(3) of the Constitution. These Human Right cases of public importance helped in reducing the gap between the judiciary and the public. Article 184(3) reads as follows;

"184(3).--- Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 is involved, have the power to make an order of the nature mentioned in the said Article."

A large number of letters, newspaper articles written by various individuals and groups of persons to the Chief Justice of Pakistan indicating violations of their rights were initiated under the Article 184(3). The subjects that ranged from complaints of contaminated water resulting in deaths of innocent lives in Faisalabad and violation of the law banning serving meal in marriages to lives being lost due to kite flying, the felling of the trees, the environmentally hazardous New Murree Project, cancellation of the privatization of the Pakistan Steel Mills or bringing relief to women and children whose lives are being effected by swara or vanni, the Supreme Court of Pakistan has played a proactive role in reaching out to the common people. Giving a message that indeed 'justice is for all'.

A suo motu notice was taken under the article 184 (3) regarding swara and vanni custom when in December 2005 the Supreme Court brought under challenge the unconstitutional, unlawful and unislamic custom of giving girls as compensation to end disputes.

After its landmark orders to the police in Punjab and the NWFP on Dec. 16, 2005 to protect women and girls from vanni marriages, the Supreme Court instructed the inspector generals of the police in all four provinces and in the Northern Areas to act against the settlement of disputes through these mostly-rural customs. The Chief Justice termed jirgas a negation of the concept of civilized society.

At another hearing in the Supreme Court, directions were given by the apex court that special

committees are to be formed throughout Pakistan to give legal assistance to the victims of Swara and Vanni. The committees have not only been formed but have started assisting those who are referred to these committees.

This concrete step is to have a lasting impact as it is a step towards acknowledgement of prevalence of a human rights violation that in the past was lost in silence and denials. Based on the premise that injustice in the form of swara, sung chatti, vanni or khoon baha is commonly perpetrated in our societies and the victims may not be in a position to have recourse to legal means to get justice---the Supreme Court gave an entirely new form to 'judicial activism'.

It was through judicial activism that a petition that was initially filed to curb swara, later helped in identifying other facets of the custom spread in various parts of the country. Victims of Vanni and Sang Chatti and their families not only started to resist this form of reconciliation but many approached formal courts for intervention.

This judicial activism led not just to a social change but transformed into a movement and a silent revolution in the minds of the civil society and media.

Jirgas and the practice of settling disputes by gifting girls as compensation was recently confronted by the Honourable Supreme Court when in Kashmore, Sind a jirga decreed the giving of five minor girls in marriage. The girls were to pay the price for the crime committed by their father and uncle. One could see real judicial activism in practice while the honorable judges put their time, hearts and minds into the case of sang chatti. The five minor girls who were never consulted by the jirga while their fate was being decided sat silently in the Chamber of the Chief Justice reaching out for justice: justice that they could not seek back home.

By freezing the jirga verdict, the apex court has sent a clear message to tribal chiefs that customs like vanni, swara and karo-kari that are being committed against the women should not be allowed to exist. The judicial activism in the case of swara and vanni has in the true sense been a catalyst for social change because it has been generated by passion, ideological opposition and a struggle against opposing viewpoints. It has been a journey that opposed the justification of the social status quo. A change that made the injustice visible and the silence speak up against atrocity. The judiciary gave voice to the speechless. For the first time, the real face of swara, vanni and sang chatti was seen and experienced in the courts where little girls and their fathers came to reach out for justice. Justice that till recent past remained silent in such accepted norms could finally be heard and seen driven by logic and ideals. In the words of Justice Benjamin Cardozo,⁵ *"A court must give to the words of the constitution "a continuity of life and expression. An apex court, besides deciding the law that binds all courts subordinate to it, also must make vocal and audible the ideals that otherwise might remain silent"*. In the

absence of such judicial activism, a constitution would become stultified and devoid of the inner strength necessary to survive and provide normative order.

The sustained effort of the judiciary to curb the custom of swara and vanni has made an ideological impact bridging the distance between the common man and the judicial system because the interest and protection of the public was the main driving force that led to some important directives. It also helped in the redressal of grievances of victimized sections of society brought within the purview of the court. It has been rightly said that, '*Judicial activism is a necessary adjunct of the judicial function because the protection of public interest, as opposed to private interest, is the main concern*'. Former Chief Justice India, Mr Justice A.H Ahmadi.

The Honourable Supreme Court's proactive stance opened the doors for many women and children who were silently enduring the injustice that was being perpetrated upon them in the name of culture. During the month of December, 2005 to June 30th, 2006 around sixty cases of swara were recorded in the two districts of the NWFP. In the month of May after the Honourable Supreme Court heard the appeal of Zarina Bibi ,a victim of vanni, more than twelve cases of vanni emerged only from District Bhakkar within two weeks time. Seven of these cases of vanni resulted in intervention by the local media and police.

From Mianwali, five sisters given as vanni reached out for judicial intervention when they experienced lack of apathy from other quarters. In June, 2006, the handing over of an eleven year old girl to a rival family in Swara was challenged in the Peshawar High Court. A writ petition was filed by two sisters, Sanad Bibi (eleven) and Shah Izzat Bibi (nine), with a prayer to the the court that a jirga decision in Barawal Banda in Upper Dir regarding handing over one of them to the rival family in Swara be declared as illegal and unconstitutional. In fact, it was only after the issue was taken up by the Honourable Supreme Court that the issue received the importance it deserved. The very fact that women and children from all over Pakistan are being affected by this inhuman custom was realized for the first time. Since our judicial system is acting proactively, it provides victims and society at large with hope. It is also the need of the hour to strengthen the lower judiciary so that the people's confidence is restored.

Bakht Meena (eight), was to go as a compensation for her brother's crime. The incident was reported by one of the villagers. Mardan Police took prompt action when they were reported that a jirga in Bakhshali had resolved a dispute through a 'Swara' deal. Saima (five), was to be given in marriage to Mohammad Ali (twenty five) for her father Hashmat's crime. Her father was involved in a 'sharam' (honour crime) and the only way to free himself from the rage of the girl's family was to hide behind little Saima. The jirga was overruled by the local administration in April 2006 in Bashkhali, Mardan. The Mardan Police, in June 2006, recovered five year old Rubina from the rival party's home. She had been handed over to the

rival party as compensation for a moral crime committed by her brother.

On May 31st 2006, on the demand of the jirga members in Shikarpur Sindh, Mohammad Ramzan pledged to hand over his daughter Heer (nine) and one year old Kareema as compensation for eleven buffaloes within three days. The handing over of the girls was halted after the case was brought to the notice of the Honourable Supreme Court. In June 2006, in Buner, a two months old girl was taken to a jirga where she was given in marriage to a one year old boy. The verbal solemnization was conducted by the imam of the mosque. Buner police later arrested the jirga members and the imam. In the past few months since the Honourable Supreme Court has taken up the issue of swara and vani, the police has ceased to treat this sensitive issue as a 'private' matter.

Recommendations:

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Formalizing Jirga Proceedings for Conflict Resolution

There is a need to formalize the proceedings of jirga so that the decisions are available in writing. A need for an institutional linkup of Jirgas and law enforcement agencies can help in monitoring the dispute resolution process. This would help in keeping a watch on the number of cases that are resolved silently within the jirga. The locals, even if they want to, are too afraid of reporting the incident. For an outsider, the fear of social isolation will not be there. The institution of musalihat anjuman is capable of bridging gap between the informal panchayat/jirga system and the formal legal system.

Sensitization for the Subordinate Judiciary

At the subordinate level, effort needs to be made to eradicate male bias in judgements. This could be eradicated through sensitization and training programs for the subordinate judiciary. More research and in depth studies of customary practices and their impact on fundamental human rights need to be undertaken

Supremacy of Shariah Law over Unwritten Traditional Codes

Traditions and common law are regarded as superior even as compared to the Sharia or statutory laws. Religious leaders are always present in a jirga. Although ideally they are to apply Sharia Law they themselves are influenced by traditions. There is a strong need to sensitize the religious

leaders to play the role of a catalyst for social change. According to our research findings, 95% of the decisions are taken in the presence of a local mosque leader. Sensitizing this group of stakeholders would have a strong impact as they in return can effectively use Friday sermons for spreading awareness. Since the tradition is against Islamic principles, Ministry of Religious Affairs and Ministry of Women Division can arrange collaborative meetings to streamline a long term awareness raising interventions.

Public Awareness Programs

The State and the institutions should carry out broad based awareness and education campaign regarding legal rights of women and children. It is important to utilize various forms of local, folk or popular media to sensitize general public in a culturally competent way. For the decision makers and stakeholders, advocacy through electronic and print media should be done in a way that the campaign is sustainable. Television talk shows on the issue of Vanni, Swara, Chatti, Khoon baha, should be arranged to generate dialogue. Similarly, since 'Swara' is as much an issue of Child Rights as it is a Women's Right's issue, therefore it is important that the NGO's working for the Rights of Children should impart this issue in its advocacy and awareness raising programs at various levels. Advocacy campaigns should aim towards highlighting swara as a form of revenge and as a criminal act perpetuating violence, rather than as a peace making custom.

Installing Watchdogs/or Swara and Vanni

A systematic reporting strategy of the cases should be developed on a community level, involving the women councilors as 'watch dogs'. Women councilors can have access to otherwise 'private' matters of the community. By forming links with government agencies, women councilors can develop an effective reporting mechanism regarding the custom of Swara. At the local and community level, collaboration with 'Islahi Committees' or 'Musalihati Anjumans' can also be explored.

Linkages Development

Linkages and networking between the Special Committees dealing with issues of Swara at district level and the local councilors could be developed and strengthened. The reporting mechanism is still ineffective as far as working of these committees is concerned. Headed by the President of the Bar, these committees can be made more effective by arranging seminars and meetings with the local lawyers and involve them in the process.

Sensitization amongst Police

There is an urgent need to sensitize police to not treat issues like 'Swara' as a private matter only. Neither should they resort to reconciliation or mediation only. Where needed, the perpetrators should be dealt with promptly. Special training programs for the Police should be developed by the organizations having prior expertise of working with them.

Clarity in Law

The current amended law (Section 31 O-A) is very brief and thus needs to be given a more precise interpretation. The misinterpretation of law at different levels is acting as a deterrent against the abolishment of the custom. The law does not specify whether it is retroactive or prospective. Because of the misinterpretation of the amended law, fathers who access law enforcement agencies for relief against the decision of 'Swara' are the ones arrested. The parties that demand a girl as compensation or the members of the jirga are not held responsible, thus perpetuating the custom. Jirga members should be strictly dealt with for taking such decisions.

Clarity in Cultural and Islamic Traditions

Culturally, verbal solemnization of Nikah (matrimonial bond) is considered enough and the recorded document is a mere cultural practice that has nothing to do with Islam. The process of Nikah should be formalized by laying down a criterion for the Nikah Khawan. This way many other violations of laws such as the right to succession, talaq-i-tafweez, dower, that are interlinked to the way a marriage contract is being applied, will also be discouraged.

Finally, judicial activism gives people hope that they will receive impartial justice and that the rights of the oppressed will be respected.

Whether the Supreme Court denounces extravagance and ostentatious display on marriage functions or freezes jirga verdicts, it is bound to have an impact on the society at large. By taking suo motu action on such issues of public interest, the judiciary promotes and vindicates public interest which demands that violations of the constitutional or legal rights of people who are poor, or in a socially or economically disadvantaged position should not go unnoticed and overlooked.

Such actions are driven by conscience and ideology.

“There is no witness as 'terrible ', no accuser so dreaded, as the conscience that lives in all our hearts.”

Polybius.

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