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Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)**OFFENCES OF FORCED MARRIAGE, RAPE, AND HONOUR KILLING: A COMPARATIVE STUDY OF PAKISTAN AND AFGHANISTAN****Dr. Rafia Naz Ali**Assistant Professor, Department of Shariah and Law, Islamia College University Peshawar
Email: rafia@icp.edu.pk**ABSTRACT**

It is a comparative study focusing on the crimes of honour killings, rape, and forced marriage in Pakistan and Afghanistan with an emphasis on the role of judiciary along with social, cultural, and legal factors that influence how these crimes are handled and how common they are in both nations. The legal reactions and social views towards these offences show notable variances, despite the fact that they are heavily influenced by patriarchal regimes and conservative religious interpretations. In both countries, forced marriage is frequently viewed as a means of upholding social standing and family honour, rape victims are severely stigmatised by society, which results in underreporting and insufficient legal remedies. Despite legal embargoes, honour killings continue to occur, frequently with the justification that they are necessary to preserve family honour. The paper examines how customs, the predominance of traditional values, and lax law enforcement make it difficult for legislation in both nations to adequately address these problems. The study compares the court cases decided by the superior courts as quantitative data in order to draw attention to the parallels, discrepancies, and difficulties that Pakistan and Afghanistan encounter in dealing with these serious human rights abuses. It also makes suggestions for enhancing legal safeguards and raising public awareness.

Keywords: Forced Marriage, Rape, Honour Killing, Court, Comparative**Introduction**

Some natural law jurists like Grotius, Montesquieu, and Samuel Pufendorf have used comparative law techniques to provide empirical support for natural law principles. According to Montesquieu, climate, soil, population size, people's morals and customs; religion and commerce are causative factors which enable humans to achieve justice. Comparative research is an important part of criminology and criminal justice with an identifiable knowledge base and history. For example, John Howard carried out important work in the area of prisons (Clark, 2006).

The aim of putting a law into context is to understand the law and explain its current status. For this purpose, it always requires empirical data to test the hypotheses. This

chapter aims to test the hypotheses and efficacy of legislation using both qualitative and quantitative methods. "The more similar the units being compared, the more possible it should be to isolate the factors responsible for differences between them" (Hague et al., 1998). Pakistan is a former British colony and has inherent colonial legal systems like codified civil and criminal procedures, along with jurisprudence, legal reasoning, education, and legal language. Pakistan is a member of the commonwealth countries and exchanges legal information with its members. In the early 20th century, the Romano-Germanic legal system began to impact Afghan law. Amir Amanullah, who ruled Afghanistan from 1919 until 1929, enacted Afghanistan's first constitution in 1923 as part of his ambitious agenda of social, political, and legal reform. From France and Turkey, two countries with Romano-Germanic roots, came the inspiration for this constitution. In the decades that followed, the Afghan government continued to be influenced by the Romano-Germanic tradition, adopting a series of legal codes. For example, the Commercial Code (1955), Penal Code (1976), Civil Code (1977), and Civil Procedure Code (1990), are all Romano-Germanic in origin (Barfield, 2010).

Islam has influenced the understanding of justice in Afghanistan. Afghan rulers have repeatedly interpreted justice in Islamic terms since the founding of the state of Afghanistan, particularly after the establishment of the state under Amir Abd al-Rahman Khan in the 1880s. With this underlying concept, it is the duty of government to apply God's law on earth. Abd al-Rahman established a legal system with regularised courts and procedures. To put it another way, Islamic Shari'a was the nation's law. Although Afghan administrations have looked to other sources of law in the past, Shari'a has always played a significant role. Article 3 of Afghanistan's 2004 Constitution states that no law may contradict the Shari'a principles. This shows that the idea of Islamic values of justice is still very important in Afghanistan today. In Afghanistan's culture, justice is frequently communal. This means that, rather than being something to which individuals are entitled, justice might be defined in terms of what benefits a group of people in a community. For example, most offences are considered crimes against the community and reflect on community safety (ALEP, 2016).

For the purpose, national and international sources are used in this method to arrive at a new conclusion (Arbi et al., 2010). Official statistics in a comparative study cannot and will not give the true picture of a society. Under reporting is considered one of the main reasons. This reason can be associated with many other reasons. For example, why are people reluctant to report a crime to the police? The victim or witness must have trust in the authorities to take action against the offender (Pake, 2010).

Discussion and Result

Equal rights should be given to them according to national and Islamic law. Religious fraternity could play a vital role in their regard. It is the duty of the courts and states to protect the modesty of women. If a person did it with the intent to create terror in society, particularly in the parents of young daughters, not to object to acts of harassment or question employers for teasing their young daughters, the court declared sentences for life imprisonment or rejected bail applications in such cases. The Supreme Court of Pakistan took it as a public interest question (*Shahrukh Jatoi v. The State*, 2018).

Decisions of Courts and Conviction Percentage in Pakistan and Afghanistan: A Comparative analysis

1. Forced Marriage

Marriage through force is not unusual in a society where the majority of individuals are motivated by a dogmatic interpretation of local norms. Ghag is a term that refers to a custom, usage, tradition, or practise in which a person forcibly demands or claims the hand of a woman, without her consent or that of her parents. Regrettably, in a society dominated by a violent tradition of rationalising male brutality and atrocities, ghag assigns women a low status in Pakistan and Afghanistan (Bhattacharya, 2014).

It is declared an offence by criminal law both in Pakistan and Afghanistan, but the punishment provided is different. It is reported to police and courts on the pretext of kidnapping for forced marriage, but later on, in most cases, the court declares it a wilful marriage. In KP and Balochistan, not even a single case has been filed in the courts for adjudication in the years 2016-2018. In 2016, the SHC gave a consolidated decision on different petitions, applications, and appeals that were filed against forced marriage, threatened forced marriage, or wilful marriage. In 2017-18, only 15 cases of forced marriages were decided by the Lahore and Peshawar High Courts as given in the table (PLD, YLR, and SCMR of 2016-18).

Table 1: Number of Forced Marriage Cases Decided by Pakistani Superior Courts in the Years 2016-2018

Offence: Kidnapping for the purpose of Forced Marriage		2016	2017	2018	Total
Balochistan High Court		-	-	-	-
Lahore High Court		1	5	4	10

Peshawar High Court	-	-	-	-
Sindh High Court	66	5	1	72
Supreme Court	1	-	-	1
Total	68	10	5	83

In forced marriage cases, the conviction percentage is only 35%. In 29 cases, convictions have been awarded under section 365-B of the PPC, which provides punishment for kidnapping. In all decided cases, there was no case of forced marriage, which is defined by sections 498-B and 498-C (table 2). It means that in the years 2016–2018, no case of forced marriage, as defined by criminal law, was filed with the courts (PLD, PCr.L.J, YLR, and SCMR of 2016–18).

Table 2 Conviction percentage in cases of forced marriage in Pakistan

No. of Cases & percent age	Execution	Life Impris.	Long Term Impris.	Short Term Impri.	Fine	Acquittal
83	-	-	4	25	29	54
100%	-	-	5%	30%	35%	65%

Marriage against the will of the woman is considered a routine matter in the societies of Pakistan and Afghanistan. Pakistan's criminal law not only prohibits marriages against the will of a girl but also makes punishable all customary practises which compel a woman to marriage, like marriage with the Holy Quran or as compensation in a dispute. Afghanistan's criminal law also prohibits forced marriages and provides punishment both in the Penal Code and EAW law. In the cases decided by courts in the years 2016–18, the acquittal percentage was higher at 59%. It is due to the victim's acceptance of the wilful marriage. In 41% of cases, only a short-term sentence was

granted, along with a fine in 30% of cases (table 3) (Media Centre of the Supreme Court of Afghanistan, 2018).

Table 3: Conviction percentage in Forced Marriage cases in the years 2016-2018 by Courts in Afghanistan

No. of Cases & percent age	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
460	-	-	-	187	138	273
100%	-	-	-	41%	30%	59%

Table 4: Comparison of conviction in Forced Marriage cases in the years 2016-2018

	No. of Cases	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
Pakistan	83	-	-	5%	30%	35%	65%
Afghanistan	460	-	-	-	41%	30%	59%

Forced marriage is one of the factors contributing to the suicide risk factor in Afghanistan (Manalai, P., et al., 2024). It is a customary practise in Pakistan and Afghanistan with several names. Some of the reasons for forced marriage in both countries are customs, inheritance, as a compensation to solve a dispute or evade punishment. In Pakistan, females are kidnapped for the purpose of forced marriage. The comparison shows only a short term of imprisonment, which may be from 1-3 years, was awarded to the accused in both countries. The acquittal is high as compared to the conviction. The main reasons are the mind-set of the people and their built-in

leniency towards the accused. It is the least reported crime. Only those instances were reported where rape, murder, or kidnapping occurred.

2. Rape

Rape is per categorized the very worst form of crime and of violence. Some others call this a crime against the soul. When viewed in the context of us, it appears that the most common and reported case is wholly rape in Pakistan and Afghanistan as compared to other offences related to women. The legal system of Pakistan awards death sentence for the particular crime. The Superior Courts of Pakistan in the year 2016-2018 have decided a total of 29 cases (Table 5). Courts had given stern decisions to discourage occurrence of this offence. The percentage of conviction is high as well. In 10 of these cases, death sentence was awarded by the courts, which translates to a 55 per cent conviction rate and 45 percent acquittals (table 6) (PLD, PCr.LJ, YLR, SCMR of 2016-18).

Table 5: The total number of rape cases decided by the Superior Courts of Pakistan in the years 2016-2018

Offence: Kidnapping for Rape	2016	2017	2018	Total
Balochistan High Court	-	-	-	-
Lahore High Court	3	11	6	20
Peshawar High Court	-	-	2	2
Sindh High Court	5	1	-	6
Supreme Court	-	-	1	1
Total	8	12	9	29

Table 6: Conviction percentage in Rape Cases in Pakistan

No. of Cases & percentage	Execution	Life Impriso.	Long Term Impriso.	Short Term Impriso.	Fine	Acquittal
29	3	7	6	-	16	13
100%	15%	24%	21%	-	55%	45%

Table 7: Conviction percentage in Rape cases in Afghanistan (2016-2018)

Cases & percentage	Execution	Life Impriso.	Long Term Impriso.	Short Term Impriso.	Fine	Acquittal
920	2	7	320	205	405	386
100%	0.2%	0.7%	35%	22%	46%	42%

In Afghanistan, 920 cases of rape were recorded in the years 2016–18. In these cases, the courts sentence two defendants to death, seven to life imprisonment, and 320 to long imprisonment. In rape cases, the conviction percentage is high as acquittal (table 7) (MOVA Report, 2015-2018).

Table 8: Comparison of conviction in Rape Cases in the years 2016-2018

No. of Cases	Execution	Life Impriso.	Long Term Impriso.	Short Term Impriso.	Fine	Acquittal
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Pakistan	29	15%	24%	21%	-	55%	45%
Afghanistan	920	0.2%	0.7%	35%	22%	46%	42%

It is the most heinous crime against women. The legal systems of Pakistan and Afghanistan are stern in the adjudication of such cases. The laws of both states entail capital punishment for the offence of rape. The main causes of acquittal are lack of evidence, contradictory statements by the victim, and delay in filing the FIR.

3. Honour Killing

It is a crime backed by culture and society in both countries. Several amendments were made to the existing legal system to prevent its occurrence. It is declared as an intentional murder and a non-compoundable offence in Pakistan. The reported cases show that only 5 cases of honour killing were decided by courts, except for the SHC, where a combined decision was given on honour killing and the threat of honour killing (Table 4.17). The courts remained strict in cases of honour killings. In one of the cases, the courts state that if one claims to be a citizen of this soil, then he, regardless of his status and power, cannot:

- Declare a woman as Kari (honour);
- Decide the fate of a lady who is awarding her death penalty on the pretext of honour.

And if such acts of violence are valid, they will lead to an anarchic situation. It is a major and invariable threat to society (Mst Rahman Bibi and another v. SHO, Karan Sharif and 8 others, 2016). The conviction percentage is very high in honour killings, as in 10% of the cases, the courts convicted the accused persons of life imprisonment. Long and short-term sentences, along with fines, were also granted. The acquittal percentage was only 27% in these years (table 9) (PLD, PCr.LJ, YLR, SCMR of 2016-18).

Table 9: Total no. of Honour Killing cases decided by Superior Courts in Pakistan in the years 2016-2018

Offence:				
Honour Killing	2016	2017	2018	Total
Balochistan High Court	-	-	-	-

Lahore Court	High	-	3	1	4
Peshawar Court	High	1	-	-	1
Sindh High Court		83	-	-	83
Supreme Court		-	-	-	-
Total		84	3	1	88

Table 10: Conviction percentage in Honour Killings in Pakistan

Cases & percent age	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
88	-	10	35	19	64	24
100%	-	11%	40%	21%	73%	27%

It is a crime that has occurred throughout the world against women in one form or another. Every system has its own framework for the prevention and protection of women. Afghanistan's legal system is very lenient against the crime of honour killing. It did not provide capital punishment but only provided three years of imprisonment for this intentional murder. Afghan laws on violence against women are not good enough to protect women's rights. The EVAW Law was adopted in 2009 to protect women's rights, especially against violence. But some of the provisions of this law are considered against the principles of Islamic law, so Parliament is reluctant to pass it. Furthermore, economic conditions, access to justice, corruption, and the preference of

the informal justice system over formal systems are hurdles to enforcing the law on violence. In Afghan society, the informal justice system is not in favour of women's rights and their enforcement. For example, in cases of honour killing, most of the perpetrators go unpunished as the parties settle the dispute mutually, with or without payment of certain compensation.

Total of 320 cases were dealt with by the courts in which 180 accused were awarded short imprisonment and 75 with fines (table 4.19) (MOVA, 5th Report 2018).

Table 11: Conviction percentage Honour Killing cases in Afghanistan (2016-2018)

No. of Cases & percent age	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
320	-	-	-	180	75	140
100%	-	-	-	56%	23%	44%

Table 12: Comparison of conviction in Honour Killing Cases in the years 2016-2018

	No. of Cases	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
Pakistan	88	-	11%	40%	21%	73%	27%
Afghanistan	320	-	-	-	56%	23%	44%

It is impossible to separate an event from its social and economic contexts. Due to the interaction of numerous variables, any phenomenon can be suppressed or expanded in an environment that is favourable to its emergence. The same is true for honour

killing, as practised in Pakistan and Afghanistan. Very few cases attract capital punishment, while many only get nominal punishment. The reasons are a lack of evidence and conciliation between the parties.

There is a violation of the rule of law at every stage when it comes to cases of violence against women in Pakistan and Afghanistan. There is a lack of special laws on the subject. Olwan (2013) says that in addition to the substantive aspect, procedural safeguards can be used to keep the rule of law by getting justice quickly and following established rules.

Conclusion

On analysis of the data in the chapter, it is concluded that very few cases of rape, kidnapping, forced marriage, femicide, domestic violence, and honour killing are brought to the jurisdiction of courts in Pakistan. The courts provide punishment based on the evidence available. As in all these offences except rape, the perpetrator is either an intimate partner or close relative, so many of the cases either go unreported or the accused is acquitted because of unavailability of evidence. Moreover, Afghanistan's criminal law did not provide adequate punishment for honour killing and femicide. In Pakistan, the institutions and ministries are not specifically mandated to discourage and eliminate VAW as in Afghanistan. The Ministries and Commissions in Afghanistan regularly publish their reports and findings on VAW as opposed to Pakistan.

In both countries, the statistics provided by the institutions are greater in number than the cases entertained by the courts. From reports and court cases, clearly rape is the most prevalent crime in both societies, while domestic violence and forced marriages are considered daily business and the least reported crimes. After analysis of the data, it is clear that these offences are the most frequently occurring offences against women and what is the current situation of VAW in both countries? The data presented and analysed in the previous chapter will be compared to find the similarities and differences between both legal systems. The laws on violence against women are not adequate at all, and those that were enacted have flaws and inconsistencies. Civil societies and human rights activists should play their roles in enacting laws on the prevention of violence and the protection of women's rights.

References

Afghanistan Penal Code, Government of Afghanistan, issue No.13, serial no.347, Articles 420(2) And 421(2), 1976.

Afghanistan Penal Code, Government of Afghanistan, issue No.13, serial no.347, Article 5, 407-411,424-429,517, 1976.

Afghanistan Independent Human Rights Commission, Kabul: Annual Report 2018.

Annual Report of 2016, 2017, 2018, AIHRC, AIHRC's Printing Press, Kabul, Afghanistan, 5.

- ALEP (2016). Terrorist Attacks against Educational institutions, retrieved from <https://law.stanford.edu/organizations/pages/alep-hosts-panel-discussion-on-terrorists-attacks-against-educational-institutions/#slnav-alep-hosts-panel-discussion-on-terrorist-attacks-against-educational-institutions>
- Aziz Ullah versus the State, 2016 P Cr. L J 681
- Barfield, T. (2010). *Afghanistan: A Cultural and Political History*. Princeton University Press. <https://doi.org/10.2307/j.ctt7sqkc>
- Bhattacharya, S. (2014). Status of women in Pakistan. *Journal of the Research Society of Pakistan*, 51(1).
- Clark, M. (2006). Commitment to Crime: The Role of the Criminal Justice System. *European Journal of Criminology*, 3(2), 201-220. <https://doi.org/10.1177/1477370806061975>.
- Chudhary, A.G., (2016), *Pakistan Penal Code*, Lahore: PLD Publisher, Sections 53A, 154,161A, 164A-164B, 156B, 299-311, 336-336B, 337-337 A (1), 337F (1)-338E, 341-346, 352, 361-369,375-376B, 498A-498C &509
- Cicourel, A. V. (2017). A Note on the Uses of Official Statistics 1. In *Quantitative Methods in Criminology*. Routledge, 191-199
- Criminal Law (Amendment) (Offences in the Name or on pretext of Honour), 2016, Section 6
- Chaudhry, G.M., Chaudhry's Annotated Constitution of Pakistan, Lahore, Federal Law House, 2010, Article 11,25-27,37(g), 199 &184(3)
- Criminal law (Amendment) (offences in the name and pretext of honour) Act, 2016, Government of Pakistan, Official Gazette, Islamabad
- Criminal Laws (Amendments) Act II of 1997
- Criminal law (Amendment) (offences relating to rape) Act, 2016, Government of Pakistan, Official Gazette, Islamabad
- Ehtsham alias Shan v. The State and another 2017 P Cr. L J Note 243
- Fifth Report on the Implementation of ERAW Law (2018). Ministry of Women Affairs, Islamic Republic of Afghanistan, 35-39
- Hagan, F. E., & Hagan, F. E. (2000). *Research methods in criminal justice and criminology*. Boston: Allyn and Bacon.
- Imtiaz alias Badshah and others v. The state 2017 P Cr. L J Note 97
- Iman, A., a spokeswoman for the Supreme Court hold a news conference at the Center for Information and Media Supreme Court of Afghanistan, Retrieved from <https://supremecourt.gov.af/en/afghan-judiciary-spokesman-conference-violence-cases-against-women> .
- Kirshan Lal v. Pertab Rai and others 2018 Y L R 1942

- Law on Elimination of Violence against Women (2009)*, Islamic Republic of Afghanistan, Ministry of Justice: official Gazette, *issue No. 989, Article 2-23, 8-17.*
- Laws and Institutions to Combat Violence against Women in Afghanistan. (2024). Competitive Research Journal Archive, 2(04), 143-150. <https://thecrja.com/index.php/Journal/article/view/40>*
- Manalai et al. BMC Pregnancy and Childbirth (2024) 24:48 <https://doi.org/10.1186/s12884-023-06234-9>
- Mst. Ayesha Malik v. S.H.O Police Station City Jampur District Rajanpur and 4 others, 2016 Y L R 2016
- Mst. Rahamat Bibi and another v. SHO, Karan Sharif and 8 others, PLD 2016 Sindh 268
- Mst. Shahzeen v. Station House Officer and another, 2016 M L D 792
- Muhammad Bilal v. The State and another, 2018 M L D 899
- Muhammad Khalid v. The State 2018 P Cr. L J Note 29
- Muhammad Ramzan v. The State and another 2017 P Cr. L J Note 74
- Muhammad saleem v. The State 2016 Y L R 500
- Nadeem Bhatti alias Sanni v. The State 2016 P Cr. L J 558
- Nelken, D. (2010). *Comparative criminal justice: Making sense of difference* (Vol. 1). Sage.
- Olwan, Dana M.(2013). "Review of Between Feminism and Islam: Human Rights and Sharia Law in Morocco by Zakia Salime." *Societies without Borders* 8 (1): 163-168. Available at: <https://scholarlycommons.law.case.edu/swb/vol8/iss1/8>
- Patel, R. (1991). Socio-economic political status and women and law in Pakistan. *Socio-economic political status and women and law in Pakistan.*
- Shabbiran Bibi v. The State and another 2018 P Cr. L J 788
- Shafqat hussain alias Viki v. The State and another 2016 P Cr. L J Note 92
- Shahrukh Jatoi v. The State 2018 M L D 1588
- Umer Din v. The State and others, 2017 Y L R Note 378
- Umar Hayat v. Station House Officer, Police Station Sadder Multan and 6 others, 2017 Y L R Note 67