Summary

The practice of honour killings is a particularly troubling form of violence against women. This lesson examines the practice of honour killings in Pakistan, together with the country’s alternative legal system, as formed by the jirgas and panchayats. These bodies are primary obstacles towards the abolition of honour killings and other human rights violations, as well as the establishment of effective rule of law.
THE ISSUE

Violence against women is an unfortunate but common human rights violation, particularly in South Asia. The practice of honour killings is a particularly atrocious form of such violence against women. These killings have been reported in Bangladesh, India, Nepal and Pakistan, as well as other parts of Asia and the Middle East. The practice of such killings violates many fundamental human rights, such as the right to life, to due process, to be presumed innocent until proven guilty. In some instances, honour killings take the life of men and children as well, not just women.

Honour killings have a long history steeped in traditional forms of justice with no relation to the effective rule of law. In Pakistan, the practice of honour killings is linked to the traditional system of jirga or panchayat rule. These tribal councils act as parallel legal systems within the country and not only prevent the abolition of honour killings, but actively encourage them.

THE LESSONS

There are three lessons in this series.

Lesson 1: This lesson introduces the practice of honour killings in Pakistan and provides specific cases as illustration.

Lesson 2: The lesson examines the national and international legal framework relating to honour killings and the system of jirgas.

Lesson 3: The lesson focuses on the collapse of the rule of law within the country, which prevents the deterrence of honour killings.
LESSON 1

Honour killings in Pakistan

Honour killings have taken the lives of innumerable women, many men, and even young girls throughout Pakistan, but especially within Sindh province. The term ‘honour killings’ comes from the idea of killing for ‘honour’, usually that of the family. Females are believed to be the repositories of such ‘honour’, as well as being the possessions of men. When this honour is believed to be besmirched, and when possessions are thought to be ‘tainted’, such killing is allowed as retribution and as a means to defend ‘honour’. The practice is given legitimacy due to the traditional authority of the ‘jirgas’ or the ‘panchayats’ (tribal councils), which firmly abide by such practices. (‘Jirgas’ and ‘panchayats’ both refer to tribal councils, with the usage varying depending on geography. For the purposes of this lesson, ‘jirga’ will be used.)

According to the jirgas, in cases where a woman is believed to have ‘dishonoured’ her family with immoral conduct (having a male friend, marrying a man of her choice or seeking divorce), all those responsible should be killed or otherwise punished. Inevitably, the undefined concept of ‘honour’ and of what undermines it leads to almost every act of female disobedience amounting to ‘dishonouring’ the family. In fact, it is merely the rumour of a woman’s inappropriate behaviour that damages the ‘honour’ of her family and hence the truth of such an allegation does not need to be established.

Another problem with the system of honour killings is that jirgas allow the families of those who have besmirched the honour to pay compensation instead of being killed; this further undermines the rule of law.

The following three cases illustrate the practice of honour killing, and the last case also refers to a recent court judgment banning jirga trials. Two of the cases are edited urgent appeals from AHRC’s Urgent Appeals programme, http://www.ahrchk.net/ua/index.php, while the last case is an excerpt from an article produced in an AHRC e-newsletter, Religious Perspectives on Human Rights, http://www.rghr.net.

1. UA-44-2004: PAKISTAN: A honour killing victim’s family suffers from police inaction, issued on 24 April 2004

On 7 March 2004 at about 5:30 am, three nephews (Zaheer, Qaaim-u-ddin and Mohammad Salih) killed their 50-year-old aunt, Ms Wazeeran. After the incident, the victim’s brother Mr. Hakim Ali lodged the First Information Report (FIR- Case No. 21/04 302,114,34/337Hii PCC) at Rohri Police Station in Sukkur District. In the FIR, the alleged reason of murder was stated as a matter of property.
According to Hakim Ali, his sister Wazeeran lived with her husband Nawab in Sanjrani Street, Rohri town. She has another house in her hometown, Rustam village, Shikarpur District. Sometime previously, Zaheer and his family asked Wazeeran to sell her house in Rustam Village to them but she refused. On 6 March 2004, in the afternoon, the victim’s brother and his son-in-law Ali Asghar came to Rohri town to visit Wazeeran. At sunset, Zaheer Ahmed, Mohammad Salih and Qaim-u-ddin also came to Wazeeran’s house. Her husband Nawab was not at home at that time because he worked in a dairy farm owned by a person named Sayed Zulfiqar. The three nephews again asked Wazeeran to sell them her house in Rustam Village, but she refused again. Then they asked her if they could stay there for the night. The three nephews slept in a separate room, while Wazeeran, her son Sadaruddin and Ali Asghar slept in the corridor.

At around 5:30 am of the next morning (7 March 2004), Hakim Ali got up to use the toilet. When he came back, he saw that Zaheer Ahmed, Mohammad Salih and Qaaim-u-ddin had come into the corridor holding pistols in their hands. Zaheer woke Wazeeran and asked her whether she would sell her house to him or not. At that time, Wazeeran’s son and Ali Asghar got up due to the noise. When Wazeeran said no, Mohammad Salih told the others to kill her. Zaheer then fired on Wazeeran, hitting her right cheek. Qaaim-u-ddin fired at her right shoulder, and Wazeeran fell down on the bed. The three offenders then fled the site, firing randomly behind them so the witnesses could not catch them. When the witnesses came to see Wazeeran, they found her already dead. Wazeeran’s brother told Ali Asghar and Sadaruddin to stay at the house while he went to the Rohri Police Station to report the incident.

According to Wazeeran’s husband Nawab, who was contacted by a human rights group on 19 April 2004, the offenders fabricated false allegations of Wazeeran having committing adultery. This would assist them in being easily freed from their crime by the tribal court as well as the court of law, as they could term their act an ‘honour killing’. He further told the group that the offenders were constantly threatening his family and pressuring him to withdraw the complaint against them. He also said that Zaheer’s father Sherdil, was a police head constable in Sukkur District, and therefore the police have taken no serious action to investigate this matter. According to Nawab, the police have not attempted to arrest the offenders at all.

In fact, there was even a resolution moved in the Sukkur District Council to arrest the perpetrators of this case, but it did not earn any positive results. The resolution came about due to Wazeeran’s long political career. At the time of her death, she was elected as a counselor representing the ladies in Union Council Rohri, according to the President of Pakistan’s programme of “Devolution of Power” to the district level. This shows the extent of the breakdown of the rule of law in Pakistan, and the impunity of both police and criminals within the country.
2. UP-23-2004: PAKISTAN: Three of the nine perpetrators were arrested but the police officer pressured politically, issued on 27 May 2004

The Asian Human Rights Commission (AHRC) has received updated information on the case of the two teenage girls killed in the instance of “honour killings” (FA-12-2004). Apparently, after an urgent appeal was issued, and the local police station notified, the police assigned two policemen to provide security to the complainant and witness in the case. Also, the police appear to be taking action in the case, arresting three of the suspects, conducting an investigation that led to the discovery of the bodies and providing protection for the family.

UPDATED INFORMATION:

On 17 May 2004, the police obtained an eight-day physical remand of three accused suspects of the murder of two girls, Aabida Bhutto and Tehmina Bhutto, killed in a Shikarpur village on the pretext of honour killing. The three are Hajji Nazeer, Hajji Shafi Mohammad and Sulaiman.

However, six other accused persons including Abdul Rasheed Bhutto, who made the decision to kill the victims, are still at large in this double murder case. We also received information that the District Investigation officer, Mr. Fida Hussain Mastoi, who is dealing with this case has been pressured politically and there is apprehension that he maybe be transferred to another place. A human rights group expressed its concern that he can be transferred at any time as all the ministers and members of Parliament of this area are feudal lords.

Ms. Tehmina, 17, and Ms. Aabida, 18, were killed under the fake allegation of honour killings by an influential landlord in the village of Jano in the town of Shikarpur in Sindh Province, Abdul Rasheed Bhutto, along with eight other accomplices. The murders of the two victims were labelled as honour killings in a jirga meeting that was convened after the incident, through an agreement among all of the perpetrators. The alleged reason for the murder of the girls was that they visited their grandparents in the nearby city of Sukkur without permission. After the two victims were killed, they were buried in a dry fish pond about one kilometer away from Jano village by the perpetrators. (If you want to see the photo of the victims, please go to: Photo 1. Please note that the picture is VERY GRAPHIC and DISTURBING.)

Fazal Bhutto, Tehmina’s brother, registered a First Information Report (FIR) against Hajji Nazeer, Hajji Shafi, Sulaiman, Abdul Rasheed, Younis, Jamaluddin, Abdul Karim, Ghulam Sarwar and Sanaullah.

In the meantime, a number of people held a demonstration against the murder of Tehmina and Aabida on 18 May 2004, and demanded the immediate arrest of the other six perpetrators and that severe steps be taken against the persons who organized the Jirga even though it has been banned by the High Court of
Sindh in Pakistan. (To see the pictures of the demonstration, please go to: Photo 2, Photo 3)


Shazia Mangi and Ehsan Chachar of Daharki decided of their own free will to marry, and they did so on October 16, 2003, according to the requirements of law, but without the permission of Shazia’s father. That same day, her father, accompanied by six members of his tribe, physically attacked the house of Ehsan’s parents, threatening to kill Shazia, declared by them to be a ‘kari’ and Ehsan, her legally wedded husband, a ‘karo’. The two were lucky to escape. They managed to get to Sukkur, and were able to move the Third Additional Sessions Court Judge, Naseem Ahmed Sheikh, to order that the Sukkur Darul Aman give them shelter and protection. The police proved to be hostile to the desperate couple, their sympathies, for whatever reasons, lying firmly with the Mangi tribal elders.

On October 25, the seven assailants held a jirga, Shazia’s father-in-law was summoned and asked to hand over Shazia so that she could be murdered. He could do little but promise to so do, and in the bargain the jirga imposed on him a fine of Rs.500,000.

Shazia’s lawyer, Advocate Ghulam Shabir Shar, filed a petition (CP 92 OF 2004) on her behalf in the Sindh High Court. The respondents were seven police officers and seven Mangis who were represented by Advocates Tariq Hanif Gul Mangi and Sarfaraz Akhund, and the province of Sindh represented by A.A.G. Ghulam Dastgir. The court appointed Abdul Fateh Malik and Nizamuddin Baloch amicus curiae.

The petition prayed that the police be restrained from harassing the petitioner’s family, that they be restrained from filing false FIRs at the behest of the Mangis, that the Mangis be restrained from carrying out the decision taken at the jirga to murder Shazia and her husband, and most vitally, the court was petitioned to: “.... declare that the jirga system is illegal, unlawful and against the cannons of [the] law of [the] land, same is the inhuman act of feudal lords and Sardars.”

Judge Jaffery signed his 48-page judgment on April 21. His findings, and his orders, are:

“The private persons have no authority to execute the decision of jirgas nor the jirgas have the authority to execute their own decisions through their own sources. If such decisions are carried out and executed by killing persons, then the offence of murder will be committed and they will be liable for action as per the law ....... the jirgas have also usurped the powers of the executing authorities which is not permissible under the Constitution or the law.

48. The Constitution is based on a trichotomy of powers, i.e. legislature, judiciary and executive, whose powers and duties are enshrined in the Constitution ..... in jirgas the powers of legislature, judiciary
and executive authorities are being exercised. All the learned counsel are unanimous that Jirgas are against
the trichotomy powers of the Constitution. It thus appears that Jirgas are undermining or attempting to
undermine the provisions of the Constitution.

49. Apart from the above position, in jirgas the assembly may be in the first instance lawful, but the
purpose for which they assemble is unlawful and then they conspire to commit some offences therefore they
expose themselves for action as provided under various and relevant provisions of [the] PPC ........ In such a
situation it is the public duty of the police to act swiftly and to exercise their powers and perform their duties
to curb the offences being committed or book the persons who committed the offences .... It is also one of
the public duties of the police to protect the life of the citizens who complain to them. In the present case,
the petitioner complained to the police to protect her life and the life of her husband but when she could not
get a proper response .... she has approached this court to save her life and the life of her husband ....

50. Consequently, the official respondents are directed to provide due protection to the petitioner to
save her life and the life of her husband ....

51. It is pertinent to point out that under the West Pakistan Criminal Law (Amendment) Act 1963,
trials, which were commonly known as jirga trials, were permissible, but the said law has been repealed. As
such, the jirga system is unlawful and illegal which is against the provisions of the Constitution and the law
of the land.

52. The police are duty bound to take appropriate action to prevent the holding of jirgas within their
jurisdiction. The press which has already played a commendable and positive role in this behalf is expected
to continue to play the same role by pinpointing the assembly of jirgas so that the police may act promptly,
according to law and such information can be made available to the police through their own intelligence
agencies.”

As these cases illustrate, the practice of honour killings is widespread and random. The practice has
been used to justify killing mainly women but also men for the most arbitrary or personal reasons, far from
relating to family ‘honour’. For instance the killing of 50-year-old Wazeeran by her nephews, for refusing to
sell her property to them. This case had little to do with defending ‘honour’, but was so termed to justify the
arbitrary and cold-blooded killing. In the practice of honour killings, the community plays as significant a
role as the families involved. As shown in the case of Shazia and Ehsan, the Mangi tribal leaders were just as
if not more adamant in finding the couple and ensuring that ‘honour’ was defended, as were the couple’s
families.
The jirga system has been the main obstacle to ending the atrocious practice of honour killings. The recent decision banning jirga trials and calling them unconstitutional and illegal is a good step towards the elimination of honour killings. However, the decision will only be effective if it is implemented; this leads into the discussion on the rule of law, which is addressed in the next two lessons.

Questions For Discussion

1. In your opinion, what is the main obstacle to the elimination of honour killings? What role does society play in the practice of honour killings?

2. Discuss the advantages and obstacles regarding the recent high court judgement relating to jirga trials. How could a campaign be formulated, aiming at the implementation of this judgement?

3. What other customs and traditions are you aware of, perhaps in your own countries, which discriminate against women?

LESSON 2

This lesson discusses international and domestic laws that relate to and/or are violated by the practice of honour killing and a parallel justice system.

A. Pakistan's international obligations

Pakistan is party to numerous international conventions that include specific provisions on the rights of women, the rights to due process and fair trial, all of which are violated by the practice of honour killings.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Articles 5 & 2 state that state parties should take all “appropriate measures to modify ... social and cultural patterns” in order to eliminate prejudices and customs based on inferiority or gender-based stereotyped roles and “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”
According to article 4, custom, tradition or religious reasons may not be invoked as grounds for not meeting obligations under the CEDAW.

The Convention on the Rights of the Child (CRC)

Article 3(1) says “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”

Article 35 further states that governments must “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic of children for any purpose or in any form.”

The Convention on the Elimination of All Forms of Discrimination

Article 16 stipulates that “State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of man and woman: (a) the same right to enter into marriage; (b) the same right to freely choose a spouse and to enter into marriage only with their free and full consent; (c) the same rights and responsibilities during marriage and its dissolution”.

The Universal Declaration of Human Rights (UDHR)

Articles 1 & 2 state that “All human beings are born free and equal in dignity and rights” and that everyone is “entitled without distinction to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language”.

Article 3 states that “everyone has the right to life, liberty and security of the person.”

Article 5 states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 7 says that “All are equal before the law and are entitled to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

Articles 8 & 10 elaborate on this right, stating that everyone has the right to effective remedies and “to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Similarly, article 11 mentions that all those charged with penal offences have “the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees
necessary for his defence."

Under international human rights law, and particularly under the UDHR preamble and the Vienna Declaration, the state is obliged to ensure the enjoyment of rights by everyone living in its jurisdiction. Therefore, if in a collapsed rule of law situation as exists in Pakistan, informal bodies such as jirgas/panchayats carry out state functions, the state must ensure that the role of such bodies is clearly defined in the legislation, to prevent any exaggerated social and political authority by these bodies. Additionally, if the state fails to prevent these bodies from violating human rights, it is legally and morally responsible for any such violations. It hence follows that the government of Pakistan is legally liable for the honour killings being committed under its jurisdiction.

B. Pakistan’s legal framework

I. An overview of jirgas and how they function

Jirga law is rooted in tribal customs and in the power of elders; contrary to popular belief, the jirga tradition has no relationship to religion. In fact, many so-called customs and interpretations of Islamic laws are based on neither religion nor tradition. Most commonly, it is the disputes related to zar (money), zin (women) and zameen (land) that are settled through the jirga. The jirga is a tribal council that mediates between the conflicting parties according to principles of tribal justice, which are allegedly well defined, although not codified. The jirga consists of the elders of the tribe and either meets on an ad hoc basis or regularly. The members of the jirga are always men and the representation of women is not permitted. Even when women are the victims, they are not heard. In rare instances, male family members of the female victim will represent her interests, but even in such cases all decisions are made without consulting the woman herself. Jirga verdicts are announced and carried out by social pressure.

Although illegal, the jirga is a powerful institution within the Pakistani informal justice system, which is influenced by wealthy clans, biased against the women and poor, and condoned by the Pakistani police. Even state officials have used jirgas to solve criminal cases pending in court. Many jirga leaders themselves are parliamentarians or members of the civil administration, or have family links to the administration. In their official capacity they talk about human rights for all, yet in their constituencies they participate in tribal courts. While speaking about ‘good governance’ and ‘real democracy’ in one forum, in another they are handing down punishments in violation of basic human rights principles.
As mentioned previously, according to jirga law, when a woman is believed to have ‘dishonoured’ her family, all those responsible should be killed or otherwise punished. However, the vague notion of honour has led to almost every act of disobedience amounting to ‘dishonouring’ the family, a fact that was clearly illustrated in the case of the two teenage girls killed for visiting their grandmother without permission, described in Lesson 1.

Following from this expansion of what undermines ‘honour’, is the way that these killings are now used for personal vengeance also, as shown in the case of the nephews killing their aunt for her refusal to sell them her property, also described in Lesson 1. The jirga system condones this as it requires no evidence and does not punish the perpetrators.

The reason for this is that the jirga sense of justice is not synonymous with truth and punishment, but rather with reconciliation of the powerful and social stability and/or control. This being the case, evidence and other legal principles have no place within a jirga hearing. What is important is reconciliation brought about by compensation, monetary or otherwise, including the handing over of a woman or girl. This is linked to the fact that compensation is imposed collectively on the perpetrator’s family, not on the perpetrator alone.

II. Domestic law

The 1979 Constitution of Pakistan guarantees women’s equality before the law. Articles 7 & 25 explicitly define the equality of women with men and their entitlement to equal protection of the law and with equal opportunities disregarding sexual orientation.

Article 8 of the constitution also 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.”

However, the Qisas (retribution) and Diyat (compensation) law, which covers offences relating to physical injury and murder, does not conform to the standards laid out in the constitution. Under this law, the victim or the legal heirs of the victim may claim retribution/compensation, or may pardon the accused. The exceptions to the use of qisas as under section 306 of the Pakistan Penal Code (PPC) include when the offender committed the crime ‘whilst deprived of the power of self-control by grave and sudden provocation’, or when the offender causes the death of his child/grandchild.

In the case of honour killings qisas is generally not applicable as the offenders plea that death was caused in ‘grave provocation’ caused by the alleged immoral conduct of the victim. Also, in many cases the offenders are the parents (and close relatives), which again means qisas is not applicable. Furthermore,
section 309 & 210 of the PPC reads that the legal heir of the deceased may waive his right of qisas or may compound (withdraw) the offence in return for compensation. The large majority of honour killing cases involve the family of the victim waiving their right to qisas or withdrawing their complaint in return for compensation, both instances ensuring that the perpetrators are not prosecuted and go free.

Section 311 of the PPC however, stipulates that notwithstanding anything contained in section 309 or 310, the court may in its discretion, having regard to the facts of the case, punish an offender against whom the right of qisas has been waived with imprisonment of up to 14 years. Similarly, section 302 (3) states that the offender should be punished by imprisonment for up to 25 years in cases where qisas is not applicable. In practice though, the sentence is always very lenient. While the law of qisas and diyat stipulates that handing over a woman/girl is not a valid form of compensation, it does not explicitly prohibit the practice. In reality, the practice of compensation settlements including women is common and accepted by the courts.

Qisas and Diyat law does not regard the serious crimes of murder and physical injury as offences against the state, but against the individual. For this reason, it is completely up to the individual to choose an action against a crime committed against them, while the state’s role becomes merely guide-like.

Questions For Discussion

1. Discuss the main drawbacks of the existing laws in Pakistan relating to women and honour killings. If you were to rewrite them, how would you safeguard the protection of women’s rights?

2. Are there any advantages of the jirga system as opposed to the official justice system? Do you know of similar alternative justice systems in other countries? Discuss how these systems can be abolished effectively, or how they can be comprised into the official legal systems.
LESSON 3

Ineffective rule of law

In recent years, the establishment of military courts and rule has undermined the little legal framework that exists in Pakistan. This being the case, the traditional practice of honour killings is merely exacerbated by the collapse of the rule of law throughout the country. This collapse stems not only from poor legislation, but also from ineffective justice mechanisms - the institutions responsible for enforcing the legislation and protecting the rights of the people under the country’s constitution are currently in a state of corruption and decline. One of the reasons that is consistently cited for why the jirga system is still so common throughout the country, is precisely because of the ineffective and drawn out process of official justice.

If we look at the reasons for the lack of justice in the three cases illustrating the practice of honour killings described in Lesson 1, it is evident that the police were not merely inefficient, but actively worked against the victims. For instance, in the first case of the 50-year-old aunt who was killed, the police officers took no action to arrest the perpetrators even though a complaint was made identifying those responsible. This lack of action was allegedly due to the fact that the father of one of the perpetrators is a police constable. Similarly, in the third case of Shazia and Ehsan, although the couple had married in accordance with the law, the police were hostile towards them and refused them protection, their sympathies with the tribal leaders.

In contrast, the case of the two teenage girls saw more effective police action, with an investigation being conducted, three perpetrators arrested and protection given to the witnesses. However, six other perpetrators have yet to be arrested and political pressure is being put on the district investigation officer in charge of the case. This fact is highly disturbing as all the ministers and members of parliament of that particular area happen to be feudal lords. This illustrates the close relationship between jirgas and the police.

Other systemic issues that perpetuate the breakdown of the rule of law in Pakistan are as follows:
♦ Not only are the police seen as working with local jirga leaders or with magistrates, but they are also seen as biased against women and the poor, being influenced by wealthy families in the area/district. Corruption is rife within the police force, and in most cases, simply to file a complaint, the police need to be paid a ‘fee’.
♦ Corruption and partiality is also used to solve cases; due to the fact that the police are under-equipped and under-trained, they lack decent investigative skills and in most cases do not even bother to investigate crimes or complaints.
Corruption is also inevitably experienced within the courts themselves. The level of bribery ranges from giving ‘fees’ to clerks to process documents, to paying lawyers. Many lawyers also openly conspire with magistrates regarding cases.

Similarly, there are also political issues that affect the outcome of cases; for instance, the current politicization of the appointments and promotions of judges, including punitive transfers, all ensure partial rather than impartial judgements.

Due to poor infrastructure and staffing within the courts, amongst other things, it takes years to get through the large number of cases, which also increases the expense for the victim.

Access to the official justice system is highly limited to the cities and more urban areas. Those living in rural areas or remote villages have a long way to go to access the courts. When they do make their way there after a long and arduous journey, they inevitably experience delays and a long procedure, which means they must either stay near the court for some time, or be prepared to make frequent journeys back and forth. Time and expense are hence both taken up.

It is for these reasons that the Asian Legal Resource Center (ALRC) stated in its submission Pakistan: Critique of the rule of law and policing system [E/CN.4/2004/NGO/43] to the UN Commission on Human Rights in 2004 that,

11. For effective rule of law, reliable services from the police, prosecution and judiciary must be accessible to all citizens alike. Protection from the police must not be based upon social status and class, but should be granted to all citizens without them having to go via a Member of Parliament or a feudal lord. Should an ordinary citizen enter a police station, he must be confident that they will not be subjected to intimidation, torture or arbitrary custody. Furthermore, it is also necessary that they know that if they end up in police custody, they will be treated as innocent until proven guilty. There must be guarantees ensuring that no detainee will be summarily killed by a hint from the local feudal lord or for denying a financial request of a police official. Minorities need to be assured and protected against falsified cases, which only are fabricated to show increase in police efficiency. Women need to be assured that should they be subjected to crimes against them they would be treated equally before the law and granted required protection.

12. Although the government introduced a new Police Order in 2002, it has failed to address many of the issues targeted. It in fact misses the independence and effective functioning of the police institution at large. The current legal framework has on the contrary managed to tighten the grip of feudal lords and politicians. What feudal lords and politicians do in their constituencies on a daily basis, has to a certain extent now been extended into the larger context of the national level. This strengthening of power has contrary to its assumed purpose
It should also be noted here that in many ways, the current laws of Pakistan and the jirga system are similar, especially with regard to the treatment of honour killings and other violence against women. For example, both the jirga law and the Qisas and Diyat law allow for honour killing to be seen as a compoundable offence and one that can be punished by compensation. This being the case, it is not surprising that many people, particularly the poor, continue to choose the parallel system of justice rather than the official one, especially with the drawbacks and extra time and money that is associated with the official justice system of the country.

In order to get rid of alternative forms of justice, it is thus necessary for Pakistan to re-haul its existing laws and justice mechanisms, such as the police, prosecution and judiciary. The access to justice program is evidently not working, with the poorer sections of society and those living in rural areas still unable to effectively make use of the official justice system. Also, as brought up in the ALRC submission above, the institutional control of the police is with the feudal lords, who use the police for their own purposes.

13. There is yet arbitrary and whimsical (mis)management of the police by the executive authority of the state at all levels. Still are police officers recruited, trained, promoted and posted without regard to merit but mainly for their subservience to people with influence and power. This shows the extent and influence of feudal and political ‘gurus’ of Pakistan.

14. The Asian Legal Resource Center is of the opinion that in the Police Order of 2002, the Government of Pakistan has failed to provide a framework for public accountability, de-politicisation of the institutions of justice and the provision of a people friendly policing system in the country. On the contrary, by giving accountability to district councils and political figures, the government has assured that the institutional controls of justice remain under the same privileged group as always.

15. Additionally, politicisation and other ill-practices, such as fabricated police cases and corruption, gives a clear message that in Pakistani state institutions, principles such as ‘might is right’ still prevails. In short, the whole system of administration of justice is very vulnerable to whims of power of the elite groups and feudal lords.
It is only with the abolishment of the jirgas and the reform of Pakistan’s current legal system and institutions that human rights violations such as honour killings will cease.

Questions For Discussion

1. Discuss the relationship between corrupt justice mechanisms and ineffective rule of law.

2. What is the state of the police, prosecution and judiciary in your country and what is the attitude of the public towards these institutions? Are they effective in upholding the rule of law and preventing human rights violations?

3. Choose one of the three justice mechanisms in Pakistan or your own country, and work out a plan for reform of that institution, covering aspects such as recruitment, skills training, legal knowledge, budget & remuneration, independent complaints mechanism, disciplinary action and evaluation.

References
