

From Ghairat to Criminality: Transformation of Honour Killing Jurisprudence in Pakistan

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Abstract

Honour killing is one of the most enduring gender-based violence in Pakistan and it is a complicated interplay of the traditional customs, social norms, religious interpretations, and the criminal law. This paper looks at how honour killing jurisprudence has changed in Pakistan by analyzing the legal changes in the jurisdiction of the law since the colonial times to the modern age. The paper identifies the sources of honour-based violence in the socio-cultural notion of ghairat and examines its provisions in the Indian Penal Code, 1860, Pakistan Penal Code, and Qisas and Diyat framework and the subsequent legislative changes. The Criminal Law (Amendment) Act, 2004 and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 are of particular interest and aimed to increase the criminal accountability and restrict the misuse of compromise provisions. The study shows that there has been a progressive change in the approach to cultural accommodation of honour-based motives to a rights-based approach that focuses on the protection of life, dignity, and equality through an analysis of judicial precedents, statutory reforms, constitutional principles, and the literature. The analysis shows that although legislative and judicial changes have greatly enhanced the legal reaction to honour killings, issues to do with implementation, social predispositions, and institutional flaws still hinder effective accountability. This paper finds that long-term legal implementation, judicial dedication, and social change will be critical in eliminating honour-based violence in Pakistan.

Keywords: Honour Killing, Ghairat, Honour Crimes, Qisas and Diyat, Criminal Law Reform, Gender-Based Violence, Human Rights, Constitutional Rights, Judicial Activism, Pakistan.

Introduction

One of the worst forms of gender-based violence in Pakistan has been honour killing and remains a major legal and human rights dilemma. This is widely connected with the notion of ghairat (honour), in which the reputation of the family is connected to the behaviours of women. Social norms Violence in the name of honour has frequently been justified by allegations of adultery, marriage by choice, rejection of arranged marriages or behaviour that is regarded to have been in violation of social norms. Honour-based violence is not a new phenomenon in different societies,

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but the prevalence of this issue in Pakistan has drawn the attention of a number of legal scholars, politicians, and even human rights groups (Welchman and Hossain, 2005; Gill, 2009).

In the past, honour-related homicides were usually handled as family or communal issues instead of being subjected to the criminal justice system. Prior to the establishment of modern criminal justice systems, the conflicts related to honour were often settled by means of customary practices and tribal systems based on the patriarchal society. This led to the fact that violence to regain perceived family honour was usually accepted or even socially approved in some societies (Menski, 1998; Shah, 1998).

Legal treatment of honour killings started to shift in the colonial era through the adoption of the Indian Penal Code, 1860 and the homicide became a crime irrespective of the motive. However, doctrines like grave and sudden provocation were also sometimes applied in adultery or perceived sexual misconduct cases by colonial courts and their verdicts often seemed to be sympathetic to honour-based motives (Anderson, 1993; Wasti, 2010). With the independence of Pakistan in 1947, the criminal law system inherited remained in place to regulate the homicide offences. Though honour killings were considered to be crimes by the courts, in some cases the courts showed judicial preference in terms of social construction and cultural understanding of honour (Jahangir and Jilani, 2004).

There was a major change with the introduction of the Qisas and Diyat laws as part of the Islamization reforms in the 1980s and 1990s. Such laws enabled the legal heirs to forgive the wrongdoers or to forge compromises, which critics claimed created room to impunity in honour killing cases since the victims and the offenders were usually members of the same family (Kennedy, 1991; Mehdi, 1997). Increasing pressure on the part of civil society groups and human rights organizations resulted in changes to the legislation, such as the Criminal Law (Amendment) Act, 2004, and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016. These reforms aimed to reinforce the intervention of the state and minimize the abuse of the compromise provisions in the crimes of honour.

The Pakistani courts have been putting more focus on constitutional rights, human dignity and gender equality in recent years and no longer consider honour as a reasonable defence in homicide. Although all these have been happening, honour killings still exist, which are questioning the efficiency of the legal changes and the means of their execution.

This paper discusses how the history of honour killing jurisprudence in Pakistan has developed since the colonial times up to the present. It examines the way legal responses to honour killings have changed over time through a doctrinal and historical analysis of legislation, judicial decisions, and the academic literature and evaluates whether modern reforms have been successful in eliminating this endemic violence.

Study Background

Honour killing which is usually perpetrated under the guise or pretext of ghairat (honour) is one of the most controversial types of violence in the context of Pakistan. The practice is older than the establishment of Pakistan, and traces its roots to traditional and tribal customs of the Indian subcontinent, it has been subject to considerable legal reform over the years. Since the colonial experience of applying the Indian Penal Code, 1860, the jurisprudence of honour killings has substantially changed since the introduction of the Qisas and Diyat laws in 2004 and 2016 as well. In spite of such developments, honour based violence still exists, which necessitates the need to analyse how the judicial and legislative reactions have evolved since the pre-independence days to the current legal system.

Study Significance.

The research is important in that it gives a historical and jurisprudential review of the laws of honour killing and court attitudes in Pakistan and how they have evolved since the colonial criminal law era to contemporary constitutional and human rights-based law. Through the study of the legislative reforms, judicial case laws, and the effect of the Qisas and Diyat system, the study plays a part in a more in-depth insight into the change in which honour killing has ceased to be a case that is based on cultural factors to a case where honour killing is treated as a criminal offence. The research can also be useful to legislators, judicial officers, legal practitioners, researchers and policymakers who are aimed at enhancing the legal response to honour-based violence.

Research Objectives

- To explore how honour killing jurisprudence has evolved in Pakistan by a comparative study of developments in legal history before and after independence.
- To examine the historical causes of honour-based violence.
- To compare the handling of honour killings in colonial and post-colonial law.
- To determine the effect of the Qisas and Diyat law and the law reforms thereafter.
- To look into evolving judicial attitudes using reported case law.
- To find out whether modern legal processes have been effective in dealing with honour killings and ensuring that criminals are held accountable.

Research Questions

The current research aims to address the following research questions:

- How was honour killing addressed in the legal system of British India before the Pakistani independence?
- What has been the jurisprudence of honour killing in Pakistan since independence in 1947?
- How has the Qisas and Diyat laws affected the prosecution and adjudication of the honour killing cases?
- How far have the Criminal Law (Amendment) Act, 2004 and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 changed the legal approach to honour killings?
- What has changed in the attitudes of the judiciary towards honour killings between the pre-independence period and the modern Pakistan?
- Have the legal and judicial systems in place been effective in holding criminals accountable when it comes to honour-based violence in Pakistan?

Literature Review

Honour killing is a phenomenon that has drawn a lot of attention of scholars, human rights bodies, legal professionals and sociologists. The literature on honour killing typically takes three interrelated aspects in looking at honour killing, socio-cultural roots of honour-based violence, criminal law in countering honour killings, and the efficacy of legislative changes that seek to eradicate impunity. Although much has been written about honour killings in modern Pakistan, there has been relative lack of focus on how honour killing jurisprudence developed throughout the colonial era up to the current times. As a result, the shift of judicial views towards considering honour as a mitigating circumstance to honour killing as an aggravated criminal offence is not adequately addressed.

Initial research on honour killings was more of a cultural and anthropological interpretation. Shah (1998) posited honour is highly entrenched in the patriarchal tribal systems in which women are

considered to be the guardians of family honour. On the same note, Kressel (1981) noted that the honour-based violence is a common occurrence in the societies whereby collective family identity rather than individual autonomy prevails. These works found honour killings to be a social control mechanism and not a spontaneous violence. They, however, had little attention to court and criminal justice institution response to the law.

Studies on the practices of honour in South Asia have shown that honour is a pre-modern concept which was found in many customary regimes that were running in British India (Menski, 1998). Marriage, sexuality, inheritance, and family relationships were often governed by informal means, which was regulated by customary norms (Menski, 1998). When the British administrators came during the colonial era, they experienced these practices and tried to balance the native practices with the written criminal code. This interplay between the traditional norms and the colonial laws played a huge role in the future judicial handling of honour-related offences. The passing of the Indian Penal Code, 1860 provided a single criminal law system throughout British India. According to scholars, even though honour was not explicitly included as a legal defence in the Penal Code, courts tended to apply honour-based motives to sentencing decisions (Anderson, 1993). According to Singha (1998), colonial courts often used to apply some of the doctrines like grave and sudden provocation in cases involving adultery, elopement, or apprehended sexual offence. This strategy opened a side street whereby honour factors came into play in the criminal adjudication. Wasti (2010) argues that, the colonial jurisprudence established the grounds in which the future jurisprudence would be lenient in honour killing cases by allowing moral and cultural issues to influence criminal responsibility.

Wasti (2010) offers one of the most detailed analyses of the jurisprudence of honour killing in the Indian subcontinent among the contemporary scholars. He suggests that one cannot make any sense of the legal treatment of honour killings without looking at the area of colonial criminal law and how it contributed to post-independence judicial attitudes. Wasti (2010) suggests that most of the assumptions about honour-based violence were passed on to the colonial judicial logic and remained in the Pakistani jurisprudence even after independence. His work stands out especially in that it has been able to bridge the gap between historical and contemporary developments in the law.

A significant source of scholarship on honour killings in the 1990s was human rights literature. Amnesty international (1999) reported high rates of honour killings in Pakistan and noted the failure of the criminal justice system to prosecute the criminals. The Human Rights Commission of Pakistan (HRCP) also expressed similar concerns and frequently reported that honour killings were often considered to be family disputes and not serious crimes (HRCP, 2004; HRCP, 2015). Such reports helped in creating awareness and legislative reforms in society.

There has been a lot of scholarly controversy about the connection between honour killings and the Qisas and Diyat laws. Kennedy (1991) noted that the criminal justice system in Pakistan became Islamized and this has significantly changed the way homicide offenders are prosecuted in the country as the legal heirs gained a lot of control over the criminal proceedings. Critics said that this framework provided avenues through which the perpetrators of honour killings escaped the hangman since in most cases, victims and perpetrators were family members (Jahangir and Jilani, 2004). Hussain (2006) also found that privatization of murder eroded the power of the state and deterrence on honour killing cases.

Warriach (2005) observed how the honour killing prosecutions work with the Qisas and Diyat regime and found that they have major structural flaws. He claimed that compromise and waiver policies in effect enabled families to forgive wrongdoers hence establishing a culture of impunity. Similar conclusions were made by Mehdi (1997) who found that the law system had a habit of not differentiating between common homicide and homicide on the basis of honour. These works were significant in influencing the further reform discourse.

Gender inequality has also been researched in relation to honour killings through sociological studies. Welchman and Hossain (2005) define honour crimes as a form of patriarchal domination of women and their sexuality. Through their comparative analysis, they show that honour killings take place in various jurisdictions although they are often defended using cultural discourses that place an emphasis on family reputation. Gill (2009) also claims that the issue of honour-based violence needs to be viewed in the context of gender-based violence and violation of human rights.

In Pakistan, Patel and Gadit (2008) and Bhanbhro et al. (2013) conducted a study on Karo-Kari in Sindh. According to their conclusions, honour killings are usually associated not only with the claims of illicit relations but also with property issues, economic motives, and the local authorities. These studies not only dispute the simplistic explanations but it also illustrates the multi-layered motivations behind honour-related violence.

After the adoption of the Criminal Law (Amendment) Act, 2004, scholarship began to pay more attention to the issue of legislative reform. Khan (2016) suggested that the amendment was a significant symbolic acknowledgment of honour killings as a unique legal issue. But she noted the effective enforcement still suffered at the hands of practical impediments. The same was echoed by Ali (2007) who opined that procedural flaws and societal pressures still affected the result of prosecutions.

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 spawned a new scholarly literature assessing its efficacy. Malik (2018) states that the act was a major shift of the past methods in that the chances of being fully impunity were diluted with the mandatory punishment requirements. However, Fikree and Osman (2020) observe that the legislative change will not be sufficient to end the honour killings unless further advances in the investigation, prosecution, witness protection, and judicial training are made.

According to the recent scholarship of jurists, there is a visible change in the jurisprudence in Pakistan. Khan (2020) discovered that high courts are turning away from honour-based reasoning and focusing more on constitutional safeguards of life, dignity, and equality. It is also found by Awan and Zia (2021) that modern judicial discourses indicate an increase in the understanding of honour killings as extreme versions of gender-based violence instead of culturally justified behaviours. This change is a big break compared to the previous attitudes of the judiciary which tended to show sympathy to honour-related motives.

Even though there is a considerable amount of literature, there are still significant gaps. To begin with, majority of these studies are concentrated on the modern honour killings and legislative amendments whilst having little discussions on the jurisprudence prior to independence. Second, the literature tends to make a distinction between colonial and post-colonial developments instead of looking at how they are connected. Third, comparisons between judicial reasoning, sentencing patterns and evidentiary approaches between various legal eras are not systematically studied. Lastly, the research with the potential to trace the entire metamorphosis of honour killing jurisprudence between the cultural and criminal condemnation is lacking.

The current research aims to fill these gaps by performing a comparative study of honour killing before and after independence in jurisprudence. Through analyzing the legal developments in the colonial period, the trends in the post-independent judicial decisions, the role of Qisas and Diyat laws as well as the recent reforms in legislation, the study seeks to offer a thorough insight into how Pakistani courts have changed the legal approach to honour killings into one that is treated as a serious criminal offence.

Methodology

The research paper uses the doctrinal and historical legal research methodology to analyse the change in the jurisprudence of honour killing in Pakistan. The doctrinal aspect deals with a critical

evaluation of constitutional clauses, legislative enactments, judicial judgments and legislative amendments dealing with honour-based violence. The special focus is on the Indian Penal Code, 1860, the Pakistan Penal Code, the Qisas and Diyat laws, the Criminal Law (Amendment) Act, 2004, and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016. The historical method will be applied to traverse the development of the legal reaction to honour killings in the colonial era to the modern Pakistan. Moreover, a comparative study of the reported cases during the pre-independence and the post-independence periods is also done to determine the change in judicial reasoning, sentencing, and the approach taken towards honour as a mitigating or aggravating factor. The pertinent academic literature, human rights reports, publications of law commissions, and international legal instruments have also been consulted to give an in-depth insight into the topic. The research is qualitative in character and aims at assessing how new legislative and judicial trends have turned honour killing, as a culturally conditioned crime, into an issue of rigid criminal responsibility.

Evolution of Honour Killing and the Idea of Ghairat in the Indian Subcontinent.

The idea of ghairat (honour) has traditionally been the key element of the social and cultural organization in the Indian subcontinent, which regarded the reputation of the family and social status directly connected to the behaviour of the women. Honour existed as a family interest in patriarchal societies and as such, customary practices emerged that rationalized social sanctions and in severe instances, violence to people who were seen to have transgressed the accepted norms. Consequently, honour-based violence was ingrained into tribal, feudal and kinship based social structures.

Prior to the development of legal systems, issues pertaining to honour were dominated by informal institutions like jirgas and panchayats, which held powers over marriage, family relations and individual behaviour. Those informal processes often imposed communal values and family status on individual rights, thus reinforcing traditional gender hierarchies and restricting the freedom women. Violence linked to honour was consequently usually considered as a way of maintaining social order and family respect as opposed to a crime.

Formal legal regulation of honour-related violence started with the introduction of British colonial rule and the passing of the Indian Penal Code, 1860. Although the Code made homicide a crime but honour was not a legal defence, colonial courts were sometimes sympathetic to honour motives via legal principles like grave and sudden provocation. The combination of traditional conceptions of ghairat and colonial criminal law led to the further development of the honour killing jurisprudence in Pakistan, where the two cultural traditions and the formal legal principles still shapes the legal reactions to honour-based violence.

Honour Killing in British India: Colonial Criminal Law and Judicial Attitudes (1860-1947)

With the passing of the Indian Penal Code, 1860, a standardized system of criminal law was established in British India and homicide was explicitly criminalized with honour not being identified as a legal defence. But in most instances, colonial courts reviewed cases that included adultery, elopement, and perceived sexual misconduct and applied the doctrine of grave and sudden provocation. Consequently, the motives of honour sometimes determined the criminal liability and sentencing, enabling some criminals to be convicted of a less serious crime than murder.

The social attitudes that permeated colonial judicial reasoning were the attitudes towards family honour, morality and masculinity. The courts by and large abhorred illegal killing, but occasionally showed sympathy to those who had committed the crime arguing that they had done so due to perceived dishonour. The practice did not explicitly justify honour killings but indirectly accommodated honour-based motives; by allowing them to apply as applicable to provocation

and punishment. As a result, the development of colonial jurisprudence established a culture of law, whereby the violence connected with honour was sometimes treated differently in comparison to other types of murder.

The legacy of colonial jurisprudence was not restricted to the British rule as India, when it became Pakistan, not only inherited substantive provisions of the Indian Penal Code, but also much of the judicial ethos that had been established in that time. Although the colonial system of laws was a significant move towards criminalizing honour-based violence, it did not remove the effects of social and cultural attitudes in judicial decision-making entirely. These contradictions between the formal law and the customary ideas of honour went on to influence honour killing jurisprudence in post-independent Pakistan.

Honour Killing Jurisprudence in Pakistan (1947-1990): Continuity, Judicial Trends and Social Attitudes

After gaining independence in 1947, Pakistan inherited the colonial criminal law system, with the homicide provisions contained in the Pakistan Penal Code. Even though honour killings were criminalized as crimes, judicial decisions usually were informed by colonial precedents and social attitudes towards family honour. The courts were often faced with an adultery, elopement, and perceived dishonour, in which the defendants used provocation and emotional disturbance as mitigating circumstances. The effect was that motives related to honour sometimes affected the sentencing outcomes even though they were not considered to be a legal defence.

Honour-related violence, at this time, was still firmly related to patriarchal social systems, traditional modes of practice, and informal dispute-resolution systems, like jirgas and tribal councils. Honour killings in most societies were considered family issues and not criminal acts and this has led to the failure to enforce and protect women who defy the social norms. There was a growing condemnation of judicial procedures which seemed to justify honour-based violence by imposing lighter penalties and treating perpetrators with sympathy.

The period between 1947 and 1990 thus forms a transition period in the development of honour killing jurisprudence. Although courts have always considered honour killings as illegal practices, the legal rationale was still based on the colonial traditions and social understanding of honour. The increasing criticism of human rights organizations and legal reform activists ultimately led to broader discussions on gender equality and criminal justice reform, which led to the introduction of the Qisas and Diyat laws and the legal changes that were ultimately widespread in the post-1990s.

The effects of Qisas and Diyat Laws on Honour Killing Prosecutions

With the establishment of the Qisas and Diyat laws in 1990, the homicide laws in Pakistan were completely changed by putting much power into the hands of legal heirs of the victims, rather than the state. In this system heirs were given the authority to forego Qisas, receive Diyat, or sign compromise deals with the offenders. Although these reforms aimed to include Islamic values and restorative justice processes in criminal law, they raised serious concerns in honour killings where victims and offenders usually were members of the same family.

One of the biggest objections to the Qisas and Diyat system was that it enabled honour killings to go unpunished. Legal heirs were often affiliated with or supportive of the offender, thus compromise agreements could often avoid meaningful punishment and undermine the deterrent impact of criminal punishment. It was repeatedly pointed out by human rights groups, legal scholars and civil society organizations that privatization of homicide prosecutions created a lack of accountability and turned many honour killings into forgivable crimes within a family set-up. The expanding sense of impunity gave rise to a lot of criticism and eventually led to legislative change. The rise in public awareness, judicial interest, and campaigning by human rights

organizations contributed to changing the policy makers attitude towards honour killing by making them see the necessity of having the state intervene more in such cases. These fears later led to the Criminal Law (Amendment) Act, 2004 and Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016, both of which aimed at correcting the loopholes in the Qisas and Diyat system and enhance criminal responsibility towards honour-based violence.

Laws and Reforms to Criminalize Honour Killings: 2004 and 2016 Amendments.

The rising rate of honour killings and the high abuse of Qisas and Diyat system highlighted the major flaws in the criminal justice system of Pakistan. In the 1990s and the early 2000s, human rights groups, law schools and civil society organizations repeatedly pointed out the fact that the perpetrators of honour crimes managed to get away with the crime under the banner of family forgiveness and compromise. To address these issues, Parliament passed Criminal Law (Amendment) Act, 2004 which officially acknowledged honour killings as a special legal issue, and aimed to empower the state to better prosecute honour killings. The law, however, was largely criticized, owing to the fact that it was not effective in limiting the application of waiver and compromise clauses.

Even after the 2004 reforms, honour killings still took place and most of the perpetrators still enjoyed forgiveness that was offered by members of their families who in most cases were related to the crime itself. The shortcomings of the legal structure were especially evident in the high-profile cases, like the murder of Qandeel Baloch in 2016, which triggered a renewed discussion of honour killings and the continued existence of impunity. The generalized criticism created a surge of legislative change to counter the inadequacies of the legal regime that had existed.

One of the major breakthroughs was the introduction of the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016. In contrast to the 2004 amendment, the 2016 law was an explicit strike to the abuse of compromise provisions in that the offenders were not allowed to get away with punishment using familial forgiveness. The reform increased the role of the state, solidified the idea that honour is not a valid defence to homicide and made the prosecution of honour killing consistent with the constitutional guarantees of life, dignity and equality. The reforms of 2004 and 2016 are both major stepping stones in the process of Pakistan shifting its system of compromising privately to a system that focuses on criminal responsibility and protection of human rights.

Judicial Revolution: Ghairat to Criminality

The changes in honour killing jurisprudence in Pakistan can be seen as a progressive transition towards cultural compatibility instead of legal opposition. During the early post independence era, judicial approaches were mostly based on the inherited colonial dogmas with honour-related motives sometimes playing a role in shaping criminal liability and sentencing in the use of principles of provocation. Despite the fact that the courts acknowledged the offence of homicide as a crime, other accusations such as adultery, elopement or the appearance of sexual misconduct were occasionally considered as mitigating factors leading to less severe imprisonment of offenders.

With time, Pakistani courts started to be more progressive and rights oriented. The courts were placing more and more stress on the inadmissibility of individual conceptions of honour to the rule of law and that honour killings are wholly unrelated to normal family conflicts. Claims of honour were denied by superior courts since they do not excuse violence and that neither cultural practices nor tribal practices can override statutory law. The reasoning of courts, too, was changed to include constitutional guarantees of life, dignity and equality in Articles 9, 14 and 25 of the Constitution, making honour killings appear not as family issues but as an infringement of the basic rights.

This change has been further enhanced by the introduction of the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016, which facilitated greater judicial review and increased criminal responsibility. Modern courts are becoming more inclined to consider honour killings to be aggravated murderous acts and do not allow honour motives to be used as mitigation. Despite the impediments that have impeded successful prosecution in the form of poor enforcement, intimidation of witnesses and cultural normalization of honour killing, the judiciary has been instrumental in altering honour killing into a culturally-based crime and a contravention of the constitutional and human rights principles.

Empirical and Comparative Analysis of Honour Killing Cases: Pre-Independence and Post-Independence Trends

The development of honour killing jurisprudence in Pakistan could be understood better in the context of comparative analysis of legal development over the various historical periods. Despite the fact that honour-related violence has been in existence even before the formation of Pakistan, there has been a dramatic change in the way such offences are treated under the law. The shift of traditional acceptance to criminal responsibility was not a sudden event; it was a process that was developed with a mixture of judicial interpretations, legislative interventions, constitutional evolution, and human rights activism. A comparatively analytical examination of the different periods of law reveals the way in which the reactions of the state towards honour killings progressively changed in terms of cultural accommodation to legal denunciation.

Table 1: Comparative Evolution of Honour Killing Jurisprudence

Period	Governing Legal Framework	Judicial Attitude	Effect of Honour Motive	Legal Outcome
Pre-1947 (Colonial Era)	Indian Penal Code, 1860	Relatively sympathetic in some cases	Frequently considered under grave and sudden provocation	Reduced liability in certain cases
1947–1990	Pakistan Penal Code	Mixed approach	Honour occasionally treated as mitigating circumstance	Variable sentencing practices
1990–2016	Qisas and Diyat Framework	Recognition of criminality but constrained by compromise provisions	Honour not legally recognized but compromise frequently available	High incidence of acquittals through waiver and compromise
Post-2016	Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016	Strong condemnation of honour killings	Honour expressly rejected as justification	Increased criminal accountability

The legal treatment of honour killings has evolved through three distinct phases. During the colonial era, although the Indian Penal Code criminalized homicide, courts occasionally showed leniency by applying the doctrine of grave and sudden provocation in honour-related cases. Following independence, Pakistan largely continued this approach, with courts recognizing honour killings as criminal acts but sometimes allowing social and cultural considerations to

influence sentencing. A major shift occurred with the introduction of the Qisas and Diyat laws in 1990, which permitted waiver and compromise by legal heirs. While intended to incorporate Islamic principles, these provisions often facilitated impunity in honour killing cases because offenders and victims frequently belonged to the same family, thereby limiting effective criminal accountability.

Table 2: Major Legal Milestones in Honour Killing Jurisprudence

Year	Development	Significance
1860	Indian Penal Code enacted	Uniform criminalization of homicide
1947	Pakistan inherits colonial criminal law	Continuation of IPC-based jurisprudence
1990	Qisas and Diyat laws introduced	Privatization of homicide prosecution
2004	Criminal Law (Amendment) Act	Recognition of honour killing as a distinct legal concern
2016	Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act	Restriction of compromise loopholes and enhanced accountability

The enactment of the Criminal Law (Amendment) Act, 2004 represented the first substantial legislative attempt to address honour killings directly. However, scholars generally agree that the amendment failed to eliminate the practical effects of compromise provisions under the Qisas and Diyat framework (Ali, 2007; Khan, 2016). Consequently, honour killings continued to occur despite formal legal condemnation.

The most significant legislative development occurred in 2016 with the enactment of the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act. This legislation sought to address the longstanding problem of impunity by ensuring that offenders could not entirely escape punishment through familial forgiveness (Government of Pakistan, 2016). The reform reflected a fundamental shift in legal philosophy by emphasizing public accountability over private settlement. It also strengthened the state's role in prosecuting honour-based violence and reinforced the principle that honour cannot serve as a justification for homicide.

Figure 1: Evolution of Legal Accountability in Honour Killing Cases



Illustrative representation based upon legislative and judicial developments.

The comparative analysis demonstrates that honour killing jurisprudence in Pakistan has evolved from a system that occasionally accommodated honour-based motives through doctrines such as provocation to one that increasingly emphasizes criminal accountability and human rights protection. While the Qisas and Diyat framework created challenges by allowing private

compromises and limiting state intervention, the legislative reforms of 2004 and 2016 significantly strengthened the legal response to honour crimes. Contemporary courts now rely on constitutional guarantees of life, dignity, and equality under Articles 9, 14, and 25 of the Constitution, rejecting honour as a justification for violence. Although challenges remain, the overall trajectory of judicial and legislative development reflects a clear shift from cultural tolerance of *ghairat*-based violence toward greater accountability and the protection of fundamental rights.

Key Findings

- Honour killings originated from customary and patriarchal notions of *ghairat*, where family reputation was closely linked to the conduct of women and often enforced through informal social sanctions.
- During the colonial era, the Indian Penal Code, 1860 criminalized homicide; however, judicial reliance on the doctrine of grave and sudden provocation occasionally resulted in reduced liability in honour-related cases.
- Pakistan inherited the colonial criminal law framework after independence, and early judicial approaches continued to reflect social attitudes regarding honour and family reputation.
- Prior to the introduction of the Qisas and Diyat laws, courts generally prosecuted honour killings as homicide offences, though honour-related motives sometimes influenced sentencing outcomes.
- The Qisas and Diyat framework significantly altered homicide prosecutions by granting legal heirs the power to waive punishment or enter into compromises with offenders.
- In honour killing cases, the operation of compromise provisions frequently undermined accountability because offenders and victims often belonged to the same family.
- The Criminal Law (Amendment) Act, 2004 represented the first substantial legislative effort to specifically address honour killings as a distinct legal problem.
- Despite the 2004 reforms, honour killings continued because the compromise and forgiveness mechanisms available under the Qisas and Diyat framework remained largely intact.
- The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 significantly strengthened the legal framework by restricting the practical misuse of compromise provisions.
- The 2016 reforms reinforced the state's role in prosecuting honour killings and reduced opportunities for complete impunity through familial forgiveness.
- Judicial attitudes have evolved considerably from treating honour-related motives as potentially mitigating circumstances to categorically rejecting honour as a justification for homicide.
- Superior courts have increasingly emphasized constitutional rights, particularly the rights to life, dignity, and equality guaranteed under Articles 9, 14, and 25 of the Constitution.
- Contemporary jurisprudence treats honour killings as serious criminal offences and violations of fundamental human rights rather than private family disputes.
- The study demonstrates that the transformation of honour killing jurisprudence has been influenced by legislative reforms, judicial activism, constitutional interpretation, and human rights advocacy.
- Despite legal progress, honour killings continue to occur due to weak enforcement, social acceptance, family pressure, underreporting, and deficiencies in investigation and prosecution.
- The evolution of honour killing jurisprudence reflects a gradual transition from cultural accommodation of *ghairat*-based violence toward criminal accountability and protection of human dignity under the rule of law.

Recommendations

- The Government should strengthen the enforcement of honour killing laws by ensuring prompt investigation, prosecution, and trial of offenders without external influence or family pressure.
- Specialized training programs should be conducted for police officers, prosecutors, and judicial officers to improve the handling of honour-based violence cases and ensure victim-centered justice.
- The provisions introduced through the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 should be strictly implemented to prevent misuse of compromise and forgiveness mechanisms.
- Witness protection mechanisms should be strengthened to encourage reporting and testimony in honour killing cases, particularly where family members are involved.
- Public awareness campaigns should be launched to challenge cultural misconceptions that associate violence with family honour and to promote respect for constitutional rights and human dignity.
- Educational institutions should incorporate human rights, gender equality, and legal literacy programs to address patriarchal attitudes that contribute to honour-based violence.
- Religious scholars and community leaders should actively participate in awareness initiatives to clarify that honour killings have no justification under Islamic teachings or Pakistani law.
- Greater collaboration between government agencies, civil society organizations, and human rights institutions should be encouraged to monitor honour killing cases and support victims' families.
- Comprehensive national data collection mechanisms should be developed to accurately record honour killing incidents, prosecution outcomes, and sentencing patterns for policy formulation.
- Future legal reforms should focus on addressing procedural deficiencies, improving victim protection measures, and strengthening institutional accountability within the criminal justice system.

Conclusion

The study concludes that honour killing jurisprudence in Pakistan has undergone a significant transformation from a legal framework influenced by cultural notions of *ghairat* to one increasingly based on criminal accountability, constitutional rights, and human dignity. While earlier legal approaches were often shaped by social attitudes and the doctrine of provocation, subsequent legislative reforms and evolving judicial interpretations have firmly established that honour cannot serve as a justification for homicide. The enactment of the Criminal Law (Amendment) Act, 2004 and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 strengthened the state's role in prosecuting honour crimes and curtailed the misuse of compromise provisions. Despite these advancements, honour killings continue to persist due to societal attitudes, weak enforcement mechanisms, and institutional challenges. Therefore, sustained legal enforcement, public awareness, institutional reform, and protection of fundamental rights remain essential to eradicate honour-based violence and ensure that the principles of justice, equality, and the rule of law prevail in Pakistani society.

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