

PAKISTAN – CRIMES AGAINST MORALITY

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Pakistan - crimes against morality

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PAKISTAN – CRIMES AGAINST MORALITY

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1. Introduction

Pakistan is located on the Indian subcontinent and it has a population of over 220 million, which in approx. 97% consists of Muslims. The constitution of this country stipulates that Islam is the state religion and guarantees citizens the possibility to live in accordance with its principles¹. The Islam religion is omnipresent in the private and public sphere, and it determines to a great extent the boundaries of moral behaviour in statutory law and beyond it while indicating the practices that are legitimised and condemned by society. Although the studies performed by Pew Research Centre in 2012 indicate that the majority of Muslims around the world and in Pakistan agree on the activities that are considered immoral, including drinking alcohol, premarital and extramarital sex or having homosexual relations², there is no one universal and unquestionable definition of morality. The differences in determination of boundaries for moral behaviours in Pakistan result from:

- various interpretations of the Islam religion itself in the context of an approach to such practices as: conversion from Islam or compliance with purdah (covering up or isolation of women in the presence of unrelated men);
- internal diversification of the country, which is divided into 4 main provinces: Balochistan, Khyber Pakhtunkhwa, Punjab, Sindh (and the Islamabad Capital Territory, as well as two regions under the Pakistani administration, i.e. Azad Kashmir and Gilgit-Baltistan), where each part of the country is characterised by its own cultural background, as well as political and socio-economic challenges - from the least populated poor Balochistan to the most developed Punjab, which dominates over the other provinces in the scope of internal politics;
- discrepancy between what is legal, i.e. permitted by statutory law and what is legitimised by society;

¹ Constitution of the Islamic Republic of Pakistan 1973 (text published on 28 February 2012), art. 2.

² Pew Research Center, Morality, 30 April 2013, <https://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-morality/>, [access: 2.09.2021].

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- functioning of a robust system called *jirga* – councils of respected community representatives (consisting only of men) who, along with the Pakistani judiciary, provide "justice" based on the traditional locally legitimised order;
- tendency to instrumentalise religion, including its approach to moral issues by *jirgas*, mullahs (who fulfil religious functions, members of the community who (among others) settle religious disputes) or Islamist organisations; and
- degree of education, modernisation, as well as relations and familiarity between members of a given family.

While taking into account the above-mentioned considerations, this report first thoroughly analyses the approach to crimes against morality in statutory, religious and common law and subsequently focuses on practices that violate socially legitimised norms, e.g. love marriages or conversion from Islam to other religions. While taking up the subject of the consequences resulting from such behaviours, the report exposes the mechanism of honour crimes and demonstrates the evolution of the approach in statutory law to this type of crimes. A significant part of this report is devoted to the situation of people who, to varying degrees, violate the traditionally legitimised order, e.g. the LGBTI community, as well as the situation of their relatives, including the families of those who have committed crimes against morality, or those who maintain informal relationships abroad and/or have illegitimate children. Moreover, as a result of the common discrimination of women in Pakistan - certain academic sources and selected local media call them second-class citizens - three chapters focus on women and describe the situation of women with illegitimate children, widow-mothers and divorcees, as well as the prostitution problem.

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2. Legal system in relation to crimes against morality statutory, Islamic and common law

Crimes against morality

Crimes against morality – the definition and perception in culture and tradition of Pakistan have been specified in the subsequent subchapter – concern both sexes, however, the majority of victims are women, while men constitute vast minority in this regard.

The situation of women in Pakistan is determined by several distinct factors: economic, ethnic or religious. These factors are directly manifested in access to education, possibility of undertaking employment and self-realization. Notwithstanding the above, the underlying issue is the traditional, patriarchal social structure which defines social roles available for women (wife, mother) and the overall perception of a woman through the prism of her male guardian (*saya*). Through this, as a rule, the autonomous functioning of a woman as an entity is deemed impossible and her existence is perceived solely in relation to a man, never otherwise. The inequality stemming from this structure as well as the related dependence on a man on every stage of her life (as a daughter, wife, mother, grandmother) became the cause of breaching and violating her basic rights (to which a human being is entitled), creating a number of occasions to apply violence against women –both psychological and physical one. While remaining almost exclusively in the four walls of a home women are subjected to strict control of their family (especially its male members). In a situation of threat, they often are unable to protect themselves or even complain about their situation as authorities and law enforcement are usually unwilling to interfere with family affairs³.

³ Junik K., 2020. *Ruch kobiety w Pakistanie w perspektywie historycznej*, [w:] *Problemy społeczno-polityczne Bliskiego i Dalekiego Wschodu*, edit. A. W. Jelonek, M. Lipa, Publishing House of the Jagiellonian University, p. 117–118.

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According to the UN Declaration on the Elimination of Violence against Women from 1994⁴, violence on account of gender involves⁵ all acts of violence “which cause or may result in physical, sexual or psychological injustice or suffering of women as well as threats of actions such as coercion or arbitrary deprivation of freedom, both in the public and private life domain”. Crimes and offences towards women are not ascribed to any specific region and occur in every – more or less – developed country⁶. Nevertheless, annual statistics confirm that the situation in Pakistan is alarming: according to the Global Gender Gap Index⁷ from 2020 this country remain on the 154th place (out of 162)⁸, whilst in 2018 it was recorded on the 152nd place in the ranking.

The most crucial problems include: violence on account of dowry and the related murders of young wives, violence exercised by representatives of authorities⁹, rape – including gang rape, unequal right to succession of inheritance/property, sale for matrimonial purposes and to brothels (forming part of human trafficking phenomenon), violence resulting from “inappropriate” outfit/behaviour and the so-called honour killings. The above-listed phenomena possess two common features, namely: objectivization of women as belonging to men and – particularly visible in case of two last examples – limiting all freedoms in the name of protection of morality.

“Morality,” “honour,” “purity” – definition attempt

One of the more problematic issues in the law and customs of Pakistan are the so-called honour killing cases. They occur in many locations worldwide, also in places where large groups of migrants habituate, who is committed to values other than those in place in the

⁴ UN Declaration on the Elimination of Violence against Women (1994), <http://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/711/88/img/NR071188.pdf?OpenElement>, [access: 1.08.2021].

⁵ Violence on account of gender is referred to in subject literature as GBV (*gender-based violence*)

⁶ Compare: annual reports by Human Rights Watch available at: www.hrw.org/topic/womens-rights.

⁷ Gender Inequality Index (GII) – annual report issued as part of the United Nations Development Programme, <http://hdr.undp.org/en/content/gender-inequality-index-gii>, [access: 1.08.2021].

⁸ For comparison: Poland is on the 35th place while Norway is the leader.

⁹ Babar Z. U., 2007, *Violence against Women in Pakistan: Current Realities and Strategies for Change*. (Non-published Master Dissertaion). Austria: European University Center for Peace Studies, p. 148–156.

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country of their stay (i.e. Great Britain or Canada). The statistics show that almost half of these crimes occur in South Asia (here, next to Pakistan the most frequently indicated country is India)¹⁰.

The above-specified complexity of this phenomenon stems from a very broad and specific understanding of the term “honour”. In simple terms, this term may be defined as unconditional subordination of a woman to the social roles enforced on her, accepted by her closest environment: husband, father and/or brother, family, local community, religious community. Each behaviour which extends beyond the accepted paradigm also exceeds the boundaries of an established scheme placed precisely in between the patriarchy and the religiously motivated conservatism, perceived as a threat to tradition and culture. Each action which questions the roles available to a woman – a daughter, wife, mother (thus, ancillary roles, controlled by male family members) is perceived as an attack on stability of the family institution – the smallest but the most crucial social cell as well as one that both determines durability and invariability of the whole community in the broader context.

From the historical perspective, Muslim communities inhabiting today's Pakistan lived according to the principles of *parda*¹¹. *Parda* – literally “cover” in Persian and Urdu languages – constituted an obligation to cover women in presence of non-related men. The practice of *parda* consisted in covering body and face (hair, parts of face or whole face), however, in some regions it took the form of complete segregation of women from men, limiting their freedom of movement almost entirely – each departure outside the house is in fact an occasion to get into contact with other men. Women who obey these principles are considered by society to be pure, moral, stainless – hence, the whole family was deemed as a proper one. Each incident which did not comply with the standard in place was deemed as training, immoral – casting all family members, the clan, the community in a bad light. A woman in Pakistan ought to “respect” *izzat* – this general term means honour in this very context in the Urdu language. Abiding by *parda* results in maintaining purity. Male honour, on the other hand, in Urdu *ghairat*, is defined as jealousy, will to protect the holy things, honour, courage, modesty as well as

¹⁰ Encyclopædia Britannica, Inc. Corporate Site, <https://www.britannica.com/topic/honor-killing>, [access: 1.08.2021].

¹¹ All terms from Urdu have been indicated in their Polish equivalents.

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shame. The meaning of this term specified above reveals the idea in accordance with which the “honour defenders” function in Pakistan. Motivated by the will to remove a stain which appeared as a result of “immoral” thus different to enforced and customary accepted manner in which women should act, striving to reinstate the violated order through eliminating the direct cause of an undesired state of affairs.

Morally acceptable behaviours of a woman thanks to which family honour remains intact include unarguable acceptance of the social roles assigned to her by the tradition. Maintaining purity means lack of contact with non-related men – thus, female sexuality is subjected to close control. This in turn enables an overly broad interpretation of actions which might be morally doubtful – the list of “vices”, apart from adultery and pre-marriage relations (even if they are not of physical nature) usually also contains rapes and even falling in love and relationship with “an inappropriate” person (out of one's own choice)¹².

Honourable killing

An honourable killing was defined in the report issued by Amnesty International from 1999 as:

*Out-of-court punishment imposed on a relative for alleged sexual and marriage crimes considered as a vice or an insult without the will of parents or a relationship which the family considers as inappropriate as well as a rebellion against the community and the clan's marriage customs*¹³.

It is customarily referred to as *karo-kari* – a term which comes from one of Pakistan's provinces, Sindh. The following names function in the remaining three: *siyah-kari* (Balochistan), *tor-tora* (former North-Wester Borderland Province, today's Khyber Pakhtunkhwa), *kala-kali* (Punjab). The first element of the term refers to a man – “black,” “stained,” “committing an impure act,” while the second element signifies the same thing but with respect to a woman.

¹² Sher Muhammad et al, Violence against Women in Pakistan: A Study of Religious, SocioCultural and Legal Perspectives of Honour Killing. „Al-Qalam”, vol. 23, 1/2018, p. 127.

¹³ Amnesty International, Pakistan: Violence against Women in the Name of Honour, 22.09.1999, AI Index: ASA 33/17/99, <https://www.amnesty.org/download/Documents/144000/asa330201799en.pdf>, [access: 1.08.2021].

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Traditionally it means the right of a community or the close ones to kill a woman and her (alleged) lover for a non-marital relationship. In case of accusing someone of infidelity or non-marital sex, both parties are blamed for the immoral behaviour, however, men often avoid death or harsher consequences i.e. through payment of compensation towards the family the honour of which has been stained¹⁴.

Nowadays, the most frequent cases concern alleged adultery, a will to abandon the husband, obtaining a divorce without family's consent and similar – and concern mostly women. Motifs may differ, encompassing also material ones and the so-called petty ones such as sole suspicion of adultery, late return from shopping or too cheerful conversation with a neighbour. In short, any behaviour related to the will of self-determination, undertaking individual decisions, anything that might seem non-compliant with the accepted customs to families/family/community. Sometimes a husband who wishes to remarry gets rid of the unwanted wife this way. In Pakistan, as stressed out by social activists, a woman's life means extraordinarily little and one may do as he pleases with it. It is also extremely difficult to question the hard face of tradition and customs. Customary, crimes committed in defence of honour are honourable and deemed as protecting the old, outmoded social structure, ensuring stability to the structure and the desired *status quo*. As a result, even though honour killings are at the top of the list in annual statistics concreting violence, honour¹⁵ defenders' continue to be unpunished – and this practice has not been considered a crime for years.

Legal systems in Pakistan

Since the country origins in 1947, Pakistan constitutes an Islamic Republic. The country's constitution is in place which was established in 1973 and amended on a number of occasions, similar to the criminal law which was inherited after the British. Due to the stormy history of

¹⁴ More on this in chapter “Honour crimes, their prosecution and punishment p. 77.

¹⁵ Current reports concerning the so-called violence in defence of honour (Honour-based violence, HBV): <http://hbv-awareness.com/regions/>, [access: 4.08.2021]. Police report from Punjab province for the years 2011–2020 indicates that approx. three hundred cases of honour killings are officially reported each year. More: <https://punjabpolice.gov.pk/honour-killings>, [access: 4.08.2021].

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the subcontinent, ethnic and regional diversity of social groups as well as religion, the following orders overlap in Pakistan:

- legal – in the form of a criminal code, Code of Criminal Proceeding, consisting of judiciary, law enforcement including police;
- traditional – parallel law represented by village councils with the most frequently encountered: *jirga* and *panchayat*;
- religious – law regulated by the Pakistan Islam Council; based on the authority of religious *muftis* and *ulemas*; learned in religious texts.
- customary – not constituting law *per se*, informal but socially binding and frequently replacing the remaining ones; supporting the patriarchal system and drawing reference to the traditional, non-specific interpretation of Islam rules¹⁶.

Statutory law

The Constitution of Pakistan refers in several parts to the issue of equality and respect for the law towards both sexes as well as to the protection of the institution of marriage, family, children¹⁷. However, the rights guaranteed in writing are often not applicable in reality and have no significant impact on the improvement of the situation of women in the country. Low detectability of crimes or failure to report crimes stemming not only from the ignorance of legal standards but also from the lack of trust in the government, especially the police, corruption, reluctance to publicly disclose family matters and lack of faith that anything could break the wall of tradition.

As mentioned before, Pakistan inherited the legal system in place in the colonial era, based on the British Penal Code from 1860. It contains regulations concerning crimes towards human body and life, also with respect to murder. The law defines adultery and other sexual relations outside of marriage as a crime punishable with imprisonment up to five years or a

¹⁶ Engineer, Ali Asghar, 1996, *The Rights of Women in Islam*, Lahore: Vanguard Books Ltd.

¹⁷ Sher Muhammad et al, *Violence against Women in Pakistan: A Study of Religious, SocioCultural and Legal Perspectives of Honour Killing*. „Al-Qalam”, vol. 23, 1/2018, p. 136.

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fine¹⁸. However, it lacks a separate treatment of the phenomenon of honour killing characterized by a pre-selected goal, premeditation, ideology and in many cases also extreme cruelty. During the ruling of general Zia-ul-Haq (in 1977–1978 head of the government and of the Military Council, in 1978–1988 President of Pakistan) when the most rigid law towards women was introduced as part of the programme Pakistan Islamization of the society¹⁹, the statistics of honour killing rocketed. In the same period, activism towards women's rights blossomed and these activities were supported by NGOs, pro-female groups²⁰, especially when in 1996 Pakistan ratified the Convention eliminating all types of discrimination towards women (*Convention on the Elimination of All Forms of Discrimination against Women, CEDAW*). Through the power of protests, discussions, lobbying towards changing the law, an amendment was successfully introduced in the Criminal Code, penalizing *karo-kari*. Punishments from 7 years' imprisonment to death penalty were established for committing this crime. The regulation concerning the possibility of redemption of a committed crime through payment of compensation towards the family of the victim made the new law almost entirely dead – the killer and the victim almost always came from the same family. In addition, reporting such crimes was almost voluntary and the definition of honour killing included also other acts of violence such as cutting off a nose or pouring acid. Such a large number of gaps in the law made it very ineffective.

Two years later, the *Act on Protection of Women* was adopted which defined rape, abduction and forced marriage as crimes subjected to the punishment of imprisonment. The last amendment was conducted in 2016 after the controversies related to the death of a blogger and a celebrity star Qandeel Baloch. Baloch was murdered with cold blood by her brother in her own house after she published photographs with a Muslim scholar on social

¹⁸ Country Policy and Information Note Pakistan: Women fearing gender-based violence, February 2020, p. 8–9, <https://www.justice.gov/eoir/page/file/1250691/download>, [access: 4.08.2021].

¹⁹ Shaheed, Farida, Khawar Mumtaz, (1995) Islamisation and Women. The Experience of Pakistan. In: Other Voices from Pakistan. New Delhi: Wiley Eastern Limited, 71–87.

²⁰ Junik, Kamila. 2020. *Ruch kobiety w Pakistanie w perspektywie historycznej*, [w:] *Problemy społeczno-polityczne Bliskiego i Dalekiego Wschodu*, edit. A. W. Jelonek, M. Lipa, Publishing House of the Jagiellonian University, p. 113-125.

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media. The state appeared as a complainant in this case thanks to which the convict could not avoid punishment in exchange for compensation²¹.

Religious law (Islamic)

It is often considered that honour killings are intricately linked to Islam, even though there is no evidence for this in the law. In reality, adultery is subjected to punishment as a heavy crime. Persons accused of this crime have a possibility of proving their innocence, though in such case they should appear before an Islamic judge (*qazi*) and four (and not, as customary accepted, two) witnesses. According to Przemysław Kubiak the punishment [discussed above] *is determined furthermore by additional requirements placed before the perpetrator, defined as 'ability to preserve purity'*²². Accusing a good woman of an unworthy deed is however also a vice which brings deprivation and is deprived of credibility²³.

The Quran does not indicate *karo-kari*, thus, one might assume that this practice does not comply with Islam. The Pakistan clergy however are not so conclusive in this regard but the fact that Islam praises equality of both sexes with respect to one another and ensures many rights to women is stressed out. The religious provisions themselves are not as problematic as their interpretation which is subjected to ideology and often conservative. In Pakistan, various fractions and groups that praise Islam from its ecumenical version (i.e. Sufism) to its orthodox variety have struggled with one another for years. The multiplicity of voices concerning disputed, difficult issues, especially with respect to the place of a woman in society is sometimes used by the conservatives wishing to justify discrimination and

²¹ "State becomes complainant in Qandeel's murder case". Daily Times Pakistan, 2016-07-18, <https://dailytimes.com.pk/69379/state-becomes-complainant-in-qandeels-murder-case/>, [access: 4.08.2021].

²² Kubiak, Przemysław. (2019). Najcięższe przestępstwa szariatu ('hudood') w świetle uwag zawartych w klasycznym podręczniku 'Umdat al-salik' al-Misriego. Law Journals no. 19, p. 155–184. DOI 10.21697/zp.2019.19.3.07., http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-doi-10_21697_zp_2019_19_3_07/c/3579-3343.pdf, [access: 1.08.2021].

²³ Quran 24:4: *And those who accuse good women but are unable to present four witnesses must be punished with eighty lashes and can never again be treated with credibility. These are the people who raise depravation.* Quran, translation from Arabic J. Bielawski, Warszawa 1986.

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violence on account of religion as well as maintain a patriarchal setup of powers. In this context, the most frequently appearing fragment of Quran is as follows (Surah 4:34):

*Men stand above women
as God granted superiority of the former towards the latter ones
and on account
of the distribution of their own property.
Thus, righteous women are humble
are keep
what God kept in secretiveness.
Do exhort those
whose disobedience you fear,
leave them in your beds
and beat them!
And should they obey you,
strive to leave them unconstrained.
Indeed, God is high-minded, great!²⁴*

Customary right

In Pakistan, there is an informal (or parallel) legal system formed by village councils. It functions in areas inhabited by clans and/or tribal groups in the provinces of Khyber Pakhtunkhwa, Balochistan, Sindh. *Jirga* (term most frequently used in Khyber Pakhtunkhwa and Balochistan) *panchayat* or *faislo* – signifies a meeting of clan or tribe's seniority during which decisions concerning social affairs are undertaken, especially regarding the issue of

²⁴ Quran, translated from Arabic J. Bielawski, Warszawa 1986.

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resolving disputes inside the community or between two clans. The objective of *Jirga* is to maintain a consensus and compliance with the teachings of honourable code of Pashtuns, called *Pashtunwali*. Moreover, avoidance of exacerbating of conflicts and proposing peaceful and amicable handling of issues²⁵.

The existence of two parallel legal orders – a formal and informal one – is a heritage of the colonial era whereby colonizers cared for the maintained order and peace between the fighting clans and tribes, especially in rural areas, located at distance from the modernizing world and its systemic solutions. *Jirgas* for years undertook arbitrary and independent decisions while maintaining respect and regard. They differed from a normative order through a number of features: in place of equality of all citizens towards the law (federal law), they considered social differences and conditions; instead of entity freedom they considered commitments and dependencies in terms of class divisions; oriented towards amicable handling of issues – while during court cases one of the parties wins and the other one loses. Decisions undertaken in a given matter were usually somewhat related to other matters – which ensured the feeling of continuity, process and care for the nature and future of a given social group²⁶.

In the context of women, however, very rigid principles were in place: the above-noted *izzat*, thus respect, played a significant role and punishments were delivered in its defence according to the principle “eye for an eye, tooth for a tooth” (in line with the concept of *badal*, thus, retaliation). A woman was treated as one of the three attributes belonging to a man – along with money and land. In the societies in which *Jirgas* were de facto exercising power having a decisive role in all matters, the position of a woman is strictly specified and leaves no room for any sort of freedom or any derogations. Each, even alleged immoral, unworthy or improper behaviour – and here the area for interpretation is quite broad – ends in a cruel verdict: violence or murder in order to remove the stain on an honour. This rule of consensus,

²⁵ Shinwari N. A., (2015) *Understanding the informal justice system: Opportunities and possibilities for legal pluralism in Pakistan*. Community Appraisal and Motivation Program (CAMP), <http://www.camp.org.pk/wp-content/uploads/2016/03/UnderstandingtheInformalJusticeSystem.pdf>, [access 2.08.2021].

²⁶ Mahrwald S., (2009) *Rule of Law: The Case of Pakistan*, Heinrich-Böll-Stiftung, October 26/2009 https://www.boell.de/sites/default/files/assets/boell.de/images/download_de/weltweit/Rule_of_Law_Conference_Paper_Pakistan_neu.pdf, [access: 4.08.2021].

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equality towards two (or more) parties of a dispute means in practice either performing the same crime towards the family of guilty party or punishing both parties with a death sentence. Rape, meeting with an unknown to the person man – death penalty for both parties, executed by a person from the closest family. *Jirga* is an institution accused of anti-female, discriminating human rights breaching of the basic constitutional provisions. Through this, stereotypes, principles and customs composing a broadly-understood tradition and custom are consolidated²⁷.

Jirgas – legal and illegal – function in many areas of Pakistan, frequently where access to the formal legal system is possible (police, court). Traditionally, women do not participate in the gatherings; nowadays exceptions to this rule tend to occur every now and then; there is a female *jirga* established by a female activist, Tabassum Adnan, towards female rights. Controversial decisions and procedures with the participation of *jirga* led in 2019 to limiting their functioning by the Supreme Court in Pakistan, however, solely in the scope of their functioning as arbitration, mediation, negotiation or conciliation forums between parties engaged in a civil proceeding; that year, the Prime Minister of Pakistan obliged himself to continue this tradition²⁸.

At present, due to the pandemics, substantially more cases of all sorts of domestic violence are reported; honour killing still constitutes more than half of the reported cases.

Custom

As already mentioned, the customary right in Pakistan does not treat both sexes on an equal level, even though the constitution of the country guarantees equality to all citizens. The codes, paragraphs continue to limit the freedom of women in many areas of life. Apart from this, the phenomenon of unawareness of the law related to i.e. lack of education is often encountered. However, an even more significant obstacle is a distrust towards the judicial system, law enforcement and its effectiveness in combating the omnipresent “tradition.” This

²⁷ Patel R., (2003) *Woman versus man*, Oxford University Press, 2003, p. 152–159.

²⁸ Rehman I. A., *Jirga space slashed*, „Dawn,” 11 July 2019, <https://www.dawn.com/news/1493381/jirga-space-slashed>, [access: 4.08.2021].

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term is uniquely capacious and covers all customs, habits and styles of proceeding that have little in common with religion but are slightly related to it, though constituting *modus operandi* for the majority of problematic cases in local communities. In various regions of Pakistan, these will involve sometimes diverse procedures of handling the same events. Nevertheless, they are always based on the stereotypical division of social roles which is discussed above.

In a family, community, tribe, hierarchy plays the most significant role – and it assumes absolute obedience towards the elderly and towards men. In every family, a grandfather, father, older brother will always maintain authority while in a community – elders. Age and experience are of utmost importance here, further to the will to maintain *status quo*, unwillingness to introduce changes, sustaining this ‘tradition.’ Such established priorities do not permit any freedom or individual choice of lifestyle – the individualism itself is perceived as a terrible thing as it resembles on the one hand disobedience and, on the other hand, egoism which harms family, group or community interests. All decisions are undertaken collectively: in case of women, social roles possible to be assumed by them are limited to being a daughter, mother, wife – always in relation to a man, serving him and serving the family (and through this, saving the clan etc.). In case of men – it will be a responsibility for maintaining order in a family and subordinating women and minors – thus, frequently decisions on behalf of younger siblings are made by older brothers or a father, grandfather, uncle - on behalf of children. Because of rigour and obligation, not everyone agrees to follow tradition and many people see the need for changes though it is difficult to oppose to it. This also concerns men who regardless of their own beliefs and views must function within the structure of patriarchy and stereotypically understood the idea of masculinity²⁹. Attempts of escaping from the fulfilment of an imposed

²⁹ There are many studies concerning the situation of women in the countries of Southern Asia, however, the issue of masculism and stereotypical place of a man in the changing reality has not yet been thoroughly investigated. Single mentions in studies concerning the idea of masculinity worldwide show that this issue is extremely interesting and deserves further investigation and analysis. In the near future, the Jagiellonian University will host the realization of a research grant concerning the shifting model of masculinity among migrants from the region of the Near East and South Asia (Pakistan) the outcome of which will be published at the turn of 2021/22 in the form of an article.

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role of a brother, son, husband, father and willingness to change are usually punished – or suppressed³⁰.

3. Love marriages/escapes to get married - consequences for women and men

Marriage arranged in the Pakistan tradition

Family is the most essential element of social structure in the Indian Subcontinent where Pakistan is located. Traditionally, it was a family that combined many generations, with many children and an established structure according to which each member had specific duties and roles to perform: both in the area of a family as well as in terms of a community in which it functioned. The most significant terms, thus, include *khandan* (family or clan in Urdu) and *biradri* (in Urdu, literally, brotherhood; community, caste)³¹ – within the established frames concerning responsibility, duties as well as maintaining purity, respect, status, at an individual and group level. Functioning within these structures means accepting the principles that govern them, impossibility to negate them (hence the slow tempo of all changes) and consent to decisions concerning individual fates of an entity always being made by the family and durability as well as stability of tradition and culture treated as priorities.

Families traditionally arrange marriages – according to a popular saying in Pakistan as well as in India a wedding is not so much a relationship between two people but rather a tie between two families. Thus, only families of the same origins, status, from the same tribe, kin etc. may be connected through marriage. The social dimension of this treaty is equally important and economic: ensuring preservation of property inside the same group, thus, the

³⁰ The lawyer, Rashida Patel, quoted in this report, in her recent book recalls a case of her driver, Zaman whose brother was murdered. As a result of an agreement between his family and the family of the murderer, as part of the so-called compensation, two young girls were “offered” to him. Another Zaman's brother married one of them and the other girl was supposed to become Zaman's second wife (his father was trying to force him into this marriage but ultimately, he married the girl himself). Compare Patel R., (2003) *Woman versus man*, Oxford University Press, 2003, p. –159.

³¹ The term *biradri* is related to the term *fratrii* – corresponding to the “kin selection,” “tribe.”

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most popular weddings are ones in which a woman and a man are related (the kinship here is remarkably close i.e. first cousins³²). And even though theoretically one of the elements of a wedding ceremony is the question directed towards both persons whether they confirm their willingness to conclude a marriage, there can only be one answer to it.

All deviations from this rule are severely punished. Even though, as noted in the introduction, the freedom of choice, conscious approach towards the institution of marriage, partnership in conducting housework and obligation of treating one's wife with respect without violence have been increasingly considered, changes in this regard as more noticeable in urban environments among classes of educated and better-situated persons. The vast majority of marriages are still arranged marriages without participation of the interested parties in the decision-making process.

Love marriages and escapes to get married – consequences

Marriage with the closest cousin or with another man from the same ethnic group selected by the family has always been a standard in Pakistan³³. Family consent is an undisputable must – and if necessary, its members will take all possible steps to prevent a marriage out of one's own will, known as love marriage. One article³⁴ analysed cases when a woman tried to enter into such marriage, generally considered as unacceptable. Family

³² In Pakistan, almost 50% of weddings involve weddings of close cousins, in the province, this number is estimated at the level of 80%. Children born out of such closely related parents will be often burdened with genetic defects. Furthermore, infant mortality rate is high in case of such relationships. Compare Merten M. (2019). Keeping it in the family: Consanguineous marriage and genetic disorders, from Islamabad to Bradford. *BMJ*, 365, l1851. <https://doi.org/10.1136/bmj.l1851>, [access: 18.08.2021]; Afzal M. et al (1994). Consanguineous marriages in Pakistan. *Pakistan development review*, 33(4 Pt 2), p. 663–674, [access: 18.08.2021].

³³ Country Policy and Information Note Pakistan: Women fearing gender-based violence, February 2020, p. 25–26, <https://www.justice.gov/eoir/page/file/1250691/download>, access 4.08.2021; Country Information and Guidance Pakistan: Women fearing gender-based harm/violence 2015, <https://www.refworld.org/pdfid/56667db14.pdf>, [access: 10.08.2021].

³⁴ Hong, J. 2009, Love marriages, women and rule of law in Pakistan, *Ethics in Action* Vol. 3, No. 5, October 2009 Asian Human Rights Commission – Ethics in Action website <http://www.ethicsinaction.asia/archive/2009-ethics-in-action/vol.-3-no.-5-october2009/love-marriages-women-and-rule-of-law-in-pakistan>, [access: 12.08.2021].

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reactions varied but all of them were lined with violence: starting with threats towards the man and his relatives, submitting the case to the police in order to trace the location of stay of the man and ending with the woman's abduction by i.e. her own brothers, holding her by force in an unknown location as well as attempts to "shaking her out" of her inappropriate idea.³⁵ In the opinion of Shakira Hussain, professor from the Australian National University:

*A love marriage that exceeds family expectations may result in significant pressure on the side of it. Whilst violence may be a part of this pressure. In cases where (future) spouse came from a lower cast, both him and his partner could be subjected to a cruel reprisal*³⁶.

This is also confirmed by the report entitled Human Rights Commission of Pakistan from 2018 according to which women who strived to choose their own spouse were punished with isolation, beating and other types of violence by their fathers and brothers, often paying for this with their life³⁷. According to the document, rejected suitors often constituted aggressors who brutally attracted women, often with the use of an acid, in order to deform them and thus punish their obedience with consequences for the rest of their life³⁸.

The cruellest type of violence in case of love marriages is honour killing. This type of murder is usually committed by the closest family towards both spouses. For this reason, couples who manage to legally enter into a marriage (so-called civil marriage) run away from their home towns, change identity and hide. Settling down away from the family and commencing life at one's own expense is not easy for a number of reasons: couples who do not stay connected with their family live a lonely life and often attract attention of everyone in the neighbourhood. It is difficult for them to rent a flat or find work. In a well-systematized and traditional society of Pakistan they raise concerns as to morality and lifestyle. In order to find them and "fulfil the obligation" in defence of the stained honour, the family (usually on the

³⁵ Ibidem.

³⁶ Country Advice: Pakistan, Refugee Review Tribunal, Australian Government, 17 November 2010, p. 2, https://www.ecoi.net/en/file/local/1138091/1788_1336913515_pak37665.pdf, [access: 12.08.2021].

³⁷ State of Human Rights in 2018, Human Rights Commission of Pakistan, p. 179, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2019/04/State-of-Human-Rights-in-2018-English-1.pdf>, [access: 12.08.2021].

³⁸ Ibidem, 179–180.

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woman' side) often applies traps. These may involve dressing up as someone else and disguising, setting up situations in order to hunt the couple out of their hiding place, blackmailing, trespassing, often with the use of local police (after the previous handover of a bribe). Police, as underlines on numerous occasions before, does not react to such conflicts, considering them as family matters, refuses to initiate proceedings, accept crime commitment forms and even intervene in the course of such events in order to protect the victims³⁹. Among daily press reports (in local languages, Urdu and English) concerning love marriages, couple escapes to get married as well as consequences of such actions one may encounter scarce situations where police provided assistance i.e. in their making it to a larger city or finding shelter until the first court proceeding⁴⁰.

Love marriage: family pressure versus the right to freedom of choice

At this point, it is worth taking a closer look at traditional justification of “dishonourableness” of marriage by choice and the way it is linked with committing by (future) spouses of a sin and a crime of adultery.

Legal norms introduced in 1979, depriving women of most freedoms and rights, called *Hudood Ordinance* constituted an element of country and law Islamization. Several changes were introduced at that time within the *British Criminal Code* from 1860, adding adultery as a crime and flogging or stoning as punishments. Regulation concerning adultery (in Urdu - *zina*) defines this crime extremely broadly – mere suspicion was enough to punish the alleged delinquents. Thus, it has been for years functioning as a tool of repression towards women, applied in particular by families in order to force women to act in line with their expectations (including agreeing to arranged marriages). In case of escapes and/or concluding marriages

³⁹ Country Advice: Pakistan, Refugee Review Tribunal, op.cit., p. 2–4.

⁴⁰ Couple married for love, hiding in fear of tribal justice' „Dawn”, 11 July 2009, <http://www.dawn.com/wps/wcm/connect/dawn-contentlibrary/dawn/news/pakistan/provinces/04-couple-married-for-love-hiding-in-fear-oftribal-justice-qs-01>, [access: 12.08.2021]. Pashtun woman hiding after love marriage' Daily Times, 20 December 2006, http://www.dailytimes.com.pk/default.asp?page=2006%5C12%5C20%5Cstory_20-12-2006_pg1_6, [access: 12.08.2021].

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out of one's own will, the family accused the (future) husband of a woman of kidnapping her which, in combination with the charge of pre-marriage sexual intercourse, constituted an effective manner of avoiding or preventing such relationships.

The law adopted in 1979 was amended by way of *Women Protection Bill* in 2006. Despite the provisions it contained whereas each type of coercion to conclude a marriage against the will of a woman is punishable, in reality, the so-far practice has not ceased. In addition, charges related to rape appeared as it was considered a highly likely that the marriage was consummated. The lawfulness of marriage conclusion was questioned not only by the families which strived to force the woman through this to be obedient and consent to an arranged marriage or when the divorcee remarried, however, the husband questioned the validity not only of the new marriage but also of the divorce⁴¹.

According to the Muslim law in place in Pakistan, a woman who reaches sexual maturity (usually it is obtained at the age of 15) is entitled to marry anyone she chooses to and such marriage is legally allowed. Certain court judgments however include the role of a legal guardian (in Urdu: *wali*), whose opinion – in this case consent for marriage – is of key importance even if the girl is an adult⁴². Since marriage contracts (in Urdu *nikah*) should be concluded in the presence of the parents, dependable witnesses or guardians, the courts consider it as an argument in favour of the need for consent of guardians for the marriage. When investigating whether this issue is compliant with the law, a regarded lawyer from Lahore, Rashida Patel, in her book looked into the provisions of Quran concerning marriage. None of them indicates a need to obtain additional consent from a guardian to marry the chosen man by an adult woman. However, a review of court decisions formulating precedents for future proceedings often presents opposing facts. Through this, a possibility is formed to annul marriages concluded out of one's will (against the will of the family); in many cases a

⁴¹ „Access to Justice for Survivors of Sexual Assault. A Pilot Study”, The National Commission on the Status of Women (NCSW) 2010, p. 32, <https://www.ncsw.gov.pk/SitelImage/Downloads/Access%20to%20Justice%20for%20Survivours%20of%20Sexual%20Assualt-%20A%20Pilot%20Study-min-Compressed.pdf>, [access: 12.08.2021].

⁴² Rashida Patel draws reference to a number of examples, including case from 1997 considered by the Supreme Court in Lahore to the detriment of newlyweds. Patel R., (2003) *Woman versus Man*, Oxford University Press, 2003, p. 55.

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young female spouse is forced to return to her father's home and she is frequently urged to submit notification regarding alleged rape⁴³.

The assumption of rape, abduction, holding against one's will – this is a traditional perception of a will to follow one's own choice, disobedience towards the family, absolute custom, escape from home, commencement of own life (as a marriage). In light of such present narration, the family is obliged to remove dishonour caused by carelessness and immoral behaviour of a woman. Accusation of adultery or premarital sex triggers non-recognition of validity of the concluded marriage. According to the law, a couple may submit a statement in this regard, which often happens in cases that end up in court⁴⁴. However, before it happens, they often meet revenge of the family and death at the hands of their closest relatives: their father or brother⁴⁵.

Marriage in Pakistan in the era of modernity

One of more popular matrimonial portals in Pakistan, shaadee.pk., refers to the issue of self-determination of young people about their future partner in several places of its blog. In the article „The Changing Trends in Marriages”⁴⁶ the slowly though noticeably changing trends that extend beyond tradition taking place in life are shown, which are impacted by;

- 1) western culture – shown in the media, serials, TV programmes etc. – the key manifestation of which is the growing acceptance of love marriages;

⁴³ „Access to Justice for Survivors of Sexual Assault. A Pilot Study”, The National Commission on the Status of Women (NCSW) 2010, p. 32–33, <https://www.ncsw.gov.pk/SitelImage/Downloads/Access%20to%20Justice%20for%20Survivours%20of%20Sexual%20Assault-%20A%20Pilot%20Study-min-Compressed.pdf>, [access: 12.08.2021].

⁴⁴ Ladly, Meghan Davidson. 2012. „Defying Parents, Some Pakistani Women Risk All to Marry Whom They Choose”. The New York Times, 8 September 2012, <https://www.nytimes.com/2012/09/09/world/asia/some-pakistani-women-risk-all-to-marry-for-love.html>, [access: 10.08.2021].

⁴⁵ Jalalzai M. Kh. (2002). Women Trafficking and Prostitution in Pakistan and Afghanistan, Lahore, p. 56.

⁴⁶ The Changing Trends in Marriages, <http://blog.shaadee.pk/the-changing-trends-in-marriages/>, [access: 12.08.2021].

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- 2) inter-cast marriages, formerly entirely unacceptable, today more and more tolerated, especially among well-educated urban classes;
- 3) changing social roles – thus, a number of the working, professionally active women who contribute to the maintenance of their families and thus, have an impact on its fates;
- 4) Changing family model – from multi-generational (so-called *joint family*) to nuclear in which bonds between spouses and impact on shaping one's own life are more significant⁴⁷.

Zinab Nazir, representing the voice of Pakistan's younger generation, used a similar tone in „Pakistan Today,” striving to free people from the rigid structure of tradition;

We must understand that intimacy, understanding and emotional and physical alignment are far more significant than labels of 'arranged marriages.' Cast and religion never determine a happy and successful marriage. Younger generation prefers to build a family and a home on such values as closeness and understanding. The time has come for the parents to reject the requirement of cast and religion as these issues have little importance for the happiness of their children and future generations⁴⁸.

Her article on the internet corresponds to the illustration used in an advertising campaign supporting the portal shaadee.pk, presenting hands while placing a wedding ring on them and an inscription in English *Love marriage is not a sin. Islam allows it* and a second one in Urdu – *Register and find your pair*. The sentence in Urdu quoted below the photograph is designated at visualizing the types of arguments usually raised by a family when disagreeing with the future wife of a man; *Her family is not too good, we don't like it, we are not thrilled about the girl because you chose her by yourself...(...).*

⁴⁷ Maqsood A. 2021b. „Love in liminality: the modes and spaces of intimacy in middle-class Pakistan”. *South Asian History and Culture* 12 (2–3): 261–77, <https://doi.org/10.1080/19472498.2021.1878785>, [access: 13.08.2021]; Hamid, Saima et al (2011), „Marriage decision making, spousal communication, and reproductive health among married youth in Pakistan”. *Global Health Action* 4 (1): 5079. <https://doi.org/10.3402/gha.v4i0.5079>, [access: 12.08.2021].

⁴⁸ Nazir Z., *Love marriage – a sin. Pakistan Today.*, 23.04.2021, <https://www.pakistantoday.com.pk/2021/04/23/love-marriage-a-sin/>, [access: 12.08.2021].

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In the article which appeared in BBC portal we are presented with a story of Arifa and Abdul Malika who ran away from their homes and got married out of love. The woman was abducted in broad daylight from a crowded street in Karachi by members of her own family while the man obtain a message that she had been murdered. Only after several days he managed to establish that she was alive; he hid himself for several months in fear of his life. In his opinion, love is a great sin in Pakistan –

Ages have passed, the world experienced considerable progress, people managed to reach the sky. But people from our country continue to follow old customs and traditions from the dark ages⁴⁹.

Arranged marriages out of love are a certain compromise in this regard – it is a relatively new phenomenon which, apart from escape to conclude a marriage out of one's free will has been increasingly occurring. In the environment of the middle class in Lahore, arranged marriages are preceded by meetings of future spouses whilst maintaining all courtesy principles and/or under supervision of third parties or via telephone. In other parts of Southern Asia, this custom is rather controversial and does not meet with larger acceptance towards love marriages. Older people claim that modern technologies such as mobile phones, internet and social media are to blame for the alleged larger freedom, lack of respect towards tradition by younger generations and even marriages out of choice⁵⁰. However, according to Maqsood, women who establish a thread of understanding and a consensus as to the lifestyle, the goals for the future with a candidate for their husband are more willing to agree to such arranged marriage and the established bond is often called an 'understanding' instead of love⁵¹. This way, while not exposing themselves too much before tradition they attempt to negotiate their roles towards the family, the community and culture⁵².

⁴⁹ BBC News. 2014. „How Pakistan's Women Are Punished for Love”, 12 December 2014, <https://www.bbc.com/news/world-asia-30400690>, [access: 12.08.2021].

⁵⁰ Maqsood A., 2021a. „Love as Understanding”. *American Ethnologist* 48 (1): 93-104. <https://doi.org/10.1111/amet.13000>, [access: 18.08.2021].

⁵¹ Ibidem.

⁵² Interesting studies in the scope of the changing cultural and social roles are carried out also by Ayesha Khurshid. One of her articles, published in 2020, analyses these issues with respect to professionally active and educated women from rural areas and families with low income. Compare Khurshid, Ayesha. 2020. „Love marriage or arranged marriage? Choice, rights, and empowerment for educated Muslim women from rural and low-income Pakistani communities.” *Compare: A Journal of*

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4. The situation of women with illegitimate children. Consequences for women and children

Illegitimate children in Pakistan – background

Marriage and family are deeply rooted in the system of values of modern Pakistanis. The vast majority of citizens lives in expanded families⁵³. It means that usually one household encompasses several families related to one another i.e. parents, unmarried daughters and sons with their wives and children (regardless of their number), widowers and often also further relatives, children of further relatives who live and learn near the house etc.; contrary to the nuclear type of family which consists solely of parents and their children. The Pakistani usually depend on their relatives when it comes to financial, social and employment-related matters. Even families from privileged classes or ones that emigrated to the cities and live with nuclear families rely on their relatives in case of financial support.

Marriage in Islam is considered a religious obligation – (Arabic *sunna*), which is of significance for the country's society of which almost 97% of citizens⁵⁴ declare themselves as Muslims⁵⁵ and sexual activity outside marriage is deemed as a sin of adultery (*zina*). Moreover, followers of other religions in Pakistan (Hinduism, Christianity, Sikhism) is an institution of significant importance.

Comparative and International Education 50 (1): 90–106,
<https://doi.org/10.1080/03057925.2018.1507726>, [access: 13.08.2021].

⁵³ The average size of a household in 2019 in Pakistan amounted to 6.24 persons – statistical survey HIES for the years 2018-2019 (The Household Integrated Economic Survey), <http://phkh.nhsr.com/sites/default/files/2021-07/Household%20Integrated%20Economic%20Survey%20Pakistan%202018-19.pdf>, [access: 13.08.2021].

⁵⁴ Compare Pakistani Bureau of Statistics 2021, <https://www.pbs.gov.pk/content/population-religion>, [access: 13.08.2021].

⁵⁵ The majority of participants of the programme „Yes I do” directed at young women, realized by the Dutch organization KIT Royal Tropical Institute in the years 2016-2020 in seven countries, including Pakistan, regardless of their marital status, age and gender considered marriage as a religious obligation practiced by the first parents – Adam and Eve and Mohamet prophet (cities Umerkot and Sanghar in the Sind province. https://www.kit.nl/wp-content/uploads/2019/01/YES-I-DOPakistan_MidlineReport_11122018_FINAL.pdf, [access: 13.08.2021].

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According to data gathered in the years 2017–2018 in the course of demographic and health studies (*Pakistan Demographic and Health Survey, DHS*)⁵⁶, women conclude marriages when they are significantly younger than men. According to the survey, the average age for the conclusion of the first marriage amounted to 20 years in case of women and approx. 26 in case of men. As many as 29% of women entered a marriage before completing the age of 18, in comparison to 5% of men. Women much more frequently than men enter into a marriage at the age of 20 (47% in comparison to 14%). In recent years (2013–2018) one may observe a slight increase of age (only by one year) at which marriages are concluded. In comparison to the previous study results (from 2012–2013) in the years 2017–2018 the percentage of women who concluded marriage before they completed the age of 18 dropped from 35% to 29%. These data indicate a tendency to later conclusion of marriages. Such factors as place of residence, level of education and level of prosperity have an impact on the age of first marriage conclusion⁵⁷.

Marriage in Pakistan is integrally related to family honour (*izzat*). Although it is a relationship between two people, it establishes a relation between their families and impacts the reputation of whole groups of relatives. Family honour is based on controlling behaviours of both sexes, especially women⁵⁸. Family often exercises substantial control over a woman's decision to get married. Arranged marriages with partners from one's own community (frequently a relative) are a traditional standard in Pakistan, regardless of the social position. Marriages concluded out of love which are non-compliant with the family expectations may cause significant pressure directed by relatives towards young spouses and lead to harsh

⁵⁶ Full DHS report: <https://dhsprogram.com/pubs/pdf/FR354/FR354.pdf>. Data regarding all so far conducted DHS surveys in Pakistan: <http://nhsrc.pk/dashboards/pdhsselect.html> i <https://dhsprogram.com/methodology/Survey-Types/DHS.cfm>, [access: 13.08.2021].

⁵⁷ Female city inhabitants get married at the age of 21 on average and in case of female countryside inhabitants – at the age of 19. Women with a third-degree education conclude marriages approx. 6 years earlier than women without education. Similar differences occur also in case of men. Women and men from impecunious families conclude married more often at a later age than women and men with the lowest level of prosperity. Average age of first marriage conclusion among women ranges from 18 in the former Tribal Territories Federally Administered (at present included into the Khyber Pakhtunkhwa province) to the age of 22 in Islamabad.

⁵⁸ Khan D., *Mixed Race Marriage in Pakistan. Politics of identity*, Lahaur 2013, p. 126.

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conflicts⁵⁹. Girls Not Brides organization which acts against children marriages worldwide reports that only 4.8% of respondents of three surveys conducted in Punjab declared having control over who, when and whether they will marry someone at all⁶⁰.

The teenage period is considered as a dangerous one as the risk of premarital sex, exposure to diseases and unwanted pregnancies occurs. Fear of extra-marital pregnancy and need of controlling female body are some of the more significant reasons for girls in Pakistan to be gotten to marry at an early age. Girls Not Brides organization quotes a statement from 2014 of an older man from Punjab who participated in a survey regarding early age marriages:

*A teenage, unmarried daughter at home is a burden. Not because you don't want to feed her but because you need to protect your honour. It's unbelievably bad when people start talking about your daughter*⁶¹.

Whilst, the majority of respondents of a survey conducted by a Dutch NGO organization KIT Royal Tropical Institute in the province of Sindh in 2019 as part of the „Yes I do” project declared that early marriage guarantees protection and safety to a girl who is traditionally considered as “a treasure entrusted in deposit” (*amanat*) “depository of honour (*izzat*) for the

⁵⁹ The report of Australian government designated or authorities conducting refugee proceedings – z 2010 draws reference to the opinion of doctor Shahira Hussein from the Australian National University: https://www.ecoi.net/en/file/local/1138091/1788_1336913515_pak37665.pdf, [access: 13.08.2021].

⁶⁰ Data from the Sind and Punjab provinces as part of the following three research projects: „Her Choice,” „Marriage: No Child’s Play,” and „Yes I Do” data publication date: 29 May 2020 Albená Sotirova, Karen van Zaal, Tasneem Kakal, “Ready to Marry? Exploring the dynamics of child marriage in Pakistan” <https://www.girlsnotbrides.org/articles/ready-to-marry-dynamics-of-child-marriage-in-pakistan-evidence-from-three-development-programmes/>, [access: 13.08.2021].

⁶¹ Based on the report released by Girls Not Brides: the speaker paid attention to a significant economic aspect of having a daughter and the perception of girls in a family as a “burden” in Pakistan. In line with tradition, the family of the bride is obliged to submit dowry (*dahez*), which, apart from jewelry and clothes, should consist of house equipment or transport means (motorcycle, car). Many families are unable to meet the requirements and get their daughter married. Both in Pakistan and among Pakistan's diaspora one may encounter organizations, such as Alamgir Welfare Trust, involved in equipping poorer girls in resources enabling them to get married. (<http://www.alamgirwelfaretrust.com.pk/alamgir2013/marriage.aspx>, [access 13.08.2021]) or Ehsaas Trust (<https://www.ehsastrust.org/marriage-assistance/>, [access 13.08.2021]). Also attempts at rejecting this tradition as non-compliant with Islam, are undertaken.

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whole family” and she is expected to enter the new family as a virgin⁶². Reputation of a young woman obviously impacts honour and position of the whole family in the local community. One of the KIT survey participants (a young man, bachelor from the town of Sanghar in Sindh province⁶³) described it in the following manner:

If a girl gets pregnant before marriage, no one will marry her... The parents will harass her. They will not let her go to school. They throw her out of the house... If a girl gets pregnant after getting married, everyone congratulates her.

Another respondent stated that if a girl gets pregnant before the wedding she should get married immediately for the sake of herself and the baby.

Pakistan government and non-government sources do not reveal any statistics concerning the number of nonmarital births in Pakistan⁶⁴, nor the number of consensual unions⁶⁵, thus the scale of these phenomena in Pakistan or their dynamics are known. Practices and attitudes towards the issue of a marriage, family honour and daughter’s honour may be diverse depending on such factors as for instance: social group from which a family originates, education, material situation, place of residence, religion and worldview.

Consequences for women

On account of social determinants related, among others, to the traditional definition of a woman's social status by her male guardian (father, husband, brother, son), perception of honour (*izzat*) as well as Sharia law in accordance with which care over an illegitimate child is granted solely to the mother as consequences of nonmarital pregnancies are suffered mainly by women. Nonmarital pregnancy or pregnancy resulting from rape and even pregnancy of a divorcee who remarried is frequently perceived as adultery (*zina*) or immoral behaviour of a

⁶² Khan D., Mixed Race Marriage in Pakistan (...) op. cit. p. 131.

⁶³ Report by KIT Royal Tropical Institute 2019, op. cit., p. 37

⁶⁴ In the course of conducted DHS surveys, it was assumed that women who were unmarried, were never pregnant, as reported by Pakistan Health Knowledge Hub (database of the Pakistan Ministry of Health) <http://phkh.nhsrcc.pk/sites/default/files/2020-12/Pakistan%20Demographic%20and%20Health%20Survey%20Key%20Indicators%20USAID%202017-18.pdf>, [access: 13.08.2021].

⁶⁵ Report by KIT Royal Tropical Institute 2019, op. cit., s. 10

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woman⁶⁶. They are considered as sins not only by Islam but also as crimes according to the Pakistan legislation⁶⁷. An unmarried pregnant woman or an unmarried woman raising an illegitimate child is exposed to complete exclusion from her community, loss of support from male guardians as well as from other women in the family and, in the worst-case scenario, family revenge “in the name of honour” which might end tragically.

Hudood Regulations – legal acts that regulate the issues of adultery and false accusation of adultery (*qazf*) since 1979 which according to Human Rights Watch have led to the imprisonment of thousands of women for honour-related crimes⁶⁸ were abolished in Pakistan only in 2006 through *Women’s Protection Bill 2006*. Situations in which a woman and a man voluntarily and consciously involve in sexual intercourse without being married are considered adultery.

The authorities of Pakistan never, even during Hudood regulations in force, executed death penalty through stoning for adultery, partly due to rigid evidence requirements.⁶⁹ However, in many rural areas of Pakistan, senior councils that perform the function of courts in the customary legal system of tribal communities continue to rule on death penalties

⁶⁶ Women who remarry after a divorce were often accused of adultery by their ex-husbands. The will to force such a woman to return to her former husband, a will to punish or humiliate a woman or simply deprive her of the possibility to remarry was a motif. In line with the Pakistan's family law (Muslim Family Law), a man who divorced a woman (*talaq*) must register the divorce in a designated public office. A divorce obtains legal force after three months from being registered. Men often delay the registration of divorce on purpose. Women who consider divorce as being already in force frequently remarry and if their former husband fails to register the divorce, they are exposed to the risk of committing adultery – Amnesty International, Pakistan Insufficient Protection Of Women from 2002 <https://www.amnesty.org/download/Documents/116000/asa330062002en.pdf>, [access: 13.08.2021].

⁶⁷ An example of a severe legal interpretation by Hudood is a story of Jehan Mina, a 13-year-old orphan. She was raped by her uncle and his son as a result of which she got pregnant. She was unable to persuade the court that she had been raped. The court sentenced her to 100 whips and three years of severe imprisonment for adultery. The fact that she was pregnant was considered by the court as evidence of committing a nonmarital sexual intercourse. <https://www.thenews.com.pk/print/714237-a-few-most-publicised-rape-cases-in-pakistan>, [access: 13.08.2021].

⁶⁸ Human Rights Watch, <https://www.hrw.org/news/2006/09/06/pakistan-proposed-reforms-hudood-laws-fall-short>, [access: 13.08.2021].

⁶⁹ The report issued by the British Home Office *Country Policy and Information Note. Pakistan: Women fearing gender-based violence*, version 4.0 from 2020 draws reference to the legal opinion elaborated by Khan and Pirach law firm: there are no available statistics concerning accusations/sentences for standard *zina* (adultery), nor was it possible to identify any legal precedent concerning conviction for this charge. <https://www.justice.gov/eoir/page/file/1250691/download>, [access: 13.08.2021].

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towards women who were considered guilty of adultery. Honour crimes continue to be considered a severe problem in Pakistan.

In line with the binding law, it is not possible to submit *First Information Report* before the police by a woman in case of adultery charges. The only possibility in this situation is to direct the case directly to the court along with evidence. Submitting false accusations of adultery and premarital intercourses (*qazf*) is considered a crime. In 2016, provisions concerning rape were tightened up for which the culprit may be sentenced to between 10 and 25 years of imprisonment or death penalty. Punishments for rape on victims with mental or physical disability were also tightened up and changes were introduced targeted at increasing discretion and protection of rape victims – before then they were often defamed and humiliated and sentenced to prisons on account of adultery.

Abortion

One of the ways in which a woman may act in a situation of nonmarital pregnancy is a decision to terminate pregnancy. Since 1997 the Pakistan law allows abortion during the first 120 days of pregnancy if the pregnancy poses a threat to mother's health or life. Abortion is thus basically illegal in Pakistan. In 2012, 2.2 million abortions were executed in Pakistan (estimated data)⁷⁰. Paragraph 338 of the Pakistan Criminal Code states that both the doctor who performed abortion and the woman who subjected herself to this procedure bear criminal responsibility should there be no medical reasons justifying abortion⁷¹. Abortion services are often provided by non-qualified doctors, causing post-abortion complications, long-term health issues and, in some cases, even death of women.

⁷⁰ Report by the Institute Guttmacher from 2012 concerning the state of post-abortion care in Pakistan indicates that in 2012 the abortion ratio amounted to 50 per 1 thousand women in comparison to 27 in 2002. The largest number of abortions is conducted in Balochistan and Sind, while the least abortions are carried out in Khyber Pakhtunkhwa and Punjab provinces https://www.popcouncil.org/uploads/pdfs/2014RH_PostabortionCare_Pakistan.pdf, [access: 13.08.2021].

⁷¹ Data of the World Health Organization from 2015 https://www.who.int/selection_medicines/committees/expert/22/applications/s22.1_mifepristone-misoprostol_ShirkatGah.pdf, [access: 13.08.2021].

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Nonmarital pregnancy is considered as an act that ruins the whole family's reputation. Abortion in such situations, is perceived as the only way to secure the family against humiliation. In the article *Induced abortion: Rural Women's Escape against Unintended Pregnancies* from 2020⁷² Aneela Sultana draws reference to her field studies from the village in *Tehsil* (territorial unit in Pakistan) Hasan Abdal in the district of Attock in Punjab) and quotes a conversation with a midwife (*dai*):

Many mothers come to me as soon as they find out that their unmarried daughter is pregnant. They feel ashamed and unhappy and they fear that they will be stigmatized by the society. They are afraid that others may start asking questions about the socialization pattern for the daughters. (...) Unmarried pregnant women are brought in for an abortion. Their parents have no alternative to keep this a secret in front of the rest of the world. Sexual intercourses outside marriage are in breach of religious rules, thus, pregnancies that result from them are not allowed.

An in-depth discussion with key informants revealed in the same survey that pregnancy from outside marriage is the worst possible situation for a woman. Midwives who conducted such abortions noted that nonmarital intercourses leading to illegitimate pregnancies occur rarely but cannot be entirely neglected despite the fact that the family and the society strive to tightly control female behaviours. Abortion in case of unmarried women, rape and incest is often more expensive than in case of married women. Depending on the financial capacity of a woman, it is carried out by a doctor, a midwife or a nurse. This procedure is dangerous for woman's health, especially in rural areas and complications occur quite often⁷³. The author of research in Hasan Abdal commune quotes a statement expressed by one of the midwives:

⁷² Sultana A., *Induced abortion: Rural Women's Escape against Unintended Pregnancies*, "Pakistan Vision vol. 21 no. 1, issued by Univ. of Punjab 2020, http://pu.edu.pk/images/journal/studies/PDF-FILES/34_v21_1_20.pdf, [access: 13.08.2021].

⁷³ Khan, S. Y. ; Saeed, H. Saeed R; *Investigating Barriers to Achieving Safe Motherhood in Pakistan: A Study in Selected Sites in Rural Sindh and Punjab*, https://www.who.int/woman_child_accountability/ierg/reports/2012_19N_Barriers_to_Safe_Motherhood_Pakistan.pdf, [access 13.08.2021].

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I charge unmarried girls and women who are in an advanced pregnancy more. What I do is of immense help to them. Not everyone is brave enough to perform this work. Parents feel condemned when their unmarried daughter is pregnant. The society condemns nonmarital sex and illegitimate pregnancies, thus, parents of such girls make them perform abortions in order to avoid being stigmatized, humiliated and in trouble with finding a husband for her. Sometimes people call me to their place of residence so I can perform the procedure. In such situations, I put on a burqua so no one can recognize me and so the interested family is not asked about the purpose of my visit. I visit the home late at night to ensure discretion. They pay me extra money up to 30 thousand rupees when I provide them with home service. Women also come to my house for the procedure and I simply fix the problem in no time⁷⁴

Single mothers

If an unmarried woman gives birth to a child and decides to raise it, then in the best-case scenario her relatives and the Pakistan state will be considered the only legal guardians of the child. The father, even if his identity is unknown, has no rights to the child and, sadly, has no alimony obligation towards the child or the mother.⁷⁵

The upbringing of a child by a single mother in Pakistan (abandoned as a result of a divorce, widowed or marrying against the will of her family) is burdened with numerous hardships. At the beginning of 2020, the story of Farheen Ishtiaq, a mother of a 9-years old girl who remarried despite her family's objection and whose husband abandoned her when she was pregnant gained popularity in the Pakistan social media. Farheen gave birth to a child whom after 1.5 years she gave under the care of Multan. Then she managed to convince her

⁷⁴ Sultana A., Induced abortion: Rural Women's Escape against Unintended Pregnancies, Pakistan Vision Vol. 21 No 1, issue. University of Punjab, 2020, http://pu.edu.pk/images/journal/studies/PDF-FILES/34_v21_1_20.pdf, [access: 13.08.2021].

⁷⁵ Ahmad O. S., Compensation Payable by Convicted Rapists to Their Illegitimate Childre: <https://sahsol.lums.edu.pk/law-journal/compensation-payable-convicted-rapists-their-illegitimate-children>, [access: 13.08.2021]. Criminal Code from 1898 provided for an alimony obligation of 400 rupees per month for children born outside a marriage. In 1981 this provision was abolished as non-compliant with the Sharia law. No legal solutions were introduced in this regard in secular legislation which leads to significant interpretation freedom and, in practice, to the inability to be led by religious law as the basis to handle such issues by courts.

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parents to take the granddaughter in (for 4 years) while she earned a living. During this time she move from Karachi to Lahore situated 1.2 thousand km away as she thought it was the safest solution. She lived in women shelter and ultimately she opened a store and ran it disguised as a man in order to make a living and provide for her child; she also worked as an Uber driver, carrying women on a motorbike⁷⁶. A single mother of an illegitimate child without support of the child's father and her own family (which happens quite often) is exposed to even more significant social exclusion and ostracism⁷⁷. Furthermore, significant percentage of rape victims and their families are forced to change their place of residence due to a significant social pressure. Four victims deliberately moved in order to disappear and run away from persecutions⁷⁸. Single mothers who find themselves in a difficult material situation are often forced to use the hardly-accessible in Pakistan social assistance service offered by the state or by NGOs (it will be discussed in the subsequent part of this chapter). Life as a single mother is available only to small number of women – as stated by one of the interviewees from Lahore participating in the Swedish project „Cause of Death” concerning violence against women: *If you are a woman in Pakistan you must be really strong and really rich to live on your own*⁷⁹. It is worth noting at this point in time the continuously raised by foreign and local media despite the passage of time case of illegitimate daughter of the British woman Sita White and the present Prime Minister of Pakistan, Imran Khan Tyrian White, born in 1992 in USA and currently living in London together with the former wife of Khan, Jemima and her two sons.

⁷⁶ Gulzar, F. Pakistan: How a single mother in Lahore dresses like a man to make ends meet, 13 February 2020 “Gulf News” <https://gulfnnews.com/world/asia/pakistan/pakistan-how-a-single-mother-in-lahore-dresses-like-a-man-to-make-ends-meet-1.1581581194466>, Article from March 2020 [access: 21.07.2021].

⁷⁷ Ahmad O. S., *Compensation Payable by (...)*, op. cit.

⁷⁸ In the opinion of experts who consult British tribunal's judgements regarding refusals to grant international protection/asylum to the mother of three illegitimate children in 2016, we read that taking into consideration the overall women's position in the Pakistan society whereby they encounter patriarchal foundations and deeply-rooted stereotypes; they may not be educated and even be illiterate; they may not know any of the official languages; they may rely entirely on their relatives regarding economic support; and they cope with issues of safety and social constraints related to living on their own; internal relocation will for many women be too difficult and demanding: [HTTPS://moj-tribunals-documents.prod.s3.amazonaws.com/decision/doc_file/48391/00067_ukut_iac_2016_sm_mh_pakistan_cg.doc](https://moj-tribunals-documents.prod.s3.amazonaws.com/decision/doc_file/48391/00067_ukut_iac_2016_sm_mh_pakistan_cg.doc), [access: 18.08.2021].

⁷⁹ The project was realized in the years 2010–2012: <http://www.causeofdeathwoman.com/the-womens-shelter>, [access: 13.08.2021].

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Imran Khan never acknowledge this fatherhood and refused to undergo DNA tests even though the court in Los Angeles ruled on a decision in 1997 according to which he was the father of Tyrian⁸⁰. Political opponents of the prime minister every now and then attempt to use the fact of his illegitimate fatherhood against Khan stating that a father of an illegitimate child cannot run for elections⁸¹ and be granted such a prominent position in a country based on Islamic values.

Consequences for a child

Abandonment

The greatest risk for a child born outside the marriage is abandonment that ends in death or, in the best-case scenario, adoption. „Deutsche Welle” reported in the material released on 22 April 2014 that

In Pakistan, abortion is illegal similar to adultery – creating a situation in which hundreds of children born outside marriages are secretly killed each year. Their bodies are literally thrown out with garbage⁸².

In 2019, Edhi Foundation provided burial of 375 bodies of abandoned new-borns found in Karachi. Illegitimate children are usually defined as *harami* which means “prohibited by Islam;” yet another pejorative term to define them is *nadžaiz aulad* „illegal offspring.” Both children and their parents and family are stigmatized by the society and cannot lead a fair life. The author of an article concerning girls’ murders in Pakistan, Aasia Khatoon Khattak from the Islamic University in Islamabad writes that

⁸⁰ More information in this regard may be found in press releases: <https://www.rediff.com/news/aug/14imran.htm>, <https://www.dawn.com/news/1458912>, [accesses: 18.08.2021].

⁸¹ “The News”, Appellate Tribunal allows Imran Khan to contest from NA-35, 28 July 2018, <https://www.thenews.com.pk/print/334804-appellate-tribunal-allows-imran-khan-to-contest-from-na-35>, [access: 13.08.2021].

⁸² Ahmad, Imtiaz, Illegitimate newborns murdered and discarded, 22 April 2014, <https://www.dw.com/en/illegitimate-newborns-murdered-and-discarded/a-17582853>, [access: 13.08.2021].

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*People who want to hide their sin kill new-borns born outside a marriage or as a result of rape*⁸³.

Girls are particularly exposed to child murders in Pakistan, constituting even 99 percent of abandoned children.

Pakistan's local charity organizations, especially the Foundation Abdula Sattara Edhi and Ramzana Chhipy realize a project called 'cradle' (*jhule*). Most of the help centres run by those two foundations have cradles installed in which one may leave an unwanted infant⁸⁴. This service, initiated in Pakistan in 1970 by Abdul Sattar Edhi, initially raised a lot of controversy, however, the idea took off as time passed⁸⁵. The abandoned infants are passed for adoption or to the foundation centres. New-borns found in rubbish dumps outside Karachi are transported by air to the central nursery in Karachi where they received medical assistance and care before their adoption. Documentation of each child is confidential in order to protect the child against later social difficulties. Until 2020, that is for a period of half a century, approx. 23,320 children were left in cradles of the Edhi Foundation⁸⁶.

In Pakistan, the Benazir Bhutto governmental centres for women - victims of violence are in place (Since 2013 there were 26 of them in the whole country) from which women are directed to the so-called Dar Ul Aman (in 2013 there were approx. 200 of them in place) or to women and children centres called Dar Ul Falah. They are designated for various groups of women: widows, divorcees or abandoned women with children. Such places are however scarce in comparison to the demand for them. One may turn to them by means of state institutions and entities registered in the NGO register of institutions in Pakistan⁸⁷. These centres offer protection and access to medical care. However, according to NGOs, these

⁸³ Female Infanticide And Killing Women For Giving Birth To A Baby Girl -A Case Study Of Pakistan- Khatoon Khattak A., 2014 http://www.ocerints.org/Socioint14_e-publication/papers/447.pdf, [access: 13.08.2021].

⁸⁴ Ousat A., Sahoutara N., Carrying Forward Edhi's Legacy, "Dawn", <https://www.dawn.com/news/1551962>, [access: 21.07.2021].

⁸⁵ Raponi L., Zanzucchi M., Half of Two Paisas, the Extraordinary Mission of Abdul Sattar Edhi and Bilquis Edhi, 2007, p. 32.

⁸⁶ Information about the "cradle" project on the website of Edhi Foundation: <https://edhi.org/children-services/#1503394908390-1569fc7b-5b51>, [access: 13.08.2021].

⁸⁷ Dar Ul Falah: https://swd.punjab.gov.pk/mother_and_children_homes, [access: 13.08.2021].

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centres do not offer women any legal assistance or consulting and mainly perform the function of temporary homes for women awaiting adultery court proceedings despite being victims of rape and domestic violence. Governmental centres lack sufficient space, personnel and means. There have been reported cases of women experiencing mistreatments there (by members of personnel who considered a woman who ran away from home as 'evil'), and their freedom greatly restrained. They were also subjected to pressure towards returning to their families.⁸⁸ A significant obstacle for mothers who had sons above the age of 5 was the fact that they could not live in such centres together with them as they were sent to orphanages or local medres (theological Muslim schools).

In the opinion of representatives of the NGO Shirkat Gah operating for the benefit of women rights and the Human Rights Commission in Pakistan, conditions in the centres run privately (by NGOs) were better than those in governmental centres. Some facilities, both state and NGO-owned strived to reunite the women with their families on account of difficult living conditions of women living on their own in the society of Pakistan. The sources informed of two centres conducted by NGOs, one of which located in Lahore – Dastak (established in 1990 by lawyer Hina Jilani) and the other one in Karachi – Panah (run by Amnesty International and the I-Care Foundation). According to „Cause of Death: Woman” – a research project realized by the Swedish Association of Women's Shelters and Young Women's Empowerment Centres in the framework of which situation of violence against women in 10 countries was investigated⁸⁹ 25 women and 45 children stayed in Dastak in the years 2010–2012 in Dastak but there were times when it hosted 70 women and children as no one was rejected. The same source indicated that the majority of women remained in the centre for at least three months, even though some of them stayed there for several years. Shirkat Gah organization reported that the total of 40-45 women and children resided in Panah. The Aurat Foundation report

⁸⁸ Reports issued by the USA government concerning human rights in Pakistan in 2014: https://www.justice.gov/sites/default/files/pages/attachments/2015/06/26/dos-hrr_2014_pakistan.pdf as well as in 2020: <https://www.justice.gov/eoir/page/file/1386041/download>, [accesses: 13.08.2021].

⁸⁹ The project covered, apart from Pakistan also Russia, Sweden, United States of America, South Africa, Egypt, Mexico, Brazil, Kongo and Spain: www.causeofdeathwoman.com/, [access: 18.08.2021].

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elaborated in 2013, quoted by the authors of the British Court of Appeal⁹⁰; judgment states that the stay of women in the assistance centre is still considered a tabu and perceived as the last resource for those who have been rejected by the society⁹¹

Problems with registration of births and obtaining key documents

The key document to verify identity of Pakistan citizens is *Computerized National Identity Card*, CNIC. Its absence causes difficulties in accessing significant governmental services and handling civil affairs. The requirement of holding an identity card becomes crucial in order to gain access to educational institutions, employment both in the private and public sector and in all practical matters of everyday life such as travelling by plane or owning a mobile phone. Access to healthcare in the public care sector (in the private sector it is not obligatory) is also determined by having an identity card. The identity card is a must-have in order to participate in government assistance programmes. Moreover, *Birth Registration Certificate* is a crucial document, issued to children by the Pakistan's Union Council offices (equivalents of Civil Registry Offices). Despite the fact that these documents are of significance a large part of Pakistan citizens does not have them issued for themselves⁹².

In 2008, Pakistan concluded an International Covenant on Civil and Political Rights ratified on 23 June 2010. Currently, it is thus legally enforced to ensure protection of human

⁹⁰ Judgment of the British Court of Appeal regarding SM and MH (single women – ostracism) Pakistan CG [2016] UKUT 00067 (IAC) https://moj-tribunals-documents.prod.s3.amazonaws.com/decision/doc_file/48391/00067_ukut_iac_2016_sm_mh_pakistan_cg.doc, [access: 18.08.2021].

⁹¹ Zaman S. and Zia M., Women's Access to Justice in Pakistan, 2013, https://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/AuratFoundationAndWarAgaInstRape_Pakistan.pdf, [access: 13.08.2021].

⁹² In light with the law, submission of a birth registration certificate is required in Pakistan when admitting a child to school, registering on the list of voters and registering a marriage. In the course of a DHS survey for the years 2017–2018 it was agreed that 425 of children below the age of 5 were registered but only 36% had a birth certificate. Births are registered in 44% at the age of 2–4 since a birth certificate is required for admission to a kindergarten. 60% of children from the cities and 34% of children from rural areas have birth certificates. The largest percentage is reported in Islamabad: 82%, while the lowest is in former Federal Administrative Tribal Territories (2%) and Khyber Pakhtunkhwa (19%), while family material status significantly impacts the percentage of registrations. The indicator of birth registrations in Pakistan has been slowly increasing <https://dhsprogram.com/pubs/pdf/FR354/FR354.pdf>, [access: 13.08.2021].

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rights regardless of whether a child is considered legitimate or illegitimate. It is quite troublesome to organize documents for an illegitimate child as authorities require an indication of the names of both parents while submitting an application. An illegitimate child will meet obstacles when applying for a personal identity card and passport. During the term of office of President Asif Ali Zardari, a recommendation was passed on to NADRA (*National Database and Registration Authority*) responsible for registering citizens to issue documents for abandoned children, whereas the field “father's name” would contain the first name and surname of the President thanks to which it was possible to regulate the legal status of many children, however, this only concerned children abandoned and placed in assistance centres registered by the state. The fact that the father's name must be indicated opened a possibility of abuses such as registering children in families randomly selected by the NADRA system (without notifying the family, despite the fact that it might lead to serious consequences such as inheritance issues) which was reported by the Pakistan press in 2018⁹³. Furthermore, in the course of correspondence with the *British High Commission* – and equivalent of an embassy from April 2015, lawyers from the legal firm Khan and Piracha drew attention to this issue. Inability to note within the birth certificate that father's name is unknown generates the necessity of indicating false or made-up data⁹⁴.

⁹³ Nadra's policy on registration of children with unknown parentage criticized, Kashif Abbasi, article in the journal „Dawn,” 7 November 2018, <https://www.dawn.com/news/1444032>. [access: 13.08.2021].

⁹⁴ The report issued by the British Home Office *Country Policy and Information Note. Pakistan: Women fearing gender-based violence*, version 4.0, February 2020, annex B, p. 56–58.

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5. The situation of single mothers with children (widows, divorced) - traditional and institutional support mechanisms

Context

The vast majority of Pakistan citizens live in multi-generation families, often extended and mainly patrilocal which means that a woman, after getting married, moves to live with the whole family of the husband⁹⁵. Social position of women is defined by their male guardians. A male guardian (Arab *mahram*) is any man whom, in line with the principles of Islam, a woman is not allowed to marry, thus, father, husband, brother, adult son. In Pakistan, traditional perception of femineity as 'private' and 'home' domain and masculinity as 'public' domain plays a crucial role on a daily basis. The division of domains into masculine and feminine may be experienced in various degrees depending on the region of Pakistan. It is not always realized in the same manner. In some regions of the country, i.e. in the Khyber Pakhtunkhwa province women are almost non-existent in the public domain; however, in large cities and modern districts a lonely women in a public office, at a bank, driving a car or waling will surprise no-one. Women in urban communication or in public offices are usually assigned separate spots; houses and flats⁹⁶ are built in such a way so as to possess at least one room with separate doors that might be used for unrelated men to enter the house without seeing the rest of the house and the women who live in it. There are no legal obstacles for women to travel on their own, however, one may come across an opinion that it is inappropriate for a woman to leave the house without any male guardian and sometimes, in addition, also accompanied by another woman or for her to carry out activities on her own which are traditionally 'reserved'

⁹⁵ Residing of a man in the family home of his wife – matrilocal residence (*ghardamad*) – is considered a behavior which is not compliant with the prevailing pattern of masculinity and often becomes a topic of jokes and mockery, though it is sometimes socially acceptable if being a temporary solution.

⁹⁶ In the cities one may often encounter the so-called family parks which cannot be entered by single men and in more conservative regions, i.e. in the Khyber Pakhtunkhwa province – such parts may only be visited by women.

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for men, i.e. handling office matters⁹⁷. Asian Development Bank⁹⁸ released an analysis of the so-called gender assessment of data gathered by the Aurat Foundation in the years 2011–2012 according to which more than 70% of women could not obtain education, work handle formalities on their own at a bank or participate in a meeting of an NGO. Freedom of women to leave their house depended on the purpose of travel. Those who departed to visit their neighbours had the broadest freedom (80.1%), though 66.2% of them noted a need to get permission to do that. In more than 85% of cases women could leave the house in order to sell or buy things, visit a hospital or a doctor and participate in a wedding ceremony. However, only half of them could do this on their own, while the remaining half could only be accompanied by another person. More than 66 percent of women who could leave their home due to these reasons had to obtain such permission as well. One may thus note that even upon the assumption that for the period of ten years this number could change, a large number of Pakistan's women needs to be accompanied by another person and/or requires permission of household members to leave the house.

Cultural determinants are of special importance for those women who due to various reasons needed to commute without male guardian i.e. a widow or a divorcee. In Pakistan, single women who run a household and raise children are exposed to many difficulties related to the lack of male guardian. A separate category of women *de facto* raising their children on their own for the majority of a year are Pakistani married women whose husbands work abroad or in large cities of Pakistan (located even 2 thousand kilometres away from the family place of residence). They remain with the husband family or live alone with their children and they share, at least partially, experiences of women “deprived of male care.”

⁹⁷ A visit to a doctor without male guardian may be considered as inappropriate and in some regions a woman should not be driving a car (author's observation). Language barrier is an additional barrier, i.e. in the countryside and among uneducated women. Many women do not speak the state official Urdu language in which documents are elaborated which hinders and sometimes prevents them from functioning in the Urdu environment (author's observations: Khyber Pakhtunkhwa, Sindh, Chitral, Punjab).

⁹⁸ Pakistan. Country Gender Assessment, volume 1 of 2: Overall Gender Analysis, Asian Development Bank, 2015, <https://www.adb.org/sites/default/files/institutional-document/218821/pak-gender-assessment-vol1.pdf> [access: 1.10.2021].

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Difficulties of single women are vividly illustrated by the example from Pakistan, described in the report elaborated by the British organization Widows for Peace Through Democracy *Widows speak out. Abuse and discrimination, Resilience and agency*. In August of 2018, the husband of a woman residing in Karachi was abducted from his home (for an alleged crime) in presence of his wife and small children. Despite the fact that the woman attempted to report this crime a number of times, the police refused to handle her requests only because she would appear at the police station unaccompanied by any male guardian. The policemen also warned her against the 'consequences' of constant interest in the case on her side. When she persisted, they started to apply threats towards her and draw reference to the fact that she was not accompanied by any male guardian and that she should maintain caution even more in such case. Two months after the abduction of the husband she turned to a legal firm for help. The lawyer who works *pro bono* helped her submit a notification to the court in Sindh province. The court ruled on an order for the police to register the notification on the commitment of crime and the local authorities helped the woman find her husband. Persons who abducted him did not provide her with any information; the situation improved once the case was directed to the court. After a year, the man was released. The lawyer stressed out that a single, uneducated housewife had enormous difficulties in contacting state institutions and pursuing her rights. She experienced discrimination during her visits at the police station. During her husband's absence, she was forced to leave the house more often, thus, she started to wear hijab and cover her face (Arabic *niqab*) so no one could recognize and hassle her. She also became financially independent from her brother-in-law. She had to arrive accompanied by him to the court hearings. She also encountered difficulties while enrolling her children to subsequent school classes as this activity also involves the presence of 'male guardians.' In Pakistan, men often wish to help women but at the same time subordinate them and deprive them of freedom of acting⁹⁹.

⁹⁹ Widows speak out. Abuse and Discrimination Resilience and Agency A dossier of evidence for the attention of CEDAW 2020; s. 13, <https://www.widowsforpeace.org/wp-content/uploads/2020/11/DOSSIER%20-%20Discrimination%20against%20widows%202020.pdf>, [access: 30/09/2021].

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Widowhood

According to data gathered by the Pakistan Statistical Office in 2019, widows constituted approx. 9% of all women above the age of 15 (for comparison, widowers constituted 3% of the male population in Pakistan)¹⁰⁰. In 2015, British Loomba Foundation estimated the number of widows in Pakistan at the level of 4 million¹⁰¹. Many of them were women who became widows as a result of conflicts, natural disasters and terrorism/extremism.

Assistance to widows is perceived by Islam as a religious obligation and marrying a widow is a noble act (a good example of it is Prophet Muhammad whose first wife, Khadija, was a widow who was 15 years older than Muhammad). The need to look after widows tends to be illustrated as one of the reasons why Islam introduced the possibility of polygamy. Despite such noble religious patterns of behaviour towards widows, widowhood for women in Pakistan involves a feeling of threat and instability. Dr Masuma Hasan¹⁰², when describing the situation of widows in Pakistan in 2011 used a local metaphor: when a woman becomes a widow and loses her male guardian she feels as if someone has taken the protective chādar off her head¹⁰³ – she becomes dependant on her environment, defenceless and exposed to dangers. The ability of widows to survive on their own and search for the sources of living depends on their age (many of them are older women), the level of social and economic development of the region in which they reside as well as the social group from which they originate. There are however no specific data regarding their situation (as well as women who raise children on their own, including divorcees, women in separation, abandoned women and women who never remarried).

¹⁰⁰ Compendium on Gender Statistics on Pakistan 2019, Pakistan Bureau of Statistics, <https://www.pbs.gov.pk/sites/default/files//COMPENDIUM%20GENDER%202019%2018-06-2019%20%20printing.pdf>, [access: 30.09.2021].

¹⁰¹ The World Widows Report, Loomba Foundation 2015, <https://www.theloombafoundation.org/sites/default/files/2019-06/WWR.pdf>, [access: 30.09.2021].

¹⁰² Hasan M., Conditions of Widows in Pakistan w “Legislative watch” wyd. Aurat Foundation nr 37, 2011, s. 6–7 <https://www.af.org.pk/Newsletters/nl%202011/NLE%20English%20-37.pdf>, [access: 1.10.2021].

¹⁰³ Chaadar is a loose fabric that covers the whole body and is designated for instance to protect a woman against male sight. It is often worn by women in Pakistan. The comparison refers to the protective function of chādar.

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A childless widow according to the Sharia law inherits one-fourth of her husband's property and if the marriage resulting in childbirth – one-eighth of this property. However, in practice, the property in Pakistan is maintained out of reach for women and they are refused the right of inheritance both by their natural family (biological) as well as by their in-laws after the death of her husband or they obtain significantly less than they are entitled to according to the law¹⁰⁴. In rare cases when a woman inherits property, it is often acquired and *de facto* managed by male members of her family. Complicated family disputes and costs as well as long-lasting court proceedings discourage women from undertaking legal actions against discrimination in the scope of inheritance. In 2020, Khyber Pakhtunkhwa province adopted an act on the protection of women right to inheritance and appointed an independent Ombudsman for Women Rights whose task is to consider complaints, initiate proceedings and direct cases to the court in order to exercise the rights to inheritance¹⁰⁵. There are also several NGOs in place which provide assistance to women in such circumstances.

A woman after the death of her husband may remain in his family, return to her biological home, live alone (which always raises suspicions which has been already noted in the chapter devoted to illegitimate children – hosts are usually unwilling to rent flats/houses to single women, even with children) or remarry after the period of mourning (Arabic *iddat*, in case of widows it lasts 4 months and 10 days). If she decides to stay with the husband's family, she may retain inheritance after the husband and the family performs the role of guardians, deciding i.e. whether she will be able to work outside the house or not.

¹⁰⁴ Asad A. Z., Butt B. Refutation, Relinquishment and Inheritance: Exploring Women's Inheritance Rights in Pakistan, *Pakistan Journal of Social Sciences (PJSS)* vol. 36, no. 2 (2016), s. 1001–1009, <https://www.bzu.edu.pk/PJSS/Vol36No22016/PJSS-Vol36-No2-34.pdf>, [access: 1.10.2021] – authors draw reference to the fact that a woman who does not ask the family for her part of the property in exchange obtains love and care of the father and brothers as well as presents, such as Christmas presents and if she is married – presents for child births and at the occasion of death of the by-laws etc. It is a compensation for the family being able to maintain the entire property in the family. There were cases of it being justified by the fact that a woman is not financially responsible for the family in light of the tradition. A woman who wishes to execute her rights to inheritance becomes deprived of them or even boycotted by the family partly or entirely – p. 1006.

¹⁰⁵ Country Reports on Human Rights Practices for 2020, United States Department of State, Bureau of Democracy, Human Rights and Labor, s. 45–46, <https://www.justice.gov/eoir/page/file/1386041/download>, [access: 30.09.2021].

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A widow who remarries, loses the right to inheritance after the first husband. If she has already collected her inheritance, the husband's family or her natural family will encourage her to return it. It sometimes happens that a widow returns to her family home and passes her inheritance onto it in exchange for care. A widow may also indefinitely use the resources she brought as the dowry. As mentioned above, women often fail to pursue their inheritance rights as they feel it would bring dishonour to the family¹⁰⁶. An opinion that widows are left alone and if it turns out impossible for them to find employment they are forced to live out of gifts or even beg. During a visit to the Gilgit-Baltistan province (Ganesh village) in August of 2021 I learnt from one of its inhabitants an opinion that people do not beg in the neighbourhood as local communities know one another very well and help out their neighbours and orphans. For comparison, in 2010 in Karachi as many as half of the begging women were widows (while the majority of the begging men were bachelors)¹⁰⁷.

Issues faced by widows in Pakistan are linked to poverty, mainly in the countryside. Less wealthy women who do not own land or any other property have significant problems maintaining themselves and even – if it is expected by their natural family – maintaining their relatives. They may find it difficult to access loans, open a bank account or gain skills necessary to maintain their family. Those who have assets tend to be used by male relatives who dominate over them culturally, especially in the countryside. They often become victims of social and cultural prejudices and financial illiteracy. Many women cannot use the internet as they are deprived of access to it by men or due to its lack in many villages of Pakistan (the internet works only when there is power in many cases⁰). Also command of English may be a substantial obstacle. In the opinion of the authors of the elaboration concerning feminism in Pakistan from December of 2020¹⁰⁸, the difference between access to the internet of men versus women is dramatic. In 2016, only 36 percent of women owned mobile phones in

¹⁰⁶ Chaudhary A, Holden L., Daughters' inheritance, legal pluralism, and governance in Pakistan and Asad A. Z., Butt B. Refutation, Relinquishment and Inheritance: Exploring Women's Inheritance Rights in Pakistan, <https://www.bzu.edu.pk/PJSS/Vol36No22016/PJSS-Vol36-No2-34.pdf>, [access: 30.09.2021].

¹⁰⁷ Survey done on Karachi beggars, „Dawn,” 23 December 2010, <https://www.dawn.com/news/593116/survey-done-on-karachi-beggars>, [access: 30.09.2021].

¹⁰⁸ Chaudhry N. U, Saigol, R. Contradictions and Ambiguities of Feminism in Pakistan. Exploring the Fourth Wave, December 2020, p. 28.

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comparison to 80 percent of Pakistan men¹⁰⁹. Access to safe and cheap transport means thanks to which widows and other single women may commute to and from work as well as access to childcare during mother's work may be an issue as well¹¹⁰.

Support systems: state structures and charity

In Pakistan, the system of state care designated for widows after public sector employees is in place. After death of a state employee, the widow and children of the deceased obtain pension – the widow indefinitely or until remarrying, the sons for 15 years and daughters until they get married¹¹¹. Widows after lower-paid employees obtain a one-off relief, the so-called *Benevolent Fund*. Pensions are also granted to widows after military men. In 1977, the so-called *Employees Old Benefits Institution* (EOBI) was launched, supervised by the Ministry of Pakistan Diaspora and Human Resources. As part of it, employees from the private sector may also be covered by insurance, however, it is criticized for its low efficiency¹¹². In the private sector, there is no support system for widows after deceased employees. It is however worth underlining that in Pakistan, the tradition of charity is deeply rooted. According to

¹⁰⁹ Social Institutions and Gender Index, wyd. OECD, 2019, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/PK.pdf>, [access: 30.09.2021].

¹¹⁰ In Pakistan, with the exception of large cities, there are practically no nurseries, kindergartens or daycare centers for children and ones that are in place are out of financial reach for single mothers, i.e. In Islamabad, monthly fee for daycare classes in August of 2021 amounted to approx. PLN 450. The cost of nanny engagement is comparable. Children who attend schools start their lessons around 8 am and end them around 1pm. An unmarried mother who wants to work 8 hours a day must look for work close to their children's locations – i.e. near friends, neighbours or family – author's note.

¹¹¹ Principles of allocation of pensions may be found on the website of the Ministry of Finance: <https://www.finance.gkp.pk/attachments/00dfacc0b4eb11e9aa5475d2f4b3d638/download#:~:text=I%20the%20civil%20servant%20dies,get%20pension%20for%2010%20years>, [access: 1.10.2021].

¹¹² An employee and his employer must make contributions towards the fund for a minimum of 15 years in order to obtain the right to a retirement pension (60 years for men, 55 for women). If they carry out a minimum contribution (130 rupees for an employee, 650 rupees for the employer) they are entitled to obtaining a provision at the level of 8.5 thousand rupees per month (equivalent of approx. PLN 190). Find out more on the above at <http://www.eobi.gov.pk/introduction/Contribution.html>, [access: 1.10.2021] and in the article available at HelpAge: Qureshi W., „Four pension reforms that could improve older people's life in Pakistan,” 18 February 2021, <https://www.helpage.org/blogs/waqas-qureshi-19658/four-pension-reforms-that-could-improve-older-peoples-life-in-pakistan-1078/>, [access: 1.10.2021].

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research conducted in 2018 by the Pakistan Philanthropy Centre, ¹¹³Pakistanis spend approx. 240 billion Pakistan rupees (more than 2 billion USD), thus, more than 1 percent of their annual GDP on charity. The same report indicates that approx. 98 percent of country inhabitants apply charity – in cash, in the form of in-kind contributions passed on regularly in small amounts or volunteering towards the needy. This also concerns the Pakistani diaspora abroad. Traditional support for widows and orphans is considered a good deed and an act of piety; religion and comparison are according to the report authors the key engines of charity in Pakistan¹¹⁴. Many charity organizations have not developed the necessary infrastructure to collect small donations yet; distrust towards many of them is quite common – it is considered that they do not pass on the donations to the needy but appropriate all or some of them for their own needs or even for entertainments.

Since 1980, Pakistan has had an official Zakat system in place, thus, a compulsory tax towards Muslim communes placed on the Muslims at the level of 2.5 percent with respect to specific categories of goods. Income on account of Zakat is designated for assistance to the needy; widows, orphans and victims of natural disasters¹¹⁵. Funds in the framework of Zakat are distributed and released by individual provinces (so-called zakat committees). The committees operate on the local level and release the so-called *guzara* (maintenance) which may be used also by widows.

In 1991, State Assistance Fund was launched – Pakistan Baitul Mal, responsible for assistance to widows, orphans, sick and other persons in need without funds to make a living and for the realization of projects in the spheres of education, healthcare, self-employment as well as assistance to women. Since 2003, the government has been releasing bonds (so-called

¹¹³Ali M. Amjad S. M., Philanthropy in Pakistan. Why civil society organizations get bypassed in favour of donations to individuals, 19 March 2018, Stanford Social Innovation Review, https://ssir.org/articles/entry/philanthropy_in_pakistan, [access: 1.10.2021].

¹¹⁴ Indigenous Philanthropy in Sindh, Pakistan Centre of Philanthropy 2014, s. 14. <http://pcp.org.pk/uploads/Sindh.pdf>, [access: 1.10.2021].

¹¹⁵ Human Rights Council Working Group on the Universal Periodic Review Twenty-eighth session 6–17 November 2017, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Pakistan, p. 14, <https://www.ohchr.org/en/hrbodies/upr/pages/pkindex.aspx>, [access: 1.10.2021].

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Behbood certificates with a value between 5 thousand and 1 million PKR¹¹⁶) as well as for pensioners and the disabled. Charity organizations held by the country, such as among others Bait Ul Mal do not, however, appreciate large social trust and their activity is criticized for lack of transparency, slowness and inefficiency in the distribution of funds as well as susceptibility to corruption¹¹⁷.

In July 2008, state assistance programme Benazir Income Support Programme (BISP) was launched for the provision of financial support to the poor. It assisted 7 million persons already. The programme covers school scholarships for children (*Wasila-e-Talim*), professional trainings (*Wasila-e-Rozgar*), loans for women wishing to establish economic activity (*Wasila-e-Haq*) and health insurance (*Wasila-e-Sehat*). The programme is financially supported by the American International Development Agency, World Bank, Asian Development Bank and British International Development Department.

First Women Ban operates in Pakistan with the goal of encouraging women to save up and invest. Moreover, Khushhali bank is in place, offering micro-loans. Women are frequent clients of institutions that provide micro-loans¹¹⁸. Thanks to the developing informal sector of services (i.e. cooking at order, sewing, sale of clothes, beauty services and in case of educated women – individual or group tutoring) as well as due to the existence of many other micro-lending institutions¹¹⁹, especially in larger cities, women are able to carry out autonomous economic activity and maintain households on their own. In 2018, 12.5 percent of such households in Pakistan were maintained by women¹²⁰.

¹¹⁶ More on this may be found on the Pakistani governmental savings fund website – institution of Central Directorate of National Savings <http://savings.gov.pk/project/behbood-savings-certificates/>, [access: 1.10.2021].

¹¹⁷ Indigenous Philanthropy in Sindh, op. cit p. 45–46.

¹¹⁸ The website of Khushhali bank contains stories of widows who, thanks to the loans granted by this bank, could set up their own beauty parlors, small agricultural farms and schools <https://www.khushhalibank.com.pk/empowering-women-entrepreneurs/>, [access: 1.10.2021]. The bank is also offering bank accounts for state employees and widows or unmarried relatives of deceased employees.

¹¹⁹ Many institutions offer women micro-loans. One of them is Finca Bank with its services - Niswan Karza and Sunheri Karza which consist in granting loans with collateral of golden jewelry, frequently received by women as a dowry present <https://finca.pk/products/sunheri-karza/>, [access: 1.10.2021].

¹²⁰ Data from; World Bank; <https://data.worldbank.org/indicator/SP.HOU.FEMA.ZS?locations=PK>, [access: 1.10.2021].

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Divorce

According to Islam, marriage is a contract between a man and a woman who may be terminated after fulfilling certain conditions. The initiator of a divorce may be a man (so-called *talaq*) or a woman (a divorce initiated by a woman is called *khula*). Divorce upon mutual consent (*talaq-e-mubarat*) is also possible, namely, divorce in case of which the husband grants his wife the right to divorce by way of a prenuptial agreement (*talaq-e-tawfiz*) as well as other, more detailed types of divorce.

A husband may apply for a divorce at any point in time and due to any reason – in accordance with the Muslim family law from 1961 (paragraph 7) he ought to send a written notification to the civil registry office – the so-called Union Council and a copy of same to his wife. Obtaining a divorce by a woman is much more complex on account of formalities. In accordance with the Act on Dissolution of Marriage Act from 1939 women in Pakistan have nine specific grounds to demand a divorce. A wife must present evidence and arguments before the court as to why she wishes to obtain a divorce. Directing a case to the court, however, involves substantial costs and may last many years before the judgment is ruled. What is more, such cases are disclosed to the public, thus, they involve a risk of the woman and her family being dishonoured for their life. In line with the Act on family courts from 1964, a woman may apply for *khula* due to any reason but in this case, she must return her dowry - *haq-mehr*¹²¹- to the husband on the basis of paragraph 10 (4). Nevertheless, in some cases it is considered that part of the dowry granted upon conclusion of such marriage must be returned and part of it - („postponed”) may be retained by the woman. This decision is at the court's sole discretion and it usually orders return of the whole dowry amount. Clause 18 of the prenuptial agreement (Urdu *nikah nama*) allows the husband to pass the right to divorce onto the wife (*talaq-e-mubarat*), however, in practice, families usually cross it out prior to handing the agreement over to the bride under the pretext of discussing divorce during a wedding is a bad omen. Thus, if the woman does not secure herself in this regard, in case of

¹²¹ Dowry – in Pakistan *haq-mehr* – it usually consists of two parts: first of them is paid during marriage and it is called ‘fast mahr’ (Arabic *muajjal*), while the second one involves funds paid after marriage dissolution, i.e. After the death of the husband or after the divorce out of his initiative or following other legal events specified in the agreement that are referred to as ‘prolonged mahr’ (Arabic *muwadđzal*)

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divorce out of her initiative is practically impossible to execute it without legal assistance. In case of *talaq* type of divorce, the woman is entitled to maintain the whole dowry as well as alimony, solely for the period *iddat* (three menstruation cycles, for pregnant women until due date). Family law ensures the protection of women in case of divorce and specifies the requirements concerning alimony as well as containing instructions regarding care over minor children and their maintenance. Many women are unaware of their rights or unable to obtain legal advice in order to exercise such rights¹²².

After the expiry of *iddat* the husband is obliged to maintain his ex-wife. The Pakistan family law, unlike the Muslim law, does not encompass the wife's right to alimony paid by her ex-husband, so-called *mata'a* or *mata'tu'talaq* indefinitely or until conclusion by her of the subsequent marriage – on a one-off basis or in instalments¹²³. Moreover, the Pakistan law does not recognize marriage property, which means that in case of a divorce the woman cannot strive to obtain any share of her husband's assets or obtain access to their common land or continue to work on it¹²⁴.

Care over children after parents' divorce

In accordance with the Act on Muslim Family Law, the father is responsible for maintaining children during the marriage. If a marriage collapses, care over children is granted to the mother until they reach the age of seven or – in case of girls – until sexual maturity is reached. A child above the age of seven decides whether they will live with their mother or father. Even if the mother is granted care over a child, the father remains responsible for his or her maintenance unless the mother is financially independent¹²⁵. Robina Shaheen, an activist fighting for women rights stated that upon agreeing on the amount of alimony, ex-wife

¹²² Pakistan – Researched and compiled by the Refugee Documentation Centre of Ireland, 23 April 2019, <https://www.justice.gov/eoir/page/file/1292741/download>, [access: 1.10.2021].

¹²³ Viqar F., Financial Protection Upon Divorce, Social constraints limit women's work outside the house and influence the kind of work they can engage, "Express Tribune," 20 February 2020, <https://tribune.com.pk/story/2160220/6-financial-protection-upon-divorce>, [access: 1.10.2021].

¹²⁴ Ahmad N. 2010 Land rights for Pakistani Muslim women: law and policy, Policy Brief Series #23, <https://www.eldis.org/document/A70206>, [access: 1.10.2021].

¹²⁵ Social Institutions and Gender Index, op. cit.

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or mother of children must justify the connection between the income of the children's father and the level of alimony and it is highly unlikely that she has access to such data. In case of lack of such evidence, courts usually establish the level of alimony at their sole discretion which in the majority of cases does not even cover the costs of children education¹²⁶. Acts concerning Zoroastrian minorities – Parsi Marriage and Divorce Act from 1936 – Hindu Marriage Act from 2017 do not contain any provisions concerning rights and obligations of parents who are undergoing a divorce and after it has been concluded towards children, even though in light of the Christian and Zoroastrian laws, the court may issue a temporary order of care over children and their education.

The mother may lose her right to care over a child in case of the conclusion of the second marriage subject to certain exceptions. Taking into consideration the fact that the father is a natural guardian for the child, it should return to him, unless certain important circumstances require otherwise – i.e. when the father's house cannot be considered as a place of decent standard of living for this child. All in all, divorcees in Pakistan are unable to reach the level of income equal to men's income in the majority of cases. Furthermore, divorced women are under social pressure to remarry. A wedding becomes a manner of protection against challenges related to being a single or divorced woman in Pakistan.

Situation of divorced women and their children: financial crisis, stigmatization, alienation

Drawing reference to the metaphor of a chador ripped off a woman once she becomes a widow one may state that a divorced woman is left alone even more than a widow. The key issue which appears immediately after termination of a marriage is a financial crisis as women, in particular, do not receive any support from their family in this period of life. Divorced women are frequently left without any means of support as their families exclude them¹²⁷. Seven out of eleven divorced women participating in the survey conducted by ILMA University

¹²⁶ Chaudhary N. U. The fight for custody, "The News," 3 November 2019, <https://www.thenews.com.pk/tns/detail/568802-fight-custody>, [access: 1.10.2021].

¹²⁷ Pakistan – Researched and compiled (...), op. cit.

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in Karachi¹²⁸ stated that they received no financial or emotional support whatsoever from their families. They were treated by them as a burden. Some families suggested that they should fix their collapsing marriage. The majority of survey participants were entirely dependent financially on their husbands and after the divorce, the biggest challenge for them was to become independent and to ensure survival for themselves and for their children. Here are some sample stories the recipients told during the survey¹²⁹:

...I did not receive any emotional support at all. Thankfully, I could stay in my family home although I was not enthusiastically accepted. I encountered financial problems while bringing up my child.

... I had to face humiliations on the side of my family. I had financial problems since I was not very well educated.

... My family did not accept me after my return. They created obstacles and tried really hard to make me stay in my marriage but I kept insisting on khula and finally, I got divorced. I also had financial problems because I did not earn any money.

The authors of the report regarding the situation of divorced women residing in the state aid centres for women and children Dar Ul Aman and Kashana w Rawalpindi¹³⁰ pay attention to the fact that the majority of families of their interlocutors opposed to their divorces even when the families were conscious of the difficulties faced by their daughter and sister in her marriage. The authors quote an example of a woman who returned with three of her children to her parents after the divorce and the behaviour of her parents surprised her. Instead of the anticipated support, the parents constantly complained that they had no financial means to provide food and a roof over the heads of her and the grandchildren. They discouraged her

¹²⁸ Akhlaq A., Khan G., Sikander P. Factors Pertaining To Rising Divorce Rate and Its Consequences on The Family Culture Of Pakistan: A Qualitative Study IBT Journal of Business Studies, Volume 15, Issue 2, December 2019, <http://jms.ilmauniversity.edu.pk/index.php/IBTJBS/article/view/323/269#>, [access: 1.10.2021].

¹²⁹ The research was attended by 17 divorced respondents, both male and female, from Lahore, Karachi, Islamabad and Peshawar.

¹³⁰ Abid S., Malik A. A., Saba, T., Abandoned and Destitute: A Case Study of Divorced Women Residing in a Welfare Complex in Pakistan, Pakistan Social Sciences Review April-June 2021, Vol. 5, No. 2 p. 352-363, <https://pssr.org.pk/issues/v5/2/abandoned-and-destitute-a-case-study-of-divorced-women-residing-in-a-welfare-complex-in-pakistan.pdf>, [access: 1.10.2021].

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from participating in weddings and family celebrations. The woman's brother told his children not to play with her children. Friends criticized her decision. In the end, they asked her to move out as they felt she was bringing dishonour to the family.

The majority of women from the Dar Ul Aman centre who spoke to us were not educated and had no source of maintenance. One of the women was left alone with small children, without any financial support from the family. She started working as a housekeeper, however, her income was insufficient to cover all costs. After divorcing her financial situation significantly deteriorated and the situation of her husband – improved as he was released from the obligation of maintaining his wife and children. Another woman also could not hope for her parents' help and after the divorce, she was left alone with her four daughters. She managed to find work as a housekeeper and she rented a house. The staff shared their food and clothes with her sometimes but her salary was not sufficient to cover the bills, rental fee, food and education for her children. That is why she found help at the Dar-ul-Aman centre¹³¹.

The country has no support programmes for the divorcees in place and all attempts of assisting them often meet with social objections and are deemed as supporting the 'sin'¹³². The banks often refuse to open bank accounts requested by divorced women, justifying the refusal with lack of financial stability and adequate income level and frequently demanding verification by a male family member. Women who earn are subjected to thorough verifications as to their potential engagement in illegal activity.

Yet another consequence of a divorce for a woman and her family is stigmatization, loss of social position and respect of her environment. Participants of the Swedish project „Cause of Death Woman indicated fear of shame/in case of a divorce¹³³. Destigmatization of divorce was also one of the slogans during women's marches (so-called *Aurat March*)¹³⁴ in Pakistan. Fear of exclusion tends to stand behind the unwillingness of women in Pakistan to seek help in situations of domestic violence and it prevents them from deciding to leave their violent

¹³¹ Ibidem, p. 359

¹³² Yousafzai R. A, Divorce, still a social stigma! 4 May 2021, <https://tribune.com.pk/article/97374/divorce-still-a-social-stigma>, [access: 1.10.2021].

¹³³ Project „The Cause of Death”: <http://www.causeofdeathwoman.com/akhtar>, [access: 1.10.2021].

¹³⁴ Before you get all worked up about Aurat March, read what it stands for, “Dawn,” 16 March 2020, <https://images.dawn.com/news/1184767>, [access: 1 October 2021].

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husbands. The parents do not encourage their daughters to return to their family home in fear of their daughter being stigmatized as a divorcee which tends to signify a complete social exclusion of the entire family. As a consequence, many women do not pursue divorce despite being entitled to it¹³⁵. In line with the official data ¹³⁶from 2012-2013, only 1.7 percent of married women at the age of 15–49 in Pakistan were divorced, even though since recently the number of divorces has been increasing and according to some statistics, this growth has been fast. This may be viewed on the example of Karachi, where during the coronavirus pandemic the number of divorce applications, initiated by women in the courts, increased by as many as 700 percent¹³⁷.

Below is a story told by one of the female residents of Dar Ul Aman centre regarding experienced rejection:

Before the divorce, I was very precious to my parents, relatives, friends. They discussed all their personal matters with me. After the divorce, they started ignoring me, stopped talking to me and showing me respect. I lived with my parents but it was extremely difficult for me. They were of the opinion that a woman should live with her husband once married as an obedient wife and good mother.

The parents of our interlocutor objected to her divorce and never accepted it. Other friends also criticized her. One day, when she visited her friend, she talked to her for 15 minutes only and then she asked her not to return ever again, which really hurt her feelings. The husband of the friend considered his wife's contacts with a divorcee to have a bad influence on his wife. In Pakistan, new clothes are worn during festivals according to tradition. The parents didn't get her or her children any outfits. They wanted her to remarry but no sane person would marry a divorcee with three children. Having been badly treated she decided to move into Dar-ul-Aman¹³⁸.

¹³⁵ Niaz U. Women's mental health in Pakistan, February 2004 , 3(1), p. 60–62 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1414670/>, [access: 1.10.2021].

¹³⁶ Pakistan, Country Gender Assessment, Asian Development Bank, op. cit.

¹³⁷ Sahoutara N., Cases of women seeking khula jumped by over 700pc in 2020, "Dawn" 5 January 2021 <https://www.dawn.com/news/1599786>, [access: 1.10.2021].

¹³⁸ Abid S., Malik A. A., Saba, T., Abandoned and Destitute: A Case Study of Divorced Women Residing in a Welfare Complex in Pakistan, , op. cit. s. 359

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Divorced women are perceived as a source of problems and their families reject them for having caused trouble regardless of who was responsible for the breakup of their marriage and the divorce. One of the participants of the ULMA University survey said that her family blamed her for infertility due to which no one wanted to marry her and she stopped being invited to birthday parties for new-borns in the family¹³⁹. It is worth pointing out that male ILMA University survey respondents declared that after the divorce they were financially independent, thus, they did not experience any financial crisis and their families supported them throughout the whole divorce process, i.e.

Yes, my brother got me a new job as I was unemployed at the time and my father supported me financially for several months.

Widows and divorced women who raise children in Pakistan share a lot of common experiences. There is however a substantial discrepancy between the way single parents who lost their spouses and single parents, especially single mothers, who got divorced are perceived by society. Divorce continues to be considered as a cause of shame for a woman and her family. In addition, children of single mothers experience isolation and distrust of the environment and in the future also difficulties with arranging their marriage as full families avoid ties with candidates from broken homes¹⁴⁰.

6. The situation of people belonging to the LGBTI community

As already mentioned when discussing the situation of single women, marriage between a man and a woman in Pakistan is the only way of satisfying sexual desire permitted by law.

¹³⁹ Belief in the power of “bad glance” (*huri nazar* or simply: *nazar*) is popular in Pakistan. It is believed that an infertile woman is particularly dangerous in this regard, and she may easily cast a spell on a baby - author's note

¹⁴⁰ Anam E., Shaharyar A, “Surviving as a single parent. the trials and tribulations of being a single parent in Pakistan,” 31 August 2015, <https://tribune.com.pk/story/945987/surviving-as-a-single-parent>, [access: 1.10.2021].

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All extramarital sexual relations are prohibited by law, including same-sex relations. Adultery is not only considered a sin (*haram*); it is also one of the most serious crimes with severe sanctions. It can be considered that in Pakistan, as in other Muslim countries, a binary and heterosexual pattern dominates the discourse on gender roles, e.g. in the mass media, public discourse or science. It applies to men and women who assume social roles based on their biological sex. At the same time, in Pakistan, this "binary" image is broken by the centuries-old presence of the so-called "third gender" (as in other countries of the Indian subcontinent). The community defined as the "third gender" is extremely diverse and has been present in this region since ancient times. In Pakistan, they are called *khawaja sira*; another term that is used is *hijra*, which is now considered pejorative. The term *khawaja sira* used to be applied in medieval South Asia to refer to eunuchs who were highly regarded at the imperial court and in the military. Their status declined sharply with the fall of the Moghul Empire. The term has been reintroduced in Pakistan since the first decade of the 21st century to replace the pejorative and immensely popular name *hijra*. Nowadays, more and more transgender people are referring to themselves as *khawaja sira* and want to be referred to as such¹⁴¹. There are more specific terms, e.g. people who were born as a biological man but feel like a woman (castrated or not) or have a fluid gender identity (e.g. behave differently in the family they were born in and differently in *khawaja sira* family). Many transgender people marry and have children. Despite the fact that it is a marginalized community, in recent years its voice has become increasingly heard in Pakistan and the rights of transgender people have started to be taken into account by the state.

Legal status

The Pakistani Constitution does not list sexual orientation and gender identity among the fundamental rights of a citizen. The Penal Code in Pakistan does not directly apply to homosexual acts. According to section 377, voluntarily bodily intercourse "against the natural order" involving a woman, man, or animal is an offence punishable by a fine or imprisonment from two years to life. This paragraph is often used as a tool to intimidate homosexuals. In

¹⁴¹ Khan F. A., Institutionalizing an Ambiguous Category: "Khwaja Sira" Activism, the State, and Sex/Gender Regulation in Pakistan w: *Anthropological Quarterly*, vol. 92, no. 4, p. 1135–1172, ISSN 0003-5491.

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turn, the act on adultery (*zina*) - the so-called Zina Ordinance (Hudood Ordinance) of 1979 criminalizes all sexual intercourse (with penetration) outside of marriage. Due to the exacting standards of evidence, courts very rarely pass sentences for adultery against LGBTI people and the death penalty is practically not imposed. Article 12 of the Hudood regulations states that a person who kidnaps someone and coerces them to act under the influence of "unnatural lust" may be punished by death or imprisonment for up to 25 years. Also, section 294 of the Penal Code about indecent acts and songs is also often interpreted against LGBTI people - it states that anyone who performs obscene acts in a public place, sings or recites obscene songs, words or ballads in a public place or nearby, shall be punished by imprisonment for up to three months. According to the interpretations of the four major Sunni schools of Islamic law, homosexual acts are a sin for which the death penalty is permissible.¹⁴² While there is no law directed against sexual minorities,¹⁴³ there is no law prohibiting discrimination on the basis of sexual orientation also.¹⁴⁴ Pakistani law does not recognize same-sex unions or marriages, much less their adoption of children.

In December 2009, a case was brought before the Pakistani Supreme Court by lawyer Muhammad Aslam Khaki against the Rawalpindi police. He brought to ensure basic rights for the third gender, pointing to the harassment, humiliation and ill-treatment they experience at the hands of the Rawalpindi police. He drew attention to the fact that the transgender community is one of the most marginalized groups in Pakistan. The Supreme Court, presided over by Judge Iftikhar Muhammad Chaudhry, in the judgement in this case of November 20, 2009, ordered, inter alia, that the state authorities should regulate the rights of transgender people to inheritance (families often deprived them of their rightful inheritance) and ensure their genuine right to education and work, enabling the third gender to be registered in identity documents. Since 2012, following this judgment, transgender people have been able to enter their gender, referred to as "gender X," in their identity cards, driving licenses and passports

¹⁴² Home Office Country Policy and Information Note Pakistan: Sexual orientation and gender identity or expression, Version 3.0, July 2019, p. 14, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814050/Pakistan-SOGIE-CPIN-v3.0July2019.pdf, 1 Oct.2021.

¹⁴³ Ibidem.

¹⁴⁴ Ibidem, p. 7 & 13.

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and apply for corrections in their existing marital status documents. They also obtained passive and active electoral rights. In 2018, Pakistan passed the Transgender Protection Act. Since then, discrimination and harassment of transgender people has been prohibited by law in Pakistan. In January 2018, Pakistan appointed for the first time in its history an ombudsman for transgender people in the office of Wafaqi Mohtasib

The Transgender Protection Act introduces a definition of a transgender person. According to it, transgender people are people who were born as hermaphrodites (Urdu: *khunsa*, English: *intersex*), eunuchs (castrati) who were born as men, transgender men and women, people belonging to the *khawaja sira* community and all those whose gender identity is different from their biological sex at birth and the social and cultural norms based on it. The Transgender Protection Act has been criticized by the International Legal Commission, including the fact that it criminalizes begging, which can be interpreted as breaking the traditional relationship between guru (master) and chela (student) in the *khawaja sira* communities, where traditionally the guru teaches his students how to collect alms. There may also be reservations about the definition of a transgender person. The law is also criticized in Pakistan as being "unduly influenced by the global LGBT movement".¹⁴⁵ However, it can be considered that its implementation is an important step towards improving the legal status of transgender people in Pakistan and recognizes their autonomy, agency, freedom to define and express their identity.¹⁴⁶

Pakistan did not address the issue of sexual orientation and gender identity in the two successive Universal Periodic Reviews of the UN Human Rights Council in 2008 and 2012. During the third cycle of the Universal Periodic Review, carried out in November 2017, Pakistan took note of a Supreme Court judgment which improved the legal situation of the "third gender." Pakistan received seven recommendations on these issues, of which it accepted two (from Albania and Spain – regarding the recognition of the rights of transgender people) and

¹⁴⁵ Abdullah M. D., Farhat S. N, Hali, S. M. Iftikhar, H., Transgender Law in Pakistan: Some Key Issues at: "Policy Perspectives", Vol. 17, No. 1 (2020), p. 7–33, <https://www.jstor.org/stable/10.13169/polipers.17.1.0007> p. 32 27 Sep. 2021.

¹⁴⁶ Pakistan. Transgender Persons, protection of rights, International Commission of Jurists, Act 2018, A Briefing Paper March 2020, p. 27, <https://www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf>, 27 Sep. 2021.

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rejected five (from Chile – regarding the recognition of same-sex relationships and from Australia, France, Mexico and the Netherlands – regarding the introduction of legal protection for the LGBTI community against discrimination and human rights violations). Pakistan has consistently refused to introduce the concept of sexual orientation and gender identity internationally, promoting "universal traditional values" instead¹⁴⁷.

There is a lack of reliable data on sexual minorities in Pakistan. The only available statistics relate to the transgender community. After the Supreme Court of Pakistan ordered the NADRA (*National Database and Registration Authority*) to register transgender people in order to issue identity cards in 2009, 4,000 people were registered during the year. The local NGOs TransAction, Alliance and Blue Veins estimate that in Khyber Pakhtunkhwa province alone, there are between 20,000 and 50,000 transgender people; another organization, the Gender Interactive Alliance, reports that there are between 15,000 and 20,000 transgendered people in Karachi. There are claims that in Pakistan their number is much higher, ranging from half a million to several million. On the other hand, UNAIDS (the United Nations HIV/AIDS program) estimates that there are more than 52,000 transgender people in the country¹⁴⁸. The only official data is available from the 2017 national census, in which 10,418 people identified themselves as transgender. Due to the differences in defining transgenderism and the stigmatization of sexual minorities in Pakistan, all these data should be treated with caution.

¹⁴⁹

Social attitudes towards the LGBTI community

Pakistan is a conservative country where homosexuality is considered a sin. According to a survey conducted by the American think tank Pew Research Centre in June 2013, as many as 87 percent of the respondents expressed the opinion that society should reject

¹⁴⁷ State-Sponsored Homophobia, A world survey of laws: Criminalization, protection and recognition of same-sex love, ILGA 2016, <https://www.refworld.org/docid/598311a44.html> 27 Sep. 2021.

¹⁴⁸ Abdullah M. D., Farhat S. N, Hali S. M., Iftikhar H., op. cit.

¹⁴⁹ Ebrahim, Z. T. Thomson Reuters Foundation, Don't we count? Transgender Pakistanis feel sidelined by census, 6 October 2017, <https://www.reuters.com/article/pakistan-transgender-census/dont-we-count-transgender-pakistanis-feel-sidelined-by-census-idUSL8N1ME398?edition-redirect=uk>, 1 Oct. 2021.

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homosexuality. Due to the widespread social, religious and cultural intolerance of this sexual orientation, it is a topic that is not very readily discussed in the public forum. It appears in public discourse mainly in the context of the fight against HIV. There are cases of gender reassignment surgery of children with congenital hermaphroditism or treating homosexuality as a disease that can be cured¹⁵⁰. In addition, the prevailing view in Pakistan is that the LGBTI community is part of the transgender community¹⁵¹. The authorities are not taking any action to change this belief.

LGBTI people experience discrimination and are subjected to family and social pressures to live according to cultural and religious norms, including - entering into heterosexual marriages. Generally, non-heterosexual people are reluctant to disclose their orientation to their closest environment because of the fear of harassment, humiliation and exclusion in the family and society, e.g. in the workplace. People from more affluent and liberal social groups may reveal their orientation in their families and among the loved ones. This privileged group also has access to a closed "gay world" that meets virtually only in private homes or places called "hotspots." LGBTI people from wealthy and influential families in large cities experience less exclusion and violence than those from poor rural areas. However, even people from privileged groups suffer discrimination and their families force them into heterosexual marriages to maintain the family's reputation and social status. The fact that a person does not disclose his or her orientation may be motivated by a desire to fit into social norms but also by fear of violence and discrimination¹⁵².

A Muslim man from Lahore, Haseeb Rathore, gave an interview in 2018 to the Italian project on LGBTI communities "Il Grande Colibri". In the interview he said, among other things, that:

abuse of gay men takes the worst forms in Pakistan. The most persecuted are boys with delicate looks. Sometimes they find themselves in situations that they cannot ignore. Young gay men are called: "gandu" [a person who enjoys sex in Urdu and Punjabi], "bund" [ass, in Urdu and

¹⁵⁰ Home Office, op. cit. s. 19

¹⁵¹ Ibidem, s. 21

¹⁵² Pakistan: Treatment of sexual and gender minorities by society and authorities; state protection and support services available (2017-January 2019), PAK106219.E', 17 January 2019, <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457702&pls=1>, 27 Sep. 2021.

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Punjabi], - these epithets are used for extreme humiliation and intimidation. No one from our community is able to help them on the ground to deal with the trauma they are experiencing.

The men live with a sense of guilt and sin. In our society, they have two options: either come out and accept a life of nightmare and harassment or live their entire lives in hiding. They usually choose the second option, marry and live a double life: one for family and society and another for personal fulfilment but in constant fear of being caught in the act. ¹⁵³

In larger cities like Lahore, Karachi and Islamabad there are groups on social media for LGBTI communities and meetings of these communities are also organized. It is noteworthy that it is rather difficult to find information about the situation of homosexual women in Pakistan or public statements of these women. In an interview for Il Grande Colibri, Mobeen Azhar, author of a documentary on homosexuality in Pakistan (from 2013)¹⁵⁴ expresses the opinion that the voice of homosexual women is even less heard in Pakistan than that of men, who have much more freedom here than women, can have same-sex sexual relations for years or remain in a same-sex relationship and at the same time maintain a heterosexual marriage. Women in Pakistan do not have the same freedom of movement as men. Young men are often allowed to stay overnight at friends' houses and go out in groups with other young men. It is also socially acceptable to show emotions between men¹⁵⁵. Young women have fewer such opportunities (which is not to say that it does not happen). Men who have sexual relations with men do not have to identify themselves as homosexual men and form permanent same-sex relationships¹⁵⁶.

Male homosexuality is tolerated in some parts of Pakistan in the form of paedophilia. Particularly in Khyber Pakhtunkhwa province, wealthy older men have been known to keep boys for sexual gratification (known as *bachcha bazi*)¹⁵⁷. This is accompanied by the belief

¹⁵³ Sunny (Faisal Zia), "Being gay in Pakistan, what a miserable and hard life!", 20 September 2018, <https://www.ilgrandecolibri.com/en/gay-pakistan-miserable-life/>, 27 Sep. 2021.

¹⁵⁴Notaro, Pier Cesare, Gay sex and love in Pakistan in the era of Grindr, 6 September 2013, <https://www.ilgrandecolibri.com/en/gay-love-sex-pakistan/>, 27 Sep. 2021

¹⁵⁵ Naz Foundation: LGBT – Building a Foundation for better understanding. A literature review of LGBT youth, April 2016, p. 3&5, https://sxpolitics.org/wp-content/uploads/2016/08/naz_pakistan_lgbt-youth.pdf, 28 Sep. 2021.

¹⁵⁶ Home Office, op. cit. p. 20

¹⁵⁷ De Lind van Wijngaarden, J.W., Rani B. Male adolescent concubinage in Peshawar, Northwestern Pakistan, Culture, Health & Sexuality, 2011,

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that women serve to bear children and maintain the socially crucial institution of the family, while boys serve for pleasure. When boys mature, they are abandoned and often end up on the sex market¹⁵⁸.

Transgender people, essentially the only sexual minority out of the entire LGBTI category that exists publicly in Pakistani society, are marginalized or stigmatized by their families and transgender women in particular experience violence and harassment. LGBTI activists are also vulnerable to attacks. According to research cited by the IRB,¹⁵⁹ the extent of familial and social discrimination and violence experienced by LGBTI people appears to be inversely proportional to their socioeconomic status. The NGO Neengar Society reported in 2019 that people from low-status groups have limited access to the health system and justice system and out of 150 cases handled by the legal counselling centre at Neengar at that time, as many as 135 were related to "low socio-economic class"¹⁶⁰. The *Women Employees Welfare Association* (WEWA) reports that when gays and lesbians are murdered, the next of kin often do not report the motive for the crime to the police so as not to defame the family. They often report that it was a suicide or an honour killing¹⁶¹. Lesbians are forced into marriage and controlled by both their natural families and their husbands' families. Transgender people are also often forced by their families to prostitute themselves and give them profit.

In 2011, the U.S. Embassy in Islamabad sponsored and organized Pakistan's first equality march on its grounds. It met with violent protests from local communities and the initiative was subsequently not continued. However, there are smaller events, such as Trans

https://www.researchgate.net/publication/51546354_Male_adolescent_concubinage_in_Peshawar_Northwestern_Pakistan, 28 Sep. 2021.

¹⁵⁸ Ali S. H., Khan. S., Khanani M. R., Rajabali A., Warraich H. J., HIV and homosexuality in Pakistan, 2008, "The Lancet", vol. 8, p. 8 & 511–515, 1 August 2008, <https://www.thelancet.com/action/showPdf?pii=S1473-3099%2808%2970183-X>, 27 Sep. 2021.

¹⁵⁹ Pakistan: Treatment of sexual and gender minorities by society and authorities; state protection and support services available (2017-January 2019), PAK106219.E', 17 January 2019, Immigration and Refugee Board of Canada, <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457702&pls=1> & <https://www.ecoi.net/en/document/1457384.html>, 27 Sep. 2021.

¹⁶⁰ Ibidem.

¹⁶¹ Home Office, op. cit. p. 17

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Pride in Lahore in 2018,¹⁶² or actions, such as the protest that took place on 13 August 2021 in front of the Press Club headquarters in Islamabad against the acts of violence against transgender people (the march was attended by Nayab Ali - an important activist for the rights of sexual minorities in Pakistan¹⁶³) and for making Islamabad a city of inclusion for these people¹⁶⁴. Organizations that support sexual minorities online often present their activities as a minority and marginalized due to fear of censorship (e.g. Blue Veins: which presents itself as an organization supporting victims of social exclusion, working for women's rights: <http://blueveins.org/> or the organization Neengar: <https://neengar.org/about-us/>). The Pakistan Telecommunication Authority (PTA) has the right to remove or block any content that it deems harmful to the so-called "*glory of Islam*", decency and morality¹⁶⁵. For example, the website queerpk.com has been blocked in this way. Due to the social stigma associated with homosexuality in Pakistan, advocacy for the LGBTI community tends to take place within the transgender community. Those working for the LGBTI community are also vulnerable to attacks¹⁶⁶. Here are some organizations that work for sexual minorities in Pakistan: Forum for Dignity Initiatives (FDI), Neengar Society, NAZ Male Health Alliance, Blue Veins, Gender Interactive Alliance, Trans Action and the Khawaja Sira Society.

In the 2018 general election, 13 candidates from the transgender community ran on the list of the All Pakistan Transgender Election Network (APTEN), which brings together TransAction Khyber Pakhtunkhwa, Sindh Transgender Welfare Network, Balochistan Alliance for Transgender and Intersex Community and Punjab Transgender Foundation. The group was

¹⁶² Hamzić V., The Dera Paradigm: Homecoming of the Gendered Other Ethnoscripts 2019 21 (1): 34–57 eISSN 2199–7942. p. 47, <https://journals.sub.uni-hamburg.de/ethnoscripts/article/view/1415/1246>, 27 Sep.2021.

¹⁶³ Nayab Ali is the first Pakistani transgender person to win the annual Gala Award in Ireland, sponsored by Amnesty International and the Franco-German Human Rights Prize. She is the founder of Khwaja Sira Community Centre, which was established to provide education and technical training for transgender people in Okara city, Punjab province, and is the chairperson of the All-Pakistan Transgender Network. She is among a very small group of transgender people who, along with 12 others, stood as candidates in the 2018 general election.

¹⁶⁴ Special campaign starts to make Islamabad Transgender Inclusive City, 26 July 2021, <https://www.thenews.com.pk/print/868521-special-campaign-starts-to-make-islamabad-tic>, 27 Sep.2021.

¹⁶⁵ The PTA periodically sends to mobile phone users messages encouraging them to report "profane" and "indecent" content found on the Internet to authorities.

¹⁶⁶ Home Office, op.cit. p. 29

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led by TransAction chairperson Farzana Jan. The leaders in the election list were Nayab Ali (Okara list) and Lubna Lal (Jhelam list), the other candidates ran as independent candidates. APTEN reported that at least two transgender people – one in Peshawar and the other in Haripur – were unable to stand for election because they were beaten and harassed after their intentions to participate in the election became public¹⁶⁷.

Access to services: education, employment, housing, healthcare

One of the most marginalised social groups in Pakistan is *khawaja sira*. Its members have limited access to education and labour market. Their main sources of income are: begging, singing, dancing, prostitution and blessing. It is believed that they are gifted with the special power of blessing and putting curses (*baddua*). Traditionally, transgender people live in so-called *deraye* (pron. *dere*) – communities built around *guru-chela* (teacher-student) relationships. Framework and function of such society resemble family (comparisons of social roles in *dera* to the ones in a family: mother, father, siblings, are repeated in the statements of transgender people from Pakistan, e.g., in a documentary film “Allah loves equality”¹⁶⁸; V. Hamzić referred to *dera* as “post-home”¹⁶⁹) and provide financial and emotional support. The *khawaja sira* community experiences difficulties in contact with institutions because they often fall victim to persecution and discrimination or are simply misunderstood. There are cases of denial to help transgender people in public hospitals e.g., because of the fear that they are HIV positive. There are no separate wards in such facilities for them and healthcare professionals have doubts (wasting time for arrangements), whether a patient should be admitted to a women’s or men’s ward. In 2018, in clinical hospital PIMS (*Pakistani Institute of Medical Sciences*) in Islamabad a ward for transgender people was opened¹⁷⁰.

¹⁶⁷ Farham, H., “Dawn,” 13 transgender people to contest elections in Pakistan, 13 June 2018, <https://www.dawn.com/news/1413894>, 26 Sep. 2021.

¹⁶⁸ Kazmi, W. A. “Allah loves equality – being LGBT in Pakistan,” 2019, <https://www.youtube.com/watch?v=CQDnNqGdGD4>, [access: 27.09.2021].

¹⁶⁹ Hamzić V., *The Dera Paradigm (...)*, op. cit. p. 25.

¹⁷⁰ “PIMS opens its doors to transgender community,” 2 December 2018. <https://tribune.com.pk/story/1858590/pims-opens-doors-transgender-community>, [access: 26.09.2021].

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Religion plays a key role in the lives of all interviewees anthropologist Faris Khan¹⁷¹ talked to in Lahore, however, they are excluded from public rituals and practices in mosques and regarded as ritually impure (*napak*). In practice, if they want to take part in prayers, they often must refrain from revealing their identity – which is not always possible. Christians also encounter similar difficulties. In 2020 pastor of the protestant Church of Pakistan¹⁷², Ms Ghazala Shafiq established in Karachi the first church for transgender people¹⁷³. Transgender people also have trouble with renting a flat. Property owners in more prestigious and safer neighbourhoods are reluctant to agree on renting flats for them. They are left with options of places with localization of worse reputation, outskirts of large cities, neighbourhoods inhabited only by *khawaja sira*, or even tents and slum where they are exposed to violence and persecution and are unfairly treated by property owners who overprice their rents or refuse to sign a rental agreement with them¹⁷⁴. A large issue is also the instability of their source of income and limitations on the labour market connected with difficulties in receiving education. The “*dance work*” which is a source of income for transgender people means not only dancing during parties or private ceremonies but also prostitution. During the Muslim holy months of Ramadan and Muharram, making a living from dancing and prostitution is not possible.

Transgender people often report that they are discriminated against and harassed by the police and experience sexual violence from them. According to a 2017 report of Naz Male Health Alliance, a Pakistani organisation, transgender people in Pakistan are often arrested for offences “against the natural order”. They reported being humiliated by police officers who could e.g., rip off their clothes, forced to dance and douse them with cold water when they refused. According to local organisations, in the years 2015–2019 at least 65 transgender

¹⁷¹ Khan F., Institutionalizing an Ambiguous Category, op. cit.

¹⁷² This church has been built in 1970 and it connects Christian denominations: Anglican, Lutheran, Methodist, and Presbyterian. Beside the Catholic Church, it is the largest Christian church in Pakistan - according to <https://www.oikoumene.org/member-churches/church-of-pakistan>, [access: 26.09.2021].

¹⁷³ Gannon K. Transgender Pakistanis find a solace in church of their own, <https://abcnews.go.com/International/wireStory/transgender-pakistanis-find-solace-church-74391676>, [access: 26.09.2021].

¹⁷⁴ Pakistan: Incidents of violence or mistreatment involving sexual minorities in Islamabad, Karachi and Lahore; loss of employment or inability to rent housing due to sexual orientation (2014), Immigration and Refugee Board, 9 January 2015, <https://www.refworld.org/country,COI,IRBC,QUERYRESPONSE,PAK,4562d8cf2,54ca23b24,0.html>, [access: 28.09.2021].

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women were killed in Khyber Pakhtunkhwa province¹⁷⁵. In 2016 in Peshawar, Alisha, transgender rights activist was shot dead – her story was told in the documentary film “Allah loves equality”¹⁷⁶.

The staff of the hospital where Alisha was admitted spent a long time determining which ward to treat her in, at the same time laughing at her¹⁷⁷. In 2019, Alisha’s murderer was sentenced to death. Other publicised cases of LGBTI people whose lives ended tragically were: 15-year-old Musa, who in April 2019 was raped by a group of men and killed, in July 2019, Kagana (transgender woman) was shot dead in Rawalpindi, in September 2019, Gul Panra, transgender rights activist died in November 2020, Nayab Ali, transgender rights activist was a victim of an attack.

However, most crimes against LGBTI people have not been reported to the police. Victims of crimes themselves are reluctant to report to the police because they are afraid to publicly reveal their orientation to the authorities as it may consequently increase the risk to their health and life. Also, it is believed that there is little chance that the guilt will be punished. According to the Neengar Society organisation, invoked by a Canadian report on the situation of sexual minorities,¹⁷⁸ applying for protection on account of sexual orientation is not possible in Pakistan. However, in recent years authorities arrested perpetrators of violations of the law against people from sexual minorities. The arrests concerned perpetrators of crimes such as murder, rape and physical abuse. Offences such as sexual harassment, homophobia, or extortion are usually not reported owing to fear of persecution. Criminal proceedings concerning people from sexual minorities are conducted negligently and dilatorily – can take years.

In 2019, the Inspector General of the police announced that the government will provide 0.5% of the jobs in Sindh police for members of transgender society. In May 2020, the police

¹⁷⁵ Ali M. Transgender persons’ rights still a far cry, 27 July 2019, <https://nation.com.pk/27-Jul-2019/transgender-persons-rights-still-a-far-cry>, [access: 26.09.2021].

¹⁷⁶ Kazmi, W. A. “Allah loves equality – being LGBT in Pakistan,” 2019, <https://www.youtube.com/watch?v=CQDnNqGdGD4>, [access: 26.09.2021].

¹⁷⁷ Amin, Akhtar, Killer of transgender gets death sentence after 3 years, 24 July 2019, <https://www.thenews.com.pk/print/502798-killer-of-transgender-gets-death-sentence-after-3-years>, [access: 26.09.2021].

¹⁷⁸ Pakistan: Treatment of sexual and gender minorities (...), op. cit.

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in Rawalpindi launched a pilot project, the so-called Tahafuz Centre,¹⁷⁹ which aims at transgender people protection – the project also employs transgender people (Ms Reem Sharif). In Khyber Pakhtunkhwa, transgender prisoners have separate cells in prison and the government of the province has created Commission for Prison Supervision in order to improve their situation. Police stations in Khyber Pakhtunkhwa opened special reception points for transgender people and included transgender rights education in police training courses. Similar courses took place in Punjab and Islamabad.

LGBTI people report facing significant hostility in Pakistani society including persecution and violent acts if they reveal their sexual orientation or gender identity. They often face pressure and violence from their family members to conform to heteronormative expectations of marriage¹⁸⁰. Hence, in practice, they do not disclose their orientation, as it can have grave consequences on their professional life, including losing the job or reporting them by third parties to the police.

7. Prostitution of women and children

In annual reports on the situation of women and children in Pakistan, as well as in global studies, prostitution and trafficking in persons remain high in the statistics¹⁸¹. According to the Global Slavery Index 2018 – Pakistan is ranked 3. in the region with 16.8 per cent of the population described as the victims of trafficking in persons¹⁸². According to studies, about

¹⁷⁹ „Tahafuz Center starts work in Pindi,” 13 May 2020 <https://tribune.com.pk/story/2220282/tahafuz-centre-starts-work-pindi>, [access: 26.09.2021].

¹⁸⁰ State Sponsored Homophobia 2019, “Pakistan”, ILGA 2019 p. 461–464. https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf, [access: 28 September 2021].

¹⁸¹ Jalalzai M.Kh., (2002), *Women Trafficking and Prostitution in Pakistan & Afghanistan*, Dua Publishers, Lahore; *2020 Trafficking in Persons Report: Pakistan*, U.S. Department of State, <https://www.state.gov/reports/2020-trafficking-in-persons-report/pakistan/#:~:text=Provincial%20police%20reported%20identifying%2019%2C954,identified%20in%20Sindh%20and%20Punjab>, [access: 1.09.2021].

¹⁸² Global Slavery Index 2018, <https://www.globallslaveryindex.org/resources/downloads/>, [access: 1.09.2021].

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70 per cent of all victims are women¹⁸³. Other studies show that almost 90 thou. prostitutes (FSW, *female sex workers*) work in big cities (almost half of them only in Lahore and Karachi)¹⁸⁴.

Nowadays, prostitution is defined as the provision of sexual services for financial gratification. However, due to the nature of the procedure, its high social and legal costs are highlighted, especially the “criminogenic and victimogenic risks”¹⁸⁵. In respect of Pakistan, it also includes: the use of violence, developing relationships based on inequality thereby leading to enforcement of power and objectification. Lack of support for victims, from both the legislature and the executive authorities – even though, for instance, Article 7 of *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) states the need for undertaking by the government:

*all appropriate measures, including legislation, to overcome all forms of trafficking in women and exploitation of the prostitution of women*¹⁸⁶.

Legal status of prostitution in Pakistan

Prostitution in Pakistan is against the law. The Pakistani Penal Code from 1860 criminalises two specific actions (Article 371 [a] and [b]), namely: selling and purchasing of a person for purposes of prostitution. Such offence is punishable by imprisonment up to 25

¹⁸³ 2020 *Trafficking in Persons Report: Pakistan*, U.S. Department of State, <https://www.state.gov/reports/2020-trafficking-in-persons-report/pakistan/#:~:text=Provincial%20police%20reported%20identifying%2019%2C954,identified%20in%20Sindh%20and%20Punjab>, [access: 1.09.2021].

¹⁸⁴ Emmanuel F., Thompson L. H., Athar U., Salim M., Sonia A., Akhtar N., & Blanchard J. F. (2013). The organisation, operational dynamics, and structure of female sex work in Pakistan. *Sexually transmitted infections*, 89 Suppl. 2 (Suppl. 2), ii29–ii33. <https://doi.org/10.1136/sestrans-2013-051062>, [access: 1.09.2021].

¹⁸⁵ Kowalewska-Łukuć M., (2017), *Prostytucja i czerpanie z niej korzyści majątkowych – analiza prawnoporównawcza*, Instytut Wymiaru Sprawiedliwości, Warszawa, p. 1, https://iws.gov.pl/wp-content/uploads/2018/10/IWS_Kowalewska-%C5%81uku%C4%87-M._Prostytucja-i-czerpanie-z-niej-korzy%C5%9Bci-Maytkowych.pdf, [access: 1.09.2021].

¹⁸⁶ Government of Pakistan, UN Committee on the Elimination of Discrimination against Women: Combined Initial, Second and Third Periodic Reports of States Parties, Pakistan, <https://www.refworld.org/publisher,CEDAW,,PAK,453778260,0.html>, [access: 2.09.2021].

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years and a fine. Amendments to the law, implemented during Gen. Zia ul-Haqa regime (1977–1988), explicitly refer to sexual intercourses between unmarried people (already mentioned fornication, *zina*¹⁸⁷) considering them a criminal offence.

These records should be considered in conjunction with the Punjab suppression of prostitution ordinance of 1961¹⁸⁸, which penalises not only prostitutes, their clients and barkers but also people who rent them flats, traffickers, etc. It means that prostitution in Pakistan is not only an offence for clients (by accusing them of fornication), prostitutes (by solicitation and fornication) but also for pimps and traffickers. Due to connotations with fornication, which is severely punished, there is a significant risk, that people providing sexual services will not approach the courts, even in minor legal matters for fear of filling a complaint against them on charges of premarital sex, as their way to earn a living is, in fact, a criminal offence.

Hammad Saeed, cited in one of the articles, a practising criminal lawyer, mentioned one of the criminal cases in which a man accused by a prostitute of kidnapping was acquitted of the charges. This was partially caused by “certain presumptions” concerning her character, which denigrated the value of her testimony¹⁸⁹. In light of Article 151 of the Law of Evidence of 1984

the credit of a witness may be impeached... when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of immoral character.

The victims of rape are generally treated stereotypically, brusquely and in a sexist way, however, the mentioned record is even more harmful to prostitutes in Pakistan, who are exposed to violence due to the character of their work.

¹⁸⁷ Khan S. (2003). "Zina" and the Moral Regulation of Pakistani Women. *Feminist Review*, (75), p. 75–100.

¹⁸⁸ The Punjab suppression of prostitution ordinance, 1961, <http://punjablaws.gov.pk/laws/130.html>, [access: 2.09.2021].

¹⁸⁹ Ahmad O. S., *Prostitution In Pakistan: As A Human Rights Violation Not A Criminal Offense*, "Human Rights Review" Vol. IV, <https://humanrightsreviewpakistan.wordpress.com/prostitution-in-pakistan-as-a-human-rights-violation-not-acriminal-offense/>, [access: 2.09.2021].

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Cultural determinants of prostitution – tawaif and bachcha bazi

In order to understand the perception of prostitution in Pakistan, a broader view, from a historical perspective is required. In the Indian subcontinent, in the times of the so-called the era of the Mughal Empire (16th – 17th centuries), a specific and extremely interesting Indo-Muslim culture was formed. A part of this culture were courtesans (in Urdu called *tawaif*)¹⁹⁰. They were women with exceptional beauty, well-educated, acquainted with the literature of Urdu (and Persia), danced and sang and knew the secrets of conducting compelling conversations. They acted as ladies' companions among the elite, at the royal and noble courts – representing high culture and offering quality entertainment. Their performances – dancing and singing – passed the time not only during individual meetings with wealthy and respectable men but also during feasts and celebrations. Courtesans had also their sponsors and provided sexual services – however, it was not the main activity but an additional one and not every social meeting had to end with a sexual encounter. For this reason, they had quite a high status in the society, were often respected and even became the wives of their sponsors. In some cities, they lived in determined areas, e.g., in Lahore, it was Heera Mandi, nowadays known as a red-light district¹⁹¹.

Because of the education level and contribution to promoting culture while providing entertainment (poetry recitations, traditional singing, dancing) courtesans appreciated quite a high status in the society, even though their profession was contacted with carnal love and there were married men among their clients. The situation changed in the colonial era – the English with Victorian prudish approach and lack of understanding for the Indian culture (widely understood) implemented a number of restrictions on courtesans treating them as

¹⁹⁰ Nevile P., (1999), *The nautch girls of colonial Punjab*, "The Tribune", 02.05.1999, <http://www.tribuneindia.com/1999/99may02/sunday/head10.htm>, [access: 02.09.2021]; Oldenburg V.T., (1990), *Lifestyle as Resistance: The Case of the Courtesans of Lucknow*, "Feminist Studies", vol. 16, no. 2, 1990, p. 259–287, http://www.columbia.edu/itc/mealac/pritchett/00urdu/umraojan/txt_veena_oldenburg.html#m32, [access: 1.09.2021].

¹⁹¹ Brown L., (2015), *The Honourable Prostitute: Culture and Conscience in a Pakistani Brothel*, Centre for Humans & Nature, <https://www.humansandnature.org/culture-the-honorable-prostitute>, [access: 2.09.2021].

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“typical” sexual workers and separating their profession from dance and other arts¹⁹². The houses they lived in – due to the lack of sponsors – began to deteriorate and turned into typical brothels. The traditions of courtesans faded away; its place was taken by prostitution. Instead of sponsorship and a high lifestyle, women accepted clients for little money and provided only one type of service.

Another tradition, with much fewer romantic origins, cultivated in Afghanistan and the neighbouring Pakistan (mostly in border regions) is *bachcha bazi* (in Persian *bacha bazi*). It can be translated as “playing (with a) boy.” This practice involves sexual activities between older men and a boy or a male child, who is called “a dancing boy.” This traditional dance is only a disguise for boy prostitution and slavery – highly placed and wealthy men sometimes force boys to sex and other practices, regardless of their age¹⁹³. This custom is so deeply rooted in the northwest part of Pakistan and men using the services (or: abusing) of the “dancing boys” are so influential that the police and other law enforcement organisations are frequently helpless. Just like areas formerly inhabited by courtesans have become infamous red-light districts, bus stations, long-distance ones mainly, have become typical places for prostituting boys¹⁹⁴.

¹⁹² Borile S., (2019), *Bacha Bazi: cultural norms and violence against poor children in Afghanistan*, “International Review of Sociology”, 29:3, 498–507, DOI: [10.1080/03906701.2019.1672346](https://doi.org/10.1080/03906701.2019.1672346).

¹⁹³ Reports indicate that because sex is a taboo subject in Pakistan, underaged victims of sexual violence, pornography and prostitution are reluctant to talk about their experiences. Because of that, estimating the actual scale of the problem and aid is impossible, however, due to the initiative of non-governmental organisations, such as e.g., Sahil, among other things, so-called child-friendly courts have been established. See more: *Child sex abuse on the rise in Pakistan: Report*, „Business Standard,” 23 May 2017, <https://www.business-standard.com/article/international/child-sex-abuse-on-the-rise-in-pakistan-report-1170323000471.html>, [access: 2.09.2021].

¹⁹⁴ Many studies mentioned it, including several reports of a non-governmental organisation, Sahil from Islamabad, among others *The Other Side of Childhood. Male Child Prostitution at a Bus Stand in Pakistan* (September 2004), or *Commercial Sexual Exploitation of Children A Situational Analysis of the Transport Industry of Pakistan* (2009) on behalf of Save the Children Sweden. Cf. <https://sahil.org/early-childhood-sexual-experience-male-prostitution/>, [access: 2.09.2021]. Prostitution of boys also became the subject of a famous documentary film, *Pakistan's Hidden Shame* (2014), which was broadcast on TVP1 as part of Adam Fidyk's cycle.

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Prostitution and violence

As it was mentioned earlier, the subject of prostitution relates to violence, unequal distribution of power between the two parties, which usually places the prostituting person in a submissive, subservient, dependent position and they usually let things happen. Men using the services (there are no sources about women using prostitution) exploit this passivity and dependence leading to significant abuse.

Pakistan is a country in which – as a result of various principles, customs, rules and traditions – there is no place for free love, premarital relations and acquiring sexual experiences earlier or differently than in a marital relationship. Marriages, as has already been mentioned, are entered into through an agreement between two families, enforcing certain roles on both spouses – wife/husband, mother/father etc. For a man, a wife is a woman who takes care of their house and children, with whom it is not possible (nor appropriate) to fulfil sexual dreams and fantasies – such as with a lover. Many men take advantage of a submissive role of prostitutes – their services are, firstly cheap and secondly – their vulnerability, dependence, low social and economic status, lack of family, lack of protection mechanisms and systems, including legal ones, in addition to lust, objectification and taking pleasure from various forms of violence leads to an imminent threat to health and life. There are reports indicating instances of purchasing women and children (both genders) for satisfying lust: individual, members of a particular family, friends, etc., one on one or in every possible configuration, including rape and group rape or multiple rapes. In the case of children, it involves not only using underage prostitutes (both genders) but also employing or simply purchasing children as house workers and then forcing them to all types of services, including sexual ones.

Reasons for prostitution

In developing countries, which include Pakistan, the main reasons for prostitution are: lack of education and qualifications for work, poverty, feudal system (which last invariably also

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as a result of poverty), sexual violence, as well as, blackmail and kidnappings¹⁹⁵. Poverty is usually listed in the first place also because it is strictly connected with many other factors, such as above-mentioned education (or rather - lack of it), difficulties in finding a job and the system of dependence between social groups, which – similarly to a cast system – strictly determines the place on the social ladder and makes it difficult to improve one's living conditions. Repeatedly, people – in search of a better life – migrate from the countryside to the cities, where they perform any job, frequently becoming dependant on pimps, sponsors, human traffickers¹⁹⁶. It also applies to children, women and men who escape from their homes for various reasons: because of violence, including sexual abuse, arranged marriages, in order to marry someone out of their own free will, running away from pressure and expected behaviours enforced by imposed social roles¹⁹⁷. In some cases, young people – faced with the death of their relatives – become deprived of their livelihood because of an unjust division of property and are forced to try to provide for themselves – this factor often emerges as a reason for children prostitution. It happens that it is someone close that inclines towards prostitution – encouraging financial independence through work which turns out to be a trap. Studies indicate that young girls fall victim to romantic love: being in love with their chosen ones, they start having intercourse (which is against culture and tradition), and then they are coerced into prostitution. The men intimidate the girls that now – as non-virgins – have no chance of returning to normal life and no one will want to marry them. The fear of being stigmatised seems greater than taking up the illegal and immoral occupation of selling their own body.

¹⁹⁵ Iram T. et al, (2019), *Socioeconomic acceptability of prostitutes in Pakistan: A diversion from prostitution*, "Cogent Social Sciences", 5:1, DOI: 10.1080/23311886.2019.1646110.

¹⁹⁶ It is worth mentioning that young girls and boys are often kidnapped, drugged and sold to brothels. It is one argument of the conservative part of society for limitations of leaving home for young people, especially females when they reached puberty. Cf. *Human trafficking in Pakistan: Not for sale*, "The Express Tribune", 2 November 2014 r., <https://tribune.com.pk/story/782953/human-trafficking-in-pakistan-not-for-sale>, [access: 2.09.2021].

¹⁹⁷ Jalalzai M.Kh., (2002), *Women Trafficking and Prostitution in Pakistan & Afghanistan*, Dua Publishers, Lahore, p. 64–69.

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Reports also indicate that pathology often occurs in a marriage, when a husband forces his own wife to have sex with other (often influential) men, sometimes with several at once¹⁹⁸.

The examples cited above show that prostitution in Pakistan in large part is connected with the issues of violence and coercion. Some sources explicitly say that in the society with religiously, traditionally, or legally motivated prohibitions and restrictions in the scope of sex, sexual violence, including rapes, also group rape (also on children and men), prostitution – although it is amoral and against the law – is omnipresent. It is sometimes considered a so-called safety valve towards impetuosity and abruptness of Pakistani men. In today's debate about human rights and the necessity of novelisation of legal provisions in the Penal Code, prostitutes' fate is also discussed (including *Hijras*, i.e., so-called third gender, engaged in this profession¹⁹⁹) – as there are still cases that police refuse to take statements for beating or rape if the victim is a prostitute²⁰⁰.

8. The situation of families of persons who remain in informal relationships abroad or have illegitimate children

Informal relationships in Pakistan

Pakistan's laws and customs do not condone extramarital or informal relationships. As mentioned earlier, arranged marriages are a guarantee of the maintenance of social order which leads to the creation of a new formal family, the conception of offspring within it and

¹⁹⁸ Iram T. et al, (2019), *Socioeconomic acceptability of prostitutes in Pakistan: A diversion from prostitution*, "Cogent Social Sciences", 5:1, <https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1646110>, [access: 2.10.2021].

¹⁹⁹ Abdullah M. A., Basharat Z., Kamal B., Sattar N. Y., Hassan Z. F., Jan, A. D., & Shafqat, A. (2012). Is social exclusion pushing the Pakistani Hijras (Transgenders) towards commercial sex work? A qualitative study. *BMC International Health and Human Rights*, 12(1), 32. <https://doi.org/10.1186/1472-698X-12-32>, [access: 2.09.2021].

²⁰⁰ Prostitution spreads as law looks on, "Dawn" 30 September 2013, <https://www.dawn.com/news/1046355/prostitution-spreads-as-law-looks-on>, [access: 2.09.2021].

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thus, the continuation of existing traditions. Any sexual intercourse outside marriage, or even its presumption, is an offence against morality and the law that constitutes the crime of adultery (*zina*) prosecuted under the penal code.

However, this does not mean that informal relationships do not exist in Pakistan. Many men cheat on their wives - not only by using sex workers but also by keeping another woman "on the side." In a patriarchal society where men dictate the rules, there is an unwritten permission to have a mistress. Such a mistress is a taboo subject that is often not talked about at all. Wives, even if they are aware that they are being cheated on, rarely confront their husbands or get divorced. They often pretend to be unaware because, for example, they do not want to change anything in their relatively comfortable lives. It is easier for them to accept an anonymous woman than a possible second wife in the household, or in this way, they gain some freedom when their husband's attention is focused somewhere else than on them.

However, the latest available studies show that husbands are not the only ones to cheat²⁰¹ - married women enter into informal relationships that eventually lead to divorce and remarriage.²⁰² Numerous articles, also in the daily press, blame TV series, soap operas and reality shows for the growing popularity of relationships outside of marriage, as they often show such relationships as something completely ordinary.²⁰³ Social media and dating apps are also considered as reasons for this phenomenon, as well as internet access, smartphones, etc.²⁰⁴

²⁰¹ Mahmood K., Najeeb Z., *Personality traits, Infidelity and Marital Satisfaction among Married men and women*, „International Journal of Scientific & Engineering Research”, Volume 4, Issue 12/2013, <https://www.ijser.org/researchpaper/Personality-traits-Infidelity-and-Marital-Satisfaction-among-Married-men-and-women.pdf+&cd=4&hl=en&ct=clnk&gl=pl>, [access: 2.10.2021].

²⁰² Malik N., et al. (2014). Causes and Consequences of Extra-Marital Relations in Married Women: A Case Study of Darulaman Sargodha. *Mediterranean Journal of Social Sciences*. <https://doi.org/10.5901/mjss.2014.v5n23p2044>, [access: 2.10.2021].

²⁰³ *Today's dramas centre around divorces, extramarital affairs, says Bushra Ansari*, „The Express Tribune”, 5.09.2020, <http://tribune.com.pk/story/2262635/todays-dramas-centre-around-divorces-extramarital-affairs-says-bushra-ansar>, [access:2.10.2021].

²⁰⁴ Sartaj M., (2016), *Of smartphones and infidelity in late-night Pakistan*, „Dawn”, <http://www.dawn.com/news/1238411>, [access: 2.10.2021].

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Children born out of extramarital relations have the status of nobody's children (*lat. filius nullius*). In Sunnism, children born during the marriage, even if they have a different father, are considered to be assigned to the current spouse, and after the divorce - to the mother; the same thing happens if the mother is unmarried. In Shiism, such a child belongs to neither father nor mother.²⁰⁵ Several sources mention the disposal of fetuses and new-borns resulting from infidelity and premarital relations that are, i.e., morally and legally unacceptable unions.²⁰⁶

The example of Imran Khan

Celebrity, former cricketer and since 2018 Prime Minister of Pakistan, Imran Khan, has repeatedly entered into informal relationships with foreign women, including Emma Sergeant (1982-1986), Sita White (1987-1991) and Kristiane Backer (1992-1994). Only the last of the women, under the influence of a man and while planning a marriage that ultimately did not happen, embraced Islam. Of the above-mentioned partners, with Sita White, the Pakistani man has a daughter Tyrian Jade White (now Tyrian Khan White) who was born in 1992. The man publicly denied her, despite the downright striking physical resemblance and a Los Angeles court decision that recognized Khan's paternity. To a certain extent, Tyrian Jade White entered the politician's family after the death of her mother in 2004. However, media reports primarily point to the woman's strong bond with Pakistan's former and first wife Jemima Khan (now: Goldsmith), rather than her own father. Now it is said among the Prime Minister's supporters, that Tyrian Khan White is his child conceived out of love.

Political opponents have attempted to exploit the fact that Khan has an illegitimate child. In 2007, the Election Commission of Pakistan rejected a motion to disqualify a man as a member of the National Assembly. The basis for the dismissal was said to be Khan's failure to meet the moral criteria outlined by Article 62 of the Constitution of the Islamic Republic of

²⁰⁵ Tariq A.,(2020), *Rights of Illegitimate Children in Pakistan: Sunni and Shia Law Perspectives*. Courting The Law, <http://courtingthelaw.com/2020/12/15/commentary/rights-of-illegitimate-children-in-pakistan-sunni-and-shia-law-perspectives/>, [access: 2.10.2021].

²⁰⁶ Country Policy and Information Note Pakistan: Women fearing gender-based violence, February 2020, p. 31–33, <https://www.justice.gov/eoir/page/file/1250691/download>, [access: 2.10.2021].

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Pakistan. According to it, people of "good character", sincere, not violating Islamic principles and those who renounce their major sins can apply for parliamentary seats.²⁰⁷ The politician was again, and again unsuccessfully strived to be recalled, in connection with having an illegitimate daughter, a year after the 2018 election, when Khan failed to list Tyrian among his offspring in his documentation for running for office.

In 2018, the politician's second wife Rehman Khan revealed that he has a total of five children out of wedlock, including, some of whom are of Indian nationality, which given the permanently strained relations between India and Pakistan, seems even more uncomfortable for the politician. The fates of these possible illegitimate offspring, excluding Tyrian Khan White, remain unknown.

The case of Imran Khan shows that, on the one hand, the fact of having illegitimate children with foreign women of other faiths is not able to harm the career of a personality at the top of the social and political hierarchy, especially if he has state institutions on his side. On the other hand, some attempts to conceal the possession of such offspring - sometimes absurd and parallel to the publication of family photos of married and illegitimate offspring on social media - indicate an absolute lack of acceptance towards such relationships and circumstances among the Pakistani society.

Migration and informal relationships

Pakistan is among the top ten countries in the world whose citizens migrate abroad. The destinations of migration are the Gulf countries and Europe, mainly the United Kingdom but also Schengen countries. Migration has an important economic dimension for Pakistan. In 2020, money transfers from abroad amounted to 9.9 percent of Pakistan's GDP.²⁰⁸ The

²⁰⁷ The Election Commission of Pakistan, References under article 63(2) of the constitution, received from Speaker National Assembly of Pakistan, Islamabad regarding disqualification of mr.Imran Khan, mna., <http://www.na.gov.pk/uploads/documents/Rulings-of-the-Chair-1999-2017.pdf>, p. 159, <https://web.archive.org/web/20150923233307/http://www.ecp.gov.pk/CecJudgement/Imran%20Khan%20final%20order.pdf>, [access: 5.10.2021].

²⁰⁸ World Bank, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PK>, [access: 5.10.2021].

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importance of emigration to the country's economy is also recognized by the Government of Pakistan, which has developed an advanced legal and institutional framework for emigration, including the Ministry of overseas Pakistanis. Money transfers from overseas to Pakistan are extremely easy to do²⁰⁹ as opposed to legally sending money from Pakistan abroad. The overwhelming majority of migrants to Europe are young men who travel alone and their family members try to join them later, a large percentage of migrants are also students.²¹⁰ According to British data²¹¹, members of the Pakistani diaspora born in the UK prefer to marry partners from Pakistan (53 per cent) or the Pakistani diaspora (about 40 per cent), and only 10 percent of men and 7 percent of women have married someone from another ethnic group.²¹² Pakistani migrants, regardless of marital status, tend to give money to their families in Pakistan and have a strong sense of responsibility associated with it. The pressure on men (regardless of marital status) to financially support families in Pakistan varies but is greatest for those with elderly parents and unmarried sisters as dependents - families then expect brothers to contribute to the cost of their weddings.²¹³

Among studies on migrants of Pakistani origin, there are none that report on the situation of informal couples, the children born to them, and the spouses and families left behind in Pakistan. The situation of these individuals is sometimes mentioned as part of the broader issue of the anthropology of migration, transnationalism, and polygamous practices among diasporas from Muslim countries in Europe. Some scholars propose to broaden the definition

²⁰⁹ More information about Remittances that belong to Pakistan is available in the Government Information Center about Migrations <https://www.mrc.org.pk/en/information-hub/remittances>, [access: 5.10.2021].

²¹⁰ Pakistan migration snapshot, 2019, International Organization of migration, UN, <https://dtm.iom.int/reports/pakistan-%E2%80%93-migration-snapshot-august-2019>, [access: 5.10.2021].

²¹¹ Qureshi K., „Transnational Divorce and remarriage between Pakistan and Britain: Intersectionality, harmful immigration rules and internal racism,” Population, Space and Place, Edinburgh Research Explorer, 2020, The University of Edinburgh

²¹² Qureshi draws reference to: Charsley K, Bolognani M, Ersanilli E, Spencer S., Marriage, Migration and Integration, London: Palgrave, 2020, Palgrave Macmillian.

²¹³ Charsley, K., Bolognani, M., Spencer, S., Ersanilli, E., Jayaweera H., Marriage Migration and Integration Report, Bristol, UK: University of Bristol 2016 p. 26 and also own observations.

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of polygamy to include informal "marriage-like unions" and treat them as such²¹⁴ but by far the most attention has been paid to the literature on polygamy, divorce, transnational remarriage in the Pakistani diaspora, and the situation of migrant families who stay in Pakistan. Interfaith relationships abroad have received even less attention. It is worth noting that from the perspective of the laws of European countries, a Muslim religious wedding has no legal effect (e.g., in the UK), and religiously married people are considered under the law to be living in informal unions and their children to be "illegitimate," even though the partners and their entourage may consider themselves as married.

Charsley and Anika Liversage, authors of a study on the Pakistani diaspora in the UK and the Turkish diaspora in Denmark, point out that the lives of migrants take place in multiple locations far apart from each other and create new opportunities and motivations for parallel partnerships. Parallel relationships, sometimes taking the form of polygamy, appear quite frequently in the relationships of early generations of migrants, both Pakistani and Turkish in Europe.²¹⁵ Women from host countries often play the role of "bridges" (*bridging ties*) in facilitating a migrant's entry into a new country and introducing them to the local labour market.²¹⁶ Many men see being married to a host country or EU national as the only possible legal way to settle down in Europe. A pattern described as the "Turkish trick" - cases of Turkish migrants who married Danish women and then divorced them and brought back their first wives from Turkey, is still practised among Pakistani nationals as well. However, partnering abroad without registering a relationship or entering into a religious wedding only with a partner who has not previously professed Islam also appears to be not uncommon, at least during the early years of migration. Pakistani women living in European countries are much more likely to be economically active than those who are coming from Pakistan.²¹⁷ In addition,

²¹⁴ among Muslim minorities, *Global Networks*, 13(1),s. 4, <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0374.2012.00369.x/abstract>, [access: 5.10.2021].

²¹⁵ Ibidem, p. 5

²¹⁶ Ahmad A. N., „Masculinity, Sexuality and Illegal Migration. Human Smuggling from Pakistan to Europe,” Oxford University Press 2015, p. 154

²¹⁷ Dale A., Migration, marriage and employment amongst Indian, Pakistani and Bangladeshi residents in the UK, 2008, The University of Manchester,

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single mothers often have access to social benefits. Shared households in which both partners work and/or receive social benefits enable migrants to better meet their financial obligations to their families in Pakistan, which is a common cause of conflict in transnational relationships (also within marriages - own observation; complaints about husbands or partners sending whole salaries to their families in Pakistan are quite common in "European-Pakistani" mixed relationships). It is not uncommon for informal or exclusively religious relationships with female European nationals to have religious differences between partners, although it is also not uncommon for female European nationals to enter into Muslim religious weddings with Pakistani citizens who profess Islam. Being in an informal relationship in a new country also gives the legal possibility to marry a Pakistani woman and have it registered in the host country according to local law

and legally bring one's wife to the country of origin, meeting the expectations of families in Pakistan. There are also cases of attempts to legalize the stay through the paternity of a child who is a citizen of the European Union, without marrying the mother of the child. From Cleopatra Yousef's article²¹⁸ on Pakistanis in Greece, one can learn that they are predominantly male,²¹⁹ 78 percent are married but their wives (and possibly children) have remained in their place of origin. The law on family integration in Greece is extremely strict and only 2 % of them succeed.²²⁰ Most women and children remain in Pakistan, where they are expected to be faithful, devoted and grateful to the husband who remotely supports the family.²²¹ The

<https://hummedia.manchester.ac.uk/institutes/cmist/archive-publications/working-papers/2008/2008-02-migration-marriage-and-employment.pdf>, [access: 05.10.2021].

²¹⁸ Yousef K., *The Vicious Circle of Irregular Migration from Pakistan to Greece and back to Pakistan*, Hellenic Foundation For European And Foreign Policy (ELIAMEP), (2013), <https://ec.europa.eu/migrant-integration/librarydoc/the-vicious-circle-of-irregular-migration-from-pakistan-to-greece-and-back-to-pakistan>, [access 2.10.2021].

²¹⁹ Men predominate among labour migrants from Pakistan. For reasons for the relatively low participation of women in labour migration, see World Labor Organization 2020 report, Khan T., "Female Labour Migration from Pakistan," 2020 ILO https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_735795.pdf, [accessed 5.10.2021].

²²⁰ Yousef K., *The Vicious Circle of Irregular (...)*, op.cit.

²²¹ FeixasVihé M., *Testing migration hypotheses: the movement of people from Pakistan to Catalonia, New Issues In Refugee Research 2009*, UNHCR Switzerland, (2009), p. 8.

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situation in other European Union countries and the United Kingdom is similar, although it is obviously heavily influenced by local laws governing family integration. Based on observations of migrant communities in Europe (including Poland) it may be concluded that many men enter into various types of relationships with women and often have children with them. However, this remains a taboo, and it seems that information of this kind rarely gets through to families in Pakistan. It can also be assumed that many informal unions are, from a legal point of view, religious marriages that have no legal effect in the host country but are more acceptable to people whose religious practices play a vital role in their lives.²²² Because of the tacit acquiescence to men's "double lives" mentioned at the beginning of the chapter, the existence of informal unions abroad is frequently tolerated as long as the man fulfils his obligations to his relatives in Pakistan.

9. The situation of converts from Islam to other faiths

Unlike some Islamic republics such as Afghanistan, Iran and Saudi Arabia²²³, in Pakistan, the law does not criminalize conversion from Islam to other religions. However, this type of religious conversion, known as apostasy (Arabic: *riddah*), exposes the convert (Arabic: *murtad*)²²⁴ to accusations of *blasphemy*, discrimination, harassment, and threats, especially from non-state subjects such as Islamist organizations, the local mosque community,

²²² Personal observation: the vast majority of European wives of Pakistani nationals I have encountered in Pakistan have married religiously and at least formally embraced Islam.

²²³ Agenzia Fides, PA, ASIA/PAKISTAN – A woman converts from Islam to Christianity: now she and her family risk their lives, 27.09.2017, http://www.fides.org/en/news/62973-ASIA_PAKISTAN_A_woman_convert_from_Islam_to_Christianity_now_she_and_her_family_risk_their_lives

²²⁴ Arab definitions were presented by: Clarke B., Law, Religion and Violence: A Human Rights-Based Response to the Punishment of Apostasy by State and Non-State Actors, *Adelaide Law Review* 30, 2009, s. 111–147, <http://classic.austlii.edu.au/au/journals/AdelLawRw/2009/7.pdf>, [access 26.07.2021].

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neighbours or family²²⁵. The above discrepancy between what is legal, i.e. formally permitted by law, and what is legitimized and practised by society correlates with the different approaches to conversion from Islam among scholars of Sharia law. Only according to the most extreme interpretations is a rejection of Islam a blasphemy for which the death penalty should be imposed. More moderate positions assume no "earthly punishment" for *riddah*.²²⁶

In the absence of official data on the number of any religious conversions in Pakistan, an attempt can be made at best estimation of the scale of the practice of conversion from Islam. The available data refer only to the so-called "forced conversions" of women from Christianity and Hinduism to Islam, which, in the context of religious conversions in Pakistan, is the most frequently covered topic by human rights monitoring organizations and the media. In 2017, approximately 1,000 women in Pakistan were forced to embrace Islam and marry a Muslim, according to a report by the *Commonwealth Initiative for Freedom of Religion and Belief* (CIFoRB) prepared for the *Office of the High Commissioner for Human Rights* (OHCHR).²²⁷

Considering that, first, the plight of religious minorities in the country and, second, the historically rooted trends with regard to religious conversions in the Indian subcontinent, which point to socio-economic improvement as one of the dominant reasons for the decision to change faith, it can be concluded that conversion from Islam is an extremely rare practice in Pakistan. The following section presents the situation of converts from Islam in Pakistani law and society and cites examples of Pakistani converts from Islam highlighted by the media and NGOs.

²²⁵ ecoinet, Pakistan: Religious conversion, including treatment of converts and forced conversions (2009–2012) (PAK104258.E), 14.01.2013, <https://www.ecoi.net/en/document/1096080.html>, [access: 26.07.2021].

²²⁶ Clarke B, Law, Religion and Violence: A Human Rights-Based (...), op. cit.

²²⁷ Religion and Belief (CIFoRB) Submission to office of High Commission for Human Rights on Forced Conversions and Forced Marriages, 04th September 2018., https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WRGS/HumanitarianSettings/CommonwealthInitiativeFreedomReligionPakistan.docx&action=default&DefaultItemOpen=1, [access: 26.07.2021].

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Conversion from Islam in Pakistani law and society

Religious conversion permitted by Pakistani law in practice refers only to conversion to Islam. Although attempts to introduce the death penalty for *riddah* in 1987 and 2007 (in a milder form, for a woman with a life sentence) failed in Pakistan,²²⁸ a convert from Islam can be charged with committing blasphemy, which under Pakistani law ranges from a fine to the death penalty. In addition, the convert faces similar accusations from non-state subjects.

In view of the above, conversion from Islam if it occurs is done in secret. Although, in general, it is impossible under any of the conditions of the Islamic Republic of Pakistan to keep the fact of conversion a secret, primarily in informal situations, such as the replacement of an identity card. When you apply for the document, you have to provide information about your religion.²²⁹ Moreover, according to the *British Pakistani Christian Association* (BPCA), the system that registers these applications does not allow people once registered as Muslims to change their religion.²³⁰

The mere talk of conversion from Islam surrounded by Muslims constitutes grounds for a charge of blasphemy, to refer to Articles 295-298 of the Pakistan Penal Code²³¹. In such circumstances, a convert admitting that he has rejected Allah can be charged with insulting religious feelings under Article 295A which provides for a charge of up to 10 years in prison

²²⁸ Canada: Immigration and Refugee Board of Canada, Pakistan: Legality of conversion from Islam to Christianity, legal or social actions taken against Muslim women who marry Christians but do not convert to Christianity, in Pakistan, 1st August 1989., <https://www.refworld.org/docid/3ae6ab541c.html> [access: 25.07.2021]; http://www.fides.org/en/news/62973-ASIA_PAKISTAN_A_woman_converts_from_Islam_to_Christianity_now_she_and_her_family_risk_their_lives, [access: 26.07.2021].

²²⁹ World Watch Monitor, Pakistan court orders citizens to declare religion, 13th March 2018., https://www.worldwatchmonitor.org/2018/03/pakistan-court-orders-citizens-declare-religion/?_cf_chl_jschl_tk_=pmd_8a371a42dece08721063834a03627f65f1f77396-1627228458-0-gqNtZGzNAg2jcnBszQY6, [access: 26.07.2021].

²³⁰ ecoinet.net, Pakistan: Religious conversion (...), op. cit.

²³¹ Cornell International Law Journal, Khan O., In The Name Of God: Problems With Pakistan's Blasphemy Laws, 19.01.2016, <https://cornellilj.org/2016/01/19/in-the-name-of-god-problems-with-pakistans-blasphemy-laws/>, [access: 26.07.2021].

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and/or a fine.²³² According to the British High Commission in Islamabad, although converts from Islam are particularly vulnerable to prosecution under the blasphemy laws, there are no specific examples of converts convicted under the above legislation.²³³

According to a report by the Coalition for Religious Equality and Inclusive Development (CREID) at the University of Sussex, *the environment does not allow conversion from Islam because it is treated as apostasy and is punishable by death according to the common [in Pakistan] interpretation of Islamic Sharia*²³⁴. Converts from Islam are treated worse than minority members practising their religions from birth. Local mullahs, or religious leaders, are particularly critical of converts from Islam. According to the British Home Office

*A mullah may issue a fatwa [an opinion or recommendation officially prepared only by a mufti, i.e. a scholar of Islamic law, in Pakistan also by a mullah who often incites violence] calling for the death penalty to be executed on a convert.*²³⁵

However, there is no information about specific cases of such killings²³⁶.

Paradoxically, despite the circumstances outlined above that unequivocally discourage conversion to Islam and the overt practice of another religion, teachers in Pakistani madrassas (Koranic schools) note that there is a belief among Muslims that minority religions are

²³² Pakistan Penal Code 1860 last Amended on 2017.02.16, art 295 A, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64050/88951/F1412088581/PAK64050%202017.pdf>, [access: 26.07.2021].

²³³ Letter to Country Policy and Information Team from the British High Commission (BHC), Islamabad, 15.02.2021, p. 52–54, <https://www.justice.gov/eoir/page/file/1370401/download>, [access: 26.07.2021].

²³⁴ Tados, M., Violence and Discrimination against Women of Religious Minority Backgrounds in Pakistan, CREID, p. 184, <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15800>, [access: 26.07.2021].

²³⁵ UK Home Office, Country Policy and Information Note Pakistan: Christians and Christian Converts, 02.2021, p. 11, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963724/Country_information_and_guidance_Christian_and_Christian_converters_Pakistan_February_2021.pdf, [access: 26.07.2021].

²³⁶ US Department of State, 2019 Report on International Religious Freedom, 2019, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/pakistan/>, [access: 26.07.2021].

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attractive, as indicated by research conducted by the International Centre for Religion and Diplomacy (ICRD) for the United States Commission on International Religion Freedom.

The social environment has a major impact on Muslims. Muslims with weak faith in Allah find the behaviour of non-Muslims [e.g., alcohol consumption] attractive. They reject Islam and start practising other religions²³⁷

- said a teacher from a madrassa in Punjab.

The Pakistani – Converts from Islam (Examples)

Taking into account the informal nature of consequences following conversion from Islam, and the lack of official data on this topic, in order to illustrate more accurately the situation of converts from Islam in Pakistan, cases publicised by the media, reports of state and non-governmental institutions have been presented below.

1) In 1990, Tahir Iqbal, a convert from Islam to Christianity from Lahore in Punjab was accused of insulting Allah, desecration of the Quran by using a green highlighter and conducting anti-Islamic education for students whom he tutored. Even though the court did not consider the conversion a crime, the bail application was denied. In 1992, Tahi Iqbal was poisoned in prison and died²³⁸.

2) In 2004, the court of Faisalabad in Punjab decided about a life sentence for Muhammad Iqbal, a convert from Islam to Ahmadiyya, due to committed blasphemy which included calling Allah a false prophet. The incident was reported by the community of the local mosque. Earlier, Muhammad Iqbal was unlawfully penalised by his brother who beat him with a hockey stick

²³⁷ U.S. Commission on international religious Freedom, Connecting the Dots: Education and Religious Discrimination in Pakistan. A Study of Public Schools and Madrassas, p. 70–71, [https://www.uscirf.gov/sites/default/files/resources/Pakistan-ConnectingTheDots-Email\(3\).pdf](https://www.uscirf.gov/sites/default/files/resources/Pakistan-ConnectingTheDots-Email(3).pdf), [access: 26.07.2021].

²³⁸ Siddiqi T., Timeline: Accused Under the Blasphemy Law, Dawn, 19 September 2012, <https://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law>, [accessed: 26.07.2021]; Amnesty International, Pakistan, *Use and Abuse of the Blasphemy Laws*, July 1994, <https://www.amnesty.org/download/Documents/184000/asa330081994en.pdf>, [accessed: 26.07.2021].

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until he lost consciousness²³⁹. Having regard to an utterly difficult legal and social situation of the Ahmadis in Pakistan²⁴⁰, the proceedings of the justice system and non-State actors could be significantly influenced by the adoption of Ahmadiyya, in this case.

3) In 2012, Seema Bibi, a 60-year-old resident of Kot Marth in Punjab, was tormented, or even – according to a Pakistani daily newspaper Express Tribune – tortured (she was shaved and publicly humiliated) by 27 villagers, since she had converted to Christianity, following the previous conversion from Christianity to Islam.²⁴¹

4) In 2012, a pair of converts from Islam to Christianity (following the previous conversion from Christianity to Islam) experienced continuous persecution led by the witness of their own *nikah* (a wedding in Islamic tradition). Notably, the pressure was put on the married couple to send their daughters to a mosque²⁴² for teachings.

The mentioned examples of the Pakistani – converts from Islam – are one of the very few reported by media, non-governmental organisations, and state institutions. These examples confirm that in Pakistan a convert from Islam is exposed to harassment, threat, and violence, i.e. from non-state actors, against which there is no protection from the Pakistani law, including lack of formal punishment.

Reports of international and non-profit organisations for human rights, and also materials shared by Western institutions, clearly indicate that the decision to convert from Islam poses a serious risk, including exposure to life-threatening situations, and it is also made extremely rare and secretly. Lack of information about such conversion type or of the fact that

²³⁹ US Department of State, International Religious Freedom Report 2005, <https://2009-2017.state.gov/j/drl/rls/irf/2005/51621.htm>, [accessed: 26.07.2021].

²⁴⁰ The Ahmadiyya followers believe that the founder of the movement Mirza Gula Ahmad is a prophet, a newly arrived Christ. In Pakistan perceived as heretics, the Ahmadis consider themselves a part of Islamic Ummah. The Ahmadis experience much persecution in daily life; they are expelled from schools; their mosques are set on fire. Nitza-Makowska A., *Różnice demokracji – Indie i Pakistan*, Wydawnictwo Collegium Civitas, Warsaw 2019, pp. 57–58.

²⁴¹ Kharal A., *Christianity to Islam and Back: 60-Year-Old Woman Disgraced for Reconversion*, Express Tribune, 10 March 2012, <https://tribune.com.pk/story/348036/christianity-to-islam-and-back-60-year-old-woman-disgraced-for-reconversion>, [accessed: 26.07.2021].

²⁴² Tanveer R., *'No Compulsion in Religion': 'One Should Be Able to Choose Their Religion'*, Express Tribune, 25 July 2012, <https://tribune.com.pk/story/413084/no-compulsion-in-religion-one-should-be-able-to-choose-their-religion>, [accessed: 26.07.2021].

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converts are punished by law or in an out-of-law mode may result from the marginalisation of the practice, and measures suggested by BPCA, taken by various state institutions seeking to hinder this type of conversion and conceal its consequences²⁴³.

10. “Honour” Crimes, Their Prosecution and Punishment

In accordance with the definition adopted in 2004 by the Pakistani penal code:

*“offence committed in the name or on the pretext of honour” means an offence committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices;*²⁴⁴.

An introduction of the term legitimate defence of honour (also known as “honour crimes”) using two local terms which name murders of mostly women who engaged in premarital or extramarital affairs, thereby, as it is considered, bringing disrepute to the family but without clarifying the term “similar other customs or practices,” contributed to a gap in definition²⁴⁵. As a consequence, these customs and practices are widely understood, including each behaviour going beyond existing standards which differ depending on a region of the country – ranging from relatively westernised Islamabad to rural and tribal areas in Khyber Pakhtunkhwa and Balochistan. Types of behaviour which may be considered disgraceful include: independent choice of man or wife, inappropriate clothes and opinions, and even, as reported by the western media, in case of a woman – a single conversation with a man or a chance event, such as being a rape victim²⁴⁶.

²⁴³ ecoinet.net, Pakistan: Religious Conversion, Including Treatment of Converts and Forced Conversions (2009–2012) [PAK104258.E], 14.01.2013, <https://www.ecoi.net/en/document/1096080.html>, [accessed: 26.07.2021].

²⁴⁴ Pakistan Penal Code 1860 last Amended on 2017.02.16, art 299 (ii), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64050/88951/F1412088581/PAK64050%202017.pdf>, [accessed: 30.08.2021].

²⁴⁵ Sadowa K., Zabójstwa „honorowe” w Pakistanie – analiza The Qisas and Diyat Act 2004, Wrocławskie Studia Erazmiańskie, 2017, p. 91.

²⁴⁶ Immigration and Refugee Board of Canada, Pakistan: Honour killings targeting men and women [PAK104257.E], <https://www.ecoi.net/de/dokument/1249973.html>, [accessed: 30.08.2021].

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The issue of crime but especially honour killing in Pakistan is regularly raised by international organisations, Pakistani state and non-governmental institutions, and the media. This custom is also discussed in an Oscar-winning 2015 documentary called “*A Girl in the River – The Price of Forgiveness*”, tracing the story of Saba Qaisen who survived an attempt of honour killing. The present chapter illustrates attitudes of the Pakistani law (formal) and of the society (pragmatic and legitimate) towards honour crimes, their investigation and prosecution. The latter pragmatic perspective seems, to a greater extent, to expose this controversial practice, i.e. due to ineffective Pakistani judiciary (especially lower courts) and law enforcement authorities. Freedom House, an organisation assessing the state of democracy and freedom in the world, reports about roughly 1 million cases, which are blocked by the Pakistani judicial system each year²⁴⁷. Moreover, in this context, the activity of non-state actors who administer “justice,” in particular the *jirga*, who are a reputable representation of the local community, only men should be noted²⁴⁸.

“Honour” Crimes in Pakistan – Basic Information

The publicised honour crimes indicate that regardless of the behaviour which brought disgrace to the family – in extreme cases it can be just a glance at a strange man – perpetrators act with an intent to kill. If the intentions are thwarted, such crime is categorised in statistics without an indication of an honour crime. Therefore, it is impossible to estimate the number of such cases among reported attempted murders, cases of bodily harm, or throwing acid.

As Human Rights Watch (HRW) reports, cited in a Pakistani daily newspaper „Dawn,” in Pakistan each year nearly 1 thousand women are killed in the name of honour²⁴⁹. The number of victims, although underestimated due to legal, social and cultural conditions, ranks Pakistan as the infamous leader on a global scale. According to the UN data, annually 5 thousand

²⁴⁷ Freedom House, Freedom in the World 2018 – Pakistan, <https://freedomhouse.org/report/freedom-world/2018/pakistan>, [accessed: 30.08.2021].

²⁴⁸ Nitzka-Makowska A., Różnice demokracji – Indie i Pakistan, Wydawnictwo Collegium Civitas, Warsaw 2019, p. 32.

²⁴⁹ Bandial S., The ‘Honour’ in Murder, „Dawn,” 13 September 2020, <https://www.dawn.com/news/1579389>, [accessed: 30.08.2021].

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women overall fall victim to honour killing, which means that in Pakistan every fifth such crime happens. National statistics, even those provided by non-governmental organisations cooperating with international entities, report a somewhat smaller number of victims. Table 1. *Reported cases of honour crimes in Pakistan in the years 2011-2020* presents an attempt at gathering scattered and incomplete data on the scale of honour crimes. Apart from the data for the country, there is data for Punjab, not only because this province has the biggest population of over 110 million but also owing to the availability of this information from one relatively reliable source.

Table 1. Reported cases of honour crimes in Pakistan in years 2011-2020

	2011	2012	2013	2014	2015	2016	2017	2018	2020
Punjab*	364	366	388	404	328	248	181	244	237
Pakistan	705	432	487	923	1096	bd	309	316*	430*

*data also including men, remaining numbers refer to women only

Sources: HRCP, State of Human Rights in 2020, Lahore 2021, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2021/05/State-of-Human-Rights-in-2020-20210503-KEY-ISSUES.pdf>; HRCP, State of Human Rights in 2018, Lahore 2019, <http://hrcp-web.org/publication/wp-content/uploads/2019/04/State-of-Human-Rights-in-2018-English.pdf>; HRCP, State of Human Rights in 2017, Lahore 2018, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2018/10/State-of-Human-Rights-in-2017.pdf>; HRCP, State of Human Rights in 2014, Lahore 2015, <http://hrcp-web.org/hrcpweb/data/HRCP%20Annual%20Report%202014%20-%20English.pdf>, Punjab Police, <https://www.punjabpolice.gov.pk/honour-killings>, [access to sources: 30.08.2021].

Regularly, the biggest number of honour crimes is reported in Punjab and Sindh, due to the population size, and cultural and social conditions in the other two provinces. In tribal areas of Khyber Pakhtunkhwa and Balochistan, the *jirga* forbid reporting such incidents, and generally crimes against women²⁵⁰.

A report of the Immigration and Refugee Board of Canada, which refers to the National Commission on the Status of Women in Pakistan states that *methods of honour killing differ depending on the region, i.e. in Sindh, a victim may be cut to pieces with an axe, in Punjab, usually*

²⁵⁰ HRCP, State of Human Rights in 2017, Lahore 2018, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2018/10/State-of-Human-Rights-in-2017.pdf>, [accessed: 30.08.2021].

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*murders are made with the use of a firearm*²⁵¹. There are known cases of being stoned to death or throwing acid.

The attention of human rights organisations and the media is focused on female victims but men are also murdered in the name of honour. According to the Human Rights Commission of Pakistan (HRCP) in 2020, 148 of 430 victims of these crimes were men²⁵². Unfavourable social and cultural conditions for women in Pakistan are relevant for the investigation and prosecution of honour crimes. Men, while acting in a way which brings disrepute to the family, can still be treated with forgiveness. If they engage in a premarital or extramarital relationship, they can avoid the punishment by offering financial compensation, land, or a woman of their clan for a bride to the family of the “illegal” partner²⁵³. *Aurat Foundation*, a non-governmental organisation with offices in Islamabad, reports about unequal treatment of women and men in Balochistan by the *jirga* who ordered to kill a woman for premarital or extramarital relationships but allowed men to avoid the punishment²⁵⁴. However, to a considerable extent, the lighter treatment of men is not of a universal nature, which is shown by the following cases. In a high-profile case of the footage from Kohistan in Khyber Pakhtunkhwa in 2012, which is described in detail in the chapter *The Situation of Families of Persons Who Have Committed a Crime Against Morality*, the *jirga* ordered to kill each one involved in the footage, regardless of gender. Allegedly, five female participants of the footage were murdered, while two men managed to hide. In 2016, in Burewala in Punjab, Muhammad Irshad was murdered by his own father-in-law and two brothers-in-law who did not support the

²⁵¹ Immigration and Refugee Board of Canada, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/03/04/PAK104257.E.pdf>, [accessed: 30.08.2021].

²⁵² HRCP, State of Human Rights in 2020, Lahore 2021, <http://hrcp-web.org/hrcpweb/wp-content/uploads/2021/05/State-of-Human-Rights-in-2020-20210503-KEY-ISSUES.pdf>, p. 15, [accessed: 30.08.2021].

²⁵³ Deutsche Welle, Unbreen F., Women in Pakistan face the brunt of honor killings, 20 March 2012, <https://www.dw.com/en/women-in-pakistan-face-the-brunt-of-honor-killings/a-15821068>, [accessed: 30.08.2021].

²⁵⁴ Aurat Foundation, Incidents of Violence against Women in Pakistan Reported during 2011, 2012, <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/PR/Press%20Release%202011%20%20English.pdf>, pp. 1–2, [accessed: 30.08.2021].

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marriage of the man with a woman from their family²⁵⁵. Some media considered the murder of Rizwan, in the city of Gujranwala in Punjab, as an honour killing – despite it not exactly fitting the approved definition because the perpetrator did not belong to the victim's family. In June 2021, the man was murdered by the father of the woman whom he was willing to marry²⁵⁶.

Honour Crimes, Their Prosecution and Punishment in the Pakistani Law

Although the practice of honour killing is deeply rooted in the history of the Indian subcontinent, its definition, cited at the beginning of this chapter, was introduced in the penal code at the beginning of the 21st century, and the mandatory punishment for this type of crime has been prevented only since the amendment of October 2016, *Criminal Law (Amendment) (Offences in the Name or on the pretext of Honour) (Act XLIII of 2016)*. The present fragment introduces the most important legislation which allowed perpetrators of honour crimes to avoid criminal responsibility and the changes brought by the above amendment.

Prior to the official introduction of the definition of honour killing, the Qisas and Diyat Act from 1990 referred to these crimes, indirectly to the punishment, and practically to avoid criminal responsibility by the perpetrators.

According to the rule of qisas [retaliation/vengeance] in case of murder/bodily harm the rule of retaliation shall apply, (inflicting injuries to the perpetrator, adequate to the victim's injuries), about which the victim decides, or in case of death - inheritors. Situations, in which the retaliation cannot be applied, or if persons entitled waive it, it is possible to request compensation – diyat²⁵⁷. In accordance with the content of Article 309 of the penal code,

²⁵⁵ National Post, Faris N., Man's Throat Slit in Male 'Honour Killing' in Pakistan, Where Women Regularly Die for Angering Their Family, 20.06.2016 <https://nationalpost.com/news/world/mans-throat-slit-in-male-honour-killing-in-pakistan-where-women-regularly-die-for-angering-their-family>, [accessed: 30.08.2021].

²⁵⁶ ANI, Couple Killed for 'Honour' in Pakistan's KP Province, 9 August 2021 r., <https://www.aninews.in/news/world/asia/couple-killed-for-honour-in-pakistans-kp-province20210809123024/>, [accessed: 30.08.2021].

²⁵⁷ Sadowa K., Zabójstwa „honorowe” w Pakistanie – analiza The Qisas and Diyat Act 2004, Wrocławskie Studia Erazmiańskie, 2017, p. 88.

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introduced by the *Qisas and Diyat Act, in the case of qatl-i-amd [voluntary manslaughter], adult, fully informed wali [the victim's guardian], can in any time, without compensation waive the rule of qisas [retaliation, which is a punishment of perpetrator]*²⁵⁸.

Due to the voluntary punishment dependent on the victim (if survived) and/or the relatives (who serve as *wali*) – which is pointed by the mentioned regulations – honour crimes committed with the permission of the family, and by its members in fact were committed by perpetrators with impunity.

The entity imposing a mandatory penalty for crimes in defence of honour *Criminal Law (Amendment) (Offences in the Name or on pretext of Honour) (Act XLIII of 2016)*, introduces key amendments to the penal code, such as:

- including a term and definition to Article 299, as follows: [the term] *fasad-fil-arz* includes the past behaviour of a perpetrator or the fact whether the perpetrator had a prior conviction but also his mode of action, violent or disturbing to the public while committing a crime, or whether the criminal is perceived as a potential threat to the society or whether the crime was committed in the name of honour²⁵⁹;
- abolition in Article 309 of *wali* competence to fully waive *qisas* in case of acts covered by the term *fasad-fil-arz* mentioned above;
- establishment in Article 311 of a mandatory punishment for honour killing which is subject to a sentence of life imprisonment.

Although the introduction of mandatory punishment for honour crimes is said to be transformative and definitely positive, there is reliable data missing that would confirm the effectiveness of tightening the law, including improved detection or an increase in the number of convictions. Indeed, scattered, incomplete, and sometimes even contradicting statistics from various sources indicate a lower number of registered honour crimes after 2016 but the decline may result from the quality of statistics and lower tendency to categorise an act as an honour crime since this nature of crime has no more immunity from prosecution.

²⁵⁸ Ibidem, p. 84.

²⁵⁹ Criminal Law (Amendment) (Offences in the Name or on pretext of Honour) (Act XLIII of 2016), 22 October 2016 r., <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/109730/136231/F-1646777531/PAK109730.pdf>, [accessed: 30.08.2021].

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Reports from the Pakistani media about honour crimes after 2016 suggest that such breakthroughs in legislation did not happen in the area of investigation and prosecution of perpetrators. A Pakistani daily newspaper „The Express Tribune” in an article from 2019 notifies that from among 439 persons suspected of being involved in 234 honour killing in Punjab, as many as 400 were arrested but only 2% were convicted²⁶⁰. In 2019 in Sindh, according to official data, 108 honour killings took place, and, as a result, 126 suspects were arrested. 81 cases were brought to trial, three of which were rejected - according to the data from January 2020.²⁶¹ The most recent figures from Khyber Pakhtunkhwa for 2017 report 211 suspects, including 166 arrested in 89 honour killing cases. In 2018, in only one of the cases a guilty verdict was rendered, while 10 cases were rejected, and the remaining 87, at the time of publication, were pending²⁶².

“Honour” Crimes, Their Prosecution and Punishment - Society’s Perspective

The investigations performed by Pew Research Centre in 2013, aimed at morality among Muslims, indicated that only 48% of Muslims in Pakistan believed that honour killing was never justified if the unsub was a man, and 45% if the unsub was a woman²⁶³. In view of the fact that roughly 97% of the citizens of the country are Muslims, the dominating opinions – even if not shared by other minorities – would reflect the overall attitude of the public. Significant social legitimacy of acts of violence in defence of honour corresponded to the loophole in the law before the amendment from 2016. In one way, the number of honour killings in Pakistan and cases publicised by the media indicates a sense of impunity of the perpetrators and significant social acceptance. On the contrary, some believe that it is the insistence of Pakistani and

²⁶⁰ The Express Tribune, Umair M., 2% of Honour Killing Suspects Convicted, 5 June 2019, <https://tribune.com.pk/story/2006248/1-2-honour-killing-suspects-convicted>, [accessed: 30.08.2021].

²⁶¹ Dawn, Ali I., 108 Women in Sindh 'Killed For Honour' in 2019 Alone: Police Report, 31 January 2020, <https://www.dawn.com/news/1531683>, [accessed: 30.08.2021].

²⁶² The News on Sunday, Khan J.A., Honour Killings on the Rise, 4 November 2018, <https://www.thenews.com.pk/tns/detail/566592-honour-killings-rise>, [accessed: 30.08.2021].

²⁶³ Pew Research Center, The World’s Muslims: Religion, Politics and Society, 30 April 2013., <https://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-morality/>, [accessed: 30.08.2021].

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international public opinion which forced the introduction of mandatory punishment for honour crimes. The following are several cases of such crimes which particularly agitated the public.

In May 2014, Farzana Parveen was publicly stoned in front of the court in Lahore, the second-largest city in Pakistan. Among those responsible were her father, two brothers, and a cousin who was her ex-fiancé, at the same time. This way the woman was punished for entering into matrimony with a man whom she chose irrespective of the will of her family. Other circumstances only added to the drama. Farzana, at the time, was pregnant, and her appointment to the court was intended to clarify the family situation. Thus, the Reuters and Western media wrote about police officers present at the scene of public lynching, who stood idly by²⁶⁴. Ironically, the widower of Farzana plead guilty to the murder of his first wife, whom he found necessary to be involved with another woman, though he avoided punishment because he was forgiven by his son. As early as in November that year, the court sentenced 4 unsubs to death, one for 10 years in prison for a murder of a woman and her unborn child, and for terrorism²⁶⁵.

Another honour crime publicised also outside Pakistan was the murder of Qandeel Baloch in July 2016. The woman was a popular celebrity who exposed and ridiculed the patriarchal model of Pakistani society by means of bold opinions and behaviour in social media and in TV shows. Qandeel was intoxicated by sedatives and suffocated in a family house by her younger brother. According to the perpetrator himself, he committed a crime in order to restore honour to the family. However, as the family status was low, and the popularity and success of Qandeel - one of the top 10 most searched people in Pakistan via browsers – tremendous, media and public opinion claimed the perpetrator had a financial motive. The unsub was sentenced to life imprisonment. Because of the publicity, the role of *wali* was taken over by the country, thus the potential forgiveness by the family, which the unsub could not

²⁶⁴ Reuters, Bukhari M., Pakistani Family Sentenced to Death Over 'Honour Killing' Outside Court, 19 November 2014, <https://www.reuters.com/article/uk-pakistan-women-killings-idUKKCN0J30SZ20141119>, [accessed: 30.08.2021].

²⁶⁵ HRCF, State of Human Rights in 2014, Lahore 2015, pp. 216–217, <http://hrfpweb.org/hrfpweb/data/HRCF%20Annual%20Report%202014%20-%20English.pdf>, [accessed: 30.08.2021].

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hope for anyway, would not lead to immunity from prosecution – suggests the statements of Qandeel’s parents.

Apart from the cases described above, few others resulted in the conviction of the perpetrator. The Pakistani judicial system gave a lesser sentence to the unsub of attempted murder of Saba Qaiser whose story would remain unknown without a documentary *Girl in the River – The Price of Forgiveness*. The film exposes not only the tragedy of the protagonist shot in the head and hand by her own father because she married a man of low social status (as assumed by the girl’s family) but also the powerlessness of law enforcement and judicial authorities. In this context, there is a significant scene, in which the lawyer of the protagonist attempts to explain to the *jirga* the lack of will of the victim to forgive. Eventually, the formal order represented by the lawyer loses to the power of tradition. On the trial date, the *jirga* exchanges the proxy of Sabie and forces forgiveness towards the father at the court.

Until 2016, the loophole in the law enabled the majority of unsubs of honour crimes, including murders, not to bear criminal liability. Such a concept of law resulted in major legitimacy for acts of violence in the name of honour by the society. According to the analysed cases, this violence was justified mostly by the *jirga*. They perpetuated pseudo-legal, social, and cultural order which forced to penalise a family member (mainly women, in reality), if he/she brought disgrace to the family which guaranteed impunity of perpetrators. The tightening of the law and the introduction of mandatory punishment, independent of obtaining forgiveness from the victim (if survived) or its family, will be effective - i.e. will lead to a decrease in the number of honour crimes, general penalisation, and convictions - if social legitimacy for these crimes decreases, the influence of the *jirga* is undermined, and the reliability of law enforcement authorities and court increases.

11. The situation of families of people who have committed a crime against morality

Most Muslims in Pakistan and around the world agree on certain moral principles but as already noted in Chapter 1 of this report, the country lacks a single universal definition of

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morality. Different boundaries of moral behaviour can be set by the penal code and local traditions. In this chapter, behaviour that undermines norms, which creates a locally legitimized order, is considered to be a crime against morality. In the absence of data or ready-made studies about families who have committed such crimes, the chapter is an analysis of the cases publicized by the Pakistani and international media. Their review exposes the dominance of the socially legitimized order over the formal one created by law and the spiral of violence in which some families and communities operate.

From the social consequences of a crime against morality committed by a family member, his loved ones are freed by the so-called honour crime, most often the offence of a person who has exceeded the applicable norms. Saba Qaiser's father shot and killed her in 2014 with the intention of taking her life, punishing her in this way for marrying out of love and against the will of the family. Not only was the man not convicted of the crime taking advantage of a loophole in the law before the amendment at the end of 2016 but also together with his family (excluding Saba herself) began to enjoy greater respect in the ²⁶⁶local community. In the documentary about this honorary film *A Girl in the River – The Price of Forgiveness*, the perpetrator prides himself on the fact that his other clients have received lucrative marriage proposals. In turn, the family of Saba's husband, in order to protect themselves from social rejection, according to the decision of the *jirga*, had to persuade the woman to forgive the perpetrator in court. Interestingly, this act of forgiveness effectively freed Saba from violence in the name of honour on the part of her father, and her new family from discrimination and harassment. *The jirga* and the perpetrator decided that apparently, Allah wanted the woman, her husband and in the future their children, even though the basis of their relationship is an immoral act, to continue to function in their community.

The consequences of the 2012 Kohistan video (one of the most conservative and traditional districts in Pakistan) show what threatens the family if it opposes the *jirga's* decision and does not punish immoral behaviour. In this case, the motif for sentencing a group of teenagers, five women (Bazegha, Siran Jan, Begum Jan, Amina Bibi, Shaheen) and two men (brothers Gul Nazar and Bin Yasir) to the death penalty was participation in the recording of

²⁶⁶ The issue of the chapter explains *Crimes in defense of "honor" prosecution and punishment*, s. 77.

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the wedding. Several-minute-long film shows young people clapping and singing, with no interaction between them. It is believed that the women in the video were murdered, including Shaheen, who is not even seen in the video but is known to have been in the same room. The teenagers went missing and their bodies were not found, which is why the media and public opinion are based on conjecture. The family of men refused to submit to punishment, and what is more, their brother Afzal Kohistani publicly challenged the decision of the *jirga*, gaining a split outside Pakistan. Consequently, the three older brothers of the men were murdered by relatives of the women immortalized on the video (the perpetrator was sentenced to life imprisonment). Afzal hid with the rest of the family for more than seven years – which meant a life of seclusion– and at the same time publicized the case. In March 2019, a man was shot dead in a public place in Abbottabad. These tragic events place the family inside a spiral of violence. Two months later, paradoxically known from the recording, Gul Nazar himself was to kill a further relative in the name of honour for an extramarital relationship with the widow of Afzal.²⁶⁷

In a traditionally patriarchal society, not only is pre and non-marital contact expected to be brought into compliance with local norms – sometimes extremely strict as the Kohistan video shows – but also for a man to marry a woman. Families of homosexual men protect themselves from the social consequences of revealing their son's sexual orientation in arranging for them belying to women.

*Gays don't engage in a same-sex relationship because they know that one day, they will have to marry a woman, (...) after marriage they will treat their wives well but they will still have sex with other men.*²⁶⁸

– a 50-year-old homosexual from Karachi. There is no information about discrimination or harassment against families where the husband and father have sexual relations with men. Sumera, the wife of a masseur (*malchiwala*), who also offers men sexual intercourse – in an interview with the BBC, only complains about insults against her husband but does not mention

²⁶⁷ Afzal Kohistani's brother 'kills' relative for honour, "Dawn," 27th of May 2019, <https://www.dawn.com/news/1484826>, retrieved 29.09.2021.

²⁶⁸ Azhar M., Gay Pakistan: Where sex is available and relationships are difficult, BBC, 27 August 2013, <https://www.bbc.com/news/23811826>, retrieved 29.09.2021.

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the impact of a man's sexual orientation or profession on her and her family. The consequences of those closest to him can be protected by the fact that, firstly, a man has two wives and a total of eight children, thanks to which he retains the appearance of leading a traditional lifestyle, and secondly, the conditions of Karachi, the largest city in Pakistan, which²⁶⁹ is less conservative than the countryside.

It is much more difficult to protect themselves from marginalization and even lynching for families who have committed a crime against public morality in the form of blasphemy²⁷⁰. Such a threat is confirmed by the story of Wajeeh-ul-Hassan, accused of blasphemy in 1999 and sentenced to death three years later. The basis for the conviction were "blasphemous" letters written under pressure from his superiors, in which Hassan insulted Muhammad and Islam and admitted that he had converted to Christianity. The brothers Wasim and Naveed, owners of crown steel, a company in Lahore that employed the defendant, wanted to obtain information from him about the man's previous employers, i.e., the family of Asma Jahangir, a Pakistani lawyer and activist, in order to intimidate and seize real estate. Hassan was the victim of the actions of the brothers, who forced him to write a letter and accused him of blasphemy. As the Pakistani admits years later, fearing for the safety of his family, he did not decide to testify in his own defence in court. Although in 2019 Hassan was acquitted, he is still being treated like a criminal, and his secret meetings with his family pose a threat to their lives.²⁷¹

Similarly, in the case of the blasphemous accused Asia Bibi, a Christian woman from the village of Ithan Wali in Punjab – despite the acquittal, the woman's family found itself in danger and eventually had to leave Pakistan. Bibi was accused by two Muslim women of insulting Muhammad and the Quran during an argument over her refusal to drink water from the same vessel as her in 2009. During the quarrel, Bibi was to bring Muhammad to Christ, emphasizing the fact of martyrdom for the salvation of the latter's faithful and the lack of heroic deeds on

²⁶⁹ Ibid.

²⁷⁰ Cox N., Justifying blasphemy laws: freedom of expression, public morals and international human rights law, *Journal of Law and Religion*, 35(1) 2020, s. 33–60, doi:10.1017/jlr.2020.11.

²⁷¹ Al Jazeera, Hashim A., Sentenced to death for blasphemy: Surviving Pakistan's death row, 21 February 2020, <https://www.aljazeera.com/features/2020/2/21/sentenced-to-death-for-blasphemy-surviving-pakistans-death-row>, retrieved 29.09.2021.

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the side of the Muslim prophet. The Christian woman was first sentenced to death in 2010 but after eight years the Supreme Court cleared her of the charge due to the lack of evidence. Aid to the Church in Need UK described the situation as follows:

*In their [closest to Asia Bibi] neighbourhood, the mullahs went from house to house, showing pictures of members of the [women's] family on their phones, trying to track them down.*²⁷²

The family moved only at night with their faces covered. As Aid to the Church in Need UK further reports, those closest to Asia Bibi even had to remove the mirrors in the car for fear of being recognised²⁷³.

The examples above show that against the social consequences – including lynching in extreme situations – families who have committed a crime against morality are protected by acting in accordance with a locally legitimized order and independent of the law. Paradoxically, a sentence issued based on a provision in the Criminal Code does not protect the perpetrator or his family from the consequences of the traditional, locally legitimized order. An exemption here may be the fate of the families of those accused of blasphemy and acquitted by the court. The above examples also point to the lack of effective solutions in the law that would guarantee the safety of the family of a person who has exceeded local norms, even if family members seek help and publicize the matter like Afzal Kohistani. In extreme, internationally publicized cases, such as the case of Asia Bibi, the Pakistani authorities allow the family to leave the country safely.

²⁷² The Guardian, Sherwood H., Asia Bibi family being hunted 'house to house' in Pakistan, 21.11. 2018, <https://www.theguardian.com/world/2018/nov/21/asia-bibi-family-being-hunted-house-to-house-in-pakistan>, [access: 29.09.2021].

²⁷³ Ibid.

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12. Summary

This report on crimes against morality in Pakistan has led to the following conclusions, which are set out in the following paragraphs.

1. The main elements constituting Pakistani tradition are following: patriarchy, hierarchy (subordination of younger family members to elders), collectivism (superiority of community interests – family, tribe, clan, community – over individuals), conservatism; many crimes, the victims of which are most often women, are committed in the name of defending morality or honour but often they are simply to prevent the destabilization of the ossified structure of tradition, to prevent a change in established social roles.

2. The honour of the family depends on the purity and conduct of women – any act or even suspicion is sometimes considered an adultery (pre- or extramarital sex) and as such can become the basis for violence and the desire to erase the stain, the cruellest form of which are the so-called honour killings.

3. There are four overlapping legal orders: 1) normative relating to codes, constitutions, courts or police that prosecute the perpetrators of crimes but often in a sluggish, corrupt, ineffective way (little social trust); 2) religious (represented by a council composed of scholars expert in the writings of Islam), in which there is no condoning for crimes and honour crimes but criminalizing adultery (*zina*); 3) traditional (village councils such as *jirga* or *panchayat*), according to which a woman is part of a man's belongings and owes him obedience; adjudicating according to the principle of "an eye for an eye"; 4) customary – informal, based on an imprecise interpretation of Islam, inequality, often replacing the others.

4. Families arrange traditional marriages; in this way not only couples are associated but also the families of similar status. In order to maintain the property in the family, marriages of close cousins are quite common.

5. Marriages out of love, that is, of one's own free will, are not socially acceptable because they mean opposition to loved ones, community, traditions, etc.; families often prosecute such "rebels" for retaliation – accusations of adultery or even rape, as well as honour killings occur in such circumstances. Despite the pressure of families, young people risk for love, which involves escaping, hiding, changing their identity.

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6. The consequences of extramarital pregnancy are borne mainly by women; it entails the risk of total exclusion from its community, the loss of support of male caregivers and often also women in the family and, in the worst case, the revenge of the family "in the name of honour", which can end tragically; the father of an illegitimate child has no maintenance obligation.
7. Mothers of illegitimate children are often forced to relocate with their offspring, live in social welfare centres; it is also a common reason for women to migrate abroad.
8. Illegitimate pregnancies are often removed (even though it is illegal), and illegitimate children – especially girls – are abandoned; with the help of charities, they are also given up for adoption or placed in orphanages. An illegitimate child may have problems with obtaining documents in accordance with the law (birth certificate, ID card), as well as with finding a life partner in the system of arranged marriages.
9. Women who run a household alone and raise children are exposed to difficulties in Pakistani society due to the lack of a male guardian.
10. Helping widows and orphans is considered a religious duty; widows of civil servants receive pensions from the State; the state allocates the revenue from *the zakat* tax, among others, to help widows. The tradition of charity is firmly rooted in the society.
11. Divorced people are stigmatized, and divorcees are often excluded from the community and stigmatized as those who have brought shame to the family. They do not experience support from them, have material difficulties, go (for a certain amount of time) to social care homes, may be forced to change their place of residence; unlike helping widows, helping divorcees is often frowned upon. After divorce, the father of the children has a maintenance obligation, even if they stay with the mother.
12. There are microcredit institutions that make it easier for women (both widows and divorcees) to start their own business and support themselves and their children.
13. Prostitution in Pakistan is illegal – promotion and sale/trafficking of human beings for this purpose are also criminalized.
14. Traditionally, in the subcontinent there was a culture of courtesans – educated women to accompany wealthy men who provided a lot more than marital sexual services – and to fear

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bazi – young boys to accompany the powerful; both traditions may be the cause of moral consent to prostitution.

15. The causes of prostitution are primarily poverty, lack of education, i.e., economic coercion – for these reasons there is migration from the countryside to the cities or escapes from the family, where the victims fall into the clutches of pimps; prostitution is often encouraged by close people, e.g., boy-friends, lovers, blackmailing their victims that due to the loss of virginity it will be impossible for them to marry or avoid the consequences of adultery.

16. Prostitution is associated with violence – men who use the services of prostitutes take advantage of their subordination and dependence; victims of violence rarely report such cases for fear of being accused of adultery, etc.

17. Although there is no law directly against sexual minorities, due to the existing legal regulations on adultery, homosexuality is considered a sin; there is social intolerance towards revealing relationships other than marriage between a man and a woman; people belonging to the LGBTI community are forced to hide their orientation and often to lead a double life; they cannot register a relationship or adopt children.

18. Transgender people (*hijras*) are called the "third sex" and belong to the most marginalized communities. They experience intolerance, exclusion from their natural families, difficulties in accessing education, health care, the labour market, places of worship, and are victims of persecution and violence; however, it is the only LGBTI community in the country that has come out and exists in the public sphere.

19. Transgender people have the right to register their gender in documents, they also have voting rights. Since 2018, the Transgender Protection Act has been in force; an ombudsman for transgender people has been established and a number of initiatives have been taken at the local level (e.g. in hospitals, police) – it will probably only be possible to assess how the law is implemented in this regard within a few years. Because of the separate status of transgender people in Pakistan, organizations working for this community are also involved in helping other sexual minorities.

20. In Pakistan, there is no permission for extramarital or informal relationships. Betrayals, although taboo, happen; most often men cheat, using the services of prostitutes or simply maintaining a mistress (sometimes even with the knowledge of wives).

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21. Migrant life takes place in many remote places and creates new opportunities and motivations for long-distance partnerships. Relationships, sometimes taking the form of polygamy, appear quite often in accounts of the first generations of migrants, also from Pakistan. Women from host countries often play the role of bridging ties in *facilitating* the entry of a migrant into a new country and their introduction into the local labour market. Based on social observations of these migrants, it can be concluded that many Pakistanis enter various types of relationships with women in the countries in which they settle down, often also having children with them. However, this remains a taboo subject and it seems that this kind of information rarely reaches the families remaining in Pakistan.

22. It can also be assumed that many informal unions abroad are legally religious marriages which do not have any legal effect in the host State but are easier to accept for people in whose lives religious practices play an important role.

23. Due to the tacit acceptance of men's "double lives", the existence of informal relationships abroad is often tolerated by families (as in the case of informal relationships in the country), if the man fulfils his financial duty towards his relatives.

24. The established law does not penalize conversion from Islam to other faiths but this type of religious conversion, identified with apostasy, exposes the convert to accusations of blasphemy, discrimination, persecution and threats primarily from non-state actors such as local Islamists, the community gathered at the surrounding mosque, neighbours or family.

25. From the social consequences of a crime against morality committed by a family member, his loved ones are freed by the so-called honour crime, most often the offence of a person who has exceeded the applicable norms;

26. A case study has shown that the families of people who have committed a crime against public morality such as blasphemy are exposed to discrimination, threats or lynching – even when the alleged blasphemer has been acquitted by a court.

27. Every year, more than 1,000 women are murdered for honour in Pakistan, which constitutes 1/5 of the victims of this type of crime on a global scale.

28. Although men tend to also become the victims of honour crimes, the overwhelming majority of those victims are women, which is why some statistics and sources focus exclusively on them.

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29. A definition of a crime committed in the name of honour was introduced into the Pakistani Penal Code in 2004 but it is only in 2016 a legal gap in the law, that allowed perpetrators of this type of crime not to suffer any punishment, was removed. It became possible, when they were forgiven by the victim (if they survived) or members of their family.

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