

Does Lack of Legislative Reforms Lead to Practices Like Women as Compensation in Pakhtoon Culture?

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Abstract

The present study was aimed at discovering the hidden facts causing the women as compensation practices in *pukhtoon* culture in Disttswat, *Kohistan*. A sample size of 205 respondents out of 369 were randomly through proportional allocation procedure. A conceptual frame work comprised of one independent variables i.e legislative failure and dependent variable women as compensation with education, family type and income as controlled variables was chalked out. The collected data was analyzed through simple frequency distribution, bi-variate and multi-variate respectively. Moreover, reliability analysis was carried out and reliability coefficient was declared as 0.74. Association of dispute resolution through formal law, use of formal law for social control, were found positive and significant with women as compensation. A complete synergy was found between legislative failure and women as compensation for literate and illiterate while controlling literacy in the form of non-spurious in relationship at bi-variate level. Moreover, while controlling family type a non-spurious result were discovered between legislative failure and women as compensation in the joint family system quick disposition of justice through formal courts through structural and functional synergy and declaring *Swara* as cultural taboo while relying on formal court and allied departments like police and other law enforcing departments were some of the policy recommendation in light of the study.

Keywords

Legislative Failure, Women as Compensation, Dispute Settlement, Blood, Honor and property.

Introduction

Legislative Failure

According to (Barfield, 2003) judiciary system in Afghanistan has little success to resolve civil disputes and to a great extent criminal cases as well due to prolong procedure and sending cases back to informal institutions for settlement. Exchange of women as compensation (*Bad*) has always been considered against Sharia Law and local custom in all ages throughout the world and so condemned. Unlike *Pashtun* in southern parts of the country, the practice has never been noticed in ethnic groups of the northern Afghanistan. The dynamics of relationships in a society plays a key role in issues settlement. In industrial societies the phenomenon of more access to justice through

effective judiciary has replaced this value system that also influences other cultural privileges in disputes resolutions. Still, the authority of implementation and the results based on the enforcement of dispute settlements in traditional societies are important in terms of its social ailments (Nader and Todd, 1978; Cappelletti, 1992; and Bennett, 1991).

Sadiqi (2004) found that District judiciary was more distressing for commoners, however the recent (sumoto action) had led to the acceleration of cases settlements (Minallah, 2010) conventional mechanism of reconciliation had led to poor writ of judiciary and this opened vistas to settle issues ultra-human rights considerations. These practices led to the extreme anti human acts like Swara Wani ect (Niaz, 2006). Revenge killing is deemed legitimate dispute of being illegitimate in pakhtoon culture (Barfield, 2003). In Pakistan people have little facilities to be legally redressed. Primary investigation is very necessary to provide proper evidences but poor investigation/reporting by police about *Honor Killing* relating to *Panchayat* has been always the main barrier to provide sufficient evidences for a conviction (Zahid, 2009). Due to ineffective police investigation in cases of honor crimes in Pakistan, 85% of culprits are either acquitted or given relaxation in punishment (Hussain, 2006). In communities with close inter families relations it was easy to amicably resolve disputes, in past. At present indifference is increasing day by day that leads to competitive relationship within the communities. That is why people in Pakistan are less concerned to have a society based on mutual good will but to win and earn through *Panchayat*, regular courts and *Sharia* courts to have a favorable state law, customary/ traditional law or Islamic *Sharia* that can make them win. For this purpose a big amount of \$350 million provided by Asian Development Bank for 'Access to Justice Development Initiative' programme in 2002, was spent on construction of new courts buildings and furnishing the existing ones but nothing was done for the quality of official justice system (Zahid, 2009; and Mumtaz, 1987). Taking out a narrative from the above findings, this paper has been designed to look into the causes of legislative failure over women as compensation practices with some sound and workable methodologies for its eradications.

Research Design

The present cross sectional study was carried out in Swat District f KPK Province, to determine the relationship between “Women as compensation” (*Swara* Practices) and (Legislative Failure) for the purpose of reaching into conclusive results.

Sampling

A sample size of 205 was chosen as per mechanism of Sekeran (2003) from three selected Union Councils with relative sample size as per population allocation was determined on the total strength of the respondents from each strata.

Table 1. Sample Size Distribution

Village Name	Population	Sample Size
Tehsil Kalam, Union Council Kalam	156	88
Union Council Othore	193	106
Tehsil Matta, Union Council Chupreyal	20	11
Grand Total	369	205

Characteristics of Respondents and Conceptual Framework of the Study

All those women who were the victims of compensation practice, parent, brothers and blood relatives of *Swara* were chosen as respondents for this study. The study proceeded with the following conceptual framework.

Table 2. Conceptual Framework of the Study

Background Variables	Independent Variables	Dependent Variables
Education	Legislative Failure	Women as compensation (Swara Practices)
Family Type		

Indexation

The dependent variable was indexed to get the desired degree of the responses and ascertaining the level of relationship at variables as well (Smith, 1981; and Nachmias and Nachmias, 1987).

Reliability Analysis

The Cronbach's alpha test was used for working out reliability in the present investigation. A reliability of 0.74 between the variables for the present study was discovered. 0.7 is acceptable in social sciences due to spontaneous variables in human behavior (Nachmias and Nachmias, 1992).

Data Analysis

Data were analyzed through frequency and percentage distribution along with, ² test statistics to ascertain the relationship between dependent and independent variables at bi-variate level. Gamma statistics enabled to explain the strength and direction of relationship at Bi. variate level with the aforementioned variables (See Table-2).

Chi-square Test

$$(X^2) = \sum_{F_i F_j} \sum (F_{ij} - F_{ij})^2$$

Where

(X^2) = Chi-square for two categorical variables

f_{ij} = the observed frequencies in the cross-classified category at i th row and j th column

F_{ij} = the expected frequency for the same category, assuming no association between variables under investigation

The formula simply directs one to take squared summation of the frequencies for each cell, divided by the expected frequency. The resulting frequency is distributed as chi-square with relevant degree of freedom. The degree of freedom is calculated as follows;

$$Df = (r-1)(c-1) \quad \text{where}$$

Df = Degree of freedom

r = the number of rows

c = the number of columns (Tai, 1978).

Upon the violation to (X^2) test assumption, Fisher Exact Test was used as per outlines of (Baily, 1982).

Fisher Exit Test Probability = $\frac{(a+b)!(c+d)!(a+c)!(b+d)!}{N!a!b!c!d!}$

$$N!a!b!c!d!$$

Where a, b, c and d were the observed numbers in four cells of contingency table and "N" the total number of observations.

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Gamma

Gamma statistics was used to ascertain the strength and direction of relationships between dependent and independent variables. The formula for Gamma statistics is as following

$$\gamma = \frac{NS - ND}{NS + ND}$$

Where; NS=Same order Pair

ND = Different order Pair (Nachmias, 1992).

Multi-variate Analysis by Contingency Tables

Multi-variate analysis was undertaken to determine the spuriousness or non-spuriousness of the relationship between independent and dependent variable. Basic variables namely, education, family size and income of the respondents were kept control while measuring the authenticity of relationship at bi-variate level.

Results and Discussions

Respondent's Attitude Towards Legislative Failure

A strong judicial system and appropriate rules implementation lead to peaceful environment while directing society towards development however, weak judicial system and lawlessness keeps society ignorant with all manifestations in criminal tendencies amongst its members. In order to be more precise, legislative failure in the present study was limited to certain statements.

As depicted in Table.3 (93.7%) respondents supported the idea of formal law implementation, (94.1%) had the opinion that disputes were resolved through formal law and (94.6%) viewed that formal law were used for social control. Similarly, (88.8%) respondents disclosed registration of cases in formal courts with people had easy access to formal courts (76.6%). These findings were contrary to findings of Riaz (2013) who found that right to marry with free and full consent is clearly given by Islam and incorporated in national laws of the country. Moreover, it is established under international human rights law in many conventions such as Universal Declaration of Human Rights. It shows the lack of religious knowledge, ineffectiveness of the law and inappropriate policies and procedures adopted by a state. Notwithstanding, (92.2%) respondents opposed the idea of disposition of cases by formal courts in short period of time. It could be attributed from the data that strong legislative setup was not existed in the study area which led to the establishment of community based justice system. These findings were in line to findings of (Saleem et al, 2011) who stated that poor living conditions, low social status, inaccessibility to justice, late decision making and high cost of formal judicial apparatus are key factors which leave little or no option but to obey the verdict of head man of the tribe irrespective how biased or unjust it may be. Conversely, (61.5%) respondents were satisfied from formal court decision making, (66.6%) had accepted that decision of formal court was based on justice while (79.5%) respondents opposed the statement that formal law decision was based on gender discrimination. It is obvious from the results and through formal law was in exercise but people had little faith in it regarding their family decisions. About (68.8%) respondents agreed that formal law protects women from *Swara* marriage but (95.1%) respondents gave clear indications that formal

courts took long time in decision making. Findings of the present study were contrary to the findings of Amnesty international (2002) which stated that tribal justice system grew due to failure and inaccessibility of the state justice apparatus undermined the weak judicial system and respect for the rule of law. The positive response of respondents towards the aforementioned variables in the study area could be due to strong legislative procedure and formal law implementation providing effective and administrative role in controlling various cultural and religious misbeliefs prevalent in the society, however, its role in the disposing of justice regarding the cases had clouded its acceptance amongst the respondents in the study area. (Zamurad, 2012).

Table 3: Respondents Attitude Towards Legislative Failure

Legislative Failure	Agree	Disagree	Uncertain
Formal law is implemented	192 (93.7)	3 (1.5)	10 (4.9)
Dispute are resolved through formal law	193 (94.1)	7 (3.4)	5 (2.4)
Formal law is used for social control	194 (94.6)	4 (2.0)	7 (3.4)
People registered their cases in formal court	182 (88.8)	13 (6.3)	10 (4.9)
People have easy access to formal court	157 (76.6)	38 (18.5)	10 (4.9)
Formal courts dispose off your cases in short time	9 (4.4)	189 (92.2)	7 (3.4)
Satisfaction from formal court in decision making	126 (61.5)	68 (33.2)	11 (5.6)
Decision of formal court is based on justice	137 (66.7)	49 (23.9)	19 (9.3)
Formal law decision based on gender discrimination	19 (9.3)	163 (79.5)	23 (11.2)
Formal law protects women from Swara marriage	141 (68.8)	47 (22.9)	17 (8.3)
Formal court decision takes long time	195 (95.1)	4 (2.0)	6 (2.9)

number in the column presented frequency while number in parenthesis presented percentage proportion of the respondents

Association Between Respondent's Attitude Towards Legislative Failure and Women as Compensation

Formal law is one of the important pillars of a society or state for keeping harmony, peace, stability and maintaining social control with directional predictability. Three components of the state including legislative, judiciary and executive are involved in passing, defining and implementation of law. Traditional practices may include forced marriage, child marriage etc. Moreover, imminence of

Swara, honor killing are some other gruesome effects, which could not be ruled out with variations in the frequency of occurrence and recurrence. Legislative failure as variable was limited to some specified tasks. Findings on attitude of men towards these tasks and their association with women as compensation are given and discussed as follows;

Table 4. Relationship Between Legislative Failure and Women as Compensation

Formal law is implemented	Women as compensation	$\chi^2= 8.639 (0.013)$ $\gamma=0.75$
Disputes are resolved through formal law	Women as compensation	$\chi^2=0.491 (0.782)$ $\gamma=-1.000$
Formal law is used for social control	Women as compensation	$\chi^2= 14.00 (0.001)$ $\gamma=0.725$
People registration their cases in formal court	Women as compensation	$\chi^2= 8.572 (0.014)$ $\gamma=0.764$
People have easy access to formal court	Women as compensation	$\chi^2= 1.782 (0.410)$ $\gamma=0.17$
Formal courts dispose off cases in short time	Women as compensation	$\chi^2= 0.503 (0.778)$ $\gamma=-0.318$
Satisfaction from formal court in decision making	Women as compensation	$\chi^2= 1.897 (0.387)$ $\gamma=-0.65$
Formal law decision is based on justice	Women as compensation	$\chi^2= 1.862 (0.394)$ $\gamma=-0.599$
Formal law decision is based on gender discrimination	Women as compensation	$\chi^2= 3.597 (0.166)$ $\gamma=-1.660$
Formal law protects women from Swara marriage	Women as compensation	$\chi^2= 1.867 (0.393)$ $\gamma=-0.095$
Formal court decision takes very long time	Women as compensation	$\chi^2= 1.999 (0.368)$ $\gamma=0.16$

number in the column presented frequency while number in parenthesis presented percentage proportion of the respondents

A positive ($\gamma= 0.725$) and significant ($p<0.05$) association was found between respondents attitude towards legislative failure such as dispute resolution through formal law and women as compensation (Table 4).The positive relationship of respondents towards dispute resolution through formal law and compensation practices like *Swara* marriage suggested that formal social control in the study area was strong but unlikely people were prone to use traditional *Jirga* system for dispute resolution in their area in various cases. It could be attributed to the prevalence of strong traditional and social fabrics which had control over the minds and behavior of the respondents. This commanding influence did not allow the respondents to resolve the dispute through informal legal setup. Anyhow strong primary based relations on the basis of clan and family make family members strict followers of the traditional practices. Change is the sole process and almost very difficult if not impossible to penetrate. These findings were similar to the findings of Zamurrad

(2012) who stated that despite of various legislative and executive measures of the federal and provincial governments in the past regarding gender issues, the Pakistani women are still facing all kinds of discrimination. *Vanni/Swara* is an inhuman customs, ultra legislative and moral limits (Mumtaz, 2014). Handing over of girls for blood based dispute settlement is a common characteristic of Asian countries. These practices of dispute resolution have a strong support from the existing culture (Rivert, 2001; and Hussain and Kokab, 2004). Also a high positive ($\gamma= 0.764$) and significant ($p<0.05$) relationship was found between respondents attitude towards use of formal law for social control and *Swara* marriage. It is indicative of the fact that formal law could reduce the occurrence of *Swara* event (women as compensation). However, the absence/fragile existence of formal system with little ramifications in deliverance had created some conducive environment for such practices to creep in. Despite declaring exchange of female for dispute settlement is strictly prohibited by government of Pakistan through amendment act 2005 which was also augmented by the Supreme Court of Pakistan while declining *Jirga* is illegal's which still existed in the remote areas of Pakistan. Equity in gender though exists in constitution of Pakistan but often confined to papers with little existence on ground perhaps, cultural endorsement is taken as legitimate as legal (Munir, 2013; Niaz, 2006; and United Nation Human Right Council, 2007). Similarly, a high positive ($\gamma= 0.75$) and significant ($p< 0.05$) relationship was found between formal court's decision takes very long time and women as compensation. These could be related to the emergence of *Swara* practices, practiced through cultural institution like *Jirga* with prompt justice in disposition by penalizing the inflicting family to surrender its women in compensation as punishment acts. Moreover, the enactment of Zia's regime Hudood laws might have embolden the local to exercise quick justice as per pattern of Islamic injunctions. Lack of political well in the political party over the issue of compensation practice is agony of the day (Amnesty international, 2006). However, a positive ($\gamma= 0.17$) but non-significant relationship was found between compensation practices and registration of cases in formal courts. Thus, it is obvious from these findings that no any compensation practice was reported to any formal court of justice. It could be the outcome of prolonged procedure of disposition of justice by the formal courts and the availability of substitute institutions in informal manner. Similar findings were also extended by (Atayee, 1978) that informal system is an alternative and popular to formal system for just and quick settling of disputes. Similarly, a positive ($\gamma= 0.16$) but non-significant relationship was found between formal law protects woman from *Swara* marriage and women as compensation. It is perhaps, the inability of formal judicial system to protect women from the harmful practices. The obvious reasons could be the prevalence of patriarchy which dictates of inequality between the genders. These findings were in

total contradictions to outcomes from Hussain and Kokab, (2004) who disclosed that both genders have equal status before the law as per enshrined in the constitution of Pakistan. Contrary, a highly negative ($\gamma = -1.000$) and non-significant relationship was disclosed between formal law implementation in the area and women as compensation. This could be due to the fact that either formal justice system did not exist or suffered from malpractices in deliverance. Formal system of justice in most parts of the tribal areas of Pakistan had failed to deliver, which had given an impetus to informal judicial procedure as of quick and free disposition of justice through informal manner (Atayee, 1978). Furthermore, a high negative ($\gamma = -0.818$) and non-significant relationship was found between easy access to formal courts and women as compensation. The relationship between women as compensation and respondents attitude on disposing off cases in a shorter period of time was also found negative ($\gamma = -0.65$) and non-significant. Relationship between women as compensation when associated with respondents attitude towards satisfaction from formal courts in decision making was a negative ($\gamma = -0.599$) and non-significant. It could be attributed to the non-existence or poor and dismal performance of formal courts to decide over the issue within stipulated time with satisfaction from the parties concerned. Thus government initiatives in the form of certain amendments in law and introduction of laws like criminal act amendments 2004 and subsequent efforts from President Pervez Musharraf could not yield any positive effects (Noreen, 2013). The relationship between formal law decision is based on justice and women as compensation was found high negative ($\gamma = -1.000$) and non-significant. Also a negative ($\gamma = -0.095$) and non-significant relationship was found between formal law decision is based on gender discrimination and women as compensation. Although no any discrimination in disposition of justice on the basis of gender but the dismal performance on part of formal courts in quick and just disposition of justice was the main impediment to containment of women as compensation practices in the study area. These findings were in total negation of Wadesango (2012) that all issues of honors are settled through women compensation. Conflict resolution for living in harmony is based on settlement through negotiation might include the exchange of women/women as compensation for the purpose of settling disputes. Girls given in compensation for dispute settlements are silently compensated with cattle and some undisclosed amount of money. In many cases honor related crimes may not involve the allegation of illicit sex between a woman and man but the *Jirga* (Local Council) may award them with punishment like using the man to pay and give a woman in compensation to the aggrieved family (Kandiyoti, 1987; Matavire, 2012; and Zartman, 2000). Moreover, traditional hold over the social dynamics of operating the social structure was vivid, strong and directional in meeting out the quick disposition of justice in the study area.

Bi and Multi-variate Analysis Based on Indexation of Dependent and Independent Variables

Various statements of independent variables were indexed to investigate their relationship with dependent variables at bi- variable through multi-variate level regarding the spuriousness.

Association Between Respondent's Attitude Towards Legislative Failure and Women as Compensation (Controlling Family Type).

The response of illiterate respondents regarding legislative failure and women as compensation was negative ($\gamma = -0.60$) and significant ($p < 0.05$, Table-6). However, a negative and non-significant association was observed between the fore mentioned variables in respondents lying in the literate group ($\gamma = -0.59$). The respective gamma values showed that relationship worked out between respondent's attitude towards legislative failure and women as compensation at bi-variate level was found non-spurious when literacy was used as control variable. Results of the literate category indicated the fate of women as this category had little trust over the formal legislative setup. On the other hand literate through exercising the women as compensation practices due to the prevalent cultural norms and dysfunctional role of the legislatives bodies around. Munir (2013) had also explored the inabilities and dys-functionalism of the state laws to eradicate the practices of women as compensation (*Swara*) despite being illegitimate and un-Islamic, mostly in *Pathan* tribes. Constitution of Pakistan is enshrined with the notion of equality of all gender; however, the cultural practices in some regions are in total repugnance to it. Religious exploitation of this regime and the escalation of war by the Taliban in the recent past were some of the vivid example of resistance to the government stance on the issue of equality amongst genders (Niaz, 2006; and Rivert, 2011).

Table 5 Association Between Respondent's Attitude Towards legislative Failure and Women as Compensation (Controlling Literacy).

Literacy as Control Variable	Independent Variables	Dependent Variables	Statistics
Illiterate	Legislative Failure	Women as Compensation	$\chi^2 = 6.23 (0.043)$ $\gamma = -0.60$
Literate	Legislative Failure	Women as Compensation	$\chi^2 = 3.29 (0.057)$ $\gamma = -0.59$

Association Between Respondent's Attitudes Towards Legislative Failure and Women as Compensation (Controlling Family Type).

A negative but non-significant relationship ($\gamma = -0.55$) existed between women as compensation of the respondents in nuclear family setup and their attitude towards legislative failure (Table-5). The relationship ($\gamma = -0.60$) between the fore mentioned variables was also negative but significant ($p < 0.05$) in the joint family setup. The respective gamma values suggested that relationship worked out for the aforementioned variables at bi-variate level was found to be non-spurious in the joint family setup and spurious in nuclear family setup. It could be detected from these results that due to less number of family members at the nuclear family had a negative response to this practice. However, issues of dispute resolution had to be met out through paying either cash or surrendering commodities like land, cattle etc. The joint family setup had a willingness to go for practice of paying women as compensation but had a strong acknowledgment of the failure of legislative setup. Court marriages are even denied of implementation but had to surrender to the customary ways of marrying by a women. Moreover, ignorance or prevalent legislation on part of opposing while marrying their daughters through customary practices (Mooraj, 2004; and Plan, 2010). Ban on early marriages by the state legislative bodies had brought a high level of awareness amongst the parents of young girls (Wassan, 2012).

Table 6: Association Between Respondent's Attitudes Towards Legislative Failure and Women as Compensation (Controlling Family Type).

Family Type as Control Variable	Independent Variables	Dependent Variables	Statistics
Nuclear	Legislative Failure	Women as Compensation	$\chi^2 = 2.93 (0.07)$ $\gamma = -0.55$
Joint	Legislative Failure	Women as Compensation	$\chi^2 = 6.53 (0.031)$ $\gamma = -0.60$

Conclusions and Recommendations

The main aim of this research was to investigate dispute settlement through women as compensation in *Pakhtoon* culture, *Khyber Pakhtoonkhwa*. Women as compensation (*Swara*) was measured through legislative failure in the study area. The study found that formal law for containment of *Swara* practices was bleak and vague, despite its presence in the study area. It was further evident from the data that formal law was used as a tool of social control, however, had little roots amongst the locals due to taking long period of time in disposing of justice thus giving space to

Jirga, as informal local institution to certain behavioral outcomes, pertaining to the practices of *Swara*. Legislative failure to deliver justice were propelling factor of *Swara* practices in the study area. In addition, literacy and family type were other variables predicting the behavioral outcomes over *Swara* practice. Both literate and illiterate with joint family type had high inclinations towards *Swara* practices due to ignorance, heavy economic burden of feeding, more family members and abject poverty respectively. The study recommended that non-compliance to *Swara* practice of *Jirga* decision by the offender's family needs to be encouraged by the formal institutions like police department and other related law enforcing agencies. This act of support could bring resilience amongst the local for opting to formal law instead of relying on local laws/institutions. All courts operating in the areas ought to be strengthened in its functioning. This structural and functional synergy could lead to the development of trust of locals in getting and seeking justice from formal courts.

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