

Critical Review on Past Literature of Dispute Settlement Women as Compensation in World Community

Dr.Fazal Hanan

Department of Sociology, The University of FATA Kohat

Dr. Musawar Shah

Department of Rural Sociology, The University of Agriculture Peshawar

Dr.Naushad Khan

Institute of Development Studies, The University of Agriculture Peshawar

Abstract

Critical review was arranged to study the past literature about dispute settlement women as compensation in dispute settlement in world community. Total 89 past studies were downloaded from the net and reviewed 20 times and critically analyzed the stated phenomena. The Critical review indicates that the social dynamics of relationship play an instrumental role in addressing the social issues in a society. Judicial systems under the partridge of constitutional frame always guarantee to redress the agonies of the people with multi-dimensional amelioration. The institutional frame of the society has a dynamic role to perform. However, it has been observed that in Pakistan like other developing countries the provision of justice through constitutional laws and enactment in regard equal access to justice for all segments of societies is still a dream. Most of the inter and intra family dispute are settled outside the domain of constitutional approach, rather, going for reconciling through cultural and traditional mechanics of society. Class discrimination and marginalized position of women have further added to the miseries and agonies of this neglected segment with the consistent and dominating role of patriarchy. In most of the rural communities of Pakistan women are seldom allowed to decide over their destiny, rather, the males have to decide over. Local traditional mechanism through various traditional institutions like *Jirga*, *Panchayat* etc have also denied them of membership to decide over pertaining to their plight in society. Male with all support and supremacy from patriarchy are doing all sort of evils without any responsibility to pay back, rather, women are forced to reciprocate for their deeds through traditionally justified mechanism irrespective of its repugnance to constitution of Pakistan, religion of the area and other moral and social yardstick of civilized world. This study is an attempt to discover all the hidden facts either cultural, traditional, structural, religious, with economic deprivation and prevalent illiteracy for the purpose of coming up workable methodologies to mitigate the distress in agonies of women folk in the study area. The review also shows that this traditional mechanism is present in Pakistan and Afghanistan where women are used as compensation. Subsequently the study further explained that poverty, illiteracy, culture, education, income are the factors which have significant association between women used as compensation in the developing countries of the world. The study finally recommended that equal right are given to women in society; Women education should be compulsory in the developing world; Proper right should be provided to women according to Islam. Alternative way should be used in dispute settlement as compensation instead of women. Human Rights should have given power in the world for implementation of the law. Proper law should be developed for problem solution; and judicial mechanism should be developed particular in developing countries.

Keywords: Critical Review, Dispute Settlement, In World Culture, Women as Compensation

1, INTRODUCTION

The term dispute is a sort of disagreements between individuals. Whenever, any one among the party contradicts a verdicts or an agreement leads to the development of dispute usually based on the consequences in social and moral perspectives. After misunderstood to be the particular cause leading to but to a key to resolution is always around. The basic tools applied for resolution are negotiation, conciliation, arbitration, litigation etc (Afary, 1999). Dispute settlements and their philosophies are uniform across the globe although with variations in traditional approaches. Pacific societies would be different to the Indian and also a more differentiation could be associated with those European. However, a community role is essential and occupies a central place by providing impotent to the development and operationalization of social mechanics responsible for dispute settlements. Success has been attributed to these phenomena with in large communities and groups pertaining to issue either individuals to individual basis or even individuals to collective conformity (Daniel, 2007; Asesela, 1995; and Stephen, 2003). The nature and complexity of relationships is usually considered a determining factor towards the settlements of issues. In industrial societies established courts have replaced this value system with the culture of rights provisions through vibrant judiciary and perhaps that is the obvious reason which has dominated the other cultural prerogatives in dispute settlements. However, the jurisdiction, application and the

outcomes based on the application of dispute settlements in traditional societies are still vital in terms of its social impairments (Nader and Todd, 1978; Cappelletti, 1992; and Bennett, 1991). The monitory repercussions are an issue pertaining to its value determination quite eminent. However, in most of the cases the number of societies, traditional in nature, exhibit the transition of women for the settlements of dispute across the globe. This has transformed the women as a pray to wishes paradox and used as commodity for the conflict settlements originated from men. This marginalized position of woman has taken a shape of gender based violence within the shapes of terrible crimes like rape, forced pregnancy and other sexual related slavery. Although both genders are widely affected from the conflicts, however, women are the worst victims to such practices. The fight settlements in two warring clans are often witnessed in the shape of payment as blood money. A woman is usually surrendered to a man who has either lost his brother, close relative or even a girl by the opposite side. So it could be meaningful to derive that usually a beautiful girl is selected and handed over to the rivals in the form of a gift for marriage irrespective of her consent (Sanam, 2006; Bridget, 1996 and Camille, 2005). Dispute emergence and its subsequent settlement at clans level is perhaps the outcomes of inter and intra marriages within family. Resultant factors in light of disagreement lead to the dispute where woman as property is exchanged for such dispute. At tribunal factors included the women status, social capitals which facilitated the organizations through a reciprocal phenomenon based on cooperation and coordination. Arbitration and adjudication develop in the aftermath of conflict and conflict resolution (Jules and Huges, 2001; Robert, 1993; and Sanginga et al., 2007). Institutionalized system is one of the key instruments responsible for regulation and prediction of behavior. In the light of prevalent norms and social sanction ceremonies and social gathering are often celebrated in a code of manners inculcating the ways of behaving and action. Harmony is always a key to the all activities pertaining to group life. Max (1965) has adjudged reconciliation in the Somali customary law based on rules, regulation and principles for settlement of social, economic and cultural disputes within the warring families. Victor (1969) has also declared rituals have the repairing agents for the ruptured social relationships and that bringing homogeneity and stability within the system. Inter and intra clans conflicts are usually settled under this vary analogy (Abdi, 2003). Traditionally, disputes pertaining to blood money as compensation have been some constants analogies found across the globe in various societies. The type and amount of compensation could be different but the main philosophy is the same. Mostly killing of a person is compensated with the killing of that particular killer. In some cases some other yardsticks like payment in kind (animals) have been determined for each killing. Women or girls raping is also being dealt with the same analogy in most of the *Ugaz's Tribe* (Tadesse et al, 2010). Domestic violence through intimate partner and families has been in practice since long. Cultural endorsement has been found as ancient social indicators with the slighter variations to their application. Incest taboo, marital rape and sexual harassment are some of the key factors to the phenomena of violence and dispute settlement. Pukhtoon culture is no exception to these phenomena. Social implications are very much embedded while foreseeing into the gravity and existence through national's goggles as its existence in the shape of *Karo Kari*, *Sati*, *Vani*, *Watta Sata* and *Swara*. All these mentioned practices could commonly be found in Pakistani society (Wasim, 2003). Munir and Khan (2011) have examined and reported the practice of *Swara* across the *Pushto* speaking areas of Pakistan. In ancient traditions tracing back to the early dates with the main purpose of blood feuds and settlement amongst the warring Tribe and clans. This practice is manifested through forceful marriage of a girl with a man of other tribes for resolving a dispute. Dimension to these effects could be a number of; however, murder, kidnapping, robbery, discrimination, poverty and landlordism are the major attributing factors. Though considered social norms, however, its practice is not less than an evil as having no endorsement from Islam and even other school of thoughts. *Swara* is *Pushto* word means compensation through bloods (African Child Policy Forum, 2007). Girls are often handed over for marriage or exchange of marriage to the aggrieved party for dispute resolution based on blood (Hussain, 2004). The terminology contains the meaning and practice of giving girls to the aggrieved family as compensation for blood. This practice has usually been seen within the preamble of existing cultural perspective, devoid of any constitutional and judicial advent (Barcham, 2011). This act which has taken a shape of cultural norms is almost some 400 year's back first exercised in the *Pathan tribes* of *Mianwali*. Obvious reason was bloody war between two tribes which led to the execution of eight hundred people. Latter on *Nawab of Tank* summoned the *Jirga* to resolve this dispute. In that *Jirga* girls were declared as commodity and given to the aggrieved family as *Qisas*. This verdict proved vital in bringing harmony and later on this decision got the shape of a custom which passed on generation to generation. No any physical age consideration could be specified to this practice even from an infant up to seventy five years old women could be declared as *Swara* (Khwaja, 2010; and Sadiqi, 2004). Religiously if taken, the forced marriage is strictly forbidden in Islam where emphasis is being given on taking consent from the virgin prior to her marriage. It is probably due to the avoidances of complication after world (Wikipedia, 2007). Islam is a religion explaining in a manifest manner the rights to both genders including girls with relation to their marriage. Child marriage has no concept in Islam. Moreover, wife maintenance has been ensured on part of the husband along with her privacy, comfort and independence. In addition, *Maher*, as marriage gift is also allocated to a wife and has been declared entity to be treated with equity,

respect and kindness (Wikipedia, 2007; Bates, 2000; and Afary, 1999). Khan (2007) has indicated towards the right of child marriage in Pakistani society with multiple agonies. No such any public service is obvious to provide any help or assistance to the victim. Little efforts have also been witnessed in this regard by NGO or Government agency in a substantial way. The question needs to be addressed that whether religious command in our society is incapable of enshrining people about its teaching based on peace, love, harmony and tolerance. Moreover, Quran's teaching is abundantly available in Sura Nisa which has conspicuously spoken and dictated upon the women rights (AIQURAN, Sura Nisa). Practices pertaining to force marriage of girls in the light of compensation of murder, raping debts and settling other disputes has been in prevalence in *Khyber Pakhtunkhwa* province of Pakistan with adjacent tribal built and even going beyond to Afghanistan (Human Development Foundation, 2013). *Swara* is being practiced with other name *Bad* in Afghanistan under the same analogy. The probable reason is male dominance, women as inferior folk and recognizing them as commodity instead of human being. Moreover, the family and clans feud are almost settled through exchange of women mostly the virgins. This practice has been revealing the agonies of the victims manifested in the shape of premarital sex, female feticides, female infanticide, rape, early marriages, trafficking and domestic violence. Children violence is linked with political climate and social conditions which usually hamper the access of female to education and health care. This antagonistic and hostile attitude has led to the vulnerability of women to violence at every stage of life making it a terrible South Asian legacy (Coomaraswamy, 2005). The study major objective was that to critically review the past literature about dispute settlement, women used as compensation in the world

2. MATERIAL AND METHODS

The study was focused on the whole world. Total 89 reviews on past literature were downloaded from the net and read thoroughly 15 times and analyzed the phenomena in the world, What is going about dispute settlement, women used as compensation, in the world particular in developing countries.

3. CRITICAL REVIEW ON PAST LITERATURE ON DISPUTE SETTLEMENT WOMEN USED AS COMPENSATION IN THE WORLD CULTURE

According to Barfield (2003) judiciary system in Afghanistan has little success to resolve civil disputes and to a great extent criminal cases as well. Appeals in the court above court keep cases going on even after proceedings in the supreme court of the country. Eventually the cases are reviewed back from the very beginning or referred to social institutions i.e. *Jirga* etc and so justice is delayed to a possible extent. Many cases which were proceeded at all levels of the judiciary benches and were just to be decided, were put up to the informal institutions for ultimate resolution. Decision in cases of offences against the state is considered the sole privilege of formal actors while local community has a right to settle down criminal matters among its members and the decisions are registered to the courts or *Saronwali* for formal recognition. Decisions made by the respective community may comprise compensation (*Diat*), apologies (*Nanawati*) and reconciliation (*Sulah*). Exchange of women as compensation (*Bad*) has been always 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. Most of national officials are optimistic for shift in the deep rooted "customary law" through change in social conditions emerging with passage of time. Emergence of new institutions to tackle social conflicts and disputes is an important development and the newly constituted provincial councils play a pivotal role in it. They abridge the formal and informal systems and are going to acquire an adequate authority for coping with such disputes. 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 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) conceived that in Pakistan's governance framework access to and gaining of justice were critical issues. While the situation at district judiciary, which were the first doors to be knocked at for justice by common people, was more distressing. According to Minallah (2010) Self-initiated measures (Sumoto actions) of the judiciary has played a vital role in highlighting human rights violation in the so-called cultural practices of *Swara, Vani or Sang Chatti*. A gendered based violence i.e. *Swara, Vani or Sang Chatti* is a mean of alternative dispute resolution mechanism in which disputes (mostly created by murders) are settled by the conventional conciliating institutions to avoid waste of time and resources in perpetual litigations. According to the mechanism, family of the assassinator compensate the bereaved family with marrying a girl/woman to a member of the bereaved family and the girl/woman enters into the house of the in-laws without any ceremony, to remind the aggressors of the abuse they had caused to the bereaved family. Niaz (2006) thinks that there is little enactment of constitutional laws and rules regarding equal access to justice by different groups of the society in Pakistan. He also observes that there are provisions in the constitution of the state to prevent abusive and gender biased customs and traditional practices but implementation of these provisions are rare and usually customs

dominate settlement of disputes. There is a dire need of good feelings between the rival parties to settle an issue once for all. In murder cases, a court verdict may acquit an accused or punish him/her but in a context of less respect for government writ, a judicial decision does not necessarily remove the risk of revenge by the bereaved family. They may kill the murderer when having an opportunity and the local community will not consider the traditionally legitimized revenge killing as a crime (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. A very low conviction rate i.e. less than 10% in Pakistan reflects the basic weakness of evidence and poor investigation by police Zahid (2009). In her article in Harvard Journal of Law and Gender, Hussain(2006) indicates that due to ineffective police investigation in cases of honor crimes in Pakistan, 85% of culprits are either acquitted or given relaxation in punishment. The slow and superficial investigation provides criminals with enough opportunity to escape. In famous gang rape case of Mukhtar Mai (2002), the FIR was not registered due to the influential *Mastois* tribe until national and international media intensively highlighted the issue and human rights activists and civil society out cried against the decision of *panchayat* (Mukhtar, 2006). According to Mumtaz (1987) 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 and they wander for the best choice among *Panchayat*, regular courts and *Sharia* courts to have a favorable state law, customary / traditional law or Islamic *Sharia* that can make them win. According to the former Justice of Supreme Court of Pakistan, Zahid (2009) 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 existent ones but nothing was done for the quality of official justice system. According to Zartman (2000) future always has its roots in the past, yet for a reconciled and harmonious future of the conflicting parties it is inevitable to look back into the things that went wrong in the past and develop a consensus to pay and accept for a peaceful future. It may be a lengthy effort but once a consensus developed, the oppressors can acknowledge their wrong deeds express their regret and ask for forgiveness and the victims can accept and forgive. Usually such processes involve exchange of material goods as compensation to develop good will among the conflicting parties and transform reciprocity of enmity, into reciprocity of friendly relationship. These material goods may be an economic commodity or "blood money" usually women, according to the respective cultural values. Acceptance of the compensation is recognized as authority of the bereaved to accept or reject while it is considered an apology by the aggressor and so the order is restored to the community. Patriarchy refers to particular set of attitudes, mindset and way of thinking which value the male more than the female. In patriarchal societies men are thought of as controlling or ruling segment and women are presumed lacking the quality (Barlas, 2004). Kandiyoti (1987) describes North Africa, the Muslim Middle East (including Turkey, Pakistan and Iran), and south and East Asia (specially, India and China) as solid example of patriarchy culture. The Daily Dawn (2011) reported that class discrimination, oppression of marginalized groups including women and children and gender based violence i.e. *honor killing* etc, in Pakistan had their roots in the patriarchal culture of the country. Violence at cultural level proves relevance of Kazi (1990) theory about cultural violence reflects that cultural violence is used in structural form to give legitimacy to the violence. It legitimizes direct forms of physical violence and permits the structural violence within institutional framework of a society. According to Amnesty International, in Pakistan, structural violence is accepted by the marginalized groups as their fat destiny. A research by Punjab Government about violence in society revealed that in Pakistan 42% of women conceived violence as their fate, 13% felt helpless to withstand against it while only 19 % protested against the violence and merely 4% decided to go challenge it in the courts (Amnesty International, 2004). The Chinyangara (1996) links history of gender based violence to the history of women being regarded as a commodity and having a gender role to be always compliant to men. In remote areas of Pakistan Women are considered no more than life goods and *Panchayat* uses them as means of settling a dispute behind the shield of so called culture or religion (Ahsan, 2009). Ben(2010) article hints at social set up with political and economic prejudices that contributes to structural violence and is harmful both for individuals and the society. Accumulation of power in the few hands causes inequality in a society that instigates structural violence. The affected individuals and marginalized groups are always hampered to access social progress. Honor could be best understood in its social and cultural context. Honor (*izzat/ghairat*) and dishonor are the building units of Pakistani culture. When a family could not avenge in terms of injury or humiliation to the rival family, it loses its prestige in the eyes of the community (Lieven, 2011). According to Chinnian (2005) illicit intimacy, making choice in marriage, wishing for divorce, relations prior to the formal marriage, and being a victim of rape are considered the acts of dishonor. The female subduing to sustain the male honor is a common concept in the subcontinent and male honor is regarded as honor of a family. That is why; any discrepancy committed by woman seems to be against the cultural norms that lessen honor and dignity of the male. In rural communities of Pakistan, women are always expected to silently accept any decision

made by male members of the families, tribe, clan or the community (Hassan, 1995). Women status before the *Panchayat* forums has been an important issue that has been often highlighted by media and rights activists. Mondiale (2003) discloses that *Swara* has been considered a ‘virtual death penalty’ for the unfortunate women who become subject of this notorious mechanism. In such cases girls who become victim of the tradition physically live but with a lot of troubles and disgrace for the rest of their lives, which is an awful punishment for no guilt. In Punjab, this custom is called *Vani*, In *Sindh* it is *Sangchatti and Swarain KhyberPakhtunkhawa* Province. Unfortunately these practices are used against women under *Panchayat* forum in order to violate and manipulate their basic rights, and to perpetuate control over women. Report of UNDP (2011) revealed that “customs and religious beliefs can be deliberately mixed with the law to consolidate political, economic and social power – to the detriment of less powerful women and men. Qaiser (2004) makes some facts and figures in a report that over 4,000 people have been killed by the practice in Pakistan over the period of six years (1998-2004). 2,700 of them were women and the remaining 1,300 were men. 3,451 cases were submitted to courts. The highest rate of the practice of *Karo-kari* was in Punjab, followed by the *Sindh* province. Lesser number of cases have also been reported in *Khyber Pakhtunkhwa* and *Baluchistan* (*Honour killing* and “*karo kari*” in Pakistan). According to women rights activists, the concept of treating women as property and honor is deeply rooted in the social, political and economic texture of Pakistan. The government is mostly indifferent to the routine happening of women killing on the bases of *Karo Kari* and honor. While the incidents are usually presented as suicides and/or accidents. DPO *Sukkur* rates district *Sukkur, Larkana, Shikarpur and Khairpur* high in murder cases on account of *Honor Killing*. Property and land, self-interest and the plan to get a specific woman as compensation are among the motives causing honor killing. Chirau (2002) highlights that in feudal societies economic importance of land defines lives of the inhabitants. Land disputes in such societies are the main cause of violent conflicts which mostly ends with women’s miseries. It becomes a great opportunity for a tribal head to retain his power over the community through his active and leading involvement in the alternate dispute resolution mechanisms. They usually exploit the community support for their own vested economic and political interests i.e., voting support and financial gains etc. Inter Press Communications (2005) reported that honor killings (murders in the name of honor) in many cases are based on taking revenge from the enemy or for monetary purposes. The *Jirga* thus becomes an important agent of lucrative dealing and under the decision of the *Jirga*’s chief, life of the accused is saved in return of a big amount of money. Wikipedia (2007) finds out that blaming a tribe for theft or stealing is used as a tool to make a rival tribe weak. In such a case land, money or girl is given as the desire of the effected family. According to Ansar Burney(2010) “Many more girls from low-income families are sold into “marriage” in exchange for monetary gains. The younger the girl the higher the price for her would be paid” UNICEF (2009) observed that the concept of honor killing has become an integral part of the rural society in Pakistan and once a woman is declared guilty of having illicit relation it becomes inevitable for the accused woman and man to be killed to restore honor of the woman’s family. Lieven (2011) according to Pakistan government 45.7% (82 million) Pakistani are living below the poverty line (Jang paper, 8 June 2012). A place where people lack basic life amenities it impossible for them to afford long and complicated procedures of official courts. Sometimes cost of processing a case in Pakistani courts exceeds the value of whatever was at stake. Location of *Panchayat* further substantiate its legitimacy, because the formal courts are located in urban areas and the poor communities living in the periphery rural areas can’t afford to visit courts time and again (Deborah, 2009). When Mukhtar Mai (victim of *Panchayat* justice) famous case was at its peak, world, Amnesty International (2004) reported that the *Panchayat/ Jirga* justice system in Pakistan had gained more legitimacy, power and weight against the formal justice system because poor people believed that “*Panchayat/Jirga* systems were quicker, cheaper and more reliable than regular courts. According to Jafri (2008) Generally all women, though belonging to different classes, suffer from so called values of culture, but it is a reality that the sufferings of women varies from class to class. Women of the upper class have more access to education and other economic and social resources but still, in some cases, even women of this stratum face strong gender biases from deeply rooted tribal or *Baradar* base structures and it becomes improbable for them to ask for their rights. According to UNICEF (2009) “Pakistani women are trapped in a web of dependency and subordination due to their low social, economic and political status in society. The majority of women suffer from all forms of poverty”. Matavire (2012) reflects that even in African culture where individual rights are more important than institutions’ authority or collective prosperity, sometimes preference is given to family’s or group interest rather than the individual member of the community. The girl’s parents, often poor ones are compensated with stock or money secretly for their subsistence. This research has revealed that in *Muzarabani*, the family remains a unit of similar interests. It is an institution whose members make joint decisions in order to maximize family wellbeing despite the individual wellbeing of its members. United Nations Development Programme (2010) reports that traditional justice setup reflects the values of respective community. Although there is always a shift in these values with the passage of time and even the community leaders are doubtful about acceptance of the new practices. Community leaders relate values with religion while religious leaders affiliate these with cultural structure. And such notions results in negative cultural mechanisms i.e. forced marriage. This can occur

particularly with harmful cultural practices, such as forced marriage, handing over a girl to the rival party as compensation (known as '*bad*'). According to Human Rights, United Nations Assistance (2010), in Afghanistan using girl/woman as a commodity and paying it for resolution of a conflict is a notorious form of violence. Such mechanism as '*Bad*' or '*Swara*' etc give a chance to communities or families to save the accused/convict and restore a pseudo peace on the cost of an innocent girl. And honor of the bereaved family is reinstated by punishing a woman for nothing she did wrong. Besides murders, '*Bad*' is also used to resolve other serious moral crimes and acts such as adultery, rape and running away of a woman mostly from a forced marriage. But this kind of settlement of a conflict is not always a sustainable one. In exchange marriages daughters of two families are married in exchanged. Respondents of a study described exchange marriages, '*Badal*' as a common trend everywhere in Afghanistan, but reported that they are most frequent among poorer rural families. Still all communities in the area don't practice *Badal*; the majority ethnic Uzbek population of *Jawzjan* province, for example, has no such conventions.

Wassara (2007) reported that the *Dinka* and *Nuer* people had the traditional authority to enforce decisions. The main actors in conflict resolution among the *Dinka* are the *Bany Bith* in the *Dinka* community and the *Kuar Kwac* in the *Nuer* community. Their offices are spiritual in nature and hereditary, which are held by special priestly clans. These leaders had no political or executive authority to compel parties in a conflict to abide by the decision involving compensation. Yet, the *Dinka* and the *Nuer* respected this person who alone had a moral force to make the parties to a conflict to comply. They perform sacrifices, oaths and mediate in all types of conflict. Any offender who seeks refuge in the residences of the *Bany Bith* or the *Kuar Kwac* is spared by the offended. The most familiar mechanisms of conflict resolution consist of customary mediation, compensation and restitution. In the context of the *Dinka* and *Nuer*, mediation by elders requires the consent of parties to settle the dispute. Religious persons such as the *Bany Bith* and the *Kuar Kwac* are the ideal solicitors. Although, any other respectable elder qualifies to settle disputes. Another mechanism of conflict resolution is compensation. It applies to both criminal and civil wrongs against an individual. The compensation for adultery is known as *akor*, which is paid to the husband of the woman involved in adultery. An individual who elopes or commits illicit sexual offence with an unmarried girl pays *aruok* to the father of the girl. Finally, an accidental death or physical injuries calls for the payment to the parents of the victim. Dispute settlements and their philosophies have resemblance across the globe although traditional approached vary from culture to culture. Pacific societies would be different to the Indian and also a more differentiation could be found with those European. However, a community plays a pivotal role in the development and implementation of social mechanisms responsible for conflict resolution. Such mechanisms have always been considered successful with in large communities and groups relating to issues either between individuals or even between individuals and collective conformity (Azinge, 2005; Asesela, 1995; and Stephen, 2003).

Havemann (2012) reflects that in *Panchayat* justice women are used as a commodity paid to the opponent party as compensation to save the life of an offender and or make the opponent party happy for a lasting peace. And the practice becomes very cruel when small girls become subject to it. Usually, in remote areas girls are used only for safety and peacemaking mostly benefiting the male community only, while the subject girls live a life of miseries and disgrace till their death. In these areas women live completely on the disposal of men and have no choice of their own. According to Risse not only the general communities or the victim families accept and endorse such notorious practices but even the affected ones consider it as a sacrifice to protect their respective families and accept it as their fate so it becomes very true that 'Women are rarely prisoners of conscience but they are always prisoners of culture' (Risse, 1999). According to Pur (2009) Rapid decisions of *Panchayat* are considered an effective alternate for the lengthy process of official justice system with a concept that justice delayed is justice denied. Delays in formal courts provide the offenders with an opportunity to distort the case through dislocation of the important documents, tempering the evidences and influencing the police investigation. UNDP reports that Informal justice system has its roots in social norms of a society that is owned by the respective communities (UNDP, 2006). A village community in Pakistan is a mix of cultural, family and religious. That's why the decisions of *Panchyat* system are backed and enforced through social influence and the deviators many times bring disfavor of the community upon themselves. In this way *Panchayat* decisions, the license of social norms is manipulated against the women, children and marginalized groups to settle the disputes and victims of this system have to accept their decisions under the influence of family and social values. Malawi Human Rights Commission (2005) reported that violence against women in Solomon Islands often involved compensating the aggrieved party's family and suggestions to reconcile by the chief or church leader. Most women felt that the traditional justice system was not meeting their needs because it was men oriented and was also administered by men. Newman, (2011) thinks that traditional practices are further made harmful by existence of poverty, illiteracy and ignorance. These practices are means of cultural transmission and a mean of livelihoods for those involved in the practice such as Female Genital Mutilation. Zamurrad (2012) found that women of middle class could rarely withstand violation of their rights by the male family members (although mothers – mostly uneducated or semi-educated, were equally responsible to enforce these prejudices). The issue

gets more severe in case of higher education of female members and their choice making about their profession. Of course this class considers itself as an upholder of so called cultural and religious norms. According to Madani (2005) in rural communities, women are usually assigned with housekeeping, bearing and rearing children. And it is mostly because of their little or no access to education. In farming families, besides housekeeping tasks, women also equally contribute to household economy but the role is seldom recognized by the male segment. UNIFEM Afghanistan (2008) reported that many traditional and religious leaders reinforce these notorious customs on poor and ignorant people in disguise of Islam, while in most cases, however, these practices have no relevance to Sharia law as well as Afghan and international law and violation of human rights of women. Khawar (2010) considers education among the vital factor regarding women liberty in various domains of decision making process in Ethiopia. According to Khawar's study reported that women exchange practices *Swara* etc are mainly associated with low literacy, male dominance, patriarchal family setup, failure of judicial institution and *Jirga* system in Pakistan (Tesfa, 2002; and Mumtaz and Nosheen, 2014). Shadow (2006) reported that Low productivity is usually caused by low income, high population growth and less employment etc, while other important symptoms of population explosion and low literacy are early and or forced marriages (UNICEF, 2009). Michael (2001) and Jennifer (2009) links the tradition of *Swara* practices and other human rights violation with influencing forces i.e. *Jirga* as an institution back stopped by so called religious leaders and other influential of a community. Other root causes of such heinous practices like *Swara* or forced marriages are culturally embedded laws which have been always seconded by local bourgeois and ignorant communities (Richard, 2007). Kakar (2003) found out that customary statutes of so called *Pakhtunwali* and *Jirga* are just to oppress women and retain the supremacy of male segment. Mumtaz, (1987) explored the rural area composition with improbable working of women base on inconvenient working environment and low literacy that cause pathetic troubles for women. Ennis (1975) found out that lower middle class of Pakistani were reluctant to allow their women get higher education or involve in a job. They thought women education as humiliating women to do jobs in market or as domestic servants. However, contrary to it Rizwan and Sabir, (1976) infer the women education and job as a mean of national progress and productivity. According to Zaidi (1971), due to shift in the cultural and social dynamics of the rural areas, nearby to the city, there is an increasing understanding and realization of women education to do job and contribute to household economy. However, Akhtar, (1992) reported that women in rural areas of Afghanistan, Nepal and Pakistan have little facilities to get their education mostly because of traditional perspectives in their respective communities. A report of Census Organization Pakistan (1998) concludes that Pakistan, despite the emphasis on female enrollment, has no comprehensive arrangement to consolidate the female education programs. While a concept of threat to women honor works as another agent to detain women from getting education (Weinstein, 2001).

UNIFEM Afghanistan (2008) reported that large-scale harmful traditional practices i.e. child marriage, giving away girls for dispute resolution, forced isolation in the home, exchange marriage and "honor" killings, cause miseries in all spheres of life to a majority of Afghan women and girls. Such practices have their roots in gender biases and discriminatory approach to women role in the society. And these practices are supported by traditional as well as religious leaders, while it has little to do with Sharia or any national or international law. In force marriages consent of one of the spouses is missing. In Afghanistan exchange of girls called *Badal* is a prominent type of forced marriages. Child marriage (by its very nature forced) and forcing a widow to marry a relative of a deceased husband other main types. According to UNIFEM report (2008), 70 to 80 per cent of Afghan marriages are forced. UNAMA HR found out women consent is given no importance in most of the marriages. According to Bukhari (1999) this is an un-Islamic practice as Islam does not allow a forced marriage. The Holy Prophet clearly directed that a woman should not be married till she is inquired for her agreement. Once a woman came to the Holy Prophet (peace be upon him) and said that her father wanted to marry her to someone, but she disliked that person. The Holy prophet immediately declared that marriage null and void. Al-Juzairi (1977) A world renowned Islamic Scholar says "The Sanctity of matrimonial bond (*Nikah*) solely depends upon the consent of that lady. Surah Al-Fatir or Al-Mala'ikah (No: 35) has mentioned that When we want to get guidance about this custom from Holy Quran, we get an indication regarding the exclusion of such custom. The Holy Quran says, "For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned (14). In another verse The Quran says, "And no bearer of burdens shall bear another's burden, and if one heavily laden calls another to (bear) his load, nothing of it will be lifted even though he is near of his kin. Yazeed (2007) stated that Similarly, The Messenger of God clearly said that no one will be punished because of another's crime. I would like to quote only one saying of the Holy prophet (Peace be upon him) so that we may be able to make decision regarding prevention of such customs. It was narrated from Sulaiman bin 'Amr bin Ahwas that his father said: I heard the Messenger of God saying during the Farewell pilgrimage: "No criminal commits a crime but he brings (the punishment for that) upon himself. No father can bring punishment upon his son by his crime, and no son can bring punishment upon his father." According to Yusufzai and Gohar (2005) the *Pakhtun's* social organization, tribal structure and peculiar customs and traditions sometimes lead to disputes. In fact, the age-old *Pakhtun* code of life or *Pakhtunwali* responds to situation arising

off and on. Hassan and Gohar opined that *Pakhtunwali* not only has an equality oriented solutions for settlement of conflicts and disputes but also enhance self confidence among *Pakhtun* communities. Some components of *Pakhtunwali* may appear nave to other cultures of the world but for *Pakhtuns* these are like religious rites. Many times, in *Pakhtun* society, conflicts are raised by Animosity, *Badal* (revenge), *Taunt*, *Honor* killing, *Swara*, *Chagha*, Property disputes, other social evils. International Legal Foundation (ILF) (2004) reported that though Afghans are known good Muslims yet mostly their traditional legal system is an amalgamation of local customary laws and locally interpreted *Sharia*. According to a report from the International Legal Foundation (ILF), the involved parties may in some cases choose whether the dispute will be resolved according to customary laws '*Pashto*' or '*Sharia*'. Mkhize (1990) recorded that According to Islamic teachings have tribal practices which now have become the part of Islamic societies have no validity regarding *Sharia*. She acknowledges that Islamic societies have made a mixture of Islamic concepts and their local culture that has never been reflected in the Islamic vision of equality and reciprocal moral relationships. According to Hussain (2006) Honor Killing '*Karokari*' has nothing to do with Islam and it is purely a product of customs and culture of pre-Islamic eras. He also added that "honor is a deep-rooted tradition notion that originated in desert tribes" According to Babur(2007) killing a woman or girl for an offence is not a punishment under Islamic Law or *Sharia* and most of the Islamic countries don't have such practices at all. Atayee (1978) reported that traditional or informal justice system of resolving disputes between individuals, families and tribes. In Pakistan, this legal mechanism has become a tribal justice system in various forms with different names. Prominent form amongst those is *Jirga* in *Khyber Pakhtunkhwa*, Tribal Area and Baluchistan, *Faislo* in Sindh and *Punchayat* in the Punjab province. Many scholarly worked has been done on *Jirga/Faislo/Punchayat* as customary practice which legally justifies the 'Honor' related crimes or laws. Other functions of *Jirga/Faislo/Punchayat* comprise solicitation and reconciliation among conflicting parties. Thus traditional justice system in the form of *Jirga* is traced back to old ages and has been prevalent and practiced in both officially designated and non-designated areas in Pakistan. In the aftermath of development of ADR mechanisms through court-annexed and other institutional arrangements throughout the world has reoriented the debate in the country as well as realization in the UN specialized agencies to analyze the impact of these mechanisms and their interaction with official justice system. Amnesty International (2002) reported that political parties had done nothing solid for eradication of the traditional justice system. Rather, government's initiatives to use *Jirga* to settle local disputes have revitalized the naturally dying system. According to Some critics some supposed advantages of tribal justice i.e. cheap and swift resolution of disputes, familiarity with tribal people and capability of solving conflicts in a lasting way could not justify the grey areas of the mechanism. Yet some observers are pro *Jirga* and plea for its revival with some reforms. Journalists and academics working on tribal developments in the interior of Sindh or rural Baluchistan still have the concern that tribal justice grew due to failure and inaccessibility of the state justice apparatus. Such depending factors in turn undermine and weaken the official judicial system and respect for the rule of law. Such mechanisms not only erode the writ of Law but also promote feudalism. Saleem *et al.* (2011) expressed that in post-colonial societies that lacked formal judicial institution have informal mechanisms of justice and are still practiced widely particularly in Africa and South Asia. In Pakistan, nowadays *Jirga* is not only used as a customary practice to legitimize honor crimes or other harmful traditional practices i.e. *vani* or *Swara*, it is also used as actor of reconciliation, mediation or arbitration. Most of feudal lords or tribal chieftains have representation in both provincial and federal while they are the main player of these traditional institutions under various denominations called *Fasilo* in Sindh, *Panchayat* in Punjab, *Jirga* in Balouchistan, KP and FATA. In all of them, there is a practice that a woman is given in compensation for any kind of dispute either of civil or criminal nature. According to the tradition women are given in '*Nikah*' to resolve different kinds of disputes. These marriages are known as '*Vani*', '*Sakh*', '*Swara*' and '*Sharam*' with the difference of languages in different areas. Poor living condition, low social status, inaccessibility to justice and high cost of formal judicial apparatus are key factors which leave little or no option but to obey the verdict of headman of the tribe irrespective how biased or unjust it may be. In Sindh compensation for murder of a female is fixed at Rs. 8, 00,000/- which is double the amount as compared to the compensation for the murder of a male person. A juvenile offender is dealt in different manner. Though he/she is also given the same punishment in shape of compensation but the amount is paid by his family members and in case they cannot pay (the amount of compensation), co-villagers or caste fellow contribute and pay to the victim. Sometimes minor offenders are dealt with leniently. In urban areas where *Punchayat* system effectively works, wrong offenders are not convicted but different types of punishment are awarded which include payment of fine, transfer of land, hand of a girl (*BAZZO*) from family and in case the accused is from very low social status and there is no female in his family than the accused is asked to undertake for giving hand of baby girl which is yet to be born and for this they use the words '*PAIT DAINA*'. Ali (2001) cited a news item in the newspaper that reported that two groups belonging to Bhaya clan clashed over the honor related issue of woman's free will marriage. The accused woman and man were disappeared and it was told that the local chief of the group settled the dispute though *Jirga* in which two women as compensation were demanded from the man's party blamed for the honor offence. The accused party rejected the demand of women

compensated for marriage. Kandiyoti (1987) found out that *Jirga* don't always sentence a woman, alleged for illicit relation, to death. In many such cases, *Jirga* makes decision about fine or compensation both in the form of cash and or exchange of girls. Sometime the *kari* (accused) woman is sold or forcibly married to another remote area. In a case near Chak in Shikarpur District, it was reported that a *Jirga* related to honor related case was held in which alleged man was fined with one lakh rupees and twenty thousands. The alleged woman and man were handed over to *Jirga* holders. The accused party denied complying with the *Jirga* decision. Wassan (2012) related that *Karo-kari* or *honor* killing was a tribal custom and it was manipulated by tribal chieftains and feudal to retain their power and control over poor communities. And it was not so only by the tribal leaders and feudal but their accomplices also practiced the same. In the context of conventional rural society, it was interesting to find out that these influential kept their power and influence in the three main areas i.e., land/revenue, women and police matters. In other words, the tribal head played an important role to address and solve the community affairs for their own vested interest i.e. power and authority. Menkhaus (2000) discovered in his study that the transformation of traditional approaches from the local to societal contexts is a complex process e.g.in Somalia traditional peace-making trend are strongest at the local and regional levels than at the national level. Osaghae (2000) reported that even traditions were developed at local level these also played a great role in peace making at larger level. Apparently simple conflicts many times involved most groups in the community because of the inter-relating character of traditional communities. This phenomenon reflected that simple and complex conflicts were the two phases of the same. Consequently, resolution of routine often resulted in the prevention or resolution of more serious and expansive ones. Boege (2006) explored that traditional approaches are integrated and overlap in political, social, economic and religious domains. These could not be categorized in isolation. Traditional approaches may not comply with universal standards of human rights and democracy. For instance, decisions made by elder men about women and youngster without hearing to their say has little place in international community. Women are the most frequent victims of such mechanism to resolve conflicts between males, e.g. swapping of women between conflict parties or gift of girls as compensation, or compensation negotiated by male community leaders and exchanged between males for the rape of women or girls. According to Grubecket *al.* (2011) Xeer, Traditional Somali law, which is operated at local clan level, is the defining features of Somali society. It comprises provisions for collective compensation (*diyya*, or *blood money*) and a reconciliation based structure for the resolution of disputes. This is supported by the risk of direct retaliation by the victim's clan in failure of settlement. Clan elders' traditional authority has gradually declined and it becomes difficult to apply the tradition in a modern urban context regarding serious armed conflicts. Yet due to a respect for the mechanism in the communities, most of the rules are still applicable. This traditional system is based on collective compensation and reconciliation rather than on individual punishment. Jahangir (1990) Situation Analysis Research revealed that in *Khyber Pakhtunkhwa* 69% member of the civil society rely upon *Jirga* system for resolution of disputes. According to Ali, (2001) most of the respondents of a research study in Punjab expressed their satisfaction with the *Jirga* or *Panchayat* system and 79 % were of the view to continue with the system. Fairness in decisions, swift process and less expense were the main reasons to favor the traditional system of justice. UNDP (2006) reported that in developing societies 80% cases were settled through informal justice mechanisms but these mechanisms were often criticized for gender prejudices, discriminatory treatment and violation of international standards of human rights in decision making. Mukhtar (2006) 'in the Name of *Honor*' reflected that women are treated like beasts and paid as compensation for conflict resolution without being given any basic right of choice making. According to Pur and Krishna (2009) In Malawi nine tenth of all disputes are resolved through traditional justice systems. In Sierra Leone, almost 80% of the population knock at the door of informal justice systems, which are legitimized both by state and custom and these laws, are applicable to specific groups and communities in Sierra Leone. According to an estimate 80% of Burundians are satisfied with the systems and take their cases to *bashingantahe* forum to get justice. Informal justice system exists in Peru from long ago and still functions effectively. In Bangladesh, about 10% of local conflicts or disputes are resolved through *Salish* mechanism. This alternate justice system operates at village level and people have an easy access to it. Three fourth of African nations practice traditional justice. In India, *Nyaya Panchayats* is working since 1950 at village level with government support to decentralize the judiciary and make justice system more easy, quick and accessible indigenous communities. *Lok Adalats* is likely another to settle conflicts and disputes at local level. Kuma (2001) reported that Conflict resolution refers to a complex network of forces relating to conflicting rivals. In the conciliation process all the stakeholders are expected to contribute positively and a struggle is made towards social harmony through restoring peace and good will among conflicting individuals and families. In such situations, symbolic gestures and some rituals i.e. exchange of gifts, and feasts are considered necessary ingredients of the process. UNDP (2010) reported that the *Purahn Ban* often facilitated process of compensation and determination of the amount, and there was always a kind of spiritual sacrifice i.e. slaughtering a cow, buffalo or pig etc charged on the offending family. The *Purahn Ban* asked all involved in the conflict resolution to participate in a party celebrating the end of the dispute. This also provided witnesses to the reconciliation and pledge they made to keep peace. Magnitude of sacrifice mostly

depended on the scale of the case e.g. resolution of a minor dispute was just celebrated with a chick and a jar of wine while for a serious offence, a buffalo, a cow, or a pig was required to be slaughtered. In such feasts, both the parties ate and drank together to heal feelings among them. In cases where the conflict was resolved using a bet-swear test, the losing party provided most of the resources for the ceremony and spirit sacrifice. Reda (2011) thinks that according to *afar* customary law, the amount of compensation is mostly based on the nature of the offence and the context it is committed in. A wound without bones not being exposed is considered a minor offence and only a goat is paid to the injured by the offender to “wash his blood.” Then after a day or two the offender again offers another to “heal the wound”. This is called *Maldino*. Finally, there will be a compensation payment (*Morrucco*) ranging from 12 *Birr* to a camel depending on the seriousness of the injury. The compensation is also related to the part of the body that is injured and the payment varies from low to high according to the less important part of the body to the most important one. Deegan (1987) asserted that rituals were inevitable for restoring the distorted social relation and promoting harmony. Conflicts within and with other clans were always settled through traditional systems. Bourdillon (1998) describes *Lobola* a custom in which the husband (or his family on his behalf) delivers or promises to deliver to the father (or guardian) of the wife, stock or other property, in consideration of which the legal custody of the children born of the marriage is vested in their father (or his family) to the exclusion of any member of the mother’s family. *Lobola* is negotiated by the heads of the two families or their representatives in the presence of a messenger. Traditionally, cattle were paid by the groom’s family to that of the bride upon marriage, but now bride it is usually paid in cash. Qaiser (2004) related in his study that various types of compensation for resolution of conflicts are mostly due to *honor* killing. Saleem et al (2011) unveiled in his study that throughout Pakistan women is given in compensation for any kind of disputes either of civil or criminal nature. And it is mostly due to cultural norms and or religious/moral obligations. Other types of compensations i.e. land, cash or cattle are also made but mostly in minor cases, but marrying a woman as *Swara* is the top priority to settle down disputes of severs nature. According to Vincent, all traditional practices i.e. polygamy, forced marriages, child marriages, payment of women in compensation and payment of bride price etc are mostly because of gender discrimination. Payment of bride price and child marriages take place in most *SADC* member states as part of traditional culture ignoring changes in social contexts. In many communities girls are brought up as a source of wealth for their families and trained to be prepared for marriages. In these regions, Most of the brothers have a common notion that their sisters have no right to their fathers’ property (Vincent, 2006).

4. CONCLUSION AND RECOMENDATIONS

The study finally concluded that the social dynamics of relationship play an instrumental role in addressing the social issues in a society. Judicial systems under the partridge of constitutional frame always guarantee to redress the agonies of the people with multi-dimensional amelioration. The institutional frame of the society has a dynamic role to perform. However, it has been observed that in Pakistan like other developing countries the provision of justice through constitutional laws and enactment in regard equal access to justice for all segments of societies is still a dream. Most of the inter and intra family dispute are settled outside the domain of constitutional approach, rather, going for reconciling through cultural and traditional mechanics of society. Class discrimination and marginalized position of women have further added to the miseries and agonies of this neglected segment with the consistent and dominating role of patriarchy. In most of the rural communities of Pakistan women are seldom allowed to decide over their destiny, rather, the males have to decide over. Local traditional mechanism through various traditional institutions like *Jirga*, *Panchayat* etc have also denied them of membership to decide over pertaining to their plight in society. Male with all support and supremacy from patriarchy are doing all sort of evils without any responsibility to pay back, rather, women are forced to reciprocate for their deeds through traditionally justified mechanism irrespective of its repugnance to constitution of Pakistan, religion of the area and other moral and social yardstick of civilized world. Subsequently the study further explained that poverty, illiteracy, culture, education, income are the factors which have significant association between women used as compensation in the developing countries of the world. The study finally recommended that equal right are given to women in society; Women education should be compulsory in the developing world; Proper right should be provided to women according to Islam. Alternative way should be used in dispute settlement as compensation instead of women. Human Rights commission should have given power in the world for implementation of the law. Proper law should be developed for problem solution; and judicial mechanism should be developed particular in developing countries.

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