UNDERSTANDING HONOUR AND ELOPEMENT AMONG THE PASHTUNS: A STUDY ON LEGAL PLURALISM

[1]BAHA UL HAQ, [2]SAADIA ABID, [3]AISHA ANEES

Department of Anthropology, Quaid-i-Azam University, Islamabad, Pakistan
bahapakistani@gmail.com
Baha Ul Haq is currently pursuing his PhD in Anthropology at Quaid-i-Azam University Islamabad.
Department of Anthropology, Quaid-i-Azam University, Islamabad, Pakistan
sabid@qau.edu.pk
Saadia Abid (Ph.D. University of Vienna) is currently working as an Assistant Professor at the Department of Anthropology, Quaid-i-Azam University, Islamabad, Pakistan.
Centre of Excellence in Gender Studies, Quaid-i-Azam University, Islamabad, Pakistan
aamalik@qau.edu.pk
Aisha Anees Malik (Ph.D. University of Cambridge) is currently a Tenured Associate Professor at the Centre of Excellence in Gender Studies, Quaid-i-Azam University, Islamabad, Pakistan.

Abstract: Marriage for the Pashtun community of Baluchistan in Pakistan is a familial matter and not solely a concern for the individuals involved. While the state law allows men and women to marry of their own choice, societal norms tend to discourage individuals from making such decisions independently. It is largely obligatory for individuals to comply with decisions made by their families. Should they wish to pursue their own choices they may be compelled to leave their families. Under such circumstances, chances are that an individual's decision to marry on his/her own would be seen as a case of elopement. Given the specific understanding of honour and shame, associated primarily with women and the female body, this is seen as a blatant violation of norms and a major offence. However, the onus here weighs more on men who are perceived as offenders whose "crime" leads to 'dishonouring' the woman's family. Interestingly, and contrary to common assumption, a breach of honour is resolved through negotiations, even if reluctantly. This is to say that the matter is decided not by killing the couple but rather through customary law (marakah). The present study explores the role of this customary law in such cases of elopement and thereby sees it as an interesting example of legal pluralism.

Keywords: Elopement, Marriage, Honour, Honour killing, Resolution of Honour, Restoration of Respect

1. INTRODUCTION

Pakistan is a diverse country with respect to territory, population, language, customs, norms, values and unchartered community laws, which impose a sense of strict obligation and conformity. This varies for different regions and communities such as the Baloch, Sindhi, Punjabi and Pashtun in Pakistan. These four major ethnic groups are culturally, linguistically and geographically different (Critelli, 2012). Of the four the Pashtuns comprise one of the biggest tribal societies. They have distinctive language, culture and a very strict code of behaviour expressed via their Pashto language, which not only fulfils their communication needs but also reinforces behaviour, interaction and expectations (Ahmed, 1987). These behavioural codes are known as Pashtunwali or traditional Pashtun lifestyle. Pashtunwali not only requires women to conform to essential cultural codes but also binds men to follow the code strictly. Many scholars and academicians have used the code in a very limited and rigid manner. They explain it in a way that it does not allow members of society to commit violations

that would in turn challenge patriarchal values and bring about social change. It is commonly believed that if the Pashtunwali codes are breached with respect to honour or *izzat*, they may ultimately result in severe conflict. Scholarly writings on Pashtun society mainly focus on patriarchal concepts and do not pay attention to the social structural edifice that reinforce values and protect the choices of individuals, while limiting prolonged and unnecessary conflict (Ahmed, 1980). These note that in Pashtun society honour or related issues are neither discussed nor resolved easily. When any issues relating to males or females arise in society, women follow men's decision in every respect, ranging from marriage, dress and public visibility. As (Grima, 2004 pp. 52-57) notes, women follow the verdicts made by their male members and they do not have any say, nor are they able to challenge male decisions. Ahmed's (2006) study, on the other hand, talks about *Pukhtun* women's exercise of social agency during weddings and funerals. This also notes how woman may use her own agency to marry of her own choice, by eloping and thereby challenging patriarchal norms and men's decisions.

In this patriarchal society women are bound to adhere strictly to the codes of honour. The honour of men is based on having control over and securing *zan* (woman), *zar* (wealth) and *zamin* (land). These three ultimate principles are very dear to them and they are required to protect at all costs. These are considered to comprise the ultimate test for men who consider themselves the custodians who have to guard their sanctity (Barth, 1959). Pashtuns basically have a tribal, patriarchal and patrilineal society (Rittenberg, 1979). Their men have strong feelings of *ghairat* (honour) and *izzat* (respect) wherein the former is defined as the honour and defence of women (Chaudhry, 1999). As per established social norms men are required to protect women from harm in society. A clear line is drawn between *ghairat* and *izzat*, where the former represents fulfilling of all assigned tasks and social expectations that are gendered, while *izzat* relates to men who are considered custodians of their female family members. In the criteria mentioned only wives (and unmarried daughters) are the responsibility of husbands who are supposed to protect them. Men are required to control the behaviour of their wives and ensure they are modest both in public and private spheres. If women resist or challenge norms relating to *ghairat* and *izzat*, conflict may erupt, for instance, in cases of elopement and choice of marriage or illicit relations outside of marriage (Chaudhry, 1999). In Pashtun society, the act of elopement (*mateza*[1]) may lead to severe conflict between the two concerned families and sometimes may involve three families (if one of the elopers is married) in different contexts at the time of elopement (Ahmed, 1980). Eloping itself is considered as *tor* that is black; disgraced woman; and impure food or person (Ahmed, 2004 p. xvii).

As discussed earlier, an ethnic group not only shares in common acceptable behaviour, language, and culture, and with some variation, an understanding of *ghairat* and *izzat*. As Bokawee (2006) notes, the Pashtun do not accept elopement and the individuals concerned may face rejection by all relatives. According to Roberts (1979), conflict arises in various forms, while the intensity and scale of clashes vary, but it is always over scarce resources and things that are dear to a person. The sanctity of women and their protection is paramount for Pashtun men, even though one may presume state laws in theory are meant to protect citizens and safeguard their rights. Women in particular have to secure protection of their close male members in addition to keeping the laws of the state in mind, while conducting themselves in accordance with these laws. At the same time they are also obliged to follow patriarchal norms and adhere to social norms of modesty.

Marriage is a social contract accepted and endorsed by society where the latter accepts the bond after ratification by male family members. This kind of pattern of arranged marriage

---

[1] It is used for the act of elopement and eloper especially female eloper

is organised by families. When individuals or couples decide to reject it, they are silenced and condemned in different quarters. Independent choice in marriage or an elopement is unacceptable as per customs of Pashtun society (Wimpelmann, 2017). Most literature shows that honour killings may follow after such marriages, but this is not universally so in all Pashtun societies. This article re-examines current practices and discusses how Pashtun culture deals with elopement and honour related issues, through negotiation and discussion. Such acts are undertaken via customary law known as *marakah*[2] (Mehmood, Haider & Ali, 2017).

In Pakistan people largely adhere to existing customs and prefer to resolve serious differences via cultural avenues. The means that are used to resolve issues are known as customary laws, which operate via community courts that work parallel to statutory courts all over the country. Customary laws generally comprise rules and unwritten community norms that people are expected to follow (Thomas, 2013). The Pashtuns have very specific community laws that are invoked, depending on the nature and intensity of violations, *marakah* being one among them.

The word *marakah* has different connotations and a common one is interview, conversation or talk. *Marakah* is also used to refer to a group of people who may jointly seek resolution of disputes or a case brought up by an aggrieved party. Such resolutions of disputes are common among several indigenous communities who may not be satisfied with modern state institutions (Sieder, 2011 p. 166). The Pashtuns as an ethnic group share some cultural values, while other regions of Punjab, Khyber-Pakhtunkhwa and Sindh have their own customary laws for resolving issues locally (Chaudhry, 1999). In Khyber Pakhtunkhwa and the recently merged areas (formerly known as FATA[3]) official *jirgahs*[4] or councils are common. The case of Baluchistan is different as it has two major ethnic groups Baloch and Pashtun. The Pashtuns occupy the mainland border area with Afghanistan, former FATA, Punjab and Khyber Pakhtunkhwa. They are linguistically and culturally different from each other and the Pashtuns mainly practice and adhere to their own customary laws to resolve disputes among families and tribes. Customary courts are the main platforms used to resolve the issues of elopement. This article attempts to answer the question about how customary laws help resolve issues related to individual rights, protection of choice, reconciliation and negotiation on issues regarding honour for the Pashtuns in Baluchistan.

1.1 Legal Pluralism

Legal pluralism refers to the co-existence of two or more legal systems within a country ad this is seen in several regions. Western legal systems have resisted such pluralism because this runs contrary to the principle of every person being equal before the law, which is supposed to apply to everyone (Zariski, 2014, p. 54). Resistance to such practice is usual and continues to prevail because some people prefer self-governance or customary laws sanctioned by state (Davies, 2010).

It has been noted that legal pluralism is a multiplicity of legal orders within the same social field, where every community has its own indigenous legal system, to which people bring cases for resolution. When patriarchal societies make unilateral decisions about women, they may violate some universal human rights of women. Sometimes, the state machinery is complicit in these, along with family members, notably in deciding about girls or women who wish to marry of their own accord. For example, *khap panchayats* in some parts of India are among the oldest indigenous institutions that settle community level disputes on such matters.

---

[2] Customary court where disputes related to honour are resolved.

[3] FATA stands for Federally Administered Tribal Areas of Pakistan recently merged with the province of Khyber Pakhtunkhwa in 2018

[4] Council of elders having an authority to resolve local disputes. A form of customary law.

Such resolution may result in human rights violations and have been criticized by human rights organizations and state statutory bodies (Sangwan, 2008). The case of Pakistan is similar, for instance, the Lahore High Court gave a landmark decision in favour of the family of a woman, saying she could not marry without permission of the *wali* (family head or custodian) and was forced to return to her family. This decision reflected that in choice of marriage, the permission of family elders is required as per customs in Punjab (Ali, 2007). This case shows that despite the penal code of Pakistan that explicitly declares that men and women at the age of eighteen can marry of their own choice, such issues and differences are reflected in legal cases and such socio-cultural understandings prevail in state courts. Social norms are pervasive and believed in both by officials and community members while dealing with issues in the courts. So, if a woman goes against her family and tries to invoke statutory law, it is still considered that she needs the approval of the *wali* or family head. It is therefore important to understand the concepts of honour, feminine modesty or *izzat* to understand such cases. Studying *marakah* in Baluchistan provides us with such an opportunity.

2. MATERIALS AND METHODS

For this study the lead author conducted 28 qualitative interviews in 2017 and 2018 in Baluchistan during field research over a period six months. This combined with participant observation helped generate rich data. The paper draws on the theoretical framework of legal pluralism that explains and presumes the co-existence of more than one legal system in a society where people may prefer one rather than the other. This legal system or *marakah* is a cultural institution designed to resolve issues and reconcile clashes between disputing parties. It is compatible with cultural norms and can be invoked for resolving any sort of conflict among the Pashtun in Baluchistan, especially in the district of Zhob.

Our interviewees are from the two districts of the Baluchistan province in Pakistan; Zhob and Sherani, inhabited by six tribes, that is, the Mandokhel, Kakar, Shernai, Harifa, Babar and Lawoon. The study was conducted in Rod village (a pseudonym) where cases of elopement had occurred in large numbers. Since, the cases were resolved in the village, our research participants were primarily interviewed during their visit to Rod that is about 30 to 40 kilometres from Zhob city. The village consists of six *peshy* (kin groups or clans comprising several families). Each *peshy* has a head, supported in turn by all family heads. When a dispute arises among persons of different clans, it concerns not only the individuals, but also their clans. So, we selected interviewees who were heads of their respective villages and had some background in such arbitration and were regularly involved in resolution of cases of elopement. On one occasion when a *malak* was asked how many such cases he had dealt with and successfully resolved through *marakah* he smiled and said, there had been countless elopement cases and all were settled through *marakah* and were resolved within a few hours.

Twenty *malaks* (clan or phratry heads) and five women were interviewed. As a *malak* leads his clan in dispute/ conflict resolution he uses his influence to get the disputants to agree and accept his views. The *marakchahan* or participants of the *marakah*, are usually present along with their wives or mothers, which ensures resolution as they embody the honour or *izzat* of their clans and so are not usually expected to enter this public space. Women were also interviewed in order to understand the process of *marakah*. Two important points require elaboration. Firstly, women are largely silent members of *marakah* and are rarely involved in the negotiation process. In a patriarchal system such as one under study it is already a big step to bring women to the public space. The mere presence of women as members of *marakah* in cases of elopement is reflective of its sanctity and seriousness. It communicates to the aggrieved family that the members are equally concerned about other's women and realize the gravity of the situation. A women's presence in the public sphere must not be ignored, rather honoured. Women's presence is a silent message by the *marakah* members "We brought our women because we honour your women. We expect you to honour our women's presence and accept the request to resolve the conflict" In addition, a religious scholar was interviewed to

understand the Islamic and religious perspectives regarding elopement, and how they interpreted it in the case of betrothed or married girls.

Our interviews were exclusively conducted by the lead author who spoke the local language. All interviews were recorded and later transcribed into Pashto and respondents were not referred to by name, due to the sensitive nature of our research and to protect their identities. Each participant was assigned a letter and a number, for instance, M refers to the *malak*s interviewed while F stands for women. So, M1 is for the first *malak* interviewed, M2 for the second and so on. This coding of participants was done to ensure respondent confidentiality on the one hand, and on the other for easy identification of participants by us. It is pertinent to mention here that only 5 women were interviewed for different reasons. One, the number of women participating in *marakh* was much less compared to men. Second, women were mostly silent during the negotiations, their presence in itself influenced the entire process. Lastly, gender segregation being the norm, only the older women could be interviewed as younger ones could not be accessed. Later, the transcripts were checked and verified with the audio recordings repeatedly to remove errors and for accurate use of words and ideas expressed by our participants. These were then translated into English, placed in a matrix and transformed into code and quotations. This entire process enabled us to retain the meaning and context captured first in Pashto. The data was later subjected to thematic analysis that enabled a deeper understanding of the emerging themes of *ghairat, izzat*, elopement and resolution through customary law or *marakah* among the Pashtun, which can only be understood in terms of the backdrop of the traditional marriage system.

3. RESULTS

3.1 Traditional marriage

It is important to shed some light on traditional marriage among Pashtuns in the area before examining some of the themes that emerged from our data. Socially acceptable marriage for them is one solemnized by families and formalized through a legal contract. The marriage proposal remains the prerogative of the male heads but consultations include mothers and brothers of brides as well. Consideration is given to the economic standing and reputation of the groom. The temperament of the prospective mothers-in-law is also a key factor for acceptance. Then, female family members from the groom's side visit the prospective bride to report on her physical attributes. Notably, the character of the prospective bride is not probed in such discussions for marriages take place within a well-known community network. Traditional salutation (*roghbar*[5]) among close social network not only entails greeting but also involves passing on important information. Stressing the importance of traditional salutation in the marriage process, *M4* said:

Today you see many girls above twenty who are leading a celibate life, i.e., without marriage. This is because people have left the traditional ways. In salutation (*roghbar*) we inquire about age of children and their marriage status. So through traditional ways we come to know about the age of female and pursue the proposal."

---

[5] *Roghbar* is the local term referring to traditional salutation, which among Baloch is not just a formal exchange of hello. Rather it involves details about one's life as well as passing on of information. When to *pashtanah* (men) or *Pashtanay* (women) meet, they first hug each other. This is followed by mutual exchange of information. This involves knowing each others daily life experiences and activities as well as having an interaction on different issues and problems. If a person says I have *roghbar* with someone, it measn that he knows him personally and he knows him well. *Roghbar* plays an important role in passing on information of people looking for prospective spouse for their children or younger siblings.

Thus salutations serve as a useful means of disseminating information about the availability and suitability of eligible matches.

Early marriages are a common feature in this society, where appropriate age is not clearly defined. Age estimates are largely approximate in the absence of any tradition to note down birth dates. Accordingly, M5 said:

A girl should be married before she gets second cycle of her menstrual period, because leaving an adult female at home without marriage is equal to sin of committing a murder, so it is the responsibility of every parent to wed her as soon as possible.

Having said this, a common perception was that girls became eligible for marriage at age 16. However, men's age is not taken into consideration for marriage and they can marry at any stage of their lives.

The most common type of marriage system in the village is exchange marriage or *badal*, whereby a daughter is married off in order to bring a bride from the same family home for the son. This serves as a protection for the grooms in case of tribal feuds among kin and for security of women for fear of harsh treatment by in-laws as their own daughter(s) is feared. Marriage proposal always comes from boy's family. Most of marriages are endogamous and among cousins, because people do not wish family secrets to be disclosed to outsiders. The consent of the prospective grooms and brides is not required in making proposals. If they resist or express views during such discussions, parents consider it be disobedient behaviour on the part of their children. As M6 said, "silence means the agreement of children; in case they had any objection, they could speak out. It means they do not have any objection and let the matter go ahead." Children are socialized into believing that their parents know what is best for them. As M7 said: "At a young age, boys and girls are not mature enough to take decisions on the perils and events that life may bring. Parents are in the best position to decide about the marriage of their children and their experience as spouses."

Acceptance of the marriage proposal and the day of agreement is celebrated with great enthusiasm. Lunch or dinner at girl's home is arranged to endorse the formal agreement or *hokai* in the presence of other relatives of both families. Later, the girl's family gives *stan-seera*[6] to that of the boy, are sweets, candy, a waist-band and some handkerchiefs. This event becomes a reciprocal one if *badal* marriages are arranged. However, at this stage there is no formal *nikah* (marriage contract) but is a verbal agreement of engagement that establishes the couple as betrothed to each other.

Other marital options that are less popular are *arrah*[7], and *mateeza* (elopement). *Arrah* as an option is exercised by a man who has been refused a woman's hand in marriage. Failing to convince her family, he may resort to shooting into the air near her house. In doing so he announced his claims over her and warned others not to approach the family for her hand in marriage. This practice was quite rare and only two such cases had occurred. As M7 said, along with some other likeminded *malak*s:

I made it clear in a formal and final announcement that the claimed marriage will not be accepted by people and we totally reject the claim of person who moves to such type of unacceptable tactics.

---

[6] It is compound word. *Stan* means needle and *seera* means a long strip of cloth, but at time of

formal agreement it consists of handkerchief, sweet and other gifts.

[7] Man's claim to be spouse of

In one of these cases the girl had eloped with another man and both are now living together happily. They have children and everyone knows about them, while the man who had sought to marry her via *array* had then left them alone.

Mateeza has been cited in discussions on Pashtun culture, but the position of women with respect to this has escaped in depth scrutiny. There is not much that has been written about why elopement takes place, what other options are available to women for challenging familial reluctance for marrying out of one's own choice or in cases of ill-treatment by parents and/or in-laws. In Pashtun culture *mateeza* has many connotations. A woman chooses *mateeza* if she is mistreated by her parental family or her in-laws, following which she may take shelter in an influential person's home such as a *malak*. Such cases do not turn into major conflicts as consideration is given to the extenuating circumstances. After obtaining surety from the concerned family, those who have sheltered her hand her over to family with the assurance that she will not be maltreated in future. Other types of elopements become serious issues and cause conflict between two or sometimes among three families, as in South Asia, marriage is not only a bond between two persons but it is a social bond among families (Malik, 2015) and tribes.

We now move on to an understanding of the major themes this paper, *ghairat, izzat, marakah* and elopement. These are based on our interview data and field observations.

3.2 Ghairat (Honour)

The construction of honour does not concern women only as society assigns gender differentiated responsibilities to men and women, and so is tied to the performance of these. Both are *ghairatmand* (bound by honour), while performing their socially assigned duties. The tasks and spaces for doing these, however, were gendered. Men were required to occupy public spaces and women restricted to the privacy of their homes to maintain social order. Men have to leave their homes to earn, support families, protect them from any external threat and control the mobility, visibility and the voice of women who should not be heard or be visible to strangers outside their homes, for fear of the taunts of outsiders. If a man failed to perform his duties relating to females of his family, neighbours constantly jeered at his lack of masculine authority that he was supposed to exercise over his female family members. *Peghaor* (taunt) is an abuse that scares respectable men and forces them to control their women strictly lest people gossip and is therefore viewed as a public objection raised by a person regarding the person or family's character. It was always pronounced in public places regarding so-called characterless people in order to humiliate them. For instance, M1 said that a man who is not able to control his wife, or confine his sisters at his home should not dare to face others. This implied that if a man implemented a strict ethical code at home, he can be tough outside of his home too. There was a very common phrase people often uttered in public: "his wife played the role of a brother despite the fact that he is the only a son." This reiterated that a wife can be steadfast and honourable if she stood by her husband, supported him in his work by securing her chastity, modesty and character and did not complain or place demands. In this she has supported him like a brother. It was said, His wife was very honourable, because she took care of all the belongings of her husband and of guests whenever they visited her home. As F1 said: When a *ghairatmand* husband gives full authority to his woman to take care of household affairs then she becomes confident in welcoming the guests with self-assurance. She is then respected and admired by men of all ages for her amicable personality. If the man is *bayghirata* (dishonourable) he always ill-treats his wife and lectures her on do's and don'ts. These cheap tactics leave the woman perplexed and in an uncertain situation, and this kind of behaviour relieves the woman of her responsibilities and pushes her into a position of vulnerability.

Many people think that the position and respect of men in larger society is determined by the determined backing of his female family members. If his family members behave modestly and confine themselves to household chores, the man feels self-assured in his society and no one can dare to raise a finger regarding his honour and dignity.

One of the most crucial and interesting aspects in the understanding of *ghairat* as honour is to be a man of one's words and selfless behaviour. One must be steadfast in displaying *ghairat* and such people are applauded, appreciated and honoured in traditional courts as they are seen to try and ensure the best for others, which they wish for themselves.

3.3 Izzat

For the Pashtu, concepts of *ghairat* and *izzat* are not interchangeable. The latter related to the woman as the "wife" in a household; so if a person did not respect her/ his own family and of others, they use a proverb: "*Purdah mor au khor na da shkara*" ("he who does not distinguish between mother and sister" or "does not distinguish between respectful and disgraceful ways of dealing with the people"). It means that they need to follow *narkh* (appropriate behaviour in this context)[8] wherein men and women are obliged to act in the correct way. It is common in Muslim societies for men and women to be segregated in public and private spaces (Abu-Lughod, 2013). For instance, it is considered disrespectable (*bay-izzati*) for men and women of the family if a man treads the paths women use to go to work. It therefore becomes a private or women's path (Ahmed, 2017). For instance M2 said

If a person wants to meet someone for some work at his home, it is necessary for the person to use an appropriate track and an appropriate time. At any given time if any male family member is at home, he would entertain and meet him. If a person comes out at noon or walks onto the private track usually used by women, it becomes a matter of disgrace for the person whose female family members use the track.

The status of wife cannot be ignored either in the public or the personal life of a man. If the wife of a person does not observe norms of modesty and intermingles with strangers who are *namehram* or outsiders and belong to someone else[9] this act is considered equal to the living death of her husband in social and political terms in society. For instance M3 said:

When the wife of a person elopes with another person; the life of her husband becomes meaningless. He loses everything in life, i.e., respect and good character. It is like he has become naked in public or she has sold his *izzat* in the market. Or he has been undressed publicly by his wife.

This means that elopement or unlawful interaction of a married woman with another man is a severe act of humiliation and disgrace for her husband, wherein the relationship of this woman becomes a public event due to her interaction with an outsider or *namahram*.

4. DISCUSSION

4.1 *Marakah* and Elopement

Marakah means conversation, interview and expressing of a verdict or a decision. Culturally this is a mechanism for conflict resolution and is an organized informal tribal court, where all its members or *marakchahan* are the elders of the area, who are called head or *nawab, sardar, malak, masar*[10] and head of family as a unit of tribal structure. There is a very clear hierarchy based on the tribal structure of this society. Every tribe has its *nawab* who has prestige and a

---

[8] *Narkh* mean price, but in this context, it is used to explain the established behaviour and interaction.

[9] someone else's, another's (from a familiar point of view) ، not having access to the women's part of the house.

[10] Head of phratry subordinate to *malak*

kind of accepted authority over the tribe. In Zhob, he may claim that he is *nawab* of all Pashtuns but in social interaction and influence he has more influence on one tribe. He participates in every *marakah* related to elopement. He enjoys prestige and has influence to resolve conflicts among people. The *sardar* is head of some villages and responsible for participating in *marakah* without any payment by the disputants or the state. M8 said: "all sardars and malaks are judges without salary. He heads more moieties (*pesha*)_comprising many villages." Under the *nawab* and chiefs are the *malaks* at the third level of the hierarchy, who heads the village he represents and is part of the court as he leads the clan. Then comes the *masar* who heads his clan or *pesha/mor*[11] and consults within his clan and with the heads of families on how they should deal with the concerned parties and find a solution.
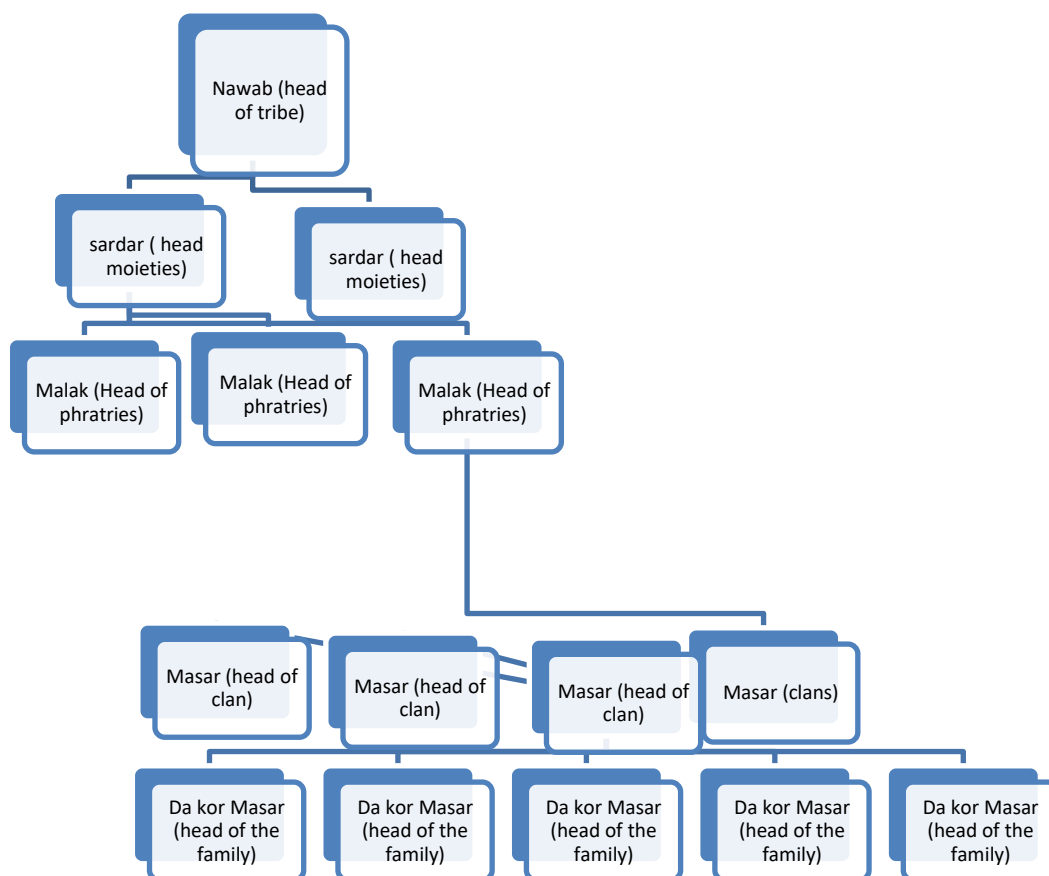

Figure: Hierarchy of heads of different groups[12]

Elopement is interpreted as kidnapping or abduction of a girl for the purpose of marriage without her consent. The blame is placed solely on the man who is considered guilty while the woman is deemed innocent. As M9 said:

---

[11] *Mora* means mother. Locally everyone calls their clan *mora*. The inhabitants of the village believe to have descended from a common male ancestor. Further division into groups is on the basis of mother.

[12] This hierarchal pattern was developed by T.C Das (Samita Manna, 2013 p. 113) targeting social organization of tribes in India. We have used this for analysing the hierarchal system in our locale and the area.

it is the boy who comes home and takes away the girl, because girls cannot go out and know nothing about the environment outside of the house. Only the boy can take such kind of bold step.

When a girl and boy decide to elope and marry, they abandon the homes of their parents and seek refuge or shelter or *nenavati* in the house of an influential and powerful *malak* or *sardar or nawab*. Most of the time elopers take shelter in a house where the host family can afford their daily expenditures, residence, food expenses and protect them from external threats. For instance, M10 said:

The elopers' most preferred destination or refuge is the house of a *malak* and *sardar*, because *sardar* and *malak* can protect them from state laws as well from offended family [female's family]. When elopers succeed in getting *nenavati* in a *malak* or *sardar*'s home, it becomes the responsibility of host family to contact the families of the eloped and ask for further consultation and negotiation by both families to reconcile and reach final resolution."

The process, discussion and negotiations are not disclosed to anyone because a host family, with help of others, is selected for *marakah*. What usually happens is that the family of the boy uses its influence with the girl's family for peaceful resolution.

Marachahan select a final day for meeting and the man's family members, including its head and women, visit that of the girl for *nahora* (in this situation, while fasting or refusing to eat). They take with them *pesa* or a sheep and a copy of the Quran. All the *marachahan* refrain from eating anything until the issue is settled. During this session, conversation takes place between the head of girl's family and the *wali*. It was observed during field work that every person was aware of the state laws on marriage and Muslim family law, but complained that the state had given full freedom to women. They expressed that Islam had given rights to every person but here while dealing with the issue of elopement, culturally strong traditions and *Pukhtoonwali* are more important in order to restrict women and follow traditions. As M12 said: "the decision on marriage of two is made by divine power in heaven. We here just make it an issue without reaching any concrete result."

After a long discourse, the man's family waive their right in favour of the *marakah*, because the man and his family are considered guilty of the offence. When the *marakah* arrives in the evening at the girl's home, following appropriate salutations, they are asked for reasons for their visit, which the head of *marakah* narrates. So, then the girl's family members excuse themselves in order to consult with their extended family members. Thereafter, they go back to the *marakah* and report what their stance is and place their demands before the *marakah*. The latter conveys these to the boy's family members and accompany them to their home for further meeting and consultation. *Marakah* keeps in mind the precedents of earlier *marakahs* regarding elopement. It does not deviate from the established traditions set by previous resolutions and makes a reasonable and sound decision.

Traditional resolution of elopement cases is reciprocal and is based on tit for tat. A *peghla* or virgin is demanded for a bachelor eloper and a married one for a woman who may have been engaged in the past. In time these cases are resolved by paying fines while giving of girls in exchange as compensation is becoming rare. In my field work I found only one case of elopement in which despite that *marakah* refused to give girl as compensation, the male members of the female eloper's family insisted for a girl to be handed over in compensation. Other cases of elopement were analysed in depth and studied, the compensation for eloping was made in monetary terms.

The use of religion to some extent is changing traditions. Theologians from the community see this as un-Islamic to give girl as "*rag[13]*" (vein or blood) in such cases. During field work I witnessed one case in which the family had given one girl as *rag*. The remaining twenty-eight cases were resolved by paying high amount of *volver* (brideprice or bride wealth). In elopement this is double what is paid in traditional marriages, agreed upon by both families, as half is seen as bride price and the rest is considered *sharamtiya* or compensation for causing shame to the family. To reach resolution, every person has to come to girl's family *taghar* (literally a family carpet but signifying the new bed for the groom). As M13 said:

Even if elopers go to the legal system for court marriage, every Pashtun knows that this is not illegal and Islam allows couples to marry, but society and family do not accept this Islamic doctrine. Every Pashtun has to use a traditional way to resolve the issue of elopement and every decision can be made on the *taghar*. Without *taghar*, there is no other way that is acceptable to people in our society.

The resolution of elopement of unmarried girls is done without major conflict is quite straightforward. Very few cases of married women who eloped after their wedding and some who were betrothed and eloped before their wedding have taken place. These cases are rarely settled amicably. The elopement cases involving married or betrothed women are considered as complex and challenging. One of the greatest challenge is to convince marakchahan. In such cases, the same *marakchahan* who would readily participate in elopement cases of unmarried women, would show reluctance to be a member of *marakah*. Their greatest fear is that in future their actions may destabilize the institution of marriage. In case of a married woman there is an additional effort involved. That is to convince the husband of eloped woman to divorce her. Thereafter, they deal with the matter as a case of an unmarried girl. For example, M14 said:

We are aware of such cases in Islam, because the elopement of married or betrothed woman is considered and interpreted as *khula* (open) in Islam and Islam gives the right to women to withdraw any time from marriage if she does not like to stay with her husband and has solid and genuine grounds to seek separation. The tradition, however, make the resolution of such cases difficult and time consuming. These vary from family to family, for instance, in one case the boy's family gave an engaged girl in marriage. In another case the family paid money to another family and agreed to resolve the matter, but such cases are very rare. Most of the cases remain unresolved for the concerned families as the elopers leave no trace of their whereabouts, because their families withdraw their support and protection from them.

5. CONCLUSION

In view of the law of Pakistan citizens are allowed to marry of their choice without any compulsion from any other person or organization, but contrary to this men and women are not given this choice at the societal level. If they proceed by choice and elope, families deem the this as an attack on their *izzat* or honour. This assault is not resolved through the state judicial system. Instead elopers have to fight for their rights through customary law to get justice and protection. Among the Pashtun, honour is carried by men and woman and izzat is imposed, bestowed and embodied in the wife. Man is responsible to restore, protect and impose the honour of his wife. Honouris a social task and responsibility that must be fulfilled by both men and women while respect is constructed in the favour of men. Restoration of respect is carried out through *marakah*. The heads of different groups stay empty stomach until the offended

---

[13] Rag means vein but here it is used to establish relation that the boy's family gives their blood

to the family.

family forgives the offender. Boy's family is obliged to pay some amount of money to the aggrieved family. This system is a combination of cultural-religious profile which is used to resolve elopement cases of both bachelor, married and betrothed girls. The resolution of elopement cases through the local justice system is also reflective of exercise of an individual's agency of both genders in subtle ways, vis-à-vis marriage decision.

Abu-Loghud (1986) has challenged the passivity and submission of Muslim women through her anthropological accounts. Saba Mahmood (2001, 2005) has criticised the contemporary definitions of the feminist subject for their inadequacy to explain Muslim women and their agency. She asserts, 'I want to suggest we think of agency not as a synonym for resistance to relations of domination, but as a capacity for action that historically specific relations of subordination enable and create' (Mahmood, 2001, p. 203). Men and women choosing elopement to escape arranged marriages and then resorting to traditional (read patriarchal) methods to negotiate and restore the respect of the family, then, is quite instructive. Choosing *marakah* over state legal systems in many ways is also indicative of the material, social and political importance of kinship ties and bargaining with a seemingly patriarchal system (Kandiyoti, 1988) may be more empowering for them than the alternative.

REFERENCES

[1] Abu-Lughod, L. (2013). *Do Muslim women need saving?* Harvard University Press.

[2] Ahmed, A. S. (1986). *Pakistan society: Islam, ethnicity, and leadership in South Asia*. Oxford University Press.

[3] Ahmed, A.S. (2017). *Pakistan Society: Islam, ethnicity and leadership in South Asia*. Lahore: Peace Publications

[4] Ahmed, A.S. (1980). *Pukhtun Economy and Society: traditional structure economic development in a tribal society*. London, Boston & Henley: Routledge & Kean Paul Ltd.

[5] Ahmed, A. (2004). "The World is Established Through the Work of Existence": The Performance of Gham-Khadi among Pukhtun Bibiane in Northern Pakistan. Cambridge: Cambridge University Press.

[6] Ali, S. (2007). Overlapping Discursive Terrain of Culture, Law and Women's Rights. In J. Bennett (Ed.), *Scratching the Surface: Democracy, Traditions Gender* (pp. 77-100). Pakistan/Afghanistan: Heinrich Böll Foundation.

[7] Ali, S. S. (1996). Is an Adult Muslim Woman Sui Juris? Some Reflections on the Concept of "Consent in Marriage" Without a Wali (with Particular Reference to the Saima Waheed Case). In *Yearbook of Islamic and Middle Eastern Law*, Vol. 3, pp. 156-176.

[8] Barth, F. (1959). *Political Leadership among Swat Pathans* (London School of Economics Monographs on Social Anthropology 19). London: Athlone.

[9] Bluntschli, J. K.(1892) *The Theory of the State*. Oxford : The Clarendon Press.

[10] Bokawee, M. A. (2006). *The Pukhtoons*. Rawalpindi: Pap-Board Printers Pvt Ltd.

[11] Chaudhry, M. A. (1999). *Justice in Practice: legal ethnography of a Pakistani Punjabi village*. New York: Oxford University Press.

[12] Critelli, F. M. (2012). Between Law and Custom: Women, family law and marriage in Pakistan. *Journal of Comparative Family Studies, 43*(5), 673-693.

[13] Davies, M. (2010). Legal Pluralism. In P. Cane, & H. M. Kritzer (Eds.), *The Oxford Handbook of Legal Emprical Research* (pp. 1-26). Oxford: Oxford University Press. doi:10.1093/oxfordhb/9780199542475.013.0034Grima, B. (1992). *The performance of emotion among Paxtun women:" the misfortunes which have befallen me"* (Vol. 17). University of Texas Press.

[14] Heywood, A. (2003). *Political Ideologies: An Introduction*. New York : Palgrave Macmillan.

[15] Hoebel, E. A. (1965). Part Two Ethnographic Approaches: Fundamental Cultural Postulates and Judicial Law making in Pakistan 1. *American Anthropologist, 67*(6), 43-56.

[16]Malik, A. (2015). Of Migration, Marriage and Men: Rethinking the masculinity of transnational husbands from rural Pakistan. In O. Gul (Ed.), *Gender and Sexuality in Muslim Cultures* (pp. 71-88). Ashgate.

[17]Mehmood, W., Haider, S. I., & Ali, R. (2017). Jirga and Sharitization: An Analysis of Maraka in District Karak. *Global Economics Review*, *2*(1), 54-60.

[18]Rittenberg, S. (1979). Continuities in Borderland Politics. In A. Ambree (ed.), *Pakistan's Western Borderlands: The Transformation of a Political Order* (pp. 67-84). Karachi: Royal Book Company.

[19]Roberts, S. (1979). *Order and Dispute: An introduction to Legal Anthropology*. Middlesex: Penguin Books Ltd.

[20]Sangwan, K. (2008). Khap Panchayats in Haryana: Sites of Legal Pluralism . In (eds.) K. Kannabiran, & R. Singh, *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (pp. 351-353). London: Sage Publications.

[21]Shevel, O. (2009). The Politics of Citizenship Policy in New States. *Comparative Politics*, *41*(3), 273-291.

[22]Shinwari, N.A. & Gauhar N.A. (2013). *Understanding Justice Systems of Khyber Pukhtunkhwa, FATA and Baluchistan: The Pukhtun Perspective*. CAMP

[23]Sieder, R. (2011). Contested sovereignties: indigenous law, violence and state effects in postwar Guatemala. *Critique of Anthropology*, *31*(3), 161-184.

[24]Thomas, S. (2013). *The Challenge of Legal Pluralism: Local Dispute Settlement and the Indian-State Relationship* (Doctoral dissertation, Utrecht University).

[25]Wilson, W. (1898). *The State: Elements of Historical and Practical Politics*. Boston : DC Heath & Co.

[26]Wimpelmann, T. (2017*). The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan.* University of California Press.

[27]Zariski, A. (2014). *Legal literacy: An introduction to legal studies*. Athabasca University Press.