

## Understanding Daughter's Traditional Share in Patrimony

### Sisters and Wives in the Pakistani Punjab

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#### Introduction

The sisters in the Pakistani Punjab particularly in the rural areas do not claim their 'official' share in the properties of their fathers. Their legal share in their father's property is anyway half of that what their brothers get. The sisters however don't claim even this 'half' share. Why the sisters do not demand this 'legal' share? The common perception is that the fathers/brothers do not give daughters/sisters their due share. To block the transfer of the property daughters/sisters are generally given in marriage to the cousins particularly father's brothers sons. Among the feudal and people belonging to higher social hierarchy the daughters/sisters are kept unmarried if a husband is not found in close family. Such women may even be married to the Quran for keeping their property in the family<sup>3</sup>. Exchange marriage is said to be another way to block transfer of the landed property. Agriculture land is very dear to the Punjabi farmers because it does not only provide them with subsistence and it is also a major source of honour to them with the result that they may go to any extent to protect it.

Shaheen Sardar Ali<sup>4</sup> a prominent Pakistani lawyer and activist in the field of women rights and status in Pakistan provides us very interesting analysis of inheritance claims of the women from the record of the higher courts in Pakistan. She writes that: "From 1947 to date we find that whenever a woman has approached the superior courts for protection of her right to inherit, she has met with a very positive response" (Ali 1997:220). She raises the question: why in spite of favorable decisions by the courts there are so few cases for patrimony keeping the fact in view that almost no women receive their share? Answering this self raised question she notes that the pressure from both family and society to forego one's inheritance is so compelling for women that they are simply unable to raise their voices and are forced to settle out of court (Ali 1997: 220).

This is, in my view, a gross oversimplification of a very complex phenomenon embedded in the kinship and social structure of the Punjabi society. The primary reason for *biradary* endogamy especially cousin marriage is not the concern for property details later) but the welfare of the daughter/sister same as the marriage of a woman to the Quran (for detailed analysis of marriage to the Quran see Chaudhary forthcoming). Sardar Ali's argument that women do claim their share because of the pressure from her family and society is also not very convincing in the light of the fact that after her marriage she lives in the family of her husband. One could ask why there is no pressure or the women do not bow to the pressure from the family of her in-laws, as a matter of legal fact her real family, for bringing her share of the patrimony?

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<sup>3</sup> Marriage to the Quran are "devised to deny women their rights of inheritance and out of fear of property being passed on to outsiders through the daughters or sisters [i.e. their spouses or children]" (Al-Shafey 2007).

<sup>4</sup> She was a member of Shirkat Gah, Lahore and the international network Women Living under Muslim Laws, entitled "Women and Law in the Muslim World" of which the author was a Research Co-ordinate for Pakistan.

The given social and the kinship structure of the Punjab in general and the rural Punjab in particular is such that not claiming a share in the patrimony is more (this includes social capital) than the legal half share (compared to their brothers) they have a claim to. In order to explain this it is important to understand the husband-wife and brother-sister relationship in the Punjabi society which will help us understand the basic nature of this society. I argue that the ideal/kern relationship in the Pakistani Punjabi kinship is the brother-sister relationship and not the husband-wife relationship. The husband-wife relationship which may also be termed as contract relationship because it comes into being as a result of a contract is in the Punjab is a relationship of mistrust, competition, almost enmity. Whereas the brother-sister relationship is a kinship and status based relationship which in the Punjab is an ideal relationship which is of care, love and trust. The brother-sister relationship is also different from brother-brother and sister-sister relationship. Claiming the share by the sisters would mean taking away from brother (women generally do not have their own separate accounts and properties) and handing over to the husband which is said to be a relationship of three words – talaq pronounced three times. This is supported by the statistics provided by Sardar Ali. She writes that:

“We came across more than a 1 000 cases concerning substantive issues of dissolution of marriage, dower, maintenance, divorce, etc. On the other hand, one does not see more than 100 cases reported concerning succession and inheritance.<sup>5</sup> (...). This is in spite of the fact that every woman is entitled to inheritance and as we know very few get/are given this inheritance” (Ali 1997: 220).

The cases of dissolution of marriage, dower, maintenance, divorce are cases against husbands. In the net calculation for every one case against brothers there are ten cases against husbands. One could draw the conclusion from this that women in the Punjab are ten times more likely to go to the court against their husband compared to their brothers. As a matter of fact whenever I talked to women including highly educated urban based ones and they criticized men they criticized their own husbands or brothers of other women seldom their own. My view is that if we want to replace the traditional law of daughter's patrimony with the official/Islamic law the kinship base of social structure has to be changed. In other words for implementing official share of daughter in the patrimony we need to change the marriage practices, modification if not replacement of the present joint/extended family system with a nuclear family to achieve individualism to make the husband-wife relationship the supreme of the kinship system. The question is not only if such changes are possible the more important question is if these changes are desirable as destination. I am personally not very sure if the Western styled individual based 'contract' society is a preferable alternative to the 'status' based kinship society. The idea that change could be brought in one area i.e. law of inheritance without affecting the other i.e. the nature of social structure and kinship system may not be possible.

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<sup>5</sup> It is important to mention about these figures that it is an average based on data about all Pakistan. The break down on the basis of provinces would have been very interesting. In my view there should be more women among Pushtoons who get their share of patrimony than in the Punjab. Relatively more women should be claiming their inheritance in urban the Punjab than in the rural Punjab. This is just my assumptions that need to be investigated.

### **The official/Islamic Verses Traditional Law of Inheritance**

There is a wide gap between the theoretical official/Islamic law of inheritance for the women and the customary law. The following verses from the holy Quran lay down the foundation of the Islamic/official law of patrimony in Pakistan.

‘Allah chargeth you concerning (the provision for) your children: to the male the equivalent of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half.’ ... (The Quran Surah Al Nisa: 4: 11).

The practice in the Punjab especially in the rural areas is that the daughters or sisters do not claim any share. The prevalent practice is that the daughters/ sisters relinquish their patrimony rights especially landed property rights by signing away their inheritance to their brothers. The village where I did my fieldwork only two sisters had claimed their inheritance and both of them were married and lived in the same village and as a first instance had conflicts with their brothers.<sup>6</sup> The question is what do the daughters/sisters instead get? Before answering this question let us explain the brother-sister and husband-wife relationships in the Punjab.

### **Brothers and Sisters in the Punjab**

The brother-sister relationship has to be understood in the light of the marriage rules and family system of the Punjab. The folk tales in this case tales of folk romance in my view may help us understand the ideal values of society. The most famous love epic of the Punjab, Mirza Sahiban may help us in this regards. According to the details relevant for us Mirza (the Punjabi hero) came to take Sahiban (his beloved) away before her family married her of to somebody else. Sahiban tells Mirza on their way how cruel and strong her brothers were and that they would kill both of them if they found them. Mirza proudly told her his marksmanship with his bow and arrows. As a demonstration he successfully aimed at the peak of a flying dove. During their further journey Mirza got tired and they stopped for a rest where Mirza fell asleep. As soon as Sahiba saw her brothers approaching she broke the head of all the arrows. Sahiban’s love for her brothers overtook her love for Mirza or even love of her own life. I think this love epic reflects the ideals of the Punjabi kinship.

In several M. Sc. classes at the Quid-i-Azam University, Islamabad I asked female students as to who among them would demand her share of the patrimony? The response average ranged between zero and one among on the average ten female students. The male students of the class on the contrary voted for giving share to the sisters. ‘The most cruel person turns into wax for daughters and sisters’, goes a saying. Daughters and sisters are called ‘guests’ (*prouhnian*) at the homes of their parents. Thus, parents start preparations for their daughter’s departure, i.e. marriage, right after their births. The issue of the daughter’s departure is so emotionally charged in the Punjab that fathers start weeping or at least get moisture in their eyes when this topic is mentioned, for example, while listening the folk wedding songs like: *Dhian tae dhan praya be bawla tun piayar kiyun aina paya be bawla* (‘Daughters belong to the others why did you fell in love them oh father’). There are similar songs of daughter’s complains of being married of to places

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<sup>6</sup> The case of one of these two women who claimed and got their share has been dealt in detail in another article published in the book form Chaudhary 2008.

far away from the homes of their father and brothers: *Bawal da baira shad ke wieran tu door challi ...* ('Going for away from the courtyard of the father and brothers, far away from toys and joys'). Much of these might be ideals but they shape the nature of Punjabi society. The closest relationship for a woman in the Punjab is that to her brother. The other most loveable relationship in the Punjabi kinship system is of *mammon* i.e. of mother's brother. The maternal grandparents, particularly the grandmothers, are famous for their love of the children of their daughters, though parents are more worried if their sons do not get children, especially male.

The daughters continue affecting the life in the houses of their brothers long after their marriage at least as long as their parents live. If sisters have quarrels or difficulties with their husbands, the wives of brothers face the same. This is most clearly the case in exchange marriages. Women even after their marriage call their natal villages and families as their 'real' (*sada pend* or *sada ghar*) villages and houses. From daughters/sisters the women directly become mothers – consanguine relatives - without ever becoming wives in the Western sense. This becomes evident in the case of death of the husband. If the husband dies, the woman will be kept in that household only if she has children, particularly sons; otherwise she goes back to her parents' house. Only by becoming mothers, particularly of sons, women get their permanent place in the household of their husbands. A woman with sons can hardly be divorced.

### **Husband-Wife Relationship**

A wife is considered an outsider who comes and destroys the family which is ideally joint and extended. This is expressed in proverbs like: *Ooan prayan jayan laraon sakyen bhayan* ('the alien come into the house and make the brother fight each other'). The relation between the family of the groom and the family of the bride is of antagonism and mistrust. This may be observed at the time of marriage ceremony. The groom's party enters the village of the bride shooting in the air, using crackers for making noises, beating drums, riding cars resembling an attack on the village as if it was a 'marriage by rob'. The groom and his people could be asked to perform a challenging job that could include things like shooting at a difficult aim, solving a puzzle, or a challenge in riding, etc. before they are given the hand of the bride.

Marriage negotiations that take place before the actual marriage are also full of mistrust. Both parties exaggerate in matters, for example, relating to economic status, education, age, etc. of the spouse. All the social networks are used to reach the truth. This mistrust continues after the marriage, at least the first years. The mother-in-law fears that the bride wants to establish an independent household, i.e. try to disintegrate the joint family of her sons. She therefore does not want her sons to be intimate with their wives. Thus, it is a common value in the village that the men of honor and prestige spend little time at home with their women folk. They come to their homes only for short whiles and even eat preferably at men's places like *dera*, *hawaili* and *thara*. The mothers and sisters have a great influence on their sons/brothers who listen to their mothers/sisters complaints and obey their advices. The wives fear being divorced and robbed of their dowry including the costly golden jewellery. In the worst case the relation of husband and wife is said to be a three words relation ('divorce, divorce and divorce') and woman is often compared to shoes which one wears if they fit<sup>7</sup>.

<sup>7</sup> Original Punjabi saying goes: "Aurat te paer de juti ae puri aie te palaie neh te badal laie".

Brother-brother relationship is very different in nature from the brother-sister relationship. Brothers are called *sharik* (in meaning synonymous to enemy) and their children became *sharika* which is feared and respected. It is at the level of *sharika* that most of the competition for honor and prestige takes place. Brothers have to divide what is actually in most cases undividable like the family honor, lands, animals, even family relations. It is between the children of the brothers that most of the fights and conflicts in a village take place. These conflicts relate to the land and property. According to the villagers it is the wives of the brothers who are the cause of these conflicts. The sister-sister relationship is cordial except that they compete for brothers. The difference between brother-brother and brother-sister relationship becomes most evident in the Punjabi system of gift exchange known as *vartan bhaji*.

### ***Vartan Bhaji***

That the relation of brother and sister decides the nature of the Punjabi family and society is also evident from the system of gift exchange called *Vartan Bhaji* in ethnographic literature on the Punjab. *Vartan Bhaji* consists of two words: *Bhaji* usually translated as 'sweats' and *Vartan* as 'distribution' or 'dealing', combined 'dealing in or distribution of sweats'. This is a very elaborate system of gift exchange that Eglar called 'dealing in relationships' (1960: 105). *Vartan bhaji* though literally means sweats only but it may be used to elaborate the whole gift exchange. Focusing on the sweats first it is the sweats a woman brings from her parent house, i.e. actually the house of her brother, for her in-laws. These are meant for distribution in the *sharika*, i.e. patrilineage of her husband, which is actually also her *sharika*. Thus women in the Punjab lose their *sharika* (*bradary*) after marriage and become a part of their husband's *sharika*. This is why people say that women have no *zat*, no *bradary* or *sharika* of their own.

One could also argue from a different point of view that the women actually lay the foundations of the *sharika*. The one time brothers, through their wives, become *sharik* (enemy) in the form of their sons. The foundations of this new relationship are laid down by the sister's brother in the form of sweats. This relationship between sister's brother and her husband is very ambivalent. Thus, on the one hand, the sister's husband is the most important guest for any Punjabi family. As a matter of fact, when Punjabis introduce somebody as 'our guest' (*prouhna*), they mean that he is their sister's or daughter's husband. In case of any trouble for the sister or daughter he becomes the worst enemy. The term for wife's brother is *sala* which is actually also an abuse. This is a person who is actually robbing that (sex of the sister) what the Punjabi brothers protect even at the cost of their lives. The *Bhaji* relationships between brothers, patrilateral parallel cousins, patrilineage at the extreme end i.e. the whole *bradary* are of equality, fraternity hence of competition that eventually turns into enmity. The relation of *Vartan Bhaji* between brothers and *biradary* brothers are dealt with by the women, i.e. wives, and then transferred to daughter-in-laws. Here lies the crux: Wives are strangers between the brothers and due to competition and mistrust the brothers become enemies in the form of cousins.

Married sisters also get their share of the *Bhaji* that their brothers' wives bring from their brothers' or fathers' houses. *Bhaji* with sisters/daughters is, however, not operated by the wives but is dealt with by their mother, father or brothers themselves. The gifts which the sisters/daughters get are called *Thehi Tehan*, an expression which can

be translated as ‘giving to the daughter’. On occasions such as religious festivals (*Eids*), marriages of brothers, birth of sons, their circumcision, or later on the sad occasions of parents’ deaths, in short every time the daughter/sister visits her family she comes packed with gifts. These gifts are the main topic of talks between women.

Every time there is a celebration in the family of the married daughter the parents go loaded with gifts for the whole family. The most celebrated occasion is the marriage of the children of the daughter. Her parents if still alive and brothers bring what is known as *nankishak* and which covers almost the biggest part of the bride’s dowry especially the marriage of first daughter. The parents once their children have been married start collecting dowry for daughter’s daughter if there is one. When the brothers establish their own independent households or when the parents are dead the role of father is taken over by the brothers. The sisters are said to become ‘daughters’ of the brothers after the death of the parents. Thus, Punjabis say that brothers are never younger than their sisters and that the elder brothers are like fathers to them. Hence all brothers are like fathers and therefore they give *Theh Thehan*. This does not mean sisters do not give gifts. They also bring gifts for their sisters-in-law and brothers’ children but they receive many times more. The women, I mean sisters, relate to neighbours the inflated stories of gifts and other assistance their brothers have given for the running of the daily affairs of her household.

In my view, the traditional rights of the daughters/sisters in the Punjab are compatible with their position and role in the family and society. The State/Islamic law reserves the share of the daughter in the property of her father. It is my assumption that the daughters do not claim their official/Islamic share in the property of their fathers/brothers because what they have to give up is more than what they would get. What she has to sacrifice against her legal share is her right on the natal family. In other words if a woman claims her part of inheritance she will have to do it at the cost of her claim of return to her stem family. This is particularly important for her in a society where women can be divorced without any claim on the property of their husbands. The women return to the family of their parents/brothers in case of the death of their husbands in case the couple was still childless. There are hardly any examples and possibilities of women to live alone, i.e. without men who are her fathers, brothers, husband and sons. However, a woman who claims her legal/Islamic share of her parental property decides for such a fate for her. In other words she becomes a brother instead of a sister<sup>8</sup>. Now we turn to the last point before conclusion i.e. the cousin marriage. My claim is that cousin marriage is not a mean to stop transfer to property from the family.

### **Cousin Marriage**

Endogamy is practiced in most parts of Pakistan. This in contrast to exogamy may be defined as marriage with one’s own people. Incest taboo that covers the categories of close relatives that cannot be married like mother, father, mother’s sisters, brothers and father’s sisters and brothers and one’s own brothers and sisters, etc. defines limits of endogamy. Beyond the incest the general principle seems to be the nearer the preferred – for instance mother’s brothers/sisters children and father’s sisters/brothers children are preferred forms of marriage practiced in Pakistan. Of course other considerations also

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<sup>8</sup> Most of the above details in this section have been reproduced here from an earlier article (Chaudhary 2008).

play not so insignificant a role for instance the economy, the nature of personal relations within the preferred categories, sometimes the wishes of children, etc. If no match is found in the first preferred category the next ring of relatives is considered and so on. The status of wife givers is in general considered lower than the status of the wife receivers. To explain my point about the reason and nature of cousin marriages in the Punjab I would like to present here the case of Qadir's family that highlights different factors that affect marriages and strategies that are adopted in arranging them.

### **Marriages in Qadir's Family**

Qadir's family consists of two brothers and four sisters. He is married to the father's brother's daughter (called *dadke*) and his younger brother is married to the mother's brother's daughter (called *nanke*). Three of his four sisters are married outside the close relatives but in their own *biradary*. The last sister is married to the mother's sister's son. Both brothers live in a joint family along with their children including the married ones. (The latest information is that the families of two brothers have finally separated). This is a farmer family originally hailing from the village but now mainly works as shopkeepers in their own shops in a city. Qadir is the elder of the two brothers who has started shop keeping business. Ashaq, his younger brother, has three sons and one daughter and Qadir has three sons and two daughters. Two sons of Ashaq are married with Qadir's daughters and one son of Qadir is married with the daughter of Ashaq. One son of Ashaq is married outside of the close family because (as Qadir told) there was no girl in the close family. One of the two sons of Qadir is married to the mother's sister daughter. The last is still unmarried.

**Qadir explains:** In an in-depth interview I asked Qadir different questions relating to issues like the role of property in endogamy, his views about genetical disorder in close relative marriages, the marriage to the Quran with special relation to the marriages in his family. In response to the question if he did not know about the genetical problems related with cousin marriages he told to know fully well but he still arranged the marriages between his and the children of his brother. He said the choice for him was between miserable life for his daughters with no genetical disorder for the future generations and a good life for the daughters with a rare chance of genetical disorder in the future children. He chose later and he is happy with this choice.

The main reasons for close cousin marriages in his family he said were the bad experiences with the out of family marriages of his own sisters. Three of the four sisters of Qadir were married outside the close family. All three sisters live a miserable life with their husbands' families. Their husbands beat them and do not give them money to buy clothes, eatables, and necessities of life. He told in tears that one sister very recently came to him with cancer prognoses. The husband did not spend a rupee on her treatment. Qadir and his brother spent all the money in the best possible hospitals for medical tests and thanks God finally it turned out to be TB. This sister lived with Qadir for treatment and left a few days ago. All the sisters get money from him to meet their day to day expenditures. After this experience the youngest sister was married with Zulfiqar, the mother's sister's son. Zulfiqar was first trained in shop keeping business and then was helped in establishing an independent shop. This is the only sister who is leading a normal and happy life.

Qadir explained that in the light of these bad experiences with the marriages of the sisters. He prepared for a long time and managed successfully to marry family daughters in the close family. He explained that their (both brothers) daughters were not very beautiful – two are very short in height and all have a very dark complexion. He told as far as he knows about the beauty standards of the modern youth their daughters had no or slight chances of getting a husband. Whereas they had such beautiful sons he pointed towards the sons of his brother and his own. Strong and economically well off. If he had not married these girls with the brother's sons and other way round no male acceptable to him and brother would have accepted these girls in marriage.

He explained further that as the children grew in marriageable age he once calculated the total expenditures on at least four marriages that were due at that time. According to his estimate it would have cost them half of their business. His younger brother agreed to his suggestions and they silently arranged the day for their marriage. Qadir told that it was not so easy to arrange these marriages. The biggest challenge and trouble were the two wives of them the brothers. They belonged to the traditional opposition if not right away the enemy sides. His wife was from his father's family and his brother's wife from their mother's side. Both these he said were traditional enemies. The wives want to keep close relationships to their families at the cost of the husband's family. The wife of Qadir's brother was the biggest barrier. She tried her best to convince her sons to revolt against the betrothal arranged by him. She did not succeed because Qadir had been very near to his nephews who had seen how fair and caring he was to them and how he loved them more than his own sons. They did not listen to their mother's advice. They were wise they also saw the consequences of such refusals. All the children whose marriages he has arranged were happy and the business prospers.

All Qadir's sisters have withdrawn their claim of property in favour of their brothers. The shops he has already transferred to the names of the sons. Daughters he said should not get any share. Marriage to the Quran he said at the start of our conversation was done by the rich people to save their properties from being transferred to other families. He confessed later that after the experience with his sisters he would rather marry his daughters to the Quran than giving them in marriage to strangers.

It is not unusual that Qadir was grieved over the misery of his sisters and that he does his best to improve their lot. He is moved to the extent that he exchanged married his daughters to the sons of his brothers and takes the daughter of his brother as a bride for one of his sons. The marriages of other sons and daughters of his and his brothers he and his brother sought spouses in next nearest possible relatives. This is not uncommon in an endogamous marriage system. That he did not give his sisters and daughters their share of the property is also not a very uncommon practice in the Punjab. Similarly the cost of marriage and other economic factors are important in the arrangement of marriages is also quite common behaviour in this part of the world. The importance of these factors may even dominate in certain cases – people may refuse a close relative their daughters and vice versa if they get an economically sounder offer.

The first case shows that sisters and daughters are at the core of these institutions. The well being and honour of a person is very closely related to the well being of the sister/daughter. This case shows the multiple sides of the relationship of man with his sister/daughter. The brother is worried about the well being of his sister. Qadir cried



when he told the misery of his sisters. The objective of life of a man is to arrange such a husband with whom they could live in peace. Qadir married the daughters of the family (his and his brother's) to their cousins. He knew about the genetical defects that may be caused by such marriages yet he preferred them. But he was at the same time concerned with his business. The cousin marriages in this case were cheaper. Almost nothing was spent and no money property moved out of the house/business. Similarly he did not give the share of the sisters in the patrimony. He similarly distributed his business among his sons without giving anything to his daughters. Such cousin marriage is considered the safest for both the women and also the aging parents. Because there is no other system of old age insurance. This does not mean there are no conflicts or problems relating to the marriage with cousins. For a detailed ethnography of such conflicts see Chaudhary 1999.

This means marriages have to take place within the same *biradary* on the first place but women may also be given in the *biradary* higher than that of the women but never in lower *biradary*. Marrying within the same *biradary* could also be explained as hypergamy because the bride givers are considered of lower social status. The different *biradarys* or ethnic groups are organized hierarchically in the Punjab/Sindh and people are very sensitive about their social position and status. There may be difference of opinion which group belongs to a higher status between members of different ethnic groups but there is no dispute that there is hierarchy. The status of some groups is very clear and beyond debate and in other cases it is contested. For instance there is no debate about the highest social status of the syeds and lower status of the artisan groups. Other *biradarys* like jat, Rajputs, Araeen, etc. may quarrel about the place of their *biradary* in the social hierarchy which is again different in different regions.

According to Pfeffer (2007) the Pakistani Punjabi society originally belonged to the North Indian type which consisted of numerous local bands of patrilineal ancestry lacking clear cut descent lines linking them to the conical founding ancestor. These bands were exogamous and practiced exchange prohibition and repetition prohibition for four generations. The exchange prohibition meant that a bride could not be taken from a clan where a sister or a clan sister had been given as a bride. The repetition prohibition forbids a bride from the clans of four grandparents of the groom. Brides were given dowry and bride givers were considered socially lower to the bride takers. After Islamisation several changes took place among the Muslim Punjabis, particularly in aspects relating to exchange prohibitions and repetition prohibitions (Pfeffer 2007). In short according to Pfeffer's views Pakistani Punjab as a result of Islamisation became *biradary* endogamous with most of the marriages taking place within close relatives such as the children of the brothers and sisters. But in spite of these changes many of the old practices were still prevailing. The practice of dowry, the lower social status of the bride givers, antagonistic relationship between the affine as also *vartan bhaji* and *theh thehan* (simplified as gift exchange) are typical aspects of exogamous marriages.

### **Discussion and Conclusion**

This article discussed the customary share of daughters/sisters in the patrimony in Pakistani Punjab. This article tried to argue that the customary practice has a logic which can only be understood if embedded in the Punjabi social and kinship structure. This is at divergence from the Islamic and the state law. This custom looks very odd when looked at from the Western or modern feminist perspectives. This may serve as an example of the problems of the rule of law in Pakistan. The rule of law requires unity of law which is

achieved in the form of state law. Pakistan is legally plural having state law, customary law and Islamic law being practiced here. The dominantly practiced law in Pakistan could be safely said to be the customary law. We wrote in the case of daughter's share in the patrimony that the theory of the official law is very different from the prevalent customary practices. This phenomenon is not limited to the daughter's patrimony alone, it is found in many other fields too. Daily newspapers frequently report stories relating to the marriages where the customary practices still prevail despite ruling of the Supreme Court of Pakistan for the reverse in case of the so called love marriages<sup>9</sup>.

We know from other enumerable cases that the court verdicts have almost no validity. The families of the women are ready to go to any length for acting upon their custom. Many couples have been killed in spite of the verdicts of the superior courts. Another important area to mention is related to honor killings and blood feuds in Pakistan. According to the report a famous *Jirga* (council of village elders) in Sindh met to decide an old blood feud. In its verdict the *jirga* ordered some innocent girls to be given in marriage to the aggrieved family. The interesting aspect of this case was that a Member of the National Assembly, the District Mayor and the *Tehsil* Mayors (all of them are supposed to represent the state and uphold the state law) were members of this *jirga*.<sup>10</sup> This is by no means an exceptional case.<sup>11</sup> Exceptional is perhaps that the Supreme Court of Pakistan took a *suo motu* action, cancelled the verdict of the *jirga*, and declared that it was an illegal, parallel system. The next day there was a "province wide crackdown against the *jirgas* by the police"<sup>12</sup>.

The giving of girls in marriage to end blood feuds, usually of ancient origin, is known as *Swara* or *Vanni* and is an age-old practice in the tribal areas of North West Frontier Province, Sindh and Balochistan. The *panchayats/jirgas* are headed by powerful, influential, aged and respectable personalities. In the above case the *jirga* included political leaders from almost the highest level in the area. The meetings of the *Jirgas/Panchayats* are made on the request or by the consent of the parties involved and most of their decisions are compromises arrived at after discussion with these parties. The decisions of these *panchayats/jirgas* in my view reflect the values/traditions/culture of the people. The decision of the court is made keeping in view the laws which have their

<sup>9</sup> A daily newspaper "The News International" in its editorial on 30<sup>th</sup> May, 2009 writes:

"Even a decade after the Supreme Court ruled that an adult woman had a right to choose her spouse, the issue lingers on. The latest case to come up before the LHC involves Kulsoom Baloch, a 25-year-old who has a post-graduation degree, and her husband Fazal Abbas. Abbas and his family have faced repeated harassment since he wed Ms Baloch last year. The LHC ruled after hearing his wife that the latest FIR lodged against him, accusing him of kidnapping Kulsoom, was a false and ordered that he be released from police custody. The court upheld the right of the couple to live where they please". (<http://www.thenews.com.pk>)

<sup>10</sup> "Chaudhry intervened in the decision of a traditional tribal council called *jirga*. It had ruled that five little girls aged two to six were to be handed over to a rival party in the context of a dispute settlement. The *jirga*, by the way, was headed by Hazar Khan Bijarani, the country's current education minister." (Saigol 2009: 208).

<sup>11</sup> Reports of such cases can be found on daily basis in newspapers such as: ("Minor girl handed over in compensation": The Dawn June 10, 2009, page 9).

<sup>12</sup> "LARKANA: Sindh Inspector-General of Police Jahangir Mirza has said that no *Jirga* will be allowed henceforth and anyone daring to do so will be dealt with severely. Instructions have been issued to the police to proceed against *Jirgas*, he said while responding to queries from newsmen at the DIG Larkana Office during his first-ever visit to the city on Saturday. The IGP said the Supreme Court has ruled that the *Jirga* system is a parallel judiciary system that has no provision in the Constitution." (The News 2.7.2006).

origin in the West and which as Moore wrote “examine one distinct dispute under ‘laboratory conditions’ (Moore 1985: 6) following the western values of individualism, universal human rights, women right, etc. Nothing against them but since they are not according to the local values hence they remain rather an empty slogan.

The fact is that people do not accept laws, courts, official law if and where it is against their values. Coming back to the case study what did the Supreme Court of Pakistan ban, and was its ban effective? According to the local custom the consent of women is not sought for their marriages. It is a duty at one level and a prerogative at another of the family or parents to marry off their children. Women who arrange their own marriages are considered almost whores. Such marriages are conducted in secret, and the families of such women lose all honor and respect among fellow villagers. They register cases with the police declaring that their daughters have been abducted. These couples are hunted down and, when they are found, killed (in so called ‘honor killings’), except when sometimes the women are ready to go back to their families and declare in the court that their absence resulted from abduction. In the social context of such practices, if parents are ready to marry off their daughter to somebody without her consent, the Supreme Court cannot prevent it. Moreover, *jirgas* are constituted informally, without either fixed permanent members or written proceedings. And *Jirgas/panchayats* are everywhere – in a literal sense, whenever five people meet to decide something this is a *panchayat/jirga*. Besides that, decisions of the courts very often remain unimplemented in Pakistan. The government of Pakistan may want to ban *Swara*, *Vanni*, and honor killings, but enjoys the support of only a small section of the society, primarily NGOs and some women’s organizations. The society at large still approves the traditional customs.

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