



# Compensation Marriages Swara, Vanni, Sang Chatti, Bhan/Irjaai

The Law in Action: A guide to effective implementation of the law under Section 310 A, Pakistan Penal Code (PPC)

'Because Justice is not executed speedily, men persuade themselves that there is no such thing as justice'.

James Anthony Froude.



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#### Compensation Marriages

(Swara, Vanni, Sang Chatti, Irjaai or Bhaan)

Very often when there is a murder or a dispute, girls are given as compensation to the aggrieved party as reparation. The murderer gets away with his crime and one, or even more girls have to pay the price of the crime for the rest of their lives.

Compensation marriages are widely accepted as a way of keeping the peace between tribes and families. However, under-aged girls torn from their homes in this manner often end up systematically abused and forced into a life of virtual slavery in the homes of their enemies.

# "And no bearer of burdens shall bear another's burden"

Surah Al Fatir-18



## Swara

What is my fault; what is my sin? That I was born a girl! Today, I am a daughter; Tomorrow, I will be a mother I'm Eve; I'm Mary; I'm Fatma; I'm Zainab; This is my fault, this is my mistake! Paradise is under my feet; I am the first being to embrace Islam; All the Prophets and Messengers; Were born by me; What do the followers of those pure figures and pure beings do? Sometimes, they kill me in the name of honour; Sometimes, I'm sold for money; Sometimes, my father surrenders me as Swara to others I lose the house of my parents I'm thrown in the fire of enmity I'm punished for the doings of my father The arrows of slander and insult pierce my soul People forget my name Every one calls me Swara This is my sin, this is my fault This is my mistake, this is my guilt I was bargained as Swara I was disgraced Lam Swara. And will be called Swara.

Pushto poem by Zaitun Bano Translated by Dr. Sher Zaman Taizi

# The Law in Action: A guide to an effective implementation of the law under Section 310 A, Pakistan Penal Code (PPC).

Pakistan, today, is confronted by a myriad of crimes, but the writ of the State seems to be getting progressively weaker as the law and order situation worsens day by day. It is a forgone conclusion that the criminal justice system is not able to effectively handle the breach of law and prosecution of offences. But it is a misunderstanding to think that the laws are weak or police is not empowered enough to effectively deal with the offending public. On the contrary, laws are in place and their in-depth knowledge, as well as a progressive and incisive application of the provisions at hand, can not only bring the offender to justice but can also curb future offending in the community.

Swara or Vanni, which is also known by other local terms like Sang Chatti, is a gender specific crime with horrific implications. It was criminalized for the first time in Pakistan by the Criminal Law Amendment Act, 2004. It was further refined and amended by Prevention of Anti Women Practices (Criminal Law Amendment Act, 2011). Section 310 A PPC dealing with Swara is as under:

Whoever gives a female in marriage or otherwise compels her to enter into marriage, as Badal-i-Sulh, Vanni or Swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees."

In schedule II, Section 10 A has been further categorized as

- 1. Non Cognizable.
- 2. Non Bailable.
- 3. Non Compoundable.
- 4. Triable by court of sessions or Magistrate first class.

#### The challenge of effective implementation;

Swara is a serious and sensitive crime which involves the battering of a female and most commonly an underage female which makes it an offence against public policy with grave implications. The fact that the law makers have made such a serious crime non cognizable poses a great challenge to the police since they may not arrest without a warrant, and are not allowed to make a pre emptive move to thwart the same while it takes place. The second challenge stems from the fact that the section carries a maximum punishment of up to 7 years making the section easily Bailable even when categorized as a non Bailable offence. (Due to falling out of the prohibitory clause)

For example On February 16, Darul Qaza (circuit bench) in Swat had granted bail to five of the accused in a Swara case and two of them, Nasrullah and Wazir Muhammad, were freed while the remaining three including Naqeeb Ahmad, Sherullah and Izzat Muhammad were imprisoned as they were also charged with the killing of the father and brother of the four-year old Swara victim Asma. (The News March 26<sup>th</sup> 2012)

The Police force can easily overcome these obstacles by equipping themselves with:

- In-depth knowledge of all sections of the PPC being violated during the offence under section 310 A.
- An innovative and inspired application of the procedural law, CRPC.
- A sincere and sensitized approach to this serious offence.

The following section will take into account other sections of the PPC that might, and very often are, attracted during the offence of Swara and which must be included if applicable alongwith 310 A to make the FIR more factual and effective.

#### A list of other sections applicable in case U/S 310 A:

In most cases, a Jirga is convened to decide and settle disputes and ordain the settlement by the handing over of a female in Badle Sulh. All Jirga members regarded as such, are equally culpable in the eyes of the Law. Do not forget to nominate each and every member by name in the FIR and besides 310 A section 34 must be added.

## 34. Acts done by several persons in furtherance of common intention.

When a criminal act is done by several persons, in furtherance of the common intention of all, each such person is liable for that act in the same manner as if it were done by him alone.

An extremely important point to consider is that many a time the father or the guardian of the female is compelled to hand her over due to threats. In a case from KP, a father and a brother were even murdered due to their refusal to do so. Police investigation must take into account whether the father or the guardian handed over the girl under duress of threats. If so, according to Section 94 PPC there is no offence made out and the father and guardian will be regarded as victims rather than perpetrators. Read Sec 94 and apply it critically so that the law aids the victim and not prosecutes him.

### 94. Act to which a person is compelled by threats:

Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

The following section has the same import as section 34 related to common intention. Anyone abetting in any way and facilitating this crime should have his name included in the FIR alongwith the relevant sections.

# 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment:

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code, for the punishment of such abetment, be punished with the punishment provided for the offence:

Many a time public servants who are in the pay of the central or provincial government facilitate the convening of Jirgas for the commission of 310 A. The following section then is applicable on such public servants:

# 119. Public servant concealing design to commit offence which it is his duty to prevent:

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, if offence be committed:

Shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both.

It is important to note that even the imminent convening of a Jirga for settlement of Badle Sulh or just two or more people planning such an offence is an offence in itself as the punishment under section 310 A is from 3 to 7 years imprisonment of either description (simple or rigourous) 120 B can also be easily applied

## **120-A** Definition of criminal conspiracy:

When two or more persons agree to do, or cause to be done,

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy:

## 120-B Punishment of criminal conspiracy:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

If a Jirga of more than 5 persons is convened for the unlawful act of Badle Sulh, Sections 148 and 149 pertaining to unlawful assembly may also be convened due to "Balwa" taking place.

#### 148. Rioting, armed with deadly weapon:

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

# 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object:

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

The following section 202 puts the onus of informing the police of an offence on all who have information of such an offence, this section can be effectively used to elicit information.

# 202. Intentional omission to give information of offence by person bound to inform:

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits any information regarding that offence which, he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

If during the offence U/S 310 A, any form of restraint is practiced to keep any individual or family from proceeding from that area or from going any place the following section should be included along with the main section. The sections that follow regarding confinement should also be included if situations arise that show that any persons especially the victim or her family were confined in any way what so ever

#### 341. Punishment for wrongful restraint:

Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term, which may extend to one month, or with fine, which may extend to [one thousand five hundred rupees] or with both.

### 342. Punishment for wrongful confinement:

Whoever wrongfully confines any person, shall be punished with imprisonment of either description for, a term, which may extend to one year, or with fine which may extend to [three thousand rupees] or with both.

## 343. Wrongful confinement for three or more days:

Whoever wrongfully confines any person, for three days or more, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both.

## 344. Wrongful confinement for ten or more days:

Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term, which may extend to three years, and shall also be liable to fine.

## 345. Wrongful confinement of person for whose liberation writ has been issued:

Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

One of the most important sections is 506 PPC related to criminal intimidation which very often accompanies the commission of offence under 310 A.

#### 506. Punishment for criminal intimidation:

Whoever commences the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

## If threat be to cause death or grievous hurt, etc:

And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section.

#### Note:

The police can not register an FIR, investigate or arrest the offenders under section 310-A without the order of the Magistrate as the offence is non-cognizable, but if it is accompanied by a cognizable offence then not only can the police proceed to arrest offender may even prevent the commission of the crime. In all of the above related offences that might be included in order to do that only four kinds are cognizable. Sections related to Restraint, Confinement criminal intimidation and rioting/unlawful assembly.

## Marriage Void or Voidable:

If a marriage has been affected of a minor or even a major girl during the crime of Swara, Vanni etc. it can be challenged under various categories as invalid, void or irregular according to the corresponding situations infront of the relevant authorities.



...The feudal landlords and tribal chieftains, i.e., the conveners of illegal jirgas and punchayats, have been emboldened to start holding them publicly again. A case in point is the recently reported Mahar tribe incident in Sindh, whereby the jirga's decision led to 12 girls allegedly being given away as compensation against Rupees 1.7 million to the enemy tribe, with impunity and in the full glare of the media, with the police, judiciary and the Government of Sindh allegedly as silent spectators.

Your Lordship may kindly recall that, under your Lordship's leadership in 2006, the Honourable Supreme Court, and prior to that in 2004 the Sindh High Court, declared jirgas and punchayats illegal and directed the federal and provincial Governments to eradicate them and to ensure that their "decisions" were not implemented. After this declaration, many of the jirgas/punchayats went underground, but after the subject judgement, they have now re-surfaced.

#### Tahira Abdullah et al. 2011

Excerpt from "Civil Society's Appeal to the Honourable Chief Justice of Pakistan, Application: Reference Mukhtaran Mai Supreme Court Judgement"

# The Supreme Court of Pakistan and Compensation Marriages

Constitutional Petition # 16 of 2004 titled Samar Minallah versus Federation of Pakistan and others.

To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Inspite of the fact that no law in the country permits the customary practice of Swara, Vanni, Sang Chatti, or Irjaai, it is being blatantly practiced in various parts of this country to the detriment of women.

A Jirga which draws its strength from the local customs and practices can never prevail over the Constitution or the law of the land. However, if girls are given as compensation, the decision attempts to overrule the Constitution and is, therefore, unlawful. Similarly, in criminal matters, a Jirga has no jurisdiction and cannot assume the role of a parallel judiciary. Here the parties involved in the dispute are not seen as victim and culprit, but simply as people seeking a solution to a problem. Hence, the character and direction of proceedings is closer to arbitration than litigation. Despite considerable progress on recognizing and curbing violation of human rights in Pakistan, especially violence against women and girls, practices such as Swara/Vanni etc exist even today. It is a socially sanctioned crime that is not geographically restricted to one region. Seeing it from a historical and cultural perspective one finds that Swara being practiced today has evolved with time. It has been redefined by economic and social forces. The economic disparity has led to its deterioration into a form of 'Badal' (revenge) rather than a form of peace keeping measure as it was originally devised. The past presented Swara as a symbolic ritual but the present scenario makes it seem like an easy way for hiding a father, brother or uncle's crime which can be avenged by marrying a girl to the rival group. Economic disparity actually contributes towards accepting Swara or Vanni as a viable means of match making in some instances.

Due to the sensitive nature of the custom of Swara, the subject in the past was confined to the guarded four walls of home and the cautious surroundings of a 'Hujra' where a Jirga took place. Perceived as 'private'

matters, the cases never penetrated through the defended cultural boundaries into the outside world. In a world where this outmoded tribal Jirga system still prevails, the courts are burdened with a huge backlog of cases and physical access to the courts is limited in semi urban, rural and remote areas: women are further impeded by social barriers and inequalities. They are expected to endure and remain silent. Every device, including emotional blackmail is used to prevent the aggrieved from seeking redress through litigation. Due to such factors, people in general lose faith in the formal judicial system.

<sup>1</sup>A Petition was filed under the article 184 (3) regarding Swara and Vanni when, in December 2005, the Supreme Court brought under challenge the unconstitutional, unlawful and un-Islamic custom of giving girls as compensation to end disputes. After its landmark orders to the police in Punjab and the KP on Dec. 16, 2005 to protect women and girls from Vanni marriages, the Supreme Court instructed the Inspector Generals of the police in all four provinces and in the Northern Areas to act against the settlement of disputes through these mostly-rural customs. The Chief Justice termed Jirgas a negation of the concept of civilized society. At another hearing in the Supreme Court, directions were given by the apex court to form special committees throughout Pakistan to provide legal assistance to the victims of Swara and Vanni. The committees have not only been formed, but have started assisting those who are referred to these committees. This concrete step is to have a lasting impact as it is a move towards acknowledgment of the prevalence of a human rights violation that, in the past was lost in silence and denial. Based on the premise that injustice in the form of Swara, Sang Chatti, Vanni or Khoon Baha/Irjaai is commonly perpetrated in our societies and the victims may not be in a position to have recourse to legal means to get justice, the Supreme Court gave an entirely new form to 'judicial activism'. It was through judicial activism that a petition that was initially filed to curb Swara, later helped in identifying other facets of the custom spread in various parts of the country. Victims of Vanni and Sang Chatti and their families not only started to resist this form of reconciliation, but many

<sup>1.</sup> Minallah, Samar 2006.

<sup>&</sup>quot;Judiciary as a Catalyst for Social Change" www.supremecourt.gov.pk/ijc/Articles/9/2.pdf

approached formal courts for intervention. This judicial activism, led not just to a social change but, transformed into a movement and a silent revolution in the minds of the civil society and media.

By freezing several Jirga verdicts, the apex court has sent a clear message to tribal chiefs that customs like Vanni and Swara that are being committed against the women should not be allowed to exist. For the first time, the real face of Swara, Vanni and Sang Chatti was seen and experienced in the courts where little girls and their fathers came to reach out for justice. Justice, that till recent past remained silent in such accepted norms, could finally be heard and seen driven by logic and ideals. The Honourable Supreme Court's proactive stance opened the doors for many women and children who were silently enduring the injustice that was being perpetrated upon them in the name of culture. <sup>2</sup>During the period from December 2005 to June 30th, 2006, around sixty cases of Swara were recorded in the two districts of the KP. In the month of May after the Honourable Supreme Court heard the appeal of Zarina Bibi, a victim of Vanni, more than twelve cases of Vanni emerged only from District Bhakkar within two weeks time. Seven of these cases of Vanni resulted in intervention by the local media and police.

From Mianwali, five sisters given as Vanni reached out for judicial intervention when they experienced lack of apathy from other quarters. In June, 2006, the handing over of an eleven year old girl to a rival family in Swara was challenged in the Peshawar High Court. A writ petition was filed by two sisters, Sanad Bibi aged (eleven) and Shah Izzat Bibi aged (nine), with a prayer to the court that a Jirga decision in Barawal Banda in Upper Dir regarding the handing over one of them to the rival family in Swara be declared as illegal and unconstitutional. Bakht Meena aged (eight), was to serve as compensation for her brother's crime. The incident was reported by one of the villagers. Mardan Police took prompt action when they were reported that a Jirga in Bakhshali had resolved a dispute through a Swara deal. Saima aged (five), was to be given in marriage to Mohammad Ali aged (twenty five) for her father Hashmat's crime. Her father was involved in a 'Sharam' (honour crime) and the only way to free himself from the rage of

<sup>2.</sup> Minallah, Samar et al, 2006.

<sup>&</sup>quot;Swara - The Human Shield" A study on the custom of Swara in KP Province.

the girl's family was to hide behind little Saima. The Jirga was overruled by the local administration in April 2006 in Bashkhali, Mardan. The Mardan Police, in June 2006, recovered five year old Rubina from the rival party's home. She had been handed over to the rival party as compensation for a moral crime committed by her brother. On May 31st 2006, on the demand of the Jirga members in Shikarpur Sindh, Mohammad Ramzan pledged to hand over his daughter Heer aged (nine) and one year old Kareema as compensation for eleven buffaloes within three days. The handing over of the girls was halted after the case was brought to the notice of the Honourable Supreme Court. In June 2006, in Buner, a two month old girl was taken to a Jirga where she was given in marriage to a one year old boy. The verbal solemnization was conducted by the imam of the mosque. Buner police later arrested the Jirga members and the imam. In the past few years since the Honourable Supreme Court has taken up the issue of Swara and Vanni, the police has ceased to treat this sensitive issue as a 'private' matter.

In 2012, The Supreme Court of Pakistan clubbed together the NCSW (National Commission on the Status of Women) Petition Against Jirgas and the 2004 Petition Against Jirga and Compensation Marriages.





'My father refused to hand me over as compensation because he loved me' 7 Year Old Sheeno, Pannu Aqil, Sukkar







