

# SWARA-The Human Shield

A Study on the Custom of SWARA in North West Frontier Province

Ethnomedia & Development

Promoting Culturally Sensitive Development



# Swara The Human Shield

A Study on the Custom of Swara  
in  
North West Frontier Province of Pakistan



By  
Ethnomedia, Islamabad

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### **Dedicated to the girls**

Whom no one could reach out to.

Who endured the pain and scorn on behalf of the perpetrators in the form of 'swara', 'vanni', 'khoon baha' or 'sang chatti'.

To all those innocent little girls who were promised as compensation for their brother's, father's or uncle's crimes, some even before they were born. It is a dedication to those girls/women, who silently put an end to their lives while giving life to their fathers ---the custodians of their 'honour'.



*Girls from Kashmore, Sind who were promised as compensation in June 2006 KTN Sind.*

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***Day halaq zairey khog wee, dhroon ee Kanree bootee pe khoshalla ee***  
*The news of the birth of a boy is sweet Even nature celebrates it.*  
*(A Pushtu Proverb)*

*A Brother and Sister from Bajaur.*

## **Preface**

A Pukhtun girl, with her little 'loopata' (veil) tucked behind her ears, very soon learns the art of endurance and modesty. She also manages to balance her little brother on her frail waist, making sure he does not fall on the rugged ground where she stands barefoot. From childhood she hands him the better portion of meat, waives off her portion of inheritance in his favour, transforms herself from an 'ajaza' (helpless) to a human shield ready to brave what may come towards her family's male members.

As she grows up she is expected to join the silent band of fellow women, who spend their lives upholding honour by preserving and protecting it through sacrifice, irrespective of the consequences. Women are seen as an embodiment of honour; honour that must be protected and preserved, at any cost. Honour that can be preserved by simply showing 'melmastiya' or hospitality towards one's guest can also be achieved by taking 'badal' or revenge for one's loss of honour. Once a dispute arises indigenous forms of dispute resolution follow.

One such culturally sanctioned form of dispute resolution involves women in the form of 'Swara', where a girl is given in marriage to the enemy's family as compensation for a crime committed by a male relative. It is argued that 'Swara' is practiced for the larger, collective good.

Since long we have been hearing about the practical 'logic' behind this culturally sanctioned form of violence. It has been over four years now, since I first conducted interviews to record the feelings of women/ girls given as swara. I personally feel that in the garb of striving for the collective good we are not only taking advantage of these silent preservers of honour, but encouraging crime as well, by shielding the perpetrator of the crime behind an innocent girl's 'chadar' (veil).

In the past, Pukhtunwali has no doubt, been playing the role of a set of rules where the innocent could seek justice, where the perpetrator paid the price for his crime through various indigenous forms of retribution. It was a code that gave women the respect that was unprecedented. Ironically, with time, like many other noble institutions, Pukhtunwali has been remoulded and redefined by men in a way that perpetuates patriarchy.

This research is an effort to analyse the custom of Swara in the light of Pukhtunwali. It is an effort to discuss the issue holistically without being labelled as 'culturally insensitive'. The aim is to explore the extent and depth of 'Swara' and the

perceptions of the society that perpetuates it, by documenting case studies. This is envisaged at breaking the silence and bringing the attention of opinion and policy-makers towards taking concrete measures.

**Samar Minallah**

Research Coordinator

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### **List of Acronyms**

APA	Assistant Political Agent
ASP	Assistant Superintendent Police
DPO	District Police Officer
FCR	Frontier Crimes Regulation
MMA	Mutahida Majlis-e-Amal
NBWS	New Bolan Welfare Society
NGO	Non-Governmental Organisation
NWFP	North West Frontier Province
SBRC	Samaji Behbud Raabta Committee
SPARC	Society for Protection and Rights of Children
SPO	Strengthening Participatory Organisation
TKWA	Tahafuz Khawateen Women Association Swabi
HRDO	Human Rights Development Organization Mardan
UNICEF	United Nations Fund for Children
SC	Supreme Court



## **Glossary of Key Terms**

**Badal** - Revenge or reciprocity.

**Bakhana** - Forgiveness.

**Bibi** - A title of respect for women.

**Chatti** - A woman given to the aggrieved party to settle a dispute in Sind.

**Diyat** - Blood money or monetary fine.

**Doli** - Palanquin.

**Eejab-o-qabool** - Proposal and acceptance.

**Fatwa** - Public declaration of a religious scholar.

**Imam** - A religious leader or the leader of prayers at a local mosque.

**Jinn** - Spirits.

**Jirga** - A gathering of community representatives for decision making.

**Kafan** - Shroud.

**Khan** - A member of the land holding elite.

**Khoon Baha** - Blood money.

**Mahar** - Dower.

**Malak** - A tribal chief.

**Mullaa** - A Muslim teacher of Quran.

**Nanawatay** - Granting refuge/ resolving a dispute.

**Narkh** - Customary Law.

**Nikah** - Marriage contract.

**Nikahnama** - Marriage contract deed.

**Por** - Monetary Fine.

**Pukhtunwali** - The code of conduct of the Pukhtuns.

**Pukhtu/Pushtu** - The language spoken by Pukhtuns/ the code of conduct or way of life.

**Purdah** - Curtain/veil (literal) practice of seclusion.

**Qaom** - Tribe.

**Qisas** - Retribution for murder and bodily harm, the notion of “an eye for an eye”.

**Rawaj** - Customs/way of life.

**Sar paisa** - Bride price.

**Sharam** - Sharam literally means shame. Sharam is given in moral offences.

**Sharmana** - Form of compensation resulting for sharam or shame (loss of honour) related to a woman. It is a common crime in which 'swara' is given as compensation.

**Spingiray** - 'White Bearded'; someone to whom respect is due/decision maker.

**Stan** - Giving of girls as compensation in Baluchistan.

**Swara** - The term 'Swara' refers to the practice of giving [in marriage often forced] female relatives (daughters, sisters, or female cousins) by the aggressor to the victims' family as compensation for damage done in terms of life or honour.

**Tappa** - A couplet or verse form in Pushtu.

**Talaq-e-tafweez** - Delegated right of divorce.

**Ulema** - Religious Scholars.

**Vanni** - Giving away of girls as compensation to end disputes in Punjab.

## **Executive Summary**

### **While Justice for some appears as hope; for others it appears as fear.**

Violence against women is about power and control. It is a chosen action against a woman or girl child simply because of her gender or status in the society. Swara is a socially and culturally sanctioned form of violence with direct consequences for women and girls.

As this report will show, it is only recently that the custom of Swara has emerged from the shadows of silence, denial and indifference of the society as a fundamental human rights abuse. Due to the sensitive nature of the custom of Swara, the subject in the past was confined to the guarded four walls of the home and the cautious surroundings of a 'hujra' where a jirga took place. Perceived as 'private' matters, the cases never penetrated the defended cultural boundaries into the outside world.

Despite considerable progress in recognizing and curbing the violation of human rights in Pakistan, especially violence against women and girls, practices such as Swara exist even today. It is a socially sanctioned crime that is not geographically restricted to one region. Practices called Vanni, Sang Chatti, Sakh, Khoon Baha, Stan, Mayaar, and Laaf are all practices whereby women are given as compensation in resolving a dispute in various parts of the country. A closer study reveals that the dynamics, procedure and rationale behind these practices are almost the same only the names differ.

This study analyses the custom of Swara in a holistic framework. Analyzing it from a historical and cultural perspective one finds that the 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 intended to be.

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 the giving of a girl into marriage to the rival group. The study finds that economic disparity actually contributes towards accepting and giving Swara as a viable means of match making in most instances.

The Study also analyzed the legal, cultural and religious aspects of the custom in detail. The fact that despite having no justification in legal or religious norms, Swara not only persists but also prevails as a viable means of conflict resolution, presents serious questions of cultural practice that undermines law and religion. The study presents culturally embedded ways in which Swara is actually promoted, silenced and defended by the societies practicing it.

Another important analysis presented in the study is the concept of 'honour'. Just as the custom of Swara is shaped by economic and

cultural forces, the notion of 'honour' has also been redefined through this custom. The very fact that the perpetrator gets away with the wrong he has committed by bringing in honour as the credibility associated with Swara, merits some serious critique. An important outcome of the study has been the coming to the fore of Swara survivors. During the study more than sixty cases of Swara were recorded in a period of three months in Mardan and Swabi. These case studies played an important role in gauging the extent of the prevalence of the custom. Not only the survivors of Swara came forward to talk about their experience, but communities and civil society in general became more aware of the prevalence of this issue. The study can be vital in helping to combat the denial by the societies of Northwest Frontier Province, of the existence of this issue.



*Da khazay chay poza pa makh na  
wee, no kando kay ba murdari khoree*  
*A woman who does not have a 'nose' honour will die of misery in  
desolate places. (Pushto proverb )*

## SECTION ONE

# Probing for understanding

**Khowenday chay keenee, Roonra Stae  
Roonra Chay keenee, Khowenday swaray kay  
warkaweena**

When sisters come together, they praise their brothers  
When brothers meet, they give their sisters away as Swara!  
(A verse from pushtu wedding song)



## **1. Introduction**

Swara is known to many in Pakistan as an alternative dispute resolution mechanism whereby disputes [often murders] are resolved by traditional peace keeping institutions [jirga, local council of elders] without having to invest time and money in lengthy judicial processes. The price of this dispute settlement is paid by the women/girls from the family of the aggressor who enter the household of the bereaved family by way of unceremonious wedlock, to remind the aggressors of the injustice their men bestowed upon the bereaved family.

Culturally, in the North West Frontier Province (NWFP) of Pakistan, women are given the domestic sphere whereas the public arena is designated to men. Since women belong to the 'private' arena therefore whatever happens behind the 'four walls of the household' is considered as private, culturally prohibiting any interference that might shield women from potential violence and/or denial of human rights. Due to the persistence of patriarchal traditions and customs, women largely remain in a position of powerlessness and vulnerability.

The socio-economic indicators provide a bleak picture of the status of women in the NWFP. According to a report by UNICEF (1993), in mid 1991 the number of females in the age bracket of 14 to 44 years in NWFP was 1.9 million, which is especially at risk from morbidity and mortality. The pre-natal and antenatal care of mothers is largely inadequate. Participation rate at primary level of education in 1991-92 was 73 percent for boys and only 25 percent for girls.

In the year 2004 alone, 22 girls/women were killed in 'honour' related crimes in the Northwest Frontier province. The 'honour' related crimes where the couple escapes 'honour killing' are mostly resolved through the giving of a 'girl' as compensation for the 'honour' that has been tarnished. By doing this, it is believed that a crime of 'honour' can be cleansed. An aggrieved person gains power by obtaining the daughter or sister of his enemy in an unceremonious marriage. Murderers are exonerated, serious financial disputes, water disputes, and 'Sharam' (honour related) crimes are excused by sacrificing a girl as a symbol of apology and forgiveness. It is a sacrifice that has been thrust upon an innocent girl who has to pay the price for a crime committed by her uncle, brother or father a clear violation of basic human rights, a crime against humanity.

To raise awareness or make efforts to end this custom, it is vital to first explore the various patterns and extent of 'Swara'. Also, the voices of 'Swara' victims, their family members, jirga members and other groups directly or indirectly involved

need to be examined and heard in detail. The custom of 'Swara', until recently, was not regarded as a criminal offence. As far as the informal legal system is concerned, in many parts of the NWFP such as Upper Dir and Malakand, it is still being practiced as an effective means of resolving disputes.

As Hameedullah, from Kooza Baazdara, Malakand, who demanded two 'Swara' girls as compensation puts it, *"If I do not demand 'Swara' girls than I will be left with no option but to murder my daughter and the boy she eloped with. I have enough money already, 'Swara' is the only option I have to regain my lost honour"*. [The girls that he has demanded are Aneesa (2) and Saira (2 <sup>1/2</sup>). Both the girls are the paternal cousins of the boy who had lured Hameedullah's daughter to run away with him. The decision was decreed in a jirga in Malakand on March 14, 2006].

Complicating matters further, women in general accept their cultural roles and the internalized norms of male superiority. They hesitate to bring 'shame' upon their family, or 'qaom' (tribe) by not complying with the norms decreed by 'Pukhtunwali'. The lives of the Pukhtun women from the Northwest frontier are over shadowed by the influence of 'Pukhtunwali'. Willi Steul describes Pukhtunwali as comprising of the sum total values and social norms which determine the way of life peculiar to the Pukhtuns. He further elaborates, that 'It is an emic concept which includes everything which a Pukhtun should or should not do. [Pukhtunwali] can be seen, above all, as the values imposed on the individual if he is to be a respected member of society and to enjoy its acceptance.'<sup>1</sup> Interestingly, although men are considered the custodians of 'honour', the burden of upholding it lies predominantly on the shoulders of women. It is the culture, norms and traditions that are perpetuating this role of Pakhtun women. The rights given by religion are mostly overshadowed by the manmade laws and rules of 'Pukhtunwali'. These are the rules that bypass the legal rights of women in this region.

Interestingly, the rights given to women by Islam are negated by the strong influence of cultural norms and traditions. Under the law and principles of Muslim Jurisprudence, the bride and the groom should freely consent to marry each other and there should be a proposal and acceptance (ejab-o-qabool). However, 'rawaj' (culture) discourages it. Similarly, a number of people do not acknowledge the delegated rights of divorce (talaq-e-tafweez) for women under clause 18 of the formal nikahnama (marriage contract). In fact, delegating the woman her right to divorce is culturally perceived as a bad omen.

<sup>1</sup>Steul,1981:308 Pashtunwali. Weisbadan and Steiner



It is in this backdrop that customs like 'honour killing', 'sar paisa' (bride price) and 'Swara' prevail which have nothing to do with Islam yet they are practiced with great reverence.

The notion of Pukhtunwali signifies honour to be preserved by acting according to the culture's behavioural expectations. Galtung defines 'cultural violence' as a culture that could be used to legitimize violence in its direct or structural form. Symbolic cultural violence is an abstract notion and does not in reality kill or maim. It legitimizes actual physical acts of direct violence and allows for the perpetuation of structural violence within institutional structural frameworks.<sup>2</sup>

Through research therefore, a strong need is present to identify the domineering role of cultural, traditional and customary laws [many time unwritten and passed on to generations] that govern the lives of women belonging to the Northwest frontier of Pakistan.

Swara, Chatti, Stan, Khoon Baha, Ivaz, Badd, Vanni [similar practices spread widely in all provinces of Pakistan ] are customs having their roots in tribal culture, not necessarily in the form they are being practiced today. These customs are not only prevalent but go unabated in many areas.

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<sup>2</sup>Galtung, J (1990) "Cultural Violence" Journal of Peace Research. Vol 27, No 3, Pp 291-385.  
Cited in 'violence in the name of honour' by Jasim Saima 1999.

## **1.1 Structure of this Study**

This study is arranged in order of context, history and presentation of the primary data collected on Swara. Section 1 presents an overall introduction to the purpose of this study and describes the key questions that it sets out to answer. This section also presents the methodology, research team and study sample used by the study. The unintended interventions made by the research team in addressing a number of Swara cases during the course of data collection are also described here, while a selection of some of the cases are described in other sections of the study. Finally this section describes key limitations of the study.

Section 2 gives a brief overview of women's rights movement in Pakistan. The purpose is to link the rights based policy processes with recognizing the practices such as honour killing and Swara as being derogatory to the Islamic laws as well as to the Constitution. This section also highlights the role of all stakeholders who were involved by this study as actors promoting human rights. Finally, this section attempts to make a point that despite considerable progress in recognizing human rights violations especially violence against women and girls, practices such as Swara exist and are widely prevalent in the modern day.

Section 3 provides the main thrust of this study. It is here that the history of Swara is described in detail. In addition, this section presents an in depth analysis of the dynamics of Swara by highlighting the conditions when Swara is performed. This analysis is followed by the prevalence of Swara in the two districts focused by this study. The winners and losers of this practice the Swara women and girls are specifically focussed upon in this section. The human rights violations, the exercise of power over women/girls as material goods, the emotional and psychological consequences for the entire community, and larger society's reaction are discussed in detail. This is done through presenting the findings of the surveys and interviews conducted by the research team. Finally, this section focuses on inference to Swara in Islam and Pakistan penal code to highlight the non-Islamic and derogatory nature of Swara.

Section 4 concludes the study by highlighting significant findings. In addition, this section moves forward to provide concrete recommendations emerging out of this study. Here the recommendations are linked with actors (who should do what) and in which order (what should be done first).

In the final section 5, the study ends with an emblematic emphasis on Swara as a source of agony and human degradation. Here a selection of voices from Swara women/girls is presented as an endnote.

## 1.2 Purpose of this Study

The following study has been conducted to analyze the custom of 'Swara' in a holistic manner to gauge the prevalence of the custom of 'Swara' in two of the districts of the NWFP. This study aims to break the silence regarding 'Swara' by bringing forth the voices of women who themselves do not know that they are victims and survivors of a culturally sanctioned form of violence.

The study is conducted on the premise that collection of information through empirical means about the prevalence of 'Swara' would be a key strategy for overcoming the silence and taboo surrounding it.

The following study is hence an attempt to produce a collection of data, qualitative, ethnographic and quantitative, that could be an important tool in lobbying the government to ensure that they are accountable for the way they respond to the custom of 'Swara'. There are several questions that this study attempts to answer:

1. Does increased economic disparity lead to deterioration of cultural practices?
2. Does unaccountability of offenders lead to a rise in the number of offences?
3. Can alternative dispute resolution measure [Swara] be a justified form of retribution?

## 1.3 Methodology

### *Literature Review*

There is a limited amount of literature present on alternative dispute resolution measures practiced in Pakistan. Except for a study by Mohammad Ali Baba Khel, an Aurat Foundation Publication, literature on Swara is virtually absent. Therefore, in order to seek conceptual clarity, literature on violence against women and women's rights in Pakistan was reviewed. In addition, literature on Pukhtunwali and Pukhtun cultural norms was also carefully reviewed for inferences to Swara. This literature review greatly assisted in the development of the research design.

Key references are provided as footnotes as these appear in the report. However, a few additional studies consulted are listed as reference in Annexure.

### ***Consultation with Civil Society***

Ethnomedia, before formally launching the research in the two districts of the Northwest Frontier province, arranged a Consultative Meeting with members of civil society organizations and some Parliament members in Peshawar on 20<sup>th</sup> February, 2006. A strong need was felt to get feedback from various professionals from civil society organizations working in similar fields before actually starting out the research. Since the subject was sensitive, therefore it was vital to tackle it sensitively and strategically.

The consultations started in the second week of February. A consortium was formed by Ethnomedia to get feedback and develop linkages for future partnerships. The meeting in Peshawar was organized and moderated by Samar Minallah, Project Coordinator for this study at the office of Aurat Foundation.

Key NGOs including Aurat Foundation, SPARC, Oxfam. Sabawon, SPO, Shirkat Gah, and Khwendo Kor participated in this meeting. In addition, Ms. Farah Aqil Shah, Member Provincial Assembly, was also present at the meeting. The research team from Swabi and Mardan also attended. The aim of this meeting was to discuss specific actions required to assess the prevalence of Swara.

As the research commenced many local level organizations from the two districts Swabi and Mardan started showing a keen interest in working along with the research team to campaign against Swara. District Resource Center AF (Aurat Foundation), SBRC (Samaji Behbud Raabta Committee) Swabi, TKWA (Tahafuz-i- Khawateen Women Association), Swabi, Human Rights Organization Mardan are among the notable local organisations that actively associated with this project. (See Annex 1).

### ***Development of Research Design***

In early March 2006, a meeting was held in Peshawar with various research associates and social sciences researchers at the premises of Aurat Foundation to formulate a strategy for carrying out research in Swabi and Mardan. The meeting discussed

in detail study location, sample size and methodology for this study. In addition, discussion on questionnaires, their comprehensiveness and administration, as well as tailoring these for various stakeholders was finalised. Special questionnaires for the members of civil society as the primary group of respondents were reviewed and finalised. Also, questionnaires were developed for secondary groups such as the local media (print and electronic), police, jirga members, Ullema (religious scholars), and elected representatives.

### ***Development of Questionnaires***

From feedback received through consultations as well as through literature review, guided questions were formulated for various respondent groups. In total, 6 questionnaires were developed, one each for civil society, Ulema, jirga members, media, police and elected representatives. The questionnaires were pre-tested and after due adjustments, finalised for administration. Keeping the respondent groups in consideration, the questionnaires were designed to be user friendly, in simple language, with as many close ended questions as possible. Few questions that required more exploration were left as open ended.

### ***Study Approach***

Right from the outset of the study, due consideration was given to the embedded cultural and traditional views associated with the practice of Swara. Hence adopting a 'culturally and religiously competent approach'<sup>3</sup> was emphasised, in order to ensure that the research team appears as objective and non-judgemental as possible during the course of data collection. Given the sensitivity of the project, it was important to follow this normative approach to help the target respondents in relating to the issue and describing their views without fear of social reprimand and/or cultural bias.

The selection of such an approach for this study was vital because introduction and development of norms and practices, especially those pertaining to the rights of women, minorities and marginalized groups, is bound to be viewed with suspicion. It is common that people prefer the status quo and are suspicious of any drivers of change. Therefore, any attempts to introduce and popularize such discussions and researches must be exercised with caution and be culturally sensitive. Instead of appealing for women's rights to employment, mobility and rights to vote, it is more effective to appeal

<sup>3</sup> Culturally competent interventions are those that are matched to and aligned with an individual's culture, based on symbols and notions that are culturally familiar, meaningful, and valuable. Such an approach is more easily accepted because of its familiarity with the target audience.

to the Islamic injunctions that provide economic empowerment through the rights given to women to inherit, own and manage property and business.

Moreover, keeping in mind that Mardan and Swabi are areas where the Mutahida Majlis-i-Amal (MMA) government is in control, it was conceded that there might be greater suspicion towards efforts which directly tend to introduce foreign practices and values. For any NGO to work in the NWFP, that too on sensitive issues like 'Swara', is a risk. Even a small culturally inappropriate statement, whether in complete innocence or honesty, could have a strong negative impact on the aim of the study as well as the physical and social safety of local research team members. Through this approach, for example, the workshop speakers focused on highlighting how the true values of Pukhtun Culture and the injunctions of Islam totally contradict the custom of 'Swara'. This led to the representatives of the MMA publicly announcing their support and cooperation, and the Imam's of the local mosques came forward to announce that they would cooperate by talking about the issue of 'Swara' in Friday sermons. Some of the Ulema even participated as speakers in the workshops arranged.

Therefore, positive advocates of change from Swabi and Mardan were identified who could play a proactive role in the collection of data and participate in the focus groups and workshops.

Finally, it was strongly felt that the nature of this study demanded ethnographic research as well, based on firsthand field work, during which information was to be collected after sufficient rapport building through personal contacts. This way it was envisaged that a sensitive handling of the information seeking process will be maintained. The research study, therefore, is a blend of ethnography and survey research. However, qualitative research based on interview techniques and observation proved most effective. This further helped in documenting case studies. (See Annex 2).

### ***Case Studies***

Individual case studies allowed the research teams an exposure to settings and contexts that they might not have otherwise experienced. To record various case studies, a small tape recorder and in some cases a video camera was used with prior permission from the respondents. This collection of case studies turned out to be much more extensive than was initially envisaged by the research team. The mere fact that during the course of data collection a total of 60 cases were brought to the attention of research team members depicts: (i) the willingness of people [especially women and girls] to voice their contempt; (ii) unabridged extent of Swara being practiced in the everyday lives of NWFP women; and (iv) an urgent need

for 'safe space' to highlight the injustice and psychological trauma associated with being labelled as Swara.

Although this study did not originally intend to collect case studies, the need to address individual cases soon became clear and the research team was impelled to not only document, but also intervene in many cases. As a result more than 20 cases were aborted whereas many cases were reopened to try and reverse the Swara verdict given by the jirga.

While some cases are included in this study, the only purpose is to highlight the dynamics of Swara when it is performed, the immediate aftermath, the long term implications for Swara women/girls and families as well as the social and psychological impacts of this discussion. A compilation of Swara cases collected by research team will be available in a separate document from Ethnomedia Islamabad.

## 1.4 Research Team

The research team comprised of data collectors and research associates. A total of 11 data collectors and 2 research associates undertook this study. There were five data collectors (3 women and 2 men) for Mardan and six (3 women and 3 men) for Swabi.

### Members of the District Research Teams

Mardan	Swabi
Rafaqat Bibi	Noorul Amin
Faheema Bibi	Roohul Amin
Sakhawat Shah	Baswara Bibi
Shahida Bibi	Shafqat Rani
Mohammad	Safia Bibi
	Mohammad Zubair

In addition, two Research Associates Mohammad Tariq and Nasira Anjum were also part of the research team. The research team was identified with the help of SBRC in Swabi and Aurat Foundation Resource Centre in Mardan and Human Rights Organization Mardan.

In addition to the research team, it was also decided that some key cultural consultants who would provide input as experts on a specific aspect of local life were also to be involved in the research study. These were experts from civil society organisations namely Shams ul Haq, Muqaddam Khan and Dilraz Bibi from Human Rights Organization Mardan, Samaji Behbud-i- Raabta Committee, Swabi, and Tahafuz-i-Khawateen Women Association Swabi, respectively. Their contribution, time and expertise to this study were valuable in collecting additional case studies and in conducting interviews.

### **Training of the Research Team**

Administering survey questionnaires to various respondent groups as well as conducting in depth interviews required ample skill and technique on the part of the data collectors. Therefore, sufficient time was allocated at the outset of the study to provide training to the data collectors and research associates.

Separate training sessions were held for research teams of the two districts Swabi and Mardan on March 15 and 16 respectively. Special attention was given to the potential need for carrying out observational and interview techniques while administering the questionnaires. Respecting the gender segregation in NWFP, women were asked to conduct in-depth interviews of girls/or women given as Swara, while male members of the research team conducted interviews of Ulema, jirga members, police and male elected representatives. This was in addition to administering questionnaires to male relatives of Swara women by male research team members.

### **Study Sample**

The total population of NWFP, according to the 1998 census report is 17.7 million approximately, of which some 14.7 million reside in the rural areas. The two districts of Mardan and Swabi have a combined population of 2.9 million residing in the two districts of Mardan (1.7 million) and Swabi (1.2 million). The detailed selection of survey sites and interviews was finalized in consultations with the research team.



## Administering of Survey Questionnaires

The total number of respondents for questionnaires was 1000 and the target was achieved amicably by the research team. The sub-distribution of respondents was as given below:

- 900 members of civil society. 450 each in Mardan and Swabi. 286 male respondents and 164 female respondents were interviewed in Swabi, whereas 222 male and 228 female respondents were interviewed in Mardan. This was the primary group of respondents. A detailed statistical profile is attached in the Annexure.
- Among the secondary groups of respondents 20 questionnaires were administered to media representatives (journalists, columnists, electronic media).
- 20 jirga members were surveyed.
- 20 police officials (inspectors, and SHO's (Station Headquarter Officers) from the two districts were surveyed.
- 20 Ulema were surveyed.
- 20 elected representatives (including councillors from union council, tehsil council, Nazims, and Naib Nazims) were surveyed.



## Geographical Distribution of Sample Size in Swabi

PanjjPir	Gandup	Kalabut	Yar Hussain
Maneree Balaa	Chaknoda	Kota	Kunda
Zaida	Nawe Calle	Topai	Shah Mansur
Manere Payan	Janda	Marguz	Chota Lahore
Kalu Khan	Swabi	Bam Khel	

Six urban and thirteen rural union councils

**A total of 20 Union Councils were covered in Mardan by the researchers:**

Gombat	Charguli	Catlang	Mayar	Jalala
Baghicha Dherai	Rustum	Jamal Gharee	Qass Koroona	Shair Gar
Shehbaz Ghara	Galyaara	Fatema	Roorya	Mangaa
Muheeb Banda	Mardan	Sawal Dheer	Chamtar	Gujar Garhi

**Three urban and seventeen rural union councils**

### In Depth Interviews

In addition to administering the survey questionnaires, in depth interviews were held with selected informants. The aim for these in depth interviews was to unfold specific dynamics interplaying in Swara cases. The selection of these key informants was done on the basis of set criteria by the research team in the field.

A total of 30 interviews were conducted, 15 in each district, with the following groups of stakeholders:

- Jirga Maar's (Jirga members) who were able to share their views and experiences regarding those disputes where 'Swara' was given or demanded. This further helped in documentation of case studies.
- Local Imam-i-masjid (religious leader) or religious scholars to collect their point of view regarding Swara.
- 'Masharaan' (local elders) of the area. They helped in giving a cultural and historical perspective of 'Swara'.
- Girls/Women, especially those given in 'Swara', their parents and in-laws were interviewed.
- In some cases even the perpetrators of the crime, or those who had demanded girls as compensation were interviewed.

### Focus Group Discussions

In addition to the survey and in depth interviews, a series of focus group discussions were held with the local media in Mardan and Swabi. The aim of these discussions was to introduce the research project and to brief the journalists on their role in highlighting the custom of Swara.



In the first week of March, the focus group discussion with media representatives of Mardan was held in the Press Club. Similarly, in the same week a focus group discussion with local media representatives, Jirga members and elected representatives was held in district Swabi. In both discussions local journalists working with various regional and national newspapers were invited. The study was introduced in detail with its objectives. In addition, the legal and religious aspects of Swara were explained by the research team members.

Much discussion revolved around the potential impacts of highlighting the incidents of Swara through print media. There was active interaction where media representatives showed their commitment and provided feedback to the research team for effective use in this study. Another key aspect mooted in the focus group discussions was around sensationalism of story coverage. Concrete measures were highlighted where 'reporting

*Mardan Press Club*



with social responsibility' remained a key aspect of the role that the media can play as an effective agent of change.

Recognizing the important role played by the women councillors in conducting the research, a special focus group discussion was held in Mardan for the female councillors. During the course of research it was found that those female councillors who were not involved in the research as researchers felt left out. A need was expressed by them to get them involved as well and to provide them with training on how to record and report incidents of Swara in their respective areas. The group discussion proved very fruitful because some of the Swara victims had also come, who wanted to not only share their experiences but also involve themselves in the research.



The focus group was a catharsis for the victims of Swara who shared their pain with all the other women. In the end, one of the Swara victims rendered traditional songs of pain and sorrow, narrating her life as a Swara.

## **1.5 Unintended Interventions**

When the study commenced, many local newspapers positively highlighted the project. Many parents, especially mothers, approached the individual research team members to narrate their experiences. The research team later also found that in both districts, many women councilors were approached by village women who did not want to be identified to the research team members. They instead wanted to report 'Swara' cases that had taken place or were under consideration in jirgas in their villages, to the elected women councilors.

This overwhelming response from people was not limited to women alone. Many fathers who stood against the decision of jirga and refused to give their daughters as compensation also came forth as spokespersons for this study. In addition, jirga leaders who refused to take decisions where 'Swara' was demanded, as well as Ulema who openly advocated against the custom and journalists who highlighted the negative aspects of 'Swara' approached the research team and provided active input. These individuals proved to be key support for this study as they continued to advocate against Swara in their individual capacities. They were identified as the 'Advocates of Change'. The most motivated amongst civil society were the younger generation. Some of them came up with poems especially written on Swara for that occasion. They were given special attention and a chance to speak during the workshops to a large audience. Among these was one Ajmal Mansoor who volunteered to recite a poem. The poem was later translated by renowned writer Dr Sherzaman Taizi.



ټول عمر سوزي د ده تېلوکښي  
او – غږ به هم کولی نه شي  
که " أف " کوی نو د غېرت  
علمبردار به ورته گوته نیسی  
دا خو نړی باتور آزاد شو خپله  
مخرورتیا خور چې په سوره کښي لاره  
هغه تراوسه پوري داسی زندگي تېروي  
لکه چې وینزه وي په کور یا په آخور تړلی  
لکه څاروی چې بي زبانه متازي تېروي  
ای پښتنو وروڼو! دا پاسی تاسو فکر وکړئ  
د دې تور سرو خو پندولو  
آخرڅه گناه ده، څه خطا ده  
چې په سوره کښي شي ورکولې  
په نخاس خرڅولې

د خپله لاسه خپله لوړ د اور لمبو ته سپاري  
دوي د یو زوي په خاطر خپله گل عوتی ریڅوي  
زه دا منمه اولاد خوړ وي په مرگ نه شی پېرزو  
زوی که د پلار د لاس عماده اهمیت ئي شته دی  
نو لوړ خو هم د خدای رحمت دی څه حرمت ئي شته دی  
دوي د قاتل زوی بچ کوو د پاره خپله غوتی  
د دشمنی د کور تنور ته څنگه وویشتله؟  
ورور ئي خبر شه خو مازغه ئي په ټیکاو کښي نه وو  
دغه خبره پرې د قنډر غونډې ولگیده.  
دا که هرڅو د ده په خوا خاطر کښي نه تېریده  
بغیر له دې نه – فیصله او روغه نه کیدله  
کونډه برېتونه د غېرت ئي لږ څه مراوي شولو  
" باتور " مجبور شولو سورې ئي غاره کېښودله  
دی ښه پوه یږي پخپل زړمکښي  
دا نیا زبینه خور به

زما مخولود دی رسم مخنیوی پکاردی  
دا یولوی سوال دی په دی بابله سپیناوی پکاردی

## مخنيوی او سپيناوی

منصور  
دټوپي

د مظلوم کورته په خرگه په ننواټي لار شي  
د مصلحت خبرې وشي او بيا امن راشي  
خو روغه گرانه وه ، د سرې ويني بدل پورې ؤ .  
دا د کلی خلقو خو د روغي کوششونه کول  
قاتل په غېره کښي سارې سارې آهونه کول  
که بودا پلار ئي په ژوندوني د لحد مړی شه  
سپين سرې مور وه د خپل زوي د خوشحالي په ارمان  
وخت خو اوس تلې ؤ واپس د جار وتلو نه ؤ  
ددی باتور زلمي دا جرم د بڅېلونه ؤ  
يو اخري جرگه دا شوه چې سورۀ به ورکړي  
بدل کښي ناوې نا د ناوې جنازه به ورکړي

د " باتور " خو به اوس د بل کره سورمکښي ورځي  
د بي گناه پېغلې عظمت سره څه لوبي کيږي  
د يو تور سرې په حقونو چې ډاگه پريوځي  
ډگه خوانی ده په دې مرگ ئي حوصله پريوځي  
پلار ئي له برمه دې پريوتی فېصله به مني  
مور ئي په زړه غنی راکاږي د سورۀ به مني

دا ددې خاورې، ددې سيمي د وطن قيصه ده  
دا ددې ښکلي ددې هستي پېتونخوا داستان دی  
دا د ښېغلې قام د هاغه روايت قيصه ده  
چې بلا پېغلې ترې له ويرې نه کومې ته دانگي  
دا د تور سرو د غلبيل غلبيل خادر قيصه ده

دا د بلا خوبندو د ژوند د زړه چاودون تصوير دی  
په دغه برکلي کښي داسی واقعه شوې وه  
چې يو " باتور " د چاننگيال په وینو لاس ووينځل  
پخپله لارلو ، مخروړ شولو ، له غروټو پناه  
خو په کاله کښي به ئي هر وختی ماتم ؤ ، ويرو  
مور به ئي زړه کښي ورته هره شپه دعا کوله

چې خدائي زما دڅنوگل هېچری مړاوی نه کړي  
خور چې به کښېنا ستله ځان سره به ئي زړه کښي ونيول  
چې ما به خپل گل لالا خپله کښېنوي ډولی کښي

خو دا به څنگه کېدل دا ارمان به څنگ رږېده  
څه مشران تر مينځه کښېناستل چې روغه وکړي

### Prevention and Clarification

By Ajmal Mansoor of Topi

Translation by Dr. Sher Zaman Taizi

*This is the story of this land, this region, this country;  
The epic related to this lovely and lively Pakhtunkhwa;  
The tale of traditions of this noble nation;  
That force many maidens to jump into a well (to perish) due to fear;  
This is the story of ragged shirts of helpless women.  
This is the picture of the woeful lives of many sisters.*

*A heart-rending event took place in the upper village;  
One Batoor<sup>4</sup> dyed his hands with the blood of a honoured youth;  
He made good his escape; beyond the mountains;  
But, mourning and wailing continued all the time in his house.*

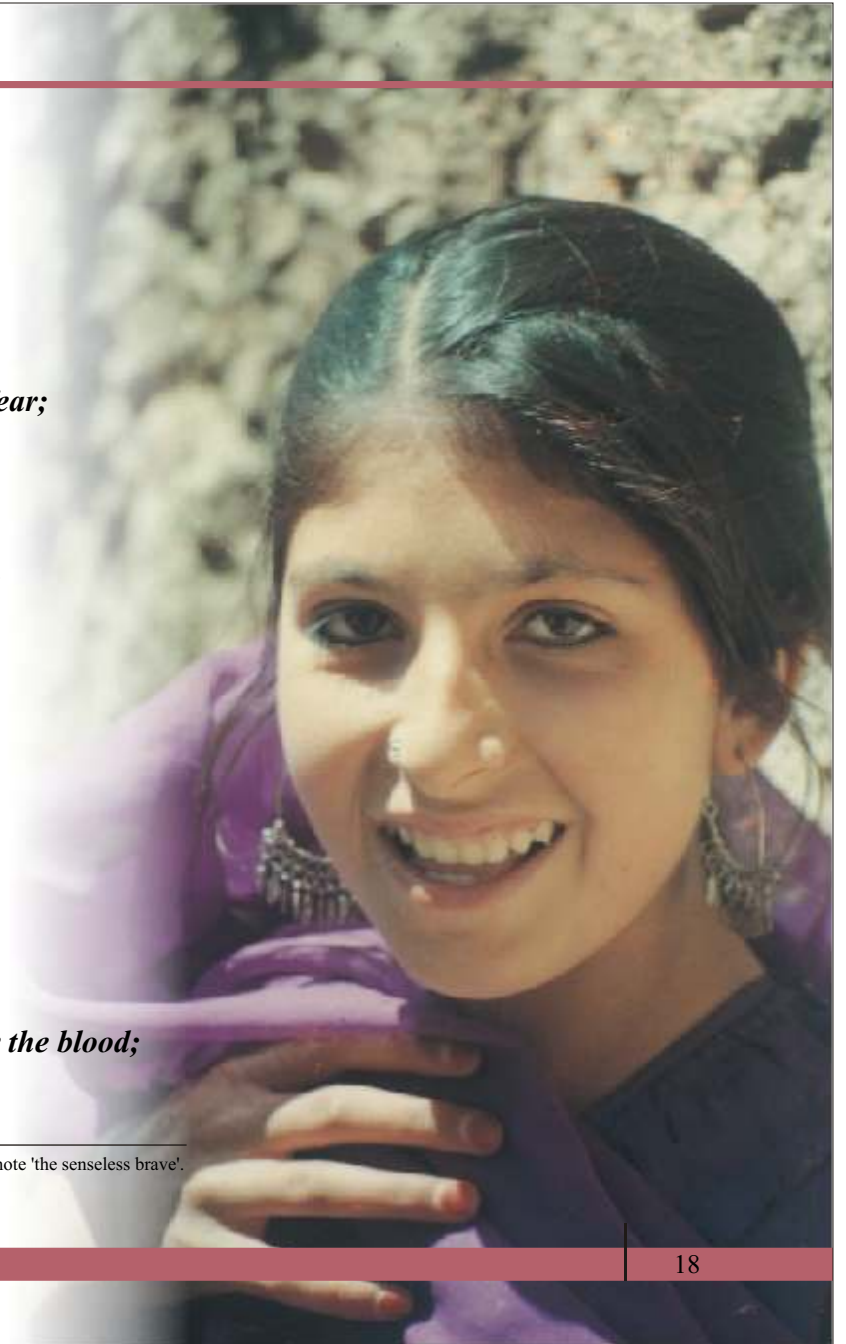
*Every night his mother prayed for him but furtively;  
O, God; may the 'flower of my hair'<sup>5</sup> not wither!  
His sister entertained desire, talking to herself in loneliness;  
My lovely brother would put me in the palanquin;*

*How could that happen; how could that desire be fulfilled?  
Some elders intervened for reconciliation;  
To visit the oppressed family in the form of a jirga;  
Discuss terms for restoration of peace.  
But, solution was a far cry in the face of the spirit of revenge for the blood;*

<sup>4</sup> Bold, a falcon remarkable for sharp sight; here, the poet mentions the character in this name sarcastically to denote 'the senseless brave'.

<sup>5</sup> A simile for the beloved one, normally it refers to 'husband', here to 'son'

<sup>6</sup> Reference to marriage of the son.





*Villagers were struggling for reconciliation;  
The killer heaved sighs of repentance in 'free land'.  
The old father lived but as the dead in a grave.  
The old mother desired a happy occasion<sup>6</sup> for her son.*

*But, the time has passed; not to come back?  
The crime of this Batoor was not forgivable.  
The final session of jirgah decided in favour of Swara;  
In compensation not as a bride, but to perform funeral rites of the bride!*

*The sister of Batoor will now go to the other house as Swara.  
What mockery is made of the greatness of the innocent maiden!  
When rights of a woman are plundered,  
The brisk youthfulness loses the patience for death;*

*The father is broken; he will yield to the decision;  
The mother will sustain the woeful pain of accepting Swara.  
She will throw with her own hands her daughter into flames.  
They pluck their bud for the sake of their son.*

*I admit, children are dear and can't be offered to death!  
The son, like a staff, supports his father; and deserves importance?  
But, the daughter is also a blessing of God; She has also some respect.  
To save the skin of the killer son, they threw their bud in the oven  
Of the house of the enemy?*

*When the brother came to know, his mind was not sane.  
This news struck him like lightening.  
This might have not crossed his mind;  
(But) reconciliation sans this - could not be achieved.*





*His dressed moustaches<sup>7</sup> of honour lost some glamour.  
Batoor surrendered under compulsion to accept Swara;  
He understands well,  
His favourite sister  
Will burn eternally in the oil (added by him to the fuel),  
But she will not be able to utter a word.*

*If she heaves even a sigh,  
Standard bearers of honour will lift fingers at her.  
This bloody Batoor is now free in abscondence.  
The sister went away as Swara.  
She still leads the life  
Of a maid-servant  
Or the speechless and needy animal on the manger!*

*O, my Pukhtun brothers! Come up to think it over  
What is the fault of the sisters and daughters?  
To be offered as Swara,  
Or auctioned in the market?  
My friends! This tradition should be stopped;  
It is an important question - and it needs clarification.*

---

<sup>7</sup> Once considered the mark of manhood.



## 1.6 Constraints and Risk Mitigation Strategies

The most challenging part throughout had been to balance the research work and the much needed intervention in the cases that were being unearthed simultaneously. Intervening in a specific case was bound to have strong repercussions on the people involved, especially those demanding or decreeing a Swara. So basically, it was a struggle against meeting deadlines and advocating against the on going cases happening in the research area. People felt more and more motivated to explore the issue of 'Swara'. The outreach spread beyond Mardan and Swabi. In one of the incidents that was reported from Malakand, the man who had demanded two 'Swara' girls as compensation for an honour related crime threatened the project coordinator not to highlight the case as it would lead to having her kidnapped. The two girls that were being given were Saira 2, and Aneesa 2.

At another point, a husband of a 'Swara' woman in Mardan took out a knife at the researchers who were trying to interview the woman. In yet another incident a man swore at the researchers in a market in Mardan. He had purchased a girl whom he wanted to give as compensation. The incident was reported by one of his villagers who was part of the jirga where the girl was being handed as swara. The case was highlighted nationally and through international media. (See Annex 5).

Ethnomedia involved more police officials in its workshops to not only sensitize them on the issue but also to make them feel more connected to the issue. The media helped in highlighting some of the positive steps taken by the police as well as the social and political pressures that at time bar the police from filing Swara reports. This strategy not only assisted in building collaborative relations with the local police but later also served as a key measure to seek police intervention in Swara cases. This turned around in support of Ethnomedia's work on this study when positive interest was shown by a senior police official of Mardan. The Senior Superintendent Police provided ample cooperation and in two particular cases, he assisted the research team in intervening Swara decisions. Later he also attended one of the consultative workshops where he publicly announced his full support to the work being carried out by Ethnomedia.

Another challenge was the women councillors who were not part of the survey. Many women councillors who were not hired by Ethnomedia as researchers felt left out and did not cooperate with other members of the research team. A special focus group discussion was therefore held for women councillors where they could share their views and feel part of the

study project. More than fifty women councilors attended the final workshop and many of them had stories to share of how they condemned Swara in their particular constituency.

## SECTION 2

# Questioning the norm

**'Because Justice is not executed speedily  
men persuade themselves that there  
is no such thing as justice'. James Anthony Froude.**



## **2.1 Human Rights in Pakistan**

There have been various attempts at social and legal reform aimed at improving Muslim women's lives in the subcontinent during the twentieth century. Since partition, the changing status of women in Pakistan largely has been linked with discourse about the role of Islam in a modern state. This debate concerns the extent to which civil rights common in most Western democracies are appropriate in an Islamic society and the way these rights should be reconciled with Islamic family law.

After independence, elite Muslim women in Pakistan continued to advocate women's political empowerment through legal reforms. They mobilized support that led to passage of the Muslim Personal Law of Sharia in 1948, which recognized a woman's right to inherit all forms of property. They were also behind the futile attempt to have the government include a Charter of Women's Rights in the 1956 constitution. The 1961 Muslim Family Laws Ordinance covering marriage and divorce, the most important socio-legal reform that they supported, is still widely regarded as empowering to women. Two issues--promotion of women's political representation and a balance between Muslim family law and democratic civil rights--came to dominate discourse about women and socio-legal reform. The second issue gained considerable attention during the regime of General Zia ul-Haq (1977-88). Urban women formed groups to protect their rights against apparent discrimination under Zia's Islamization program. It was in the highly visible realm of law that women were able to articulate their objections to the Islamization program initiated by the government in 1979.

The Women's Action Forum was formed in 1981 to respond to the implementation of the penal code and to strengthen women's position in society generally. The women in the forum, most of whom came from elite families, perceived that many of the laws proposed by the Zia government were discriminatory and would compromise their civil status. In Karachi, Lahore, and Islamabad the group agreed on collective leadership and formulated policy statements and engaged in political action to safeguard women's legal position.

The Women's Action Forum has played a central role in exposing the controversy regarding various interpretations of Islamic law and its role in a modern state, and in publicizing ways in which women can play a more active role in politics. Its members led public protests in the mid-1980s against the promulgation of the Law of Evidence. Although the final version

was substantially modified, the Women's Action Forum objected to the legislation because it gave unequal weight to testimony by men and women in financial cases. Fundamentally, they objected to the assertion that women and men cannot participate as legal equals in economic affairs.

Another of the challenges faced by Pakistani women concerns their integration into the labour force. Because of economic pressures and the dissolution of extended families in urban areas, many more women are working for wages than in the past. But by 1990 females officially made up only 13 percent of the labour force. Restrictions on their mobility limit their opportunities, and traditional notions of propriety lead families to conceal the extent of work performed by women.

A melding of the traditional social welfare activities of the women's movement and its newly revised political activism appears to have occurred. Four important challenges confronted women in Pakistan in the early 1990s: increasing practical literacy, gaining access to employment opportunities at all levels in the economy, promoting change in the perception of women's roles and status, and gaining a public voice both within and outside of the political process.

Women's awareness of their rights, thanks to manifold efforts by Pakistani women's rights groups, along with women's greater participation in the workforce and attendant exposure to the rights movement, appears to have somewhat increased which itself may have contributed to the increasingly violent backlash they are exposed to. Still, the HRCP in its report for the year 2000 asserted: "Most women across the country remained ignorant of even their most basic rights, with a newspaper survey conducted in August [2000] finding that over 80 percent of young women between 18 and 24 in Lahore had no idea of the clauses contained in the 'nikahnama' (marriage contract). Almost 90 percent, including those educated to graduate level and beyond, did not realize that they had any rights at all, such as those of divorce."

Domestic violence, which often has lethal consequences, is widespread in Pakistan. It is based on the conviction of many men that women are their property and obliged to fulfill men's needs and wants without question and without fail. This view is often shared by women who believe that violence is somehow deserved by them or something they can do nothing about and who consequently shrink from reporting it. A study by the Punjab Women Development and Social Welfare Department released in October 2001 said that around 42% of women accepted violence as part of their fate, while over 33% felt too helpless to stand up to it; only 19% protested and only 4% took action against it. The perpetrators of such violence were male relatives (53%), husbands (32%) followed by other women (13%) and other relatives (2%). The report stated that only some five per cent of rape and 'honour' crimes were reported.

## **2.2 *Progressive Directions in the Supreme Court***

Since the study undertaken by Ethnomedia was being widely covered by the local media in the NWFP, civil society organizations from Dir, Malakand and Charsada districts in NWFP and Bhakkar and Mianwali districts of Punjab, formed a citizens' network in collaboration with Ethnomedia. The network quickly transformed into a movement that was strongly backed by the Chief Justice of the Supreme Court of Pakistan.

In the absence of accountability and lack of faith in the institutions Public Interest Litigation can bring justice within the reach of the oppressed or the poor masses. By doing so, the Judiciary can play a vital role in establishing the writ of law in the state. And so it did in the case of the swara and vanni petition.

A petition was filed under the article 184(3) back in 2003 by Samar Minallah (Director Ethnomedia). The case was heard by the Chief Justice Iftikhar Mohammad Chaudhary in 2005 pleaded by Advocate Mansoor Ali Shah. (See Annex 2 b).

For protection of Human Rights in the country, the Supreme Court of Pakistan undertook cases under Article 184(3) of the Constitution. These Human Right cases of public importance helped in reducing the gap between the judiciary and the public. Article 184(3) reads as follows;

“184(3).---Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 is involved, have the power to make an order of the nature mentioned in the said Article.”

A large number of letters, newspaper articles received by Ethnomedia by various individuals and groups of persons were shared with the Chief Justice of Pakistan during the ongoing hearings regarding the custom of swara, vanni and sang chatti. These were initiated under the Article 184(3).

A suo moto notice was taken regarding swara and vanni custom when in December 2005 the Supreme Court brought under challenge the unconstitutional, unlawful and unislamic custom of giving girls as compensation to end disputes.

After its landmark orders to the police in Punjab and the NWFP 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. (See Annex 3).

In its first hearing the Chief Justice expressed the need for research on customs of swara and vanni. With the support of GEP (Gender Equality Project) Ethnomedia initiated a research in two districts of Northwest Frontier Province.

The fact that the research and the hearings in the Supreme Court both coincided had a positive impact on the communities where research was being conducted.

At another hearing in the Supreme Court, directions were given by the apex court that special committees are to be formed throughout Pakistan to give legal assistance to the victims of Swara and Vanni. (See Annex 3 a).

This concrete step is to have a lasting impact as it is a step towards acknowledgement of prevalence of a human rights violation that in the past was lost in silence and denials. Based on the premise that injustice in the form of swara, sung chatti, vanni or khoon baha 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 concept of '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 approached formal courts for intervention.

Jirgas and their decisions of settling disputes by gifting girls as compensation was confronted by the Supreme Court when in Kashmir, Sind a jirga decreed giving of five minor girls in marriage. In June, 2006, in Jacobabad, a local council (jirga) headed by PPP-MNA Mir Hazar Khan Bajrani Tahsil Nazim Thull Akbar Banglani and Peer Bharchoondi Mian Abdul Khaliq ended a decade-old feud between two rival groups by offering five minors as compensation and Rs one million fine on both warring parties. The feud began in 1997 when Miandad Banglani was murdered in a shootout between Hafiz Qamaruddin and Ali Yar Banglani groups over Karo Kari (honor killing) charges in Village Kamal Magsi, Tahsil Thull District Jacobabad. After repeated failed attempts for rapprochement between the warring groups, local elders decided to convene a jirga headed by PPP MNA Bajrani. The jirga fined Yar Ali group Rs 870,000 and Qamaruddin group Rs 300,000.



It was also decided that the Yar Ali group would offer five girls as compensation for the murder to the Hafiz Qamaruddin group in order to restore relations.

With the help of civil society organizations and media the case was brought to the notice of the honourable Chief Justice of the Supreme Court of Pakistan.

One could see real judicial activism in practice while the honorable judges put their time, hearts and minds into the case of sang chatti. The five minor girls who were never consulted by the jirga while their fate was being decided sat silently in the Chamber of the Chief Justice reaching out for justice: justice that they could not seek back home. The honorable Chief Justice ordered an inquiry into the matter and froze the jirga verdict. By freezing the jirga verdict, the apex court sent a clear message to tribal chiefs that customs like vani, swara and karo-kari that were being committed against the women should not be allowed to exist. (See Annex 4).

The judicial activism in the case of swara and vanni has in true sense been a catalyst for social change because it has been a journey that opposed the justification of the social status quo. A change that made the injustice visible and the silence speak up against atrocity.

For the first time, 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.

In the words of Justice Benjamin Cardozo,<sup>8</sup> ***“A court must give to the words of the constitution “a continuity of life and expression. An apex court, besides deciding the law that binds all courts subordinate to it, also must make vocal and audible the ideals that otherwise might remain silent”.***

In absence if such judicial activism, a constitution would become stultified and devoid of the inner strength necessary to survive and provide normative order.

The sustained effort of the judiciary to curb the custom of swara and vanni has made an ideological impact bridging the distance between the common man and the judicial system because the interest and protection of the public was the main

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<sup>8</sup> The Nature of the Judicial process. Benjemen Cardoo 1927

driving force that led to some important directives.

It also helped in the redressal of grievances of victimized sections of society brought within the purview of the court. It has been rightly said that, '**Judicial activism is a necessary adjunct of the judicial function because the protection of public interest, as opposed to private interest, is the main concern**'. Former Chief Justice India, Mr Justice A.H Ahmadi.

The 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. During the month of December 2005 to June 30th 2006 around 60 cases of swara were recorded in two districts of the NWFP.

In the month of May after Supreme Court heard the appeal of Zarina Bibi a victim of vanni, more than 12 cases of vanni emerged only from District Bhakkar in two week's time. 7 of these cases of vanni were intervened by 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. (See Annex 4 a, for copy of Supreme Court's Orders).

In June, 2006, the handing over of an 11-year-old girl to a rival family in Swara was challenged in Peshawar High Court. A writ petition was filed by two sisters, Sanad Bibi (11) and Shah Izzat Bibi (9), praying the court that a jirga decision in Barawal Banda in Upper Dir regarding handing over one of them to the rival family in Swara be declared as illegal and unconstitutional.

Infact, it was only after the issue was taken up by the Supreme Court that the issue received the importance it always deserved. The very fact that women and children from all over Pakistan are being affected by this inhuman custom was realized for the first time.

Since our judicial system is acting proactively, it provides victims and society at large with hope. It is also the need of the hour to strengthen the lower judiciary so that the people's confidence is restored.

On May 31st 2006, on the demand of the jirga members in Shikarpur Sind, Mohammad Ramzan pledged to hand over his

daughter Heer 9 and one year old Kareema as compensation for 11 buffaloes within three days.

The handing over of the girls was halted after the case was brought to the notice of the Supreme Court.

In June 2006, in Buner, a two months 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 months since the Supreme Court has taken up the issue of swara and vani, in many areas the Police has ceased to treat this sensitive issue as a 'private' matter.

In the past, Peshawar High Court has also taken strong notice of the Swara custom. In 2001 a division of the bench of the Peshawar High Court allowed the dissolution of the marriage of Bakht Meena who was given as Swara to the rival group. The Peshawar High Court, headed by Justice Khalida Rashid had ruled that the tradition of Swara violated section 310 of the Pakistan Penal Code. The court had observed that to eradicate this menace from society once and for all, there should be a severe penalty for such an oppressive act.

In November 2003, the provincial law department of Northwest Frontier Province prepared the initial draft of a law banning the custom of Swara and declaring it a penal offence. In July, 2005, Jalat Khan Afridi, the Commissioner FCR (Frontier Crimes Regulation) having the power of an appellate court under Section 48 of the FCR, termed Swara as illegal. This was in response to an appeal regarding a decision taken by the local jirga in Charmang area of Bajuar, decreeing the giving of a girl as compensation to the aggrieved party. The decision, which was initially endorsed by the APA (Assistant Political Agent) was later reversed by the Commissioner FCR. The Commissioner observed that there was no such provision in the FCR.

## 2.3 Actors in Human Rights

### *The Role of Local Institutions*

While the meetings with the women councilors and the media were being organized during the research, training was given to the councillors and media on how to record a case history or an incident of Swara. This resulted in the unearthing of numerous cases within Mardan. Personal intervention by the research team proved beneficial and timely in many instances. (See Annex 5).

In March, two of the female researchers and the research coordinator were approached by one Fazlullah from Mayar. Fazlullah had mustered courage to stand against the jirga's verdict to save his daughter from the custom of 'swara'.

The jirga in Mayar, comprising of notables of the area decreed that Fazlullah's eight year old daughter Marina was to be given as compensation for the crime committed by her male cousin. It was learnt that five years ago, a man named Arif was killed by his first cousin Altaf. Altaf was provoked when Arif taunted him for allegedly letting visitors into his house to flirt with his sister. As a result Altaf got infuriated and shot his cousin dead. Since then, he is absconding. When the issue was taken up by the local jirga, it asked the family of the accused for a house, Rs 300,000 and a girl.

Since the sisters of the accused were already married, one of the uncles was to give his eight year old daughter as compensation. With the permission of the jirga members, the research coordinator addressed the jirga and shared with them the orders passed by the Supreme Court against the custom. The jirga decided to not take Marina as compensation and instead resolve the issue with 'Diyat' (blood money).



باسمہ تعالیٰ  
 السلام علیکم درختہ اشرار و برکت اللہ  
 اس کی کتاب میں ہے کہ میرا بیٹا کسی لڑکی کے  
 جس کا رشتہ شوق میں مانتا گیا تھا اور  
 آپ کی کوششوں اور مہربانیوں سے اس کی  
 چھوٹی بہن کی حیثیت پر لوگوں سے بچ گئی۔  
 جنتہ اکرم اللہ  
 اشرار و برکت اللہ آپ کو جزا دے گا۔ امتداد اللہ  
 نام انجی کا سرینہ  
 ولد فضل اللہ  
 پتہ تحصیل بوملہ صوبہ  
 مہاراجہ ڈاکٹر ملیر  
 لاہور پاکستان  
 والسلام  
 عبدالغفور مہاراجہ

Similarly, the research team intervened in many other cases in the traditional jirga as well as the local administration to halt Swara verdicts. Some are listed below:

Samina Bibi (12) from Bughdada Mardan was to go as Swara for a crime committed by her father. It was decided that her father was to give Samina as Swara to the aggrieved party. In the meeting the two female researchers and Tajir Khan Wakil convinced the aggrieved party to accept Rs 300,000 instead of Samina.



One Fozia (11) from Farum Koroona, Mardan, was taken by the enemy's family as Swara. The research team helped in bringing her back after they were approached by the girl's father. Fozia, who had not even reached puberty, is with her parents now.

Six year old Munee was to go as Swara in Sawal Dherai, Mardan. The aggrieved party demanded two girls and 500,000 rupees as compensation. Yasmin was 16 whereas Munee was only 6. However, in another subsequent Jirga that was also attended by the District Nazim, it was decided that both the girls were not to go as Swara and the aggrieved party accepted 10 Marla land and 500,000 rupees as compensation instead.





Bakht Meena 8, was to go as a 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. (See Annex 5a).

The above cases are but a few which are brought forth during the course of interviews and survey. More than 20 cases from Mardan and 15 cases from Swabi were unearthed by the research team and later intervened.

In Swabi, nine people, seven of them jirga members, were arrested from the courtroom of the District and Sessions Judge on charges of giving a minor girl in Swara in marriage to a rival family for resolution of an honour-related dispute between them. The seven jirga members, including a union council nazim, were summoned by the judge to appear in the court where a pre-arrest bail petition of two people accused of kidnapping a girl had been pending. The court dismissed the pre-arrest bail of the two accused and also ordered the arrest of the seven jirga members.

The jirga members were identified as Dagai union council nazim Ishtiaq Khan, Sultan Gujar, Manawar Gujar, Mira Gujar, Rahim Dad, Mumtaz and Muzaffar. The other two accused are Irfan Khan and Zakir Khan.

Saima, (5), was to be given in marriage to Mohammad Ali (25) for her father Hashmat's crime. Her father was involved in a 'sharam' (honor crime) and the only way to free himself of the rage of the girl's family to hide behind little Saima. The jirga was intervened by the research team in Bashkhali, Mardan. In the final jirga the jirga members announced that the demand for Saima as compensation was set aside.



The dispute between the two families had started a few years back when Irfan Khan and Zakir Khan kidnapped the daughter of Mohammad Ali. Later, a jirga was constituted to resolve the issue.

The jirga resolved the issue according to the Swara custom and decided to give the hand of an eight-year-old girl of the accused family in marriage to the rival family to end enmity between them.



The jirga had decided that a girl belonging to the family of Irfan and Zakir would be given in Swara to Ali's son. The jirga had also decided that Irfan and Zakir's families pay Rs. 60,000 to Ali's family as compensation. But, the amount did not reach the aggrieved family.

The case came to the limelight after the two accused submitted an application for bail before arrest in the court of District and Sessions Judge Khalid Amin.

On the pre-arrest bail application, the court ordered the district police officer to conduct an inquiry that found that the issue between the two families had been resolved through the Swara custom. The court also recorded the statements of the cleric, Maulana Ibrahim, who had solemnised the nikah, and Shaukat Ali, who registered it. Later, the court ordered that the jirga members be arrested.



Mardan Police, in June 2006, recovered a five year old Rubina from the rival party's home. She was handed over to the rival party as compensation for an honor crime committed by her brother.

Tahira's brother Mohamad Razik from Gaarho Shah, Takht Bai, eloped with a girl, whom he married later. In order to avenge their humiliation, the family members of the girl who had eloped with Razik demanded Razik's sister (Rubina) as compensation.

The jirga members decided that the little girl was to go with the rival party and spend two nights with them. It was decided that she will later be handed over in marriage once she attained maturity.

While five year old Rubina was taken amidst her cries and protests to Bajaur Agency, her brother Razik suffered pangs of guilt. He reported the incident to Takht Bai Police. The Police not only recovered Rubina but also arrested the jirga members and others involved. The case was highlighted through the print and electronic media.

The research team's input in this study extended beyond administering the questionnaires as while doing so, they came across cases of 'Swara' that needed legal assistance and intervention. And it became very difficult to ignore this large demand of facilitation by the research team. Based on these and other cases, a number of case studies were recorded and the research team actively intervened in many of these cases with the help of local administration to halt and reverse Swara decisions. These case studies are compiled separately but a few are presented in this study to highlight various dynamics of this practice.

## **2.4 Persisting Discrimination**

This study reveals the fact that despite considerable progress in recognizing and curbing human rights violations especially violence against women and girls practices such as Swara exist and are widely prevalent in the modern day. This only merits further value for a study such as this to present in depth analysis as well as multi-pronged strategies for raising awareness and generating popular support against Swara.





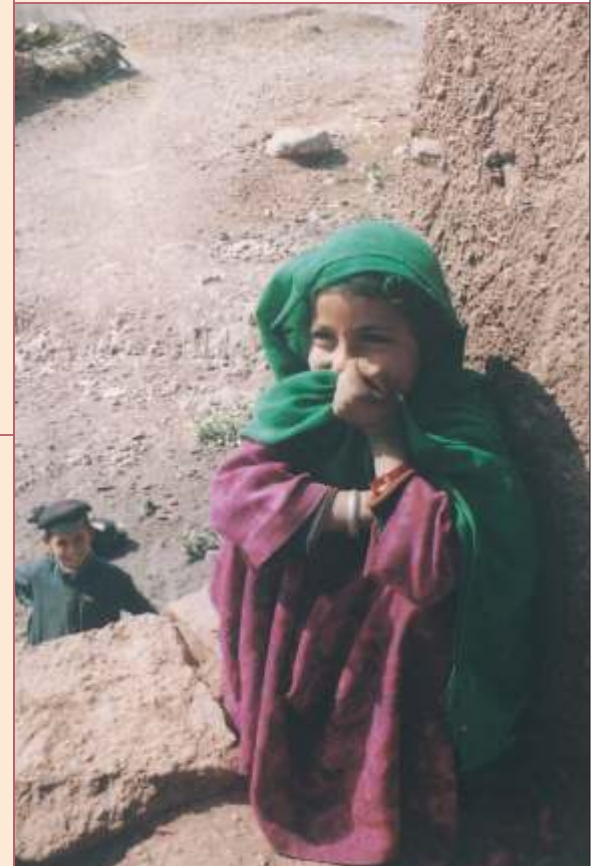
***When the girl child is asked, for what crime was she killed. (Al-Quran, Surat Al-Takwir, Verses 8-9)***

## SECTION 3

# Understanding Swara

**Pukhtun sowal na kawee, ao chay kawee no khor ta hoom odreegee**

A Pukhtun does not beg, but if he stoops then he will even beg from his sister  
(A famous proverb)



### 3.1 History of Swara

#### **To live according to one's law is to be powerful**

Wahrhaftig and LukensWahrhaft

It is important to first analyze the notion of 'pukhtunwali' or the code of life of the Pukhtuns. Anthropologist Andre Singer (1982), states, 'The nation of Pakistan has a strong central government, yet more than three million Pukhtuns, occupying an area of 25'000 square miles on a strategic frontier, remain their own masters. Across the border, in neighbouring Afghanistan, almost four million Pukhtuns share the same way of life. Together they constitute the worlds largest tribal society----a total of at least seven million people who still conduct their affairs by the law of Islam and by the rules of Pukhtunwali---'the way of the Pukhtuns'---a harsh uncompromising code that requires blood vengeance for insult and values honour more than life itself'. For more than 2000 years, the hill tribes have defended their independence and way of life with the stubborn ferocity that Pukhtunwali requires.'

'The word 'Pukhtu' itself designates not only the language but the behaviour defined by the code (Benidicte Grima 1993). Almost every Pukhtun is familiar with the proverb. “*You don't speak Pukhtu, you do Pukhtu*”. Pukhtun's who are unable to follow the principles of '*rewaj*' or their code of conduct are generally looked down upon. There is a famous proverb:

***Pukhtu da ospanay chimta da***

***Zama laliya folaadi ka ghakhoona***

*Pukhtunwali or Pukhtu is made of Iron, My dear!*

*You better have sharp and strong teeth!*

Pukhtunwali is a native unwritten law that has been etched in the hearts and minds of its people not to be eroded with the passage of time. It can provide them with respect in society, even if they have nothing else that symbolizes power and strength. Where there are conflicts, means have been devised for conflict resolution. This is mostly done with the assistance of the elders or a formal jirga (council of members). Puktuns settle a loss by taking 'badal' (revenge). This way of settling a dispute is perceived as maintenance of one's honour. For settling a conflict, sometimes the injured party receives compensation for the injury suffered. This could be in the form of 'Qisas' i.e an eye for an eye, 'diyat' (monetary fine or blood

money). There is also an option of 'badal-i-Sulah' whereby the aggrieved party has the power to grant forgiveness. However, according to custom, one way of settling a dispute which is considered effective and lasting is called 'Swara' giving of a girl to the enemy's family in marriage. Upon close examination, one finds that 'Swara' is also a form of 'badal' which is taken by an innocent paying for the crime committed by someone else.

Badal is a word of Arabic origin, with a base meaning 'change'. Referring to the concept of 'badal', Benidict Grima states that 'badal' can be used both in a positive and negative sense. 'Badal aghistal' is to take revenge, 'Badal kawel' is to exchange women of the families in marriage alliance, and 'badal khlasawal' is to reciprocate, to even out an exchange of gifts visits to create a stronger bond of good will. 'Badal' according to Hasan Yusufzai and Ali Gohar 2004, is 'both a positive and a negative return or reply, such as an obligation to seek revenge by retaliation. Not being able to even out the imbalance by taking revenge leads to life long shame or 'pighore'.

Eastern Afghanistan and Pakistan's Northwest frontier province, no matter how diverse geographically, politically or linguistically, one thing that brings them or binds them together is 'Pukhtu'.

<sup>9</sup> Akbar S Ahamad refers to non tribal areas as 'encapsulated', for not having the freedom to settle their own accounts unlike the Pukhtun from tribal areas.

However, the behavioural and cultural expectations are more or less the same, irrespective of the geographical differences in the region that a Pukhtun belongs to. A Pukhtun living in any part of the world will identify with 'badal' (revenge/reciprocity), 'melmasiya (hospitality)', 'bakhana' (forgiveness), 'nanwatay' (granting refuge) and 'pighore' (taunt). 'Bakhana' or 'Bakhal' means to grant forgiveness. 'Bakhana', if given in a case of murder, is viewed as a positive step. If someone grants it in any 'Sharam' (honour related) crime, he is looked down upon for not being able to follow 'Pukhtu'. Similarly, if a Pukhtun is unable to show hospitality or 'melmasiya' towards his guest, or is unable to equally reciprocate in cash or kind, even he becomes a target of 'pighore' or scorn.

<sup>9</sup> Akbar S. Ahmad, (1980) *Pukhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society*, Boston: Routledges and Kegan Paul

### ***'Pighore threat to one's honour***

The concept of 'badal' and 'pighore' are interconnected in a Pukhtun culture. If a man is unable to take revenge or 'badal' he is bound to receive 'pighore' (taunt) for not being able to act according to Pukhtu or cultural expectations. Basically, most of the disputes occur due to fear of 'pighore'. A pushtu proverb goes:

#### ***Pighore da laaasa sal koroona rowaan dee***

*Hundereds of families have been distraught because of 'pighore' (taunt)*

A tribal malak (leader) from Darra Adam Khel, says, “pighore' is like a slap on the face, especially when it concerns one's inability to act according to 'Pukhtu' or in an 'honourable' way”. A 'Pighore' (taunt) given by the community is considered one of the biggest threats to one's honour. It is not an economic loss, but threatens to lead to social isolation and insensitivity. People abandon villages in order to escape 'pighore'. It is commonly believed that 'pighore' could continue to haunt a family over generations.

There is a famous proverb, “*Chay nan spak shee, sabaa ba rowak shee*” (Whoever is dishonoured today, tomorrow he shall perish). Ironically, woman who symbolizes honour for her family or community may end up paying the heaviest price while protecting her family from the wrath of 'pighore'.

Social acceptance and authority cannot be achieved without complying with it. Sher Alam from Nawagai, who loved his wife Memunay very much, was given a 'pighore' by his paternal cousin. His cousin fabricated a scandalous story, telling him how in Sher Alam's absence, Memunay had been damaging the family honour by talking to a stranger. After hearing the allegations, with head held up high, looking fearlessly in to Sher Alam's eyes, the innocent Memunay replied,

***Na yarayzham ka may omanday pa khaoray***

***Za day marga na yarayzham heeskala***

***Za aseela pushtana yam kokala***

*I am not scared even if you bury me under the earth*

*I am not at all afraid of death*

*As I am a true Pukhtun woman, My dear!*

Despite listening to Memunay's side of the story, Sher Alam was all powerful and mighty while slitting the throat of his wife with his dagger. In the face of the venomous 'paighore' (taunt) any gallant Pukhtun is extremely vulnerable. Thus, the only way to have freed him of the affliction of 'pighore' was to prove his allegiance to 'Pukhtunwali', which could only have been at the expense of Memunai's life. 'Swara' is yet another product of 'pighore'. There are many cases where the parents are reluctant to give their daughters as compensation, but are socially too weak to take the wrath of 'pighore' for not complying by the rules and expectations of 'Pukhtu'.

### 3.2 Women and The Concept of Honour

The general perception is that taking a woman from another party is a “central symbol of superiority in the world view of the Pukhtun” (Charles Lindholm 1982). 'Namus' literally means chastity, but in common usage it means 'woman'. Guarding the chastity of women is guarding namus. Even a newborn girl, still in a cradle is seen as 'namus'. A proverb goes, *Maal da sarra zar, au sar da namusa* Sacrifice wealth to save the head, sacrifice head to save namus.

Pukhtunwali is predominantly based on preserving honour and conforming to the culture's behavioural expectations. Practicing it could be so trying, that people prefer not to have daughters they are perceived as the embodiment of honour of their family that needs to be guarded and protected.

Bus Bibi (stop lady), Balanishta or Naurina which is sometimes deliberately pronounced 'noray na' meaning 'no more girls', are names sometimes given to girls by their families to symbolically ward off the birth of yet another girl. While birth of a boy is marked with gunshots, the birth of a daughter goes unmarked. No matter how tiny she is, she is perceived as the family's '*sharam*' (honour/shame) and '*purdah*' (shame) that needs to be guarded against any outside threat. At the birth of a girl the parents receive greetings like '*Khuday day sharam parda o saatee*' (May God preserve your honour), '*Sar toray ma shay*' (May you never lose your veil or purdah) and '*naik bakhta shay*' (May you grow up to be pious). Outside her home she has no status of her own. She is subject to someone else's authority in order to gain acceptance. A pushtu proverb goes, '*Khazay la ya kor day, Ya gor*' (For a woman there is either the home or the grave). Home, whether her father's or husbands, is the place where her honour rests. A woman's honour is seen as a family or *qaom's* (community)'s honour and she must preserve and uphold it at all times, as it is judged harshly by the community.



Ideally a woman is expected to be 'ajaza' (helpless/powerless). The Pukhtun's honour is tied to that of his women, who exist to serve him and be loyal to his cause (Ahmad et. al. 1981). Keeping in mind the above scenario, the sensitive link between women and honour, shame and retribution, one can see the existence of 'Swara' as a form of penalty for the aggrieved party. It is an ultimate form of penalty whereby the perpetrator takes an indirect revenge through 'Swara'. It is interesting that while honour can be tarnished with a slight slip of one's behaviour, customs like Swara and sar paisa, where a woman is used as a commodity, an object of value or an instrument for building alliances, bring honour.

In the light of the present form of Swara the whole concept of honour gets warped. A woman who is the honour of ones family kept away from the eyes and influences of men outside the family; may suddenly be surrendered to the enemies' family. The same daughter is held by the hand and taken to the crowded jirga, either to be accepted or rejected as a compensation for her father or brother's crime. A brother needs to shield behind her after committing an honour related crime.

Strangely enough, honour is not at stake while she is being used as a pawn for honour related crimes committed by her brother or father. There is a famous proverb, *Pukhtun sowal na kawee, ao chay kawee no khor ta hoom odreegee* (A Pukhtun does not beg, but if he stoops then he will even beg from his sister).

### 3.3 *Swara of Yesterday and Today*

Historically, the word 'Swara' implied a girl who would commute to the enemy or the aggrieved party's home (riding) on a horse, pony or donkey. According to some, it is called 'Swara' because the girl was supposed to have a strong influence/ importance on the two families in ending their enmity. She was seen as a symbol of peace, as a constant reminder of the end of the dispute.

Most significantly, it was considered important in the past because earlier, the disputes were on a larger and more serious scale, between two warring tribes. In such wars, hundreds of people would be killed with no hope of ending the disputes with any form of dispute resolution. Hence, the importance of 'Swara' which was seen as vital for the collective good. A girl was to play the role of an ambassador of peace, cementing political or financial ties. Such a betrothal was considered as a symbol of Honour.

Mohammad Ali Baba Khel in 'Swara the Price for Honour' (2003), examining the rationale behind the custom, states that the act of sending a woman to the aggrieved tribe was symbolic of asking for truce or forgiveness. It was a symbolic gesture to end the conflict and bury the hatchet. He further affirms that 'genuine Pukhtun traditions speak of good and honourable treatment of the women coming to the enemy's camp and sending her back on the same horse with gifts and a 'chadar' symbolized respect and honour. Since the aim of the ritual was for the perpetrators to ask for truce and beg for forgiveness, the need for retaining the woman/ or women was not there.

Writing about the customs in Dir, Swat and Chitral, Sher Mohammad Mohmand, in his book, 'The Pathan Customs' states that, 'In the case of serious crimes like murder, payment or acceptance of 'blood money' is exceptional. Where 'money' was part of a 'rogha' (settlement), a 'Swara' was added as well'. He further adds, that 'this means that a girl is given away unceremoniously, mounted on a horseback and not taken in a 'doolay' (Palanquin) to the party making peace. In the matter of compensation a woman is equal to half a man.

A Tribal Chief from Khyber Agency, Malak Juma Gul, defines 'Swara' in the following words, "Whenever there is a clash or a dispute and someone is killed, whether intentionally or by mistake, the way to resolve the dispute is by resorting to 'Swara'. The monetary fine or 'diyat' is also laid down, but that does not satisfy the desire for revenge. The aggrieved person is haunted by memories of his dear departed relative and he would rather return twice the amount paid to him and kill the murderer instead. So to put out the fire of revenge, 'Swara' is the only way out. The custom of 'Swara' is an attempt to resolve the dispute permanently; otherwise the killings go on for generations. By giving away girls to the aggrieved family, eventually the children they give birth to belong to both families and the enmity is brought to an end forever.

If examined carefully, the form of 'Swara' that is being practiced today is closer to the concept of 'badal' (revenge) than to maintaining peace. Rarely does one see a 'Swara' girl/child or woman given gifts and a veil as a symbol of honour. Today, many girls that are taken to jirgas are rejected by the rival party. However, the fact remains that a little girl taken to a crowded jirga is in itself a violation of basic human rights. Noor ul Amin, an educationist and a tribal elder from District Swabi affirms that, 'Though a little girl who is taken to a crowded jirga is mostly returned by the aggrieved party, it permanently scars her emotionally. At a very early stage of her life, a girl is not only labelled as 'Swara' but also develops feelings of rejection and low self esteem'. Interestingly, murders take place if someone swears at a sister, daughter or mother, yet in 'Swara' a daughter is pushed into a situation where she is to put up with ridicule and emotional torture.



According to a Jirga leader, 'Swara in the past was not practiced the way it is being exploited today. One of the most important things in practicing 'Swara' was to give the girl respect and honour, and not ridicule her. In many cases, the 'doli' (palanquin) carrying the girl would go to the house of the aggrieved, who would without even taking her out of the palanquin, accept the apology and return her in the same palanquin with gifts and honour, ending the dispute. It is important to remember that amongst the Pukhtun's the word 'badd' is synonymous with 'Swara'. In Afghanistan, it is widely known and practiced as the custom of 'badd'.

In a research report 'Badd a Painful Sedative' Kabul, 2004, the researchers, examining the roots of 'Swara' or 'Badd', compare it to the story of the "Bride of the Nile". It is told that ancient Egyptians annually threw a young, beautiful girl into the Nile River in order stop it from overflowing. 'Badd', the report says, is the opposite of good, and refers to crimes ranging from murder to sexual assault. Though the practice has been criminalized in the Afghan Penal Code, it is still being implemented where traditional law is dominant over the country's official legislation. Pukhtun women, in the past, have played an important and proactive role in maintaining peace among two families or tribes. In the past they were proactive members of the peace keeping mission, but today they have been reduced to mere pawns, or mere victims. Directly or indirectly, women had a vital role to play in a domain which is always associated with men. Although women were never part of jirgas, they worked as negotiators at various levels. They would practice political authority within the culturally accepted limits. This role of a Pukhtun woman was more evident at a later stage of her life, after gaining a reputation over the years and after leading a life according to the behavioural expectations of the society. Thus, old age brought authority and power.

In the past, while resolving a conflict, 'Nanawatay' or truce was frequently practiced. Nanawatay was considered as a 'ghat oozar' (grand apology). Nanawatay literally means 'entering in'. It is the right of refuge that must be granted to anyone who asks for it. In some parts of Bajaur, in conflict resolution when nothing worked 'nanawatay' or 'ghat oozar' would take place. It was called 'ghat oozar' or grand apology because of the presence of women in it. On the preliminary visit of the accused to the aggrieved party, the accused would take a symbol associated with women to the aggrieved. This would be a 'chador' or veil on his head. This sort of forgiveness would not call for 'badal' or revenge because the accused showed immense remorse for what he had done. Culturally, it was accepted to grant forgiveness in such a situation.

At times, the person who was guilty took with him a cow, a knife and a 'kafan'(shroud) to the aggrieved party. It was a symbolic gesture on the part of the accused to show his repentance. All the articles he took along symbolized death, for which he was ready. Elderly women wearing black clothes would accompany the man. The presence of women of the

household gave this symbolic act more importance. Similarly, there was a ritual called '**Palao waraawal**'. In this a woman would put her veil over someone pursued by his enemy. If the opponent shot the man under the veil he was liable to give 'nagha' or fine for disrespecting the veil.

The main difference in the conflict resolution procedure of the past and present is that today the main perpetrator, by handing over a daughter or a sister as compensation, shows neither remorse nor repentance. According to Islamic Jurisprudence, a punishment is required to have the characteristic of being punitive, retributive, deterrent and reformatory, 'Swara' lacks all these features. Interestingly, the custom of 'Swara' persists but other traditional forms of dispute resolution that symbolized an accused person's repentance or remorse have dwindled with time. Sher Mohammad Mohmand documents some other traditional forms of dispute resolutions. In '**Parhay pa gharha achawal**' the culprit would put a rope around his neck. When a person of a tribe committed a grave offence against another and feared revenge he would beg 'bakhana' or forgiveness by putting a rope around the neck, and present himself in the form of 'nanawatey'. At times he would also take fodder in his mouth which symbolized that he was an animal that was ready to be slaughtered.

Another symbolic gesture signifying repentance and remorse was called '**Pa kabar kay samlastal**'. In this, the accused or the one who had committed a murder would jump into the grave dug for the deceased and lay there asking for forgiveness. One similar custom was, '**Da Kat Khpa Neewal**' or clinging to the bedpost of the aggrieved. '**Psa Warkawal**' or giving a sheep to someone meant admitting one's guilt and asking for forgiveness.

In some areas, an offender, if he was an adulterer, had little chances of escaping the social condemnation by the society. Such a man was called "Makh toray" (black faced/ or man without honor) . According to the codes of 'narkh' (the customary law) a man or a woman was to be killed. Such killings did not carry 'por' or fine.

Similarly, a term called '**Mora**' was used in Khost, Afghanistan for a woman who was in love with someone other than her husband. The killing of '**Morezana**' was allowed in '**Narkh**' (the customary law). The one killing his wife was not interrogated. Contrary to the past where killings in the name of 'honour' were used as a deterrent for any similar crimes, things have changed today. Today, the 'sharam' or honour related crimes have increased and in each crime, a 'Swara' is able to change 'tore' (black, or honour related crime) into 'spin' (white or resolved matter).

According to the research findings the crimes that most frequently required giving of a 'Swara' were murder and honour

related issues. In other words, one form of culturally sanctioned violence has been replaced by yet another form of retribution in which someone else pays the price.

*In Mardan, in December, 2005, Sadia's father was accused of having illicit relations with his sister-in-law. This was unearthed when his watch was discovered beneath the pillow of his sister-in-law, in her room. The woman with whom her father allegedly had a liaison was Sadia's paternal aunt. The word spread in the neighborhood about the incident. The jirga decided that in order to compensate Sadia's betrayed uncle, Sadia was to pay the price by shielding her father. As a child, when children would make fun of her and call her 'Swara', she would cry and hide from children and adults, fearing she would be taken away as 'Swara'. After coming of age, Sadia was given to the aggrieved party in marriage, which seemed more like a day of mourning. She screamed and cried but to no avail. There were no wedding songs, no laughter, only the cries and wails of Sadia in the neighbourhood. After she went to the aggrieved family's house in marriage, her life became an agony. From the very onset, she was constantly reminded of the crime committed by her father. As the fire of enmity had still not died, her husband, having encountered Sadia's father in a local market opened fire at him. The father survived the attack but was left with a paralysed hand. In the words of Sadia, when angry, he reminds me scornfully, "Plaar pa badal kay raaghalay ai" (you have come here to pay for the crime of your father) Sadia says, 'although I am treated like an animal, I would never complain, otherwise they would either kill my brother or my father. The pain that I am going through would be better than seeing my brother or father killed by my husband.'*

### 3.4 Islam and Swara

وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ

*And no bearer of burdens shall bear another's burden*<sup>10</sup>

It means that the person who committed the wrong act is responsible for his deeds and will face punishment, whatever it is. There is no concept in Islam that another person, as in the case of Swara a girl can receive punishment for the wrong deeds of someone else, whosoever he may be. Even if a minor killed someone you can not take Qisas from him because of his immaturity and lack of intention.<sup>11</sup>

Swara, the custom of giving and taking of girls in lieu of blood in cases of murder, is a philosophy in stark contradiction to Islam and its system of Justice. The concept of Justice occupies a central position in the Islamic value system, The Quran orders the believers to do Justice when it says,

*O you who believe! Be steadfast witnesses for Allah in equity, and let not hatred of any people seduce you that you deal not justly. Deal Justly, that is nearer to piety. Observe your duty to Allah. Lo! Allah is informed of what you do.*<sup>12</sup>

The Quran requires an unflinching devotion to Justice where, let alone consideration for customs and traditions, the Muslims are not even supposed to look at familial or personal considerations in the dispensation of Justice. The Quran further says,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلّٰهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ  
أَوِ الْوَالِدَيْنِ وَالْأَقْرَبِينَ إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَآلِلَهُ أُولَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ  
أَنْ تَعْدِلُوا وَإِنْ تَلُوتُوا أَوْ تَعْرِضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا۔

<sup>10</sup> Surah Al-Fatir; 18

<sup>11</sup> Al-Sayyad Al-Sabiq, Fiqh-ul-Sunnah, Bierut; Dar-ul-Fikr, 1983, Vol. II, 442

<sup>12</sup> Al-Quran: Al Maida: 8

*O you who believe! Be you staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than you are). So follow not passion lest you lapse (from truth) and if you lapse or fall away, then lo! Allah is ever informed of what you do.<sup>13</sup>*

Before the advent of Islam, an unjust practice was prevalent in Arabia wherein if a man was murdered then his clan, instead of demanding the blood of the murderer, demanded the blood of a person equal in rank to the murdered or the blood of scores of other Less precious souls so that they could all add up to the blood of that one murdered. The Quran repudiated this mode of vengeance. The intent of the divine word is clear in verses 178-179 of Sura al Baqarah dealing with the crime of murder. The murderer according to the Quran will pay for his deed either by his own life or by compensation. No other soul, either by familial affiliation or any other connection will bear the burden of another's sins.

Further on, for a murderer, Allah says in the Quran:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا  
وَوَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

*And whoever kills a believer intentionally, his recompense is hell to abide therein; and the wrath and the curse of Allah are upon him, and a great punishment is prepared for him.<sup>14</sup>*

In the pre Islamic period, if a man from a tribe was killed, the whole tribe was held responsible. Islam annulled this practice and declared that it is only the murderer who should be held responsible for his deed; no one else can take his burden.<sup>15</sup> Given this emphasis, there should be no question whether a woman or a minor girl can be held responsible for someone else's crime. Even if a minor killed some one, you can not take qisas from him because of his immaturity and lack of intention.<sup>16</sup>

<sup>13</sup> Al-Quran: Al Nisa;135

<sup>14</sup> Al-Quran: Surah Al-Nisa; 93

<sup>15</sup> Al-Sayyad Al-Sabiq, Fiqh-ul-Sunnah, Bierut; Dar-ul-Fikr, 1983, Vol. II, 442

<sup>16</sup> Ibid.

If the girl is major, that is, of marriageable age, her marriage can not be held without her consent. According to Abu Hanifa, the wali [guardian] has no authority to contract a major girl in marriage without her consent. As we know, in Swara marriages are held without consent. According to Abu Hanifa, the girl can contract marriage as soon as she attains the age of puberty. By ijab i.e. offer and qabul i.e. acceptance the nikah is confirmed affected. Ijab and qubul are based on consent. Even if the guardian makes qubul on behalf of the girl he has to take permission from the girl in front of witnesses that she is authorizing him to accept on her behalf with her consent.

If the girl is a minor, the guardian has the power to enter into a contract of marriage on her behalf. This is called wilayatul jabr, but this authority of the guardian, as in the case of his other powers, is subject to some restrictions. He must protect the interest of the minor while deciding such matters. Obviously, in Swara the minor's interests are severely damaged, so his authority is restricted here. This authority of wilaya tul jabr ceases when the minor attains puberty.

If a minor is contracted in marriage by his guardian, he has every right to repudiate this marriage. This right is called khayar-ul-balugh or the option of puberty.<sup>8</sup> This is incorporated in sec 13-b of the Muslim Family Laws Ordinance 1961. According to this section, if a Muslim girl, before she attains the age of 16 years is given in marriage, she can repudiate the marriage before attaining the age of 18 years.<sup>17</sup>

In the case of the option of puberty the marriage is ended without the aid of a court. If the matter comes to the court, the court does not dissolve the marriage, but confirms the repudiation made by the person, whether a girl or a boy.<sup>10</sup> The right of khayar is recognized by jurists in cases of duress and jest. If a person is induced to perform the marriage because of a threat or coercion, he can rescind the contract by the exercise of khayar.

Islam does recognize some customs which are in conformity with Islamic values and injunctions. As it is obvious from the above discussion, this custom is totally against Islam. Therefore it is totally prohibited. As Mustafa Ahmad Al-Zarqaa a renowned Islamic scholar describes, 'to recognize a custom it is necessary that it should be in conformity with Shariah. If it is against the injunctions of Shariah it is prohibited.'<sup>18</sup>

Swara is therefore prohibited because it results in injustice and zulm, and is against Shariah. Marriage under the umbrella of

<sup>17</sup> David Pearl, A Text Book on Muslim Personal Law, London; Croom Helm, 1987, 42-44

<sup>18</sup> Mustafa Ahmad Al-Zarqaa, Sharh Al-Qawaed Al-Fiqhiyyah, Damascus; Dar-ul-Fikr, 1989, 237

Swara is haram from another aspect too. It is provided by Shariah that if a person believes that he will not do justice with his wife and her rights will not be fulfilled this marriage is haram upon him because it results in zulm. In Swara usually the intention of the other party is not good and they take revenge from that poor girl. Hence, such a marriage is haram.<sup>19</sup>

According to Qurtabi, a renowned scholar of Islamic law, if a man can not give his wife her rights, this marriage is haram upon him. This applies to Swara because of the reasons stated above.<sup>20</sup> If the husband is not fulfilling her rights, she has every right to divorce. If the woman hates her husband due to any reason she can get khula by giving back her mehr. An example here is given where a woman came to the Prophet and said that she did not want divorce because her husband was a man of bad morals or that he was not a good Muslim, but she did not like him because of his ugliness. The Prophet asked her to give back a garden given to her by her husband. She agreed and the Prophet ordered khula.<sup>21</sup>

It is obvious from this hadith that Islam gives the right to get a divorce for such minute reason such as his ugliness. In the case of Swara there is infringement of the rights of the girl by the husband, so she can demand divorce on these grounds according to Islamic law. Punishment for murder is determined by Allah i.e. qisas and diyah. No one has the authority to change these punishments. But heirs of the victim have the authority to set the offender free by forgiving him, either for diyat or for nothing. There is no third way; a settlement based upon marriage is not given in any source of the Shariah. Sulh can be made voluntarily free of any condition. There is no kind of sulh which is made in exchange for a person. Badl-e-sulh can only be maal or profit. A person can not be badl-e-sulh.

<sup>19</sup> Zaki-ud-Din Al-Shawbaan, *Al-Ahkam Al-Shariyah lil Ahwal Al-Shakhsiyyah*, Cairo; Dar-ul-Nahda, 1969, 53

<sup>20</sup> Al-Sayyad Al-Sabiq, *Fiqh-ul-Sunnah*, Bierut; Dar-ul-Fikr, 1983, Vol. II, 14

<sup>21</sup> Al-Sayyad Al-Sabiq, *Fiqh-ul-Sunnah*, Bierut; Dar-ul-Fikr, 1983, Vol. II, 253



## 1.12 Swara and the Legal Jurisprudence

Raising the question of validating Swara through traditional peace building premise also does not meet with any success. The notion that Swara has taken root as an effective alternative dispute mechanism for blood [murder] is therefore seriously questioned here. While analysing the judicial premises on Swara, again there is clear evidence for containment and aversion to this practice. The Pakistan penal code has criminalized “Swara” in a 2004 amendment. Now under Section 310 PPC entitled compounding of qisas (Sulh) in Qatl-i-amd the code declares:

“In the case of qatl-i-amd, an adult sane wali may at any time on accepting badal-i-salh” compound his right of qisas (Provided that a female shall not be given in marriage or otherwise in badal-i-sulh).”<sup>22</sup>

This means that the aggrieved party i.e. the wali of the murdered person may, if she/he so wishes, forgive the murderer and accept compensation, provided that a female shall not be given in marriage or otherwise as badl Section 310-A contains the punishment for the giving of a female in Badl. “Whoever gives a female in marriage or otherwise in badal-i-sulh shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than three years”. Therefore the penal code is clear on the issue of what constitutes the crime. It states unequivocally that a female given in exchange for murder constitutes the crime of “Swara”, even if this is done with the consent of both the parties, or with the consent of the female herself. It stands criminalized.

According to Islamic Jurisprudence a punishment should have four characteristics. It should be punitive, retributive, reformatory and a deterrent. Swara does not have any of these desired features, because the criminal himself goes free, and instead an innocent girl pays the price. According to Islam there is no vicarious liability, every soul must bear the burden of their own actions. 'Nikah' (the marriage contract) is a social contract. Here consent based on free will is mandatory. Moreover, if a girl herself is not willing to marry someone, then the nikah or marriage will be considered 'abinitio void'. (Dr Justice Fida Mohammad Khan, Judge Federal Shariat Court of Pakistan, cited in Samar Minallah 2003)

Keeping in view the seriousness of this crime, the punishment it carries, its implications on public policy, the challenge it poses to fundamental rights as well as the fact that it is a crime which is not only accepted, in fact revered as being part of the

<sup>22</sup> Criminal Law Amendment Act 2004

code of honour of societies practicing it, the law makes Swara a crime to be tried by a District and Sessions Judge. A court of Sessions is the highest court of original jurisdiction and tries serious and sensitive offences.

For further details regarding the grounds on which the custom of Swara stands illegal is in Annexure in a petition drawn by Mr Mansoor Ali Shah, Advocate Supreme Court of Pakistan.

### 3.6 Dynamics of Swara

Swara, Khoon Baha, Chatti, Ivaz or 'Vanni' are customs having their roots in tribal culture. Traditional jirgas or courts decree the giving away of girls in marriage as part of deals to compensate the 'aggrieved party', claiming to derive authority for doing so from the age of the practice itself and from religion. The custom is not only un-Islamic but against the basic principles of 'Pukhunwali' as well, which considered women as a symbol of honour meant to be kept away from the eyes of the strangers, let alone one's enemy. People seem to have found a way of bypassing the armed feuds that would be the natural outcome of disputes involving murder.

It is not a custom restricted only to the Northwest Frontier Province. It is known by other names but with the same dynamics in other parts of the country as well.

In Baluchistan, according to a similar custom known as 'Khoon Baha', in 2005, in a village in Naseerabad, four girls and Rs 900, 000 were demanded as compensation for a murder. After negotiations with the Jirga, the aggrieved party agreed to bring the penalty down to Rs 500,000 and two girls as compensation.

In July 2001, a jirga of the Jatoti tribe in village Jhoke Sharif, district Thatta, Sindh province, decreed that a six-year-old girl, Amina, be handed over in marriage to Khamiso, the middle aged father of Jhuman, a boy whom Amina's minor brother had accidentally killed on a hunting trip, to compensate for his loss. Amina's father agreed to this to save his son. The girl was not asked if she agreed and the handing over was carried out. Other villagers reportedly disagreed with the 'verdict' but were too scared to protest.

In Punjab, it is known by the name of 'Vanni', Sharam, Ivaz, and Sakh. In recent times, many cases of Vanni have been recorded and highlighted through the media. One significant case has been that of five girls from Mianwali who appealed to the State authorities for intervention.

In the Northwest Frontier province it is known by the name 'Swara' or 'Baddo kay Raghalay' (a girl who comes as compensation to end enmity).

In Afghanistan, it is known by the name 'Badd'. Swara is demanded in the case of murder, 'sharam' or honour related crime,

disputes related to humiliation, financial disputes, political, fabricated crimes and many others.

According to a senior 'Jirga Maar' (tribal leader) from Swabi, "We do resolve disputes through 'Swara' but only as a last resort when nothing else seems to work. Once, I literally fell on my knees to convince a woman to grant me 'Khair' (peace) by agreeing to give her daughter as 'Swara' in a dispute. Since the last 30 years we have given many girls as compensation in our decisions, and all of them are living a happy life. Peace has also prevailed!"

### 3.7 Process of Conducting Swara

Whenever there is a dispute between two individuals or groups, usually over a murder or any other serious crime, the elders or 'masharaan' get together and resolve the matter. This is done by giving away one or two girls from the family of the murderer to that of the deceased. The aggrieved party then accepts the girls and forgives the murderer. In Pukhtun culture the concept of 'badal' is very important, and by taking these girls they are fulfilling that obligation. One of the girls is usually mature whereas the other is a minor. Such decisions are usually decreed in Jirgas. Jirga is an assembly of people's representatives belonging to different tiers of society. According to Hasan Yusufzai and Ali Gohar (2005), a jirga is a strategic exchange between two or more people to address an issue through verbal communication. The exchange may not result in an agreement on the issue, but the process itself leads the parties, including the interveners, to maintain a certain level of formal communication, thus ensuring peace.

The formation of a jirga is generally democratic in nature giving a chance to all stakeholders to express their opinions. It also seeks to convince both the parties to approve the decision before publicly announcing the final decision. The parties have to abide by the decision and cannot challenge it. Anyone who then does not conform to the rules of the jirga is subject to punitive measures. This could be in the form of social boycott, confiscation of a rifle, or burning down of the house of the non-complaint party.

The procedures or the context of a Jirga is based on the common beliefs, teachings, culture and most of all, on Pukhtunwali itself. A person who is not abiding by the rules decreed by a jirga will be looked down upon and will not be considered a '*dhroon pukhtun*' or a 'true pukhtun'. Having said that, during the research, many people were of the

opinion that the contemporary jirga has not only been abused but has lost the true essence of justice and democracy. The contemporary jirgas have a representation of the elected representatives and influentials, thus making it difficult to be an apolitical forum. The jirgas are represented by religious leaders as well. However, the decisions of these leaders are dominated by traditions and Pukhtunwali rather than Islamic injunctions. According to the research findings, the highest percentage of 'Swara' cases is demanded in the cases of murder. Men get away with as serious a crime as murder by giving compensation through 'Swara'. The custom of 'Swara' usually requires the giving away of one girl. But since the demand is itself a symbol of humiliation for the accused, therefore, initially two or more girls are demanded, depending on the severity of the dispute. Mostly, a woman from the aggrieved family goes to the victim's house to select a girl. This custom is called '**Gotaa lagawal**' (pointing at someone). The girl is usually very young, and in that case she goes to the enemies' home after reaching maturity. Once a decision has been finalized, a feast is organized for all the members of the jirga. Sometimes sacrificial animals are slaughtered. This ritual of formally announcing the end of the dispute is called '**nanawatay**' or the act of forgiveness.

According to Malak Juma Gul, a tribal chief from Khyber Agency, *“the selection of the girl is done in a ritualistic way. A woman from the aggrieved family goes to the murderer's house and is asked to select one of the girls in that home. Her selection then is final.”*

Safia Bibi, a swara victim says, *'If the other party has hatred in their hearts and the fire of enmity is burning strongly then they simply take away the little girl in her clothes without any marriage rituals. But if there is a spark of humanity then they might go through some kind of ceremony before taking her.'*

### 3.8 Types of Swara

#### i. Child Betrothal

A common form of 'Swara' is practiced as child marriages. Commonly, it is decided that the girl would be taken after she comes of age. It is a form of a verbal commitment and an understanding that is to be abided by both the parties. A verbal commitment is usually very difficult to break because it can have severe consequences. Mostly, people want to give the hand of the youngest girl in line. The logic behind giving the hand of a young child is to prolong the giving of the girl. If a girl who has been promised as 'Swara' dies before being formally handed over to the rival party, the matter is considered closed. In such a situation another girl is not demanded. It is common to take along the little girl to a crowded jirga. Here, the aggrieved party either accepts the offer or complies with 'bakhana' (forgiveness).

The very fact that a girl is to be taken to a gathering that is otherwise culturally prohibited for girls or women is a form of humiliation which has become a part of the ritual. Despite the fact that the girl is granted forgiveness and sent back to her parents home, the scar of being labelled as Swara lasts for the rest of her life. Emotionally, the whole experience can have a lasting effect on a little child's mind.

According to the jirga's decision a child can only be given as 'Swara' after she attains maturity but the decree is not followed accordingly. In order to satisfy the fire of revenge many people take the child before she reaches puberty. One such Fozia, from Mardan was taken by the aggrieved party before she attained puberty. She was taken away to Darra Adam Khel by her supposed in laws.



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.

Again in June, 2006, Takht Bai police arrested jirga members and those demanding or giving a five year old girl as compensation for her brother's crime. The girl was taken by the rival family for two nights from where the police managed to recover her.

There have been cases where even an unborn girl child has been promised as compensation. In Swabi, Akbar demanded a swara as compensation from Malik who had humiliated Akbar's sister. Malik, whose daughter Shaheen was not even born at that time, promised to hand his daughter over to Akbar's son once she would be old enough. For such young girls it is often said that '*mogee poray taralay da*' (she has been tied to a post like an animal).

## ii. Badal Swara

This is a form of Swara where the aggrieved and the accused both exchange women in a marriage alliance. Although the logic behind such marriages is to change enmity into a sustained friendship in reality that is rarely so. In Maneri, Mardan, in a bizarre tale of false accusations, Aqeela's brother Mukhtiar visited his paternal uncle's house. His cousin Pervez was also present and suddenly the latter created a hue and cry that Mukhtiar and his sister were having illicit relations.

The entire village came to know about this and despite Mukhtiar's denials, no one believed him, so the seeds of enmity were sown. The elders of the family decided to resolve the problem by ordering that Mukhtiar's sister would be given as Swara to Pervez and Pervez's sister would be married to Mukhtiar. Mukhtiar refused to accept this decision by saying that he was innocent and all the accusations were a lie. Pervez was willing to marry Aqeela, but Mukhtiar married elsewhere and now has two children. So Aqeela could not get married to Pervez either, since the condition was that Mukhtiar should marry Pervez's sister in Badal first. Both girls are unmarried with no hope of ever tying the knot, awaiting an unknown fate.



### iii. Marawara or Naasta Swara

A girl is 'Naasta' (sitting/waiting) when she lives as a spinster at her parent's home after being given in marriage to the rival family. Not accepting a Swara or depriving her of the status of a wife is yet another facet of Swara marriages. It is often said that '*pa noom kay e naasta da*' (she has been booked in his name) or '*pa noom e wakht tairae*' (she is living a life as his commodity). It is similar to another custom called '*neewaka*'. Neewaka literally means to book or lay a claim on someone. In such a marriage or engagement there is no place for a girl's consent. It is a marriage by force. No one is than allowed to ask for her hand in marriage since she has been claimed by someone else, thus she becomes someone's 'honour'.

Riaz, a taxi driver, was in love with Nargis, a school teacher, and they both wanted to get married. Riaz went about asking for her hand in marriage in the traditional manner but was turned down by Nargis's family. The couple continued to see each other and one day the girl's father fired at Riaz and killed him. He was convicted by a court and sentenced to death. When the matter was referred to a local Jirga, they decided on compensation in the form of Rs 600,000 and two girls as Swara. Luckily, the victim's father turned down the offer of Swara. Nargis, however, is still unmarried because being associated with someone is seen as a blemish on one's honor. Such girl's are neither set free nor taken home as wives. Men marry according to their choice while the girl remains with no marital status in her parent's house. Her identity is determined by the men of her family. Divorcees, Naastay Swaray (Swara women that are left in their fathers' home to live a life as a single woman), *Meerata* (a woman who has no sons) are the hardest hit in the society. She needs to be associated with a male member in a socially acceptable bond or relationship to survive socially.



A folk song states this aptly:

*Wrore kho may shtaa, Bay rora na yam,*

*Ka nang may na kray*

*No khpal rore ba may saateena.*

Brother less I am not.

If you won't defend my honor then my brother will.

#### iv. Bakhalay Swara

In many cases where a Swara has been demanded, a little girl is brought to a crowded jirga where her fate is announced. Even though in majority of the cases she might eventually escape from being given as Swara but the little girl's presence in an arena that is otherwise culturally prohibited to her is demeaning. To see the enemy's daughter symbolizing honor in a jirga gives the aggrieved a sense of satisfaction. Moreover, when a girl is granted forgiveness and the option of accepting her as compensation is set aside, then too a little girl is left with a feeling of rejection. Emotionally, that can have a lasting impact on her mind. Gul Bibi's father was condemned of having illicit relations with a woman. The woman's family demanded 'Swara' as compensation for the loss of their honour.

When only 6, Gul Bibi's father took her by the hand and led her to a crowded jirga. She had no idea at the time about what had happened and after coming of age, she refused to accept her fate as 'Swara'. Later, she, with the support of her brothers, won a legal battle to free herself from the bondage of Swara.

#### v. Purchased Swara

In situations where a Swara that is demanded by the aggrieved family is not available, people resort to 'buying' girl's that are sold by their parents due to immense poverty. This option is usually taken by those who either don't have any girls to give as compensation or can afford to purchase one.

Gul Sanga eloped with Afsar but was soon recovered by the police and sent to a women's shelter. Her brothers wanted revenge and demanded Swara. Afsar belonged to a well off family, and could give any amount of money as compensation.

But the aggrieved party was adamant on accepting 'Swara' and nothing else. In this case the girl or Swara was actually 'bought' from Peshawar at a cost of Rs.55000. This unfortunate victim named Bibi Jana, was not only a minor but was also made to spend a night as a 'Swara' bride with Afsar's brother. At night she resisted and screamed hysterically when she realized what she had been pushed into. The following morning Afsar's father realizing he had been given a bad deal for the price he had paid, took Bibi Jana back to where she was bought from. She was rejected by the bereaved family and was sent back to her buyer, who went again to Peshawar to 'buy' another girl, older and more mature, to be given as Swara. Despite efforts by the local administration, the plight of the girl remained unresolved. No one knows where Bibi Jana is today. The second 'purchase' was aborted because the matter was reported in the newspaper. In a desperate move the culprit decided to send his own sister as Swara. The latest incident took place in May 2006, when the 'buyer' saw two female researchers who were exposing such cases and swore at them in public. The women retaliated by beating him up, much to his shock and amazement. As for Bibi Jana, no one knows what ordeal she is going through in the hands of those who are selling and buying girls as inanimate objects. (See Annex 5 c).

#### vi. Khaadi (normal wedded) Swara

With the recent acceleration in highlighting of Swara and Vanni cases through the media and declaring it as a punishable crime, Swara has been given another form. Although the two parties have the same motives while using a girl in the process of dispute resolution but they have started to avoid naming it 'Swara'. The name has changed but the implications are the same. The difference is that it is not practiced openly or announced in jirgas. Families tend to decide it within themselves and secretly take the girl with or without any wedding ceremony.

#### vii. Avenged Swara

Since the swara marriage is based on feelings of animosity, therefore the girl given in swara is mostly not treated well. It is

In March, 2006, Yasmin left her home to elope with Hamid. Yasmin's parents demanded Hameed's 15 year old sister Rashida for their 35 year old son Sanullah. As a child, Rashida was betrothed to Sanaula, but her parents had refused because of the age difference. After their daughter eloped with Hamid, the parents of the girl demanded the same girl Rashida for their son whom she did not want to marry. Rashida was made to go through the verbal solemnization of marriage in her parents' house and covered with a white chadar (veil), she was taken to her new home. The families' claim it is a marriage of 'khaadi' or based on happiness, but only Rashida knows the reality of the situation because she is to pay the price for the social farce.

inevitable that she will lead a life of torment and misery. Sometimes the aggrieved party takes away a minor girl in order to torture the enemy's family and she has to grow up in a hostile environment. There have been many instances where the girls have either been tortured, killed or emotionally traumatized.

### 3.9 Analysing Swara

This study at the outset attempted to seek evidence for three primary questions:

1. Does increased economic disparity lead to deterioration of cultural practices?
2. Does unaccountability of the offender leads to a rise in the number of offences?
3. Can this alternative dispute resolution measure [Swara] be a justified form of retribution?

This section presents an analysis of the various dynamics interplaying in Swara as an indigenous practice in order to respond to the above questions. The aim is not to present complete answers to any of these questions as that might be subject to the analysis of the research team, hence will lack support for generalisation however, through analysis of various dynamics, key trends and inclinations can be identified as major forces at play in practicing Swara.

The factors and modes of Swara are more than often based on highly subjective analyses. There are distinct dynamics that describe the degree of Swara as an effective practice for alternative dispute resolution. However this is not to undermine in any way the violation of women and girls human rights. Rather the aim here is to unfold the psyche prevailing behind this

In December 2005, 17 year old Rubina, belonging to Kas Koroona (Mardan) died in mysterious circumstances. Rubina had been given away as compensation for a crime committed by her father. She was given a separate place to live in, away from the rest of the family. Rubina's bed was in the animal shed, amongst animals that were not as cruel as her in-laws.

Tayaba, 20, was found dead in mysterious circumstances in Gumbat Banda (Mardan) a month after she was married off as swara for a murder committed by her uncle. The villagers believe that she was poisoned by her in laws who started torturing her from the day she arrived in their home.

Shahida, was given as compensation to her maternal cousin because her mother had eloped with someone. The swara was thus demanded by her mother's brother for his son. Her cousin/fiancé and his brothers later raped her in the corn fields. After disgracing her, her husband to be announced that he was not interested in marrying her and left her at the mercy of her brother.

practice which implicitly renders legitimacy.

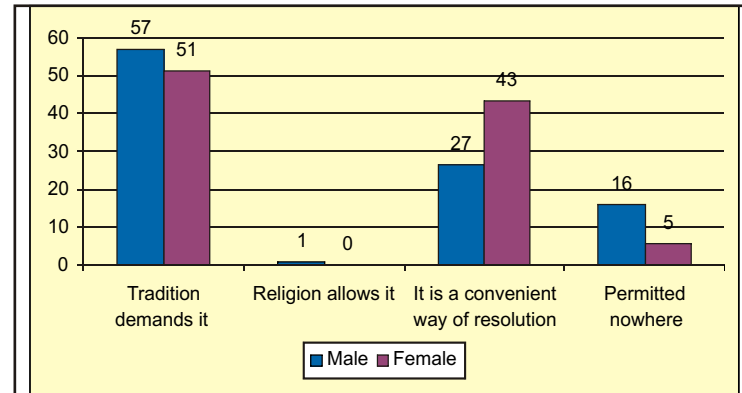
*When Aaliya (15)'s brother attempted to sodomize his cousin Hussain (18), the latter took revenge in the form of demanding Aaliya to be given to him as Swara. So, Aaliya was to marry Hussain because her brother attempted to abuse her present husband. There is no mention of the brother facing any consequences what so ever. In such situations, how can the victim forget the humiliation he went through? If he does not, on whom does he take out the anger and contempt? One does not need to think too much!*

The above case depicts a strong notion of sharam (honour) being degraded among men and setting the price of badl (revenge) as a woman. The clear aim here is to show who is higher in status the boy who was molested or the man who attempted it? The question gets even more complicated whose sharam is at stake here the brother or the husband.

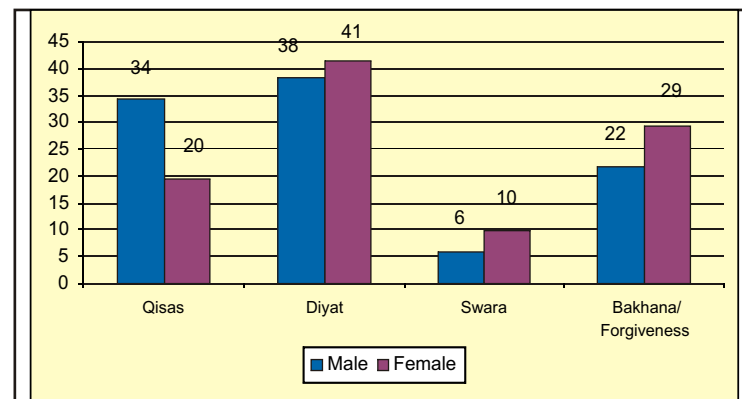
The survey revealed considerable distortion in the practice and normative values associated with Swara. While 57% of men and 51% women surveyed described giving away of a girl as Swara to be according to tradition, while 43% women associated this practice as a convenient way of resolving conflict to re-claim lost honour in Swabi (58% people surveyed in Mardan agreed with this). See graph 1 below. However, only 10%

men and 6% women responded in affirmation to Swara as the best option for conflict resolution (graph 2).

This contradiction only lends itself to show what is perceived



**Graph 1 A girl is handed over to a rival (enemy) because... (Swabi)**



**Graph 2 What is the best way of conflict resolution (Swabi)**

as a valid social norm the giving of Diyat as a means of settling conflicts is not necessarily what is prevalent as social practice giving of women/girls as Swara. The tendency for respondents to associate with the perception of what is good rather than what is generally the practice strongly depicts an invisible social pressure in play which continues to support the practice of Swara.

Another dynamic of Swara is the notion of not letting egocentric male purview down by letting female decision prevail as is the case in the following example of Swara decision.

For a woman, getting what she wants in this case marriage of her choice comes at the cost of other women in her chosen husband's clan. This case is in strong contrast to what the local decision making body jirga in this case holds close as its normative notion. 95% of the jirga members, when surveyed both in Swabi and Mardan responded to declare that women hold the choice in marriage see table 1 below. If this is the case, how come the same decision making institution regarded Swara as an amicable way of settling a conflict through Swara in the case of Naila above? Is it because there is implicit compliance to the demands coming from aggrieved families (Naila's cousin who she refused to marry)? Or is again a case of presenting strong association with normative values (Swara is 'bad') while choosing to ignore its prevalence.

*Naila (18) loved Afsar (19) but was engaged to her cousin whom she did not like. As a desperate measure the couple eloped, got married in court and settled in another village. Afsar's family finally convinced them to return home with the promise of no reprisals. The pair returned and was not harmed, but some one had to pay for the injured ego of the fiancé and the "tarnished honour" of Naila's family. Two of Afsar's sisters were given in Swara, one to the ditched fiancé and the other to Naila's brother.*

**Table 1 Should a girl's consent in marriage be given priority?**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	9	90	10	100	19	95
No	1	10			1	5
Total	10	100	10	100	20	100



Another important factor more commonly believed to be at play is the economic status of the aggressor. While the concepts of Qisas and Diyat provide support to settle disputes through economic bargain, Swara, however, at times disregards the monetary capacity of the aggressor over the premise of honour. An example is given here through the following case:

*Two families belonging to district Mardan, who had perfectly cordial relations with each other, developed an enmity over a trivial matter. Ashfaq a member of one of the families, tried to ambush his rival and instead got killed by them. The court ordered the execution of the culprit, but the matter was referred to the Jirga. They ordered compensation in the form of Rs.1,200,000 and one Swara who at the time of the Jirga's verdict was five years old. Although Afshaq's rival could pay this large sum of money, Ashfaq's family did not think it would be enough a price to pay for their lost son, hence they insisted on Swara. The girl was subsequently married to the younger brother of the victim.*

In the above scenario, the price of peace was considerably large (i.e. 2 million rupees). However, the bereaved family still demanded Swara from the aggressor. The only explanation here could be the fact that loss of a life is valued much greater than loss of honour, hence even the setting of a higher price may not suffice to reduce the grievance of the bereaved family. Whereas Swara can [might] avenge the family's grief by inflicting a constant reminder on the aggressor that a member of their family is in the custody of their rivals and more often than not is being ill-treated without any possibility of their intervention. The general reaction of the society in this case is that of acceptance rather than confrontation on the basis of human rights violation.

However, largely it is seen that Swara is an option taken only in cases where the accuser's party is either socially weak or financially not well off. Swara is rarely opted where both the rivals are strong. The low level of living standards is another factor where many are not in a position to give the 'diyat' money; therefore they see Swara as a convenient option. As a local from Mardan puts it, "Rarely do we see an influential man giving his daughter in 'Swara' for the crime committed by his son." On the other hand, 8 year old Bakht Meena's father was adamant on giving his daughter as Swara because he could not afford to pay the diyat money. He works as a labourer in Darra Adam Khel. For him paying an amount of 50'000 for his son's crime was beyond his means. Although he had committed to give his daughter as compensation, but the Mardan police took strong action against his decision and made him sign an agreement saying he will not resort to Swara. Therefore the fact that it is being practiced as a convenient option is evident from most of the case studies documented.

This is also evident from the responses received from elected representatives during the survey. 55% of the respondents agreed that Swara is largely accepted by the



society (see Table 2 below). Only 5% inferred Swara's acceptance in religion. It is also interesting to note that 40% of the respondents were of the opinion that Swara is not acceptable by any segment of society.

Another important aspect to consider here is that avenging the bereaved family's grief through Swara does not necessarily happen after Swara takes place. When asked specifically whether Swara can end the dispute, 90% of the media representatives responded in negation (see Table 3 below).

Contrary to the saying that a Swara marriage is a form of long lasting peace that binds two families together through a marriage alliance, rarely is it so. According to a tribal Malak (chief), *The dispute comes to an end but the hatred remains in the hearts and minds of the people. 'Dushmani lara shee, kho da zra na keena na zee' (Enmity ends but the hatred in the hearts remain)*. This hatred is then channelised towards the Swara girl. And she is taunted and humiliated in her new home.

**Table 2 Swara is accepted by...**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Religion	1	10			1	5
Society	3	30	8	80	11	55
None	6	60	2	20	8	40
Total	10	100	10	100	20	100

**Table 3 Swara ends hatred amongst the parties**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	1	10	0		1	5
No	9	90	9	90	18	90
Don't know	0		1	10	1	5
Total	10	100	10	100	20	100

When a trivial dispute erupted into violence, members of two families clashed with each other. One person was killed and this sowed the seeds of enmity. The dispute was resolved by a Jirga, which decided upon Rs 700,000 and three girls as Swara. Despite this decision, the victim's family took revenge. This led to the Jirga being held again, in which it was decided that the three girls were to be returned to their family, and instead a cash payment of Rs.10,000 was to be paid as compensation.

Here even three Swara's were not enough to put out the fire of revenge.

*Two brothers Nadir and Nasir exchanged hot words with Hamid Khan and the latter pulled out a gun and fired at Nadir, injuring him seriously. Both parties reported the matter to the police, as a result of which they were arrested but were later released on bail. The matter was then taken up by the local Jirga, where the father of the victim demanded Rs. 300,000, one shop and two girls as Swara. It needs to be pointed out that the two intended victims of Swara were dumb. The father of the accused pleaded with the Jirga to persuade the rival party to change their stance, since he was not able to come up with that amount of money, and the shop was his only source of income. Earlier, on the intervention of researchers the matter was negotiated when the parties agreed upon Rs 1,000,000 as compensation. Lately the father has backed out and consented on giving 'Swara'. According to him, he is not in a position to pay this amount of money, so he might as well part with his daughter!'*

one depending on demand and other factors] to the wife's family, again in an unceremonious marriage. This way both families save the presumable cost of marriage the reality, however, might not make this as easy [justifiable] as referred here.

On the other hand, as evident from the above example, lack of sufficient economic status at time pushes the Swara verdict to prevail, even without willingness of the parties involved. It therefore is a complex matter to affirm whether increased economic disparity affects the practice of Swara in a promotional manner.

Economic disparity actually contributes towards accepting Swara as a viable [although illegitimate] means of match making in some instances. This aspect can be analysed for its consequence for men and women both, as the factors at play affect the two in a distinct manner. For example, during the survey process, one young man from Mardan humoured by saying:

***My mother tells me, why doesn't a girl come [elopes] to our house with you? That way we won't have to worry for having to pay the cost of your marriage!***

Although seemingly a benign exchange of humour between a son and his mother the statement however holds significant meaning. Since marriages resulting out of Swara are not considered 'normal', meaning these are not celebrated in a ceremonious manner these could actually prove to be cost effective for particular social segments where collection of dowry and enough money for a marriage ceremony is a concern for both the bride and the groom's families. In instances, where men and women elope to get married, reconciliation often occurs by the reunion of the man with his chosen wife as well as giving a woman/girl [more than

Looking at the above dynamics from a woman's perspective, in most of the cases where a marriage results after a man and woman has eloped, upon return, reintegration into the clam of the woman who leaves her house to join the man's family is socially accepted. The reason for this seemingly easy acceptance of an otherwise 'culturally dishonourable' act is that the woman's family receives a Swara in compensation, whereas the man's family gets a bride without paying the huge amount of money that was otherwise to be spent on the marriage ceremony. Such cases in the not too distant past were commonly dealt with through honour killing [where both bride and groom would have been killed by bride's family] but now it seems there is some shift in the concept of 'honour', especially where economic disparity comes into play as a significant reason for low income families. A girl who would elope was given a name 'Mateeza' which was used as a derogatory term. Today, in the majority of cases, the girl who leaves her father's house is not only accepted by the host family as their 'honour' but in return they give their own daughter as swara to the girl's family.

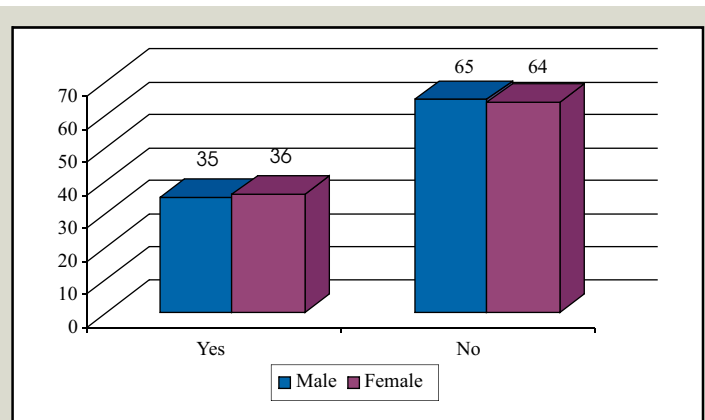
In addition, given that the Swara verdict usually associates itself with avenging honour and hence depriving the aggressor's family with social status [joy of celebrating a marriage in this case] also merits some discussion here. The respondents' affirmation of not celebrating a Swara marriage at par with normal marriages is also because [especially in honour crimes] the girl/woman given as Swara should be deprived of joy, as a means of taking revenge and her family should be aware of her psychological ordeal. Depriving the woman of the festivity of a marriage ceremony is hence another important dynamic that is perceived to have been inflicted upon the woman's family [the aggressor].

There is of course a flip side to the above analysis. The element of uncertainty of whether a party will opt for or against Swara is highly subjective in nature. As evident from the following case:

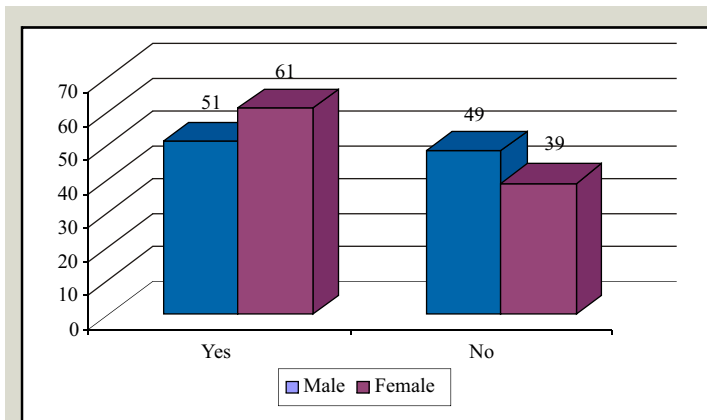
*The enmity between Ali Bahadur of Swabi and Shamus and Fida dates back twenty one years. A Jirga decided to end the feud by stating that two minor daughters of Ali are given to the two men as Swara. The girls, Naila and Zaiba, were one and two years old respectively at the time. The 'Nikah' or marriage took place. The girls were to join their husbands after reaching puberty. The two men in the mean time had married other women, and upon discovering this, Naila and Zaiba refused to join them as second wives. They refused to be used as pawns in this mess created by their father and went as far as petitioning a family court in Lahore to dissolve the marriage. According to the last report, the judge had ordered the husbands to appear in the next hearing.*

In this situation, clearly there are multiple forces at play, indifference of the Swara accepting family towards the girls who are to join their family; unwillingness of girls themselves to go as Swara; and the intervention by the judiciary. The outcome of this scenario could be anybody's guess, however one thing is for certain, the case is likely to proceed for a considerable duration in the court of law. This may not have dire consequences for the two husbands (who were to receive Swara brides) but will have significant social and psychological consequences for the two girls in question who are contesting the Swara decision.

Another important factor to consider in Swara is the issue of the girl's consent in marriage or her right to choose her husband. A total of 64% (65% men and 64% women) respondents from Mardan responded that a girl's consent in marriage is not given priority while 55% (51% men and 61% women) from Swabi upheld the notion that a girl's consent in marriage is given



**Graph 5 Is a girl's consent in marriage important? (Mardan)**



**Graph 6 Is a girl's consent in marriage important? (Swabi)**

This clear contrast from the two districts only lends itself to show the social disparity that exists even in close proximity within a society the two districts are not so different in many ways but are clearly depicting opposite trends on the same concern.

The above notion of a woman's consent to marriage also needs to be analysed in cases where Swara is declared for a marriage. Of course the case where a young girl is being given in Swara, the question of seeking her consent becomes irrelevant. In instances where at a marriageable age, the woman usually does choose to accept Swara, this more often than not is associated with saving her family's male members from potential threat of losing their lives at the hands of the bereaved family.

On the other hand though, if the woman wants to get out of a Swara marriage, her demand for dissolution of marriage through divorce raises several honour related questions for both her family of origin as well as the family she joined as Swara. The notion of honour or Pighore here prevails in perpetuating the practice of Swara, as the woman seeking divorce not only has to stand accountable to two families the aggressor [her original family] as well as the bereaved [the family she joins after becoming Swara]. And as if this is not the only premise for her to justify her demand for divorce, she also has to prepare herself for facing the larger society [her village, clan, social circle] which looks down upon divorce and places a social stigma on her status as a divorcee. It therefore is evident that once entering the bondage of Swara this woman has very little choice available to her, unless she has the courage to live with a social and moral burden [divorce] for the rest of her life.

Looking at the responses received from civil society during the survey, it is evident that there is a large portion of society that denounces the demand for seeking divorce 91% in Mardan and 95% in Swabi. These percentages are almost equally high for male and female respondents alike (see Tables 4 and 5 below).

**Table 4 Asking for divorce is.... (Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Dishonour for family and society	201	91	210	92	411	91
Against Islamic Laws	21	9	18	8	39	9
Total	222	100	228	100	450	100

**Table 5 Asking for divorce is.... (Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Dishonour for family and society	263	92	163	99	426	95
Against Islamic Laws	23	8	1	1	24	5
Total	286	100	164	100	450	100

However, Ulema when asked the question whether a woman given as Swara should accept her fate or should take action, seemed relatively divided (see Table 6 below). This division of opinion can again be attributed to the placing of greater emphasis on normative values compared to prevalent social practice of discouraging divorce sought by women.

**Table 6 If a woman/girl is forced into Swara marriage, she should...**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Take refuge in Darulaman	0		9	90	9	45
Accept the decision	10	100	1	10	11	55
Total	10	100	10	100	20	100

In concluding the discussion on the dynamics of Swara, this study places significant importance on recognising the economic and social context as the backdrop of Swara decisions. The context differs immensely due to economic status, lack of accountability of Swara practitioners and the widespread notion of social acceptance of Swara as an alternative dispute measure.

### 3.10 Key Findings of the Study

The key findings in this section are categorised into the following three themes:

1. Women's status in Pukhtun society
2. Conflict resolution
3. Primary reason for performing Swara

#### *Women's (Girls') Status in Pukhtun Society*

During the survey, several questions were included to analyze common perceptions on the status of women/girls in the Pukhtun society characterising the NWFP cultural norms and values. Several questions were included in the survey with civil society to gauge common perceptions. In addition, guided questions were included in surveys with Jirga members, Ulema, Police officials, media representatives and elected representatives.

The findings from these questions suggest a strong affiliation with normative values of gender equality, clearly in contrast to observation of cultural practice of Swara. For instance, when asked whether boys receive greater preference over girls, the response from civil society remained in negation for both districts to a large extent. However there was a slight difference in responses received from police officials and Tables 7, 8 and 9 show the number and percentage of response for the two districts.

**Table 7 Boys are given more preference over girls at birth (Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	97	44	88	39	185	41
No	125	56	140	61	265	59
Total	222	100	228	100	450	100

**Table 8 Boys are given more preference over girls at birth (Civil Society Swabi)**

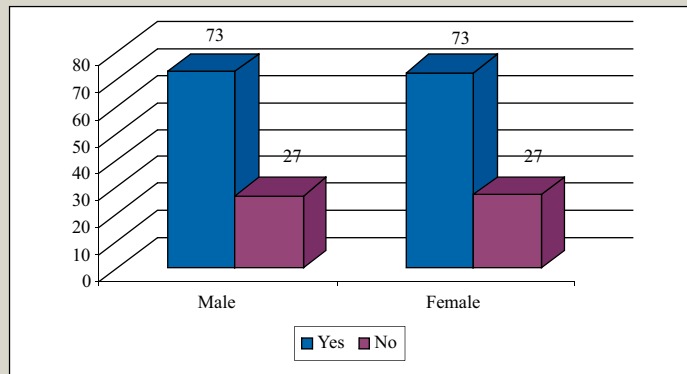
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	129	45	98	60	227	50
No	157	55	66	40	223	50
Total	286	100	164	100	450	100

**Table 9 Boys are given more preference over a girls at birth (Police officials both districts)**

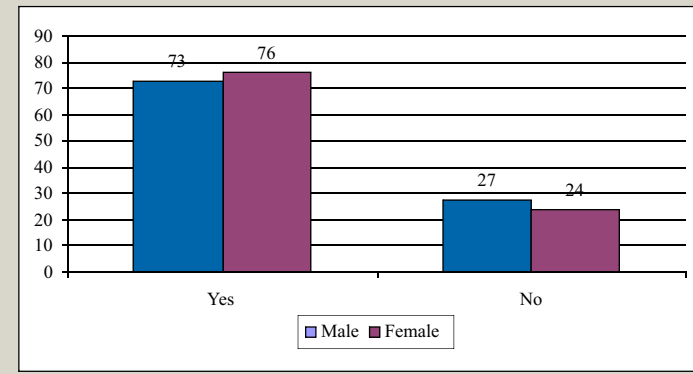
	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	4	40	6	60	10	50
No	5	50	3	30	8	40
Sometimes	1	10	1	10	2	10
Total	10	100	10	100	20	100



Similarly, on the question of whether girls are educated or not since it is important to provide education to girls, all groups of respondents from both districts answered in affirmation (see Graphs 8 and 9 and Tables 10 to 13 below).



**Graph 8 Do girls receive education in your family?  
(Civil Society Mardan)**



**Graph 9 Do girls receive education in your family?  
(Civil Society Swabi)**

**Table 10 Should girls be provided education?  
(Jirga members both districts)**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	10	100	10	100	20	100
No						
Total	10	100	10	100	20	100

**Table 11 Should girls be provided education?  
(Ulema both districts)**

	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	10	100	8	80	18	90
No			2	20	2	10
Total	10	100	10	100	20	100

**Table 12 Should girls be provided education?  
(Police officials both districts)**

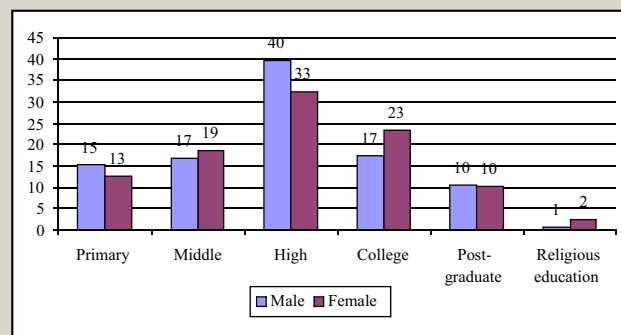
	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	7	70	10	100	17	85
No	3	30			3	15
Total	10	100	10	100	20	100

**Table 13 Should girls be provided education?  
(Media representatives both districts)**

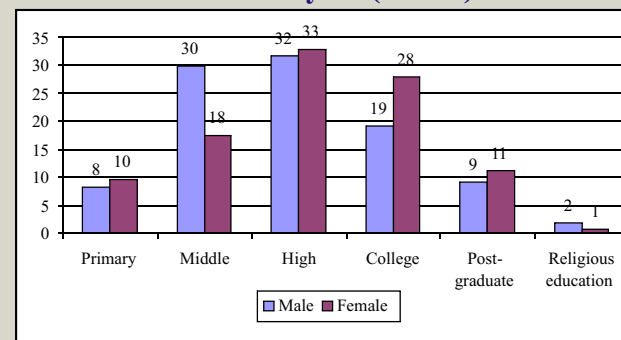
	Mardan		Swabi		Total	
	No.	%	No.	%	No.	%
Yes	10	100	10	100	20	100
No						
Total	10	100	10	100	20	100

The appropriate level of education for girls is regarded as being till high school. Graphs 10 and 11 provide the percentage of responses received from the civil society group of respondents for various levels of education for girls. It is interesting to note that very few respondents only 2% from both Mardan Swabi placed significant value on religious education for girls compared to formal schooling.

**Graph 10 Level of education provided to girls  
the family.... (Mardan)**



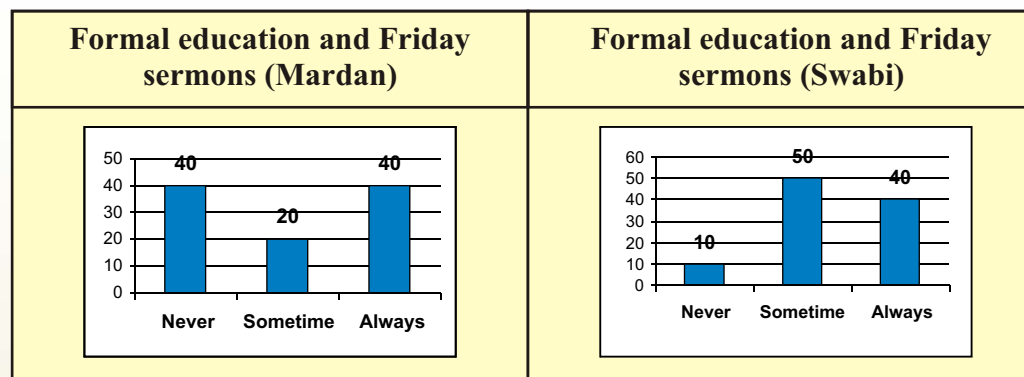
**Graph 11 Level of education provided to girls  
the family.... (Swabi)**



From the above overwhelming response from all groups of respondents it is evident that girls' education is given significance. Given the social status of Ulema in Pukhtun society, this group of respondents was primarily seen as most influential in promoting and/or prohibiting various things in daily lives of their society including providing education to a

girl child. However, when asked directly how often the stress on girls' education is brought out in Friday sermons the response did not look as encouraging as was envisaged (see Graph 12 below).

**Graph 12 If girls should be provided education, how often do you speak about it in the Friday Sermon? (Ulema both districts)**



A smaller percentage of civil society respondents average of 27% from Mardan and 26% from Swabi who responded in the negative considered gave “girls' education being against tradition” as the reason for not receiving/providing education to girls in their family (see Tables 9 and 10).

**Table 14 Girls are not educated in our family because... (Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Only religious education is encouraged	6	10	1	2	7	6
It is against the tradition	32	53	44	71	76	62
No girls at home	4	7	2	3	6	5
Can't afford	12	20	4	6	16	13
Education facilities are/were not available in the area	6	10	6	10	12	10
No Permission			5	8	5	4
Total	60	100	62	100	122	100

**Table 15 Girls are not educated in our family because... (Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
They are allowed to get religious education only			2	5	2	2
Against tradition	63	81	31	79	94	80
No girls at home						
Can't afford	4	5	3	8	7	6
Education facilities are/were not available in the area	11	14	1	3	12	10
No Permission			2	5	2	2
Total	78	100	39	100	117	100

Similarly, on the question of whether women receive their due share of inheritance the civil society respondents affirmed. Table 16 and 17 present the data collected through the survey.

**Table 16 Do women in your area get their share in inheritance? (Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	139	63	148	65	287	64
No	70	32	59	26	129	29
They themselves gift it to their brother	13	6	21	9	34	8
Total	222	100	228	100	450	100

**Table 17 Do women in your area get their share in inheritance?  
(Civil Society Swabi)**

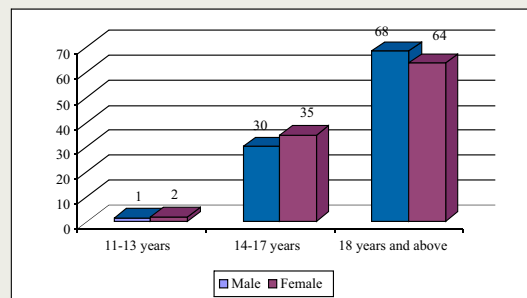
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	189	66	77	47	266	59
No	75	26	58	35	133	30
They themselves gift it to their brother	22	8	29	18	51	11
Total	286	100	164	100	450	100

Although a relatively small percentage of respondents (8% from Mardan and 11% from Swabi) suggested that women willingly give up their right of inheritance in favour of their brothers, this aspect merits further investigation to assess the level of willingness on the part of the women. This, however, is beyond the scope of the present study.

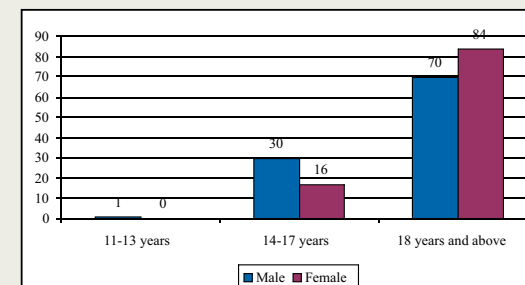
Another important aspect one directly linked to the practice of Swara that was assessed through the survey is the girl/woman's right to choose her marriage partner. This aspect was again included in the survey questionnaires to gauge the general perceptions of Pukhtun society for providing this right to women/girls.

The appropriate marriageable age for girls is considered above 18 years by the majority of civil society respondents (Graphs 13 and 14).

**Graph 13 Appropriate marriageable age for girls**



**Graph 14 Appropriate marriageable age for girls**



On the question of a girl's consent to marriage, however, some interesting observations are made in collating the responses received from various groups of respondents. For instance, there were marked differences between the civil society respondents group from Mardan and Swabi. While 55% of respondents (both men and women) from Swabi affirmed that a girl's consent to marriage is given priority, only 36% from Mardan agreed to this notion. Tables 16 and 17 present the data collected.

**Table 16 Is girl's consent in marriage given priority?  
(Civil society Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	147	51	100	61	247	55
No	139	49	64	39	203	45
Total	286	100	164	100	450	100

**Table 17 Is girl's consent in marriage given priority?  
(Civil society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	78	35	82	36	160	36
No	144	65	146	64	290	64
Total	222	100	228	100	450	100

Similarly, other groups of respondents 95% of jirga members; 85% of police officials; and 90% of media representatives responded in affirmation to giving priority to a girls' consent in marriage. The respondents from these groups who answered in negation placed being 'against tradition' as the primary reason why a girl's consent is not given priority.

On the other hand, while responding to whether women have the right to seek divorce, the emphasis on seeking divorce being against tradition stood out as a strong counter argument as to why women should not practice this right given to them by religion. The following Tables 18 and 19 present the responses received on the question of whether woman should seek divorce if unhappy in marriage.

**Table 18 If a girl/woman is discontent with her marriage,  
should she ask for divorce? (Civil Society Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	191	67	114	70	305	68
No	95	33	50	30	145	32
Total	286	100	164	100	450	100

**Table 19 If a girl/women is discontent with her marriage,  
should she ask for divorce? (Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	142	64	124	54	266	59
No	80	36	104	46	184	41
Total	222	100	228	100	450	100

The clear divide on accepting the fact that women have the right to seek divorce but the social perception that she should not practice it, merits some additional analysis here. The general perception associated with women asking for divorce is that it brings dishonour for the family and larger society (see Tables 20 and 21 below).

**Table 20 Asking for divorce is.... (Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Dishonour for family and society	201	91	210	92	411	91
Against Islamic Laws	21	9	18	8	39	9
Total	222	100	228	100	450	100

**Table 21 Asking for divorce is.... (Civil Society Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Dishonour for family and society	263	92	163	99	426	95
Against Islamic Laws	23	8	1	1	24	5
Total	286	100	164	100	450	100

The emphasis therefore placed on the family's honour and the moral implications for the society is therefore taking preference over practicing a religiously provided right to women. It is this notion of honour which is further upheld by the society even as it comes at the cost of not following Islamic premise. This, of course, severely impedes women's social status, hence describing the contrast between what their status should be and what it actually is.

### ***Conflict Resolution***

The second set of questions in the survey was aimed at gauging the implications of conflict resolution processes in the Pukhtun society. Various questions related to conflict resolution mechanisms and institutions that facilitate resolution were



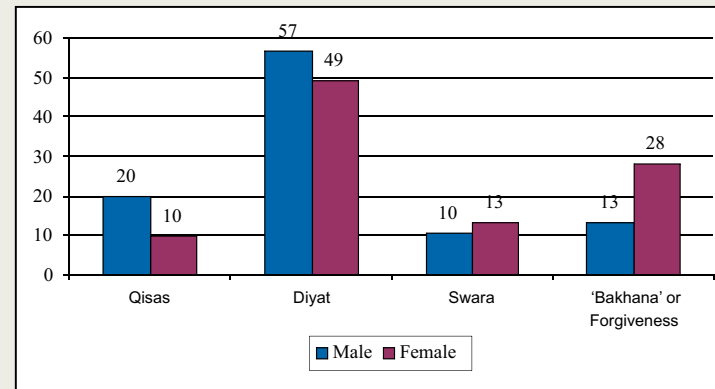
asked from all groups of respondents. The questions focused on acquiring perceptions on conflict resolving institutions and acceptance of Swara as a conflict resolution mechanism.

Swara is not perceived as the best way of mediating a conflict (see Graphs 15 and 16) by the civil society.

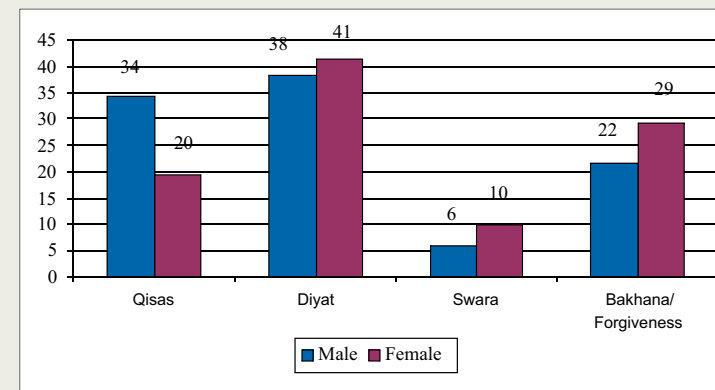
Similarly, other groups of respondents Ulema, jirga members, elected representatives, police and media, also responded by a majority that Diyat is the most suitable mode of resolving conflicts. However, there was a stark contradiction to this normative association of approving Diyat as the most suitable conflict resolution mechanism. In response to why then a woman or girl is handed over to the aggressor family, most respondents from civil society placed tradition and convenience as the major reasons. Table 22 and 23 below present the responses received from the civil society members on the above question.

The group of respondents most certain about Swara as not a religiously valid or justified way to resolve a conflict was that of Ulema. 100% of respondents from this group affirmed that girls/women can not be given as badl-e-sulh [compensation] and that Islam permits girls/women to refuse becoming Swara. In addition, 95% of the Ulema in both Mardan and Swabi also said that the nikah of a girl/woman given as compensation can be considered nikah-bil-jabr [forced marriage].

**Graph 15 What is the Best Means to Resolve Conflicts? (Civil Society Mardan)**



**Graph 16 What is the Best Means to Resolve Conflicts? (Civil Society Swabi)**



Given the influence of religious leaders in Pukhtun society, the Ulema were also asked whether they addressed Swara in the Friday sermons. The response, however, shows a marked discrepancy in what is perceived as unIslamic [Swara] but not necessarily addressed as an important social practice. Graph 17 below show the responses received from Ulema.

**Table 22 A woman/girl is handed over to a rival (enemy) family because...  
(Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Tradition demands it	78	35	71	31	149	33
Religion allows it	9	4	4	2	13	3
It is a convenient way of resolution	125	56	138	61	263	58
It is not permitted	10	5	15	7	25	6
Total	222	100	228	100	450	100

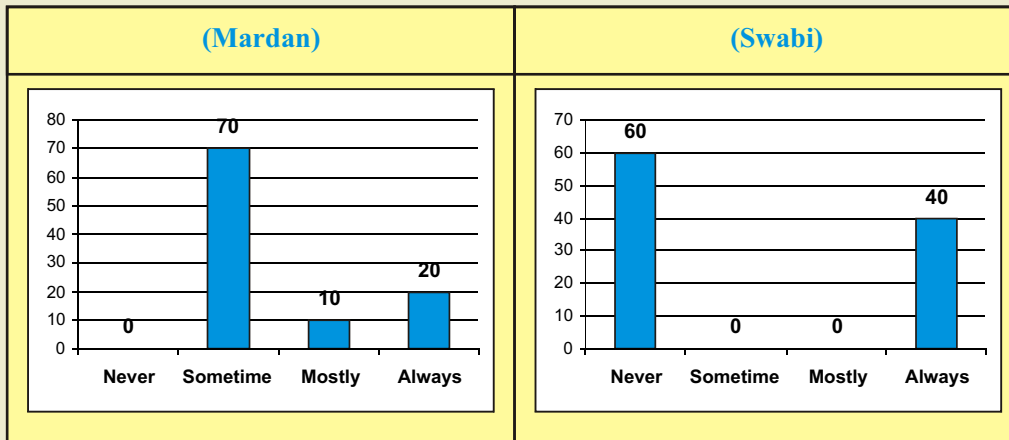
**Table 23 A woman/girl is handed over to a rival (enemy) family because...  
(Civil Society Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Tradition demands it	162	57	84	51	246	55
Religion allows it	2	1			2	0
It is a convenient way of resolution	76	27	71	43	147	33
It is not permitted	46	16	9	5	55	12
Total	286	100	164	100	450	100

In Daagai, Buner area, a two month old 'Swara', Sadaf Bibi, was saved due to the efforts of local administration. Sardara Bibi, who was married to Sherzaman, was raped at gun point by Mohammad Salim Khan on 10<sup>th</sup> March 2006. Her husband, Shernawaz, who is serving in the army and is known by the name 'foji' divorced her upon knowing that his wife was a victim of 'zina bil jabr'. Sardara Bibi was sent to her parent's home, as her husband needed to preserve his honor. Since, his wife had lost her honour, she had no place left in her husband's house. Salim (the rapist) quite conveniently left for the Middle East, knowing very well that

Sardaraan would never protest against the injustice. Even if she did, she would have to pay for the consequence. Later, Sardaraan's husband Shernawaz and his brothers Said Khan and Wali-ullah demanded compensation for the loss of their family 'honour'. The jirga, which was attended by the notables of the area decreed that since the accused did not have a daughter therefore his two month old niece, Bibi Sadaf was to go as compensation for her uncle's despicable crime. One of the religious scholar's of the area Maulvi Umar Said Shah conducted the nikah on Bibi Sadaf (2 months old) with Zohaib (1 year old). The jirga also decided that since the crime was grave therefore Sardara's husband will receive an amount of Rs 800'000 as well. While Sardara's husband received a handsome amount of money, his brother Waliullah received a two month's old bride for free for his one year old son Zoheb. The main victim got nothing but pain, abandonment and social stigma in return. A few days later, on 14<sup>th</sup> May 2006, Shernawaz feeling pangs of guilt, once again showed an interest in bringing back his wife whom he had thrown out of the house. He said, that for him she was still "paakaa" (clean/pure). This infuriated one of the brother's, who reported the incident to the police. Buner Police, headed by Wakif Khan DPO (District Police Officer) Buner, after detailed investigations, arrested Maulvi Umar Said, Waliullah (father-in-law to be of swara), Salim (the accused/rapist's) brother and Salim's father.

**Graph 17 How often do you mention in Friday Sermon that Swara is Nikah-bil-Jabr?**



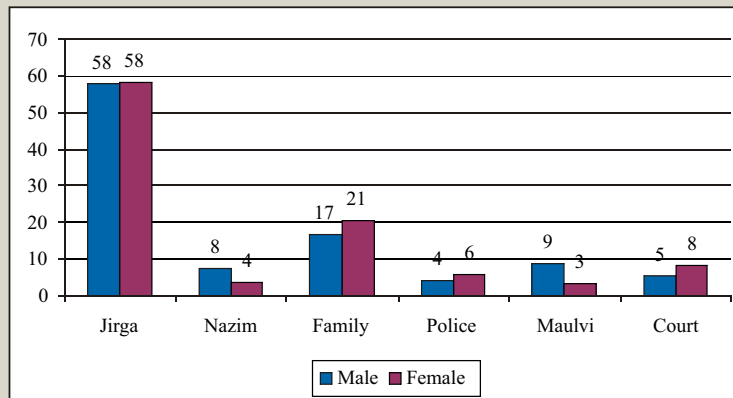
In 95% of jirgas the presence of a religious scholar was recorded.  
The opinion or decisions of these members is overshadowed by culture rather than Sharia law.

### Importance of Traditional Institutions

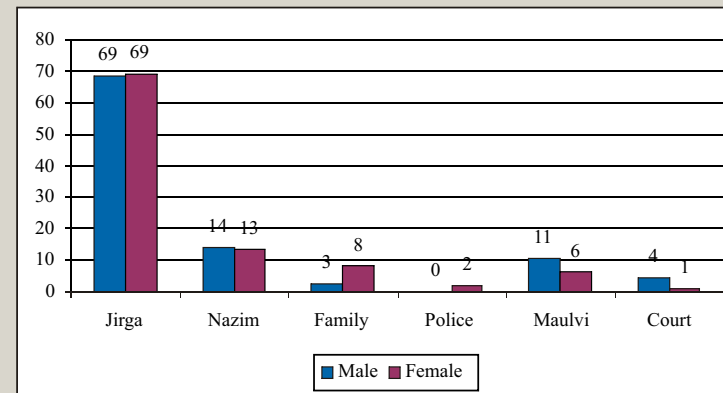
The significance of the jirga as a traditional institution endowed with the responsibility to resolve disputes in the community setting is enormous for Pukhtun society. This is also evident from the survey of civil society whose majority expressed their confidence in the institution of jirga. The following Graphs 18 and 19 depict this scenario.

This unprecedented level of confidence in the jirga as a viable means of conflict resolution must be seen in view of less than optimal effectiveness of the judicial processes. Following judicial processes, from filing the FIR to representation in a court of law through lawyers and lengthy hearing procedures undermines the community's

**Graph 19 In case of conflict, who is called upon for resolution (Civil Society Swabi)**



**Graph 18 In case of conflict, who is called upon for resolution (Civil Society Mardan)**



confidence in judiciary. This, in effect, leads to increased reliance on institutions such as jirga which naturally wins them power and supremacy over the judiciary and hence runs the risk of being hijacked by influential elements of the community to arrive at decisions that favour their interests.

### 3.11 Primary Reason for Performing Swara

This section begins by presenting the foremost finding of the study, which is the primary reason for performing Swara.

#### Murder

Jirgas are approached where a murder, intentional or unintentional takes place. In such cases it is considered vital to resolve the dispute by swara. Otherwise, it is thought that the killings will go on for generations. Such blood feuds span decades and involve many murders or revenge killings.

#### Honour

Besides murder cases, 'sharam' or honour related crimes demanded swara in a large number. In cases where the girl and boy had eloped or for other alleged infringements of honour the jirga decreed swara.

*Twenty years after murdering his uncle and two cousins, Malik Sultan was summoned by the Jirga. The victim's family wanted justice and compensation in the form of one million rupees, a couple of guns (klashinkovs) and two girls as swara. At the time of the incident the girls were too young, so now they were married off to members of the victim's family to pay the price for a murder that took place twenty years ago. They were part of the 'peace package' which would end the family feud.*

*In a village near Mardan, a young man eloped with his cousin. His aunt, who was also the girl's mother, demanded swara as compensation for the dishonour brought upon her family by her nephew. The local jirga also gave the same verdict and boy's father Saleem Khan finally agreed to give two of his daughters as swaras. After spending two months with their inlaws, the girls returned to their parent's home and refused to go back. When the matter was referred to a jirga they upheld their previous order and ordered the girls to return back.*

#### Petty Dispute

Since the person who commits a crime is not punished therefore the deterrence from committing a crime does not exist where swara is practiced. Due to this, many serious crimes are committed over petty disputes.

*One such enmity between two families began when a game of cricket turned nasty due to an accusation of foul play which led to frayed tempers and finally the shooting and killing of two brothers. The local elders and scholars took up the issue of trying to resolve the matter and a jirga was appointed to review this issue. The demands of the victim's family included them handing over all their property, including land, their house, Rs 20,00,000 in cash and a girl as swara. The jirga accepted the first three demands but tried to persuade the party to relinquish their demand for a swara. But their efforts were in vain and Shaheen was handed over to Sohail in marriage. She was abused and mistreated by both her husband and her inlaws. Six months after the marriage Sohail was killed and she was sent back to her parent's home. She is now destined to spend the rest of her life in 'khantoon' which is a pushtu word meaning living a life of celibacy.*

### **Sodomy**

*In December 2005, at a village called Sikandary Koroona, near Mardan a boy named Faisal sodomized the young son of Shah Zaman. The victim's family tried to avenge the act through a jirga and the father demanded Rs 500,000 and a swara as compensation. The jirga decided that 14 years old Riffat Bibi would be handed over as swara to a 35 year old man Fayaz. The latter abused and humiliated her and finally divorced her after six months. Riffat's father fought for his daughter's rights in court and finally it was decided that Riffat would receive Rs 1000 per month as maintenance and would be free to remarry.*

### **Physical Molestation**

*In February 2006, Gul Zarin molested and abused a young girl Fareeda. As a solution to the crime committed by Gul Zahid, the local jirga decided that his 15 year old sister Saeeda would pay the price and would be given in swara to a 30 year old man. Despite strong resistance to the decision, Saeeda's father was helpless and had to give in eventually. Upon hearing about the jirga's decision, Saeeda attempted suicide by swallowing some pesticide. Luckily, she was taken to the hospital on time and was saved.*

### **Financial/ Property Dispute**

*Imran Khan had borrowed money from Nasir, and when the date for returning the money had passed, Nasir went in search of Imran. Instead of negotiating with Nasir, Imran opened fire and a bullet injured Nasir in the spinal cord, as a result of which he was permanently paralyzed. The jirga decided upon rupees 100,000 in cash and swara as compensation.*

Nasir's family accepted the money but rejected the swara offer.

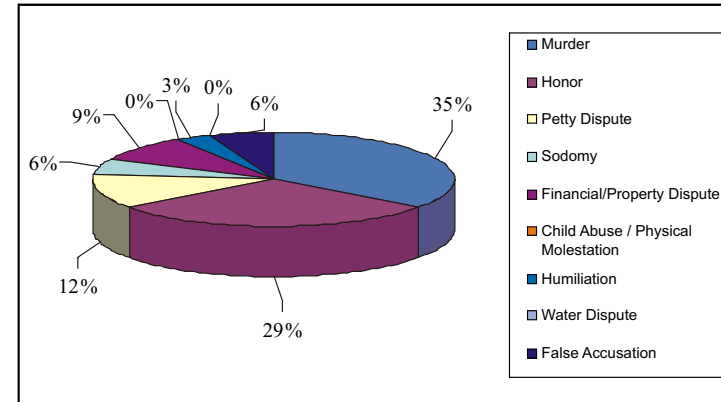
### False Accusation

Hina's brother Rashid was being brought up by his maternal grandfather. The latter had no male successor and so Rashid was sent to him at an early age to compensate for this void in his life. Other relatives and members of the family were jealous of Rashid and did not want him to inherit his grandfather's property. In order to get him out of the way they spread the rumour that there was an illicit affair going on between Rashid and a girl named Tareen. This resulted in a rift between the two families and the girl's father threatened to kill the couple. The local people called upon a jirga to resolve the matter, and their solution was a swara. The obvious victim of course was Hina, Rashid's sister. Hina was very young and was studying in eighth grade.

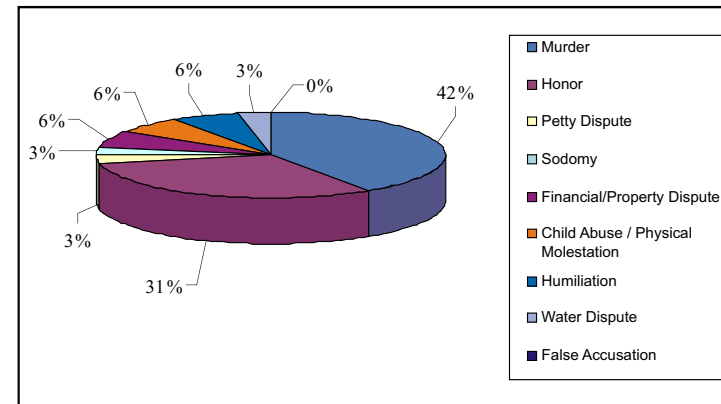
### Water Dispute

In Mardan, a murder took place over the division of water. The members of a jirga decided to resolve the issue with the help of 500,000 rupees and a twelve year old girl as swara. However, in a subsequent jirga, the members requested the aggrieved party to take back their demand for a girl as swara. Instead, they asked him to resolve the dispute by accepting land and money as diyat. In the final jirga, which took place on the 13<sup>th</sup> of February 2006, it was decided that the dispute would be resolved only through diyat.

Graph 20 Swara is given mostly in cases of... (Swabi)



Graph 21 Swara is given mostly in cases of... (Mardan)





Through this survey, the study establishes that murder and honour are the two primary reasons for seeking or giving a Swara verdict. The following graphs depict this finding clearly for both the districts. During the research around 63 cases of swara (both prospective and retrospective) were identified in District Mardan and District Swabi. Among these, 40 took place between December 2005 to June 30<sup>th</sup> 2006.

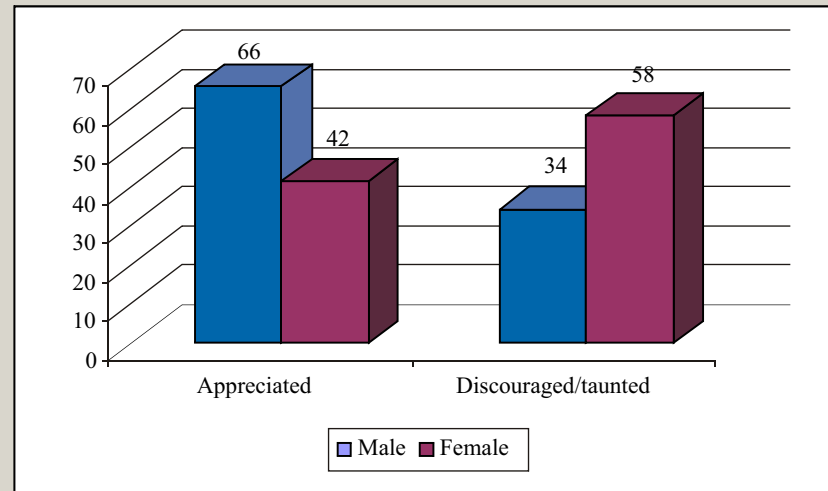
It is interesting to note here that the notion of Pighore [honour] and reclaiming lost honour stands out as the primary dynamic playing as the backdrop of Swara decisions whether in case of murder or an eloped couple or even minor disputes it is the social pressure of showing a strong effort to reclaim this honour that often leads to demands of Swara.

When asked whether a bereaved family's act of forgiveness is seen as benevolence or not, a very mixed response was received both from Mardan and Swabi (see Tables 24 and 25 with corresponding Graphs 22 and 23).

**Table 24 If a victim forgives an accused without taking revenge or penalty, this act is...  
(Civil Society Mardan)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Appreciated by the society	146	66	95	42	241	54
Discouraged/taunted	76	34	133	58	209	46
Total	222	100	228	100	450	100

**Graph 22 The act of forgiveness (Mardan)**



### 3.12 The Winners and Losers

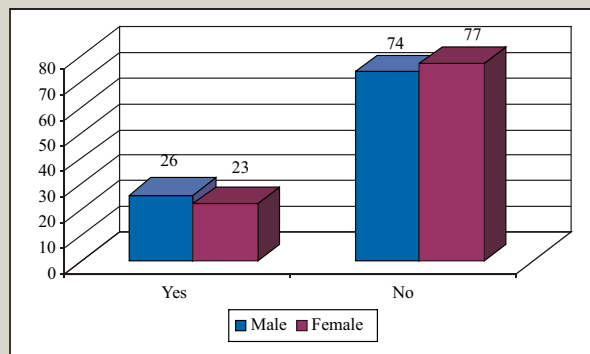
The primary losers in all Swara cases appear to be the women and girls demanded and given as Swara. However, a closer look reveals that there are no real winners in this practice. While the psychological, emotional and often physical trauma faced by Swara victims and survivors goes unmatched in its intensity of endurance compared to any other group of people, the family of the aggressors [giving their women/girls as Swara] suffers emotional and psychological trauma if not to the same extent but a considerable extent compared to that of the women/girls given as Swara. Although the real perpetrator after committing an offence eventually gets away with his head held high, someone else pays the actual price.

In analysing the economic aspect of Swara alone, the fact that it occurs as an unceremonious event makes this practice cost effective. When surveyed, 75% of respondents from Swabi and 66% from Mardan answered in the affirmative that Swara marriages are not celebrated in the same way as 'normal' marriages are (see Graphs 3 and 4 below).

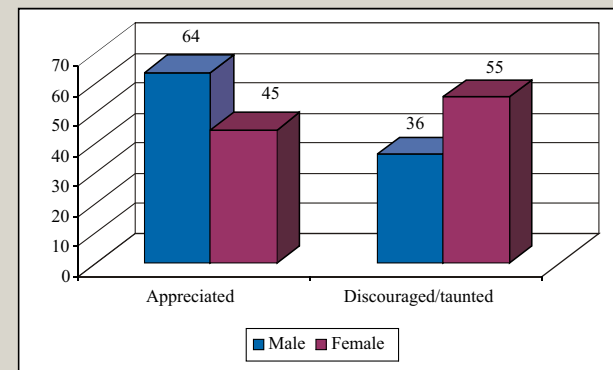
**Table 25 If a victim forgives an accused without taking revenge or penalty, this act is...  
(Civil Society Swabi)**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Appreciated	182	64	73	45	255	57
Discouraged/taunted	104	36	91	55	195	43
Total	286	100	164	100	450	100

**Graph 3 Is Swara marriage held in the same manner as non-Swara marriage? (Swabi)**



**Graph 23 The act of forgiveness (Swabi)**



According to a Pushtu proverb, '**Khaadi pa khandaa kha khkaari, maray pa jaraa**' (A wedding ceremony is complete when there is happiness and laughter and a death ceremony with tears). A Swara girl is mostly given in marriage in an unceremonious way. The giving away of a Swara girl is more of a sombre event followed by tears of sorrow. She is also deprived of her right to 'Mehr' (the sum of money or other property, which the wife is entitled to receive from the husband in consideration of the marriage. Some of the commonly given 'pighore's (scorn/taunt) to Swara women that were recorded during the research were,

***ka ta khaza way ta ba pa roweejo raaghalay way***

Had you been a respectable woman, rice would have been cooked on your wedding

***ka ta khaza way ta ba pa tang takor raaghalay way***

Had you been a woman of honour people would have rendered songs on your wedding

***'Laas niwalay moong rawastay ai'***

You were held by the hand and brought as Swara

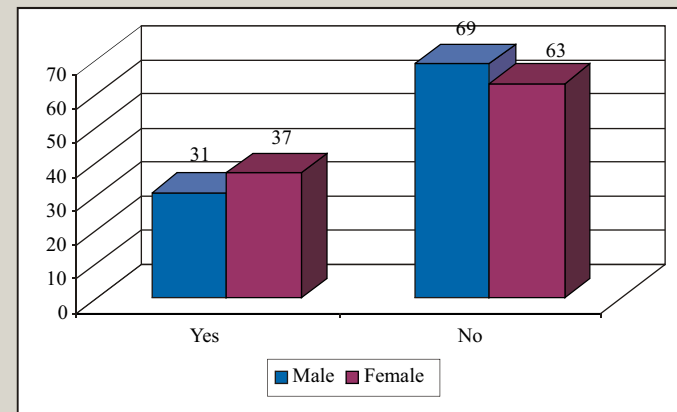
The children of a 'Swara' woman are also taunted,

***Sta mor pa doli kay na da raaghalay***

Your mother did not get the honour of being carried to the husband's home in a palanquin

Many women given as Swara are not allowed to visit their parent's home. Since silence is the operative term, many rural women who find themselves in such helpless situations, manifest their anguish in mental and physical disorders. Possession by 'Jinns'(spirits), for example, is a common phenomenon among such women, and is probably the only avenue for a distressed woman to give vent to her sentiments within the strict confines of a Pukhtun society.

**Graph 3 Is Swara marriage held in the same manner as non-Swara marriage? (Mardan)**



## ناوي

وخپل دښمن ته دى د مړى په بدل كښي وركړم  
ځان دى محفوظه كړ ، د توري له گذاره با با

په نوى كور كښي چي اوس زه يم مخامخ ورسره  
په هغه حال باندې هم ځان كړه خبرداره با با

زما د خوابني چي زما په مخ نظر ولگي  
په دى اينداره كښي ستا لاس او ستا خنجر وويني

تا چي د دى څښتن وژلى وو په كومه توگه  
د زړه په سترگ ويوځل بيا هغه منظر وويني

بهاندې ويني گڼ زخمونه ئي وخيال ته راشي  
د خپل خاوند له تنه بيل د هغه سروويني

بل ځاى په ناوى باندې شى خلك سره گلونه  
دلته چا نوم هم زما نه دى په روغ نيت اخستى

د خراسان تر واوړه سینه ځله لرم خو بيا هم  
زما د ژوند ملگري نه دى تری لذت اخستی

څه ترڅي ورځي وي چي و د مړي پور درپسي  
څه بد وختونه وو چي خون دى وو په غاړه با با

تا چي له وينو سره تور لحد ته ولير له  
هغه څهره به دى وه سترگوته ولاړه با با

په ژوند كې دومره بدگمانه وي چي خپل لاسونه  
درته ملگري د دښمن بنكاريډل دواړه با با

په مخ د محكمېرلي دى چيرته هم قرار نه كيدئ  
وو په غضب تبغ د انتقام درپسي  
په توره شپه كښي به دى چيغه تر ځله وختله  
وو به په خوب كښي هم په وينو سور انجام درپسي

هيله دى نه وه چي به ورځنى خلاص په منډه  
له سرو رځمونو سره مرگ و په غټگام درپسي

د نجات هره يوه لار چي داسي بنده شوله  
نو بيا دي زه و قرباني ته كړم تياره با با

ته شوي آزاد ورځنی، ته ئې په امان ورځنی  
اوسر د غمونو په دوزخ کښې زه محصوره یمه

چې نېغ پخ نېغه ئې گذارلگي په زړونو باندې  
پرهر پرهر تن د نفرت په داسې توره یمه

چې ستا په غشي زخمي شوی دی له قهره ډک دی  
له هغه ماره سره ژوند کوم ، مجبوره یمه

۲۷ فروری ۱۹۸۹ء

دائي په خيال کښې دي چې ده د خپل با با د وینې  
زما د شونډو په صورت کښې دی قیمت اخستی

له روغی پس ئې هم په زړه کښې دا ارمان ژوندی دی  
چې مخامخ کړي له چرې سره ستا غاړه با با

خو ډېښتو په رواج زه شوم یوه داسې رڼی  
چې په تړلی دي دده لاسونه دواړه با با



## The Bride

Pushto poem by Darwesh Durrani  
Translated by Dr. Sher Zaman Taizi

How sour the time was when debt of death haunted you!  
Father! What a bad time it was that you had to shed the blood.  
The blood-strained face that you had sent to grave, haunted your vision, father!  
Father! You were so much suspicious of your life  
That you felt your both hands as accomplices of the enemy  
You could not rest on the surface of the earth.  
The dreadful dagger of revenge haunted you;  
In the dark night, you screamed.  
Even in dream you were haunted by the bloody end.  
You had no hope for salvation by flight.  
With red wounds, the heavy step of death chased you,  
When every way to salvation was closed,  
Then I was prepared for sacrifice, father!  
You delivered me to your enemy in compensation of the dead,  
Father! You saved your skin from the sword!  
In the new home what I face  
Should be known to you, father!  
When my mother-in-law looks at me,  
She sees in that mirror your hand and your dagger.

The way that you had killed her husband;  
She perceives that scene in mind.  
Dripping blood and numerous wounds haunt her vision.  
She sees the head of her husband severed from his body.  
Elsewhere, people shower roses on the bride.  
Here, none has ever called my name with good intention.  
My face is fairer than the snow of Khurasan.  
My life-mate didn't relish its taste;  
He is possessed by the thought  
That he has received the price of the blood of his father in kind of my lips.  
Even after reconciliation, the desire rolls in his heart,  
To show the dagger to your throat, father!  
But, father! Under the custom of Pashto,  
I became such a rope  
That binds his both hands,  
You are free; you are safe.  
Now I am interned in the hell of sorrows.  
The strike of which goes straight to the heart,  
I have been cut into pieces with such a sword of hatred  
Injured by your arrow,  
I am forced to live with that angry snake.

<sup>23</sup> In my eyes

Not only the women are the victims but their children and sometimes even the men to whom they are given in marriage suffer for the rest of their lives. For both the man and the woman it is a form of forced marriage.

*In 2003, Sumaira's brother and a girl from his neighborhood eloped and left the village for six months. The villagers recovered the couple and sent them back to their respective homes till their fate was decided by the jirga. The boy's mother refused to accept 'Swara' for her son because she thought that since the girl had left her home voluntarily, a 'Swara' was not really required. However, the girl's father was adamant that only 'Swara' could compensate for the loss of his 'honor'. Sumaira's father appealed for any other means of dispute resolution but the giving away of his 12 year old daughter, Sumaira. But the girl's father refused all other options and was adamant on receiving a girl only.*

*Once decided, the girl who had eloped was sent to the house of the boy she wanted to marry, while Sumaira, at the age of 12 was given in 'nikah' to a 12 year old brother of the girl. Although, officially, Sumaira was Aslam's wife, he bitterly disliked and abhorred her. Aslam's life was as miserable as Sumaira's. The family had imposed a decision upon him to which he never wanted to agree. He would often be taunted by the villagers because of his sister's action and for paying the price for it. In a state of depression and emotional pressure he started taking drugs. Aslam continued to resist and protest against the unjust decision that was thrust upon him, but his father would not budge at his cries. During this time, Aslam expressed his desire to marry someone else, which was declined by the father because Aslam, a drug addict was not in a position to support two wives. Even the birth of his baby boy did not bring any spark in the life of Aslam. One day, when Sumaira had gone to visit her parents, he committed suicide by taking poison. Sumaira is a widow and a mother at the age of 15 and does not know what lies ahead. After a year passes, will her inlaws decide whether she should go back to her parents home or continue living a life of a widowed 'swara' with Aslam's parents?*

Despite this no win situation, the fact that Swara exists and prevails as an accepted form of seeking revenge, reveals its intense association with honour of the family. It is again stressed here that the notion of Pighore holds a higher premise in Pukhtun society above religion, social ethics and even economic status.

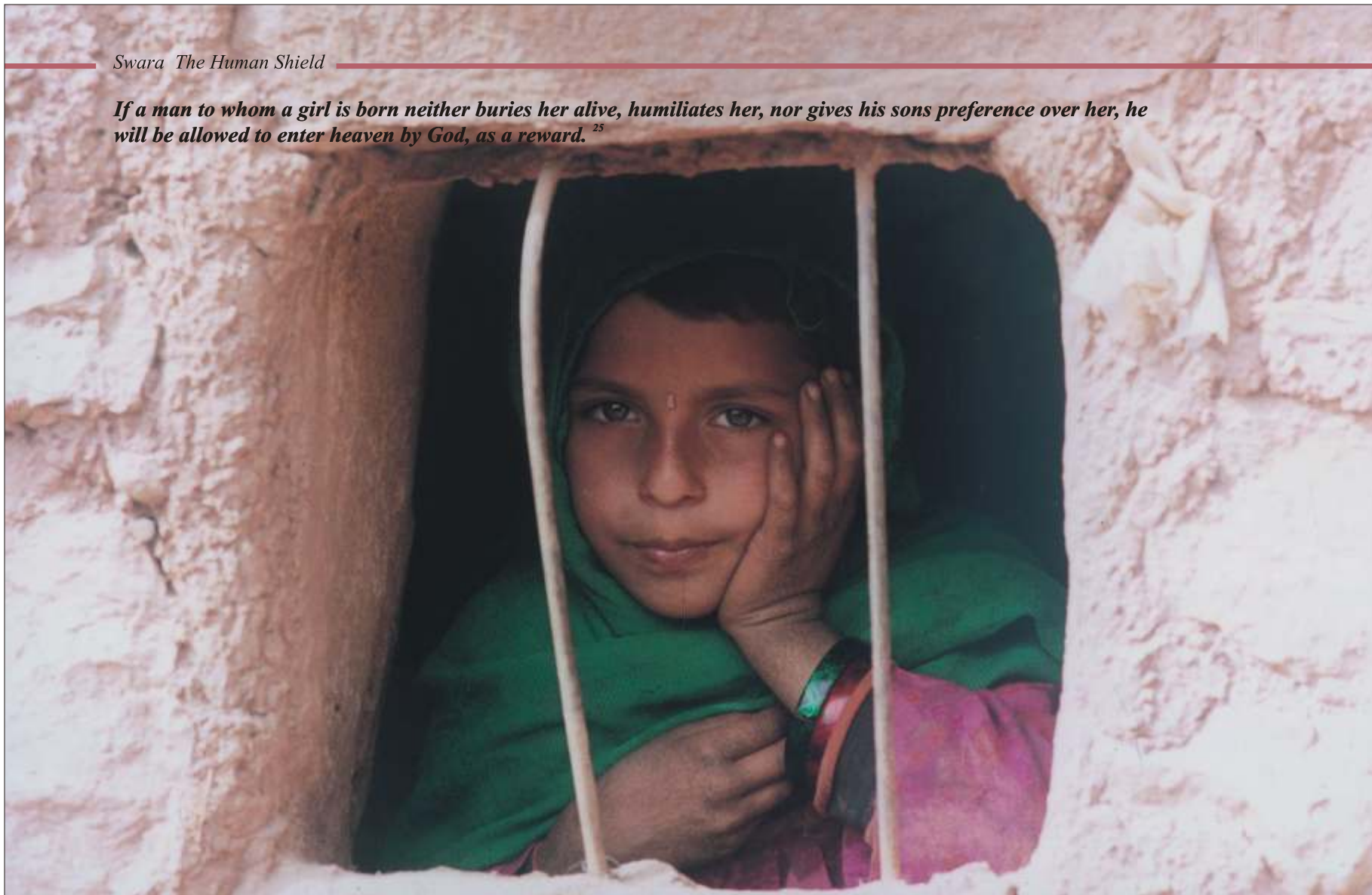


### 3.13 Analytical Inferences

The analysis presented in the preceding sections perhaps does not suffice to answer all the questions this study posed at the outset. However, there are key inferences that can be derived to conclude this section:

- ♦ Increased economic disparity can deteriorate cultural practices that are placed at high normative value although at an objective level Swara is strongly perceived as un-Islamic and as a practice that even though curtails conflicts but does not resolve conflicts, it persists and is socially accepted. Often the inability [or even unwillingness] of aggressors to pay an economic price in the form of cash, land or other property, is seemingly supporting the practice of demanding and giving Swara.
- ♦ Unaccountability of the offender continues to perpetuate Swara the fact that most Swara cases are never brought to formal judicial processes that is they are neither reported to the police nor taken to the courts for legal prosecution, leave the offender [people demanding Swara] as unaccountable. Therefore, a certain degree of conviction of having done nothing wrong in demanding and receiving Swara continues to support social acceptance of this practice.
- ♦ As an alternative dispute resolution measure, Swara does not acquire any justification for retribution since Swara in itself is aimed at inflicting pain and suffering to the aggressor's family, it does not qualify as a form of dispute resolution and hence brings no real reprisal for the bereaved family.

***If a man to whom a girl is born neither buries her alive, humiliates her, nor gives his sons preference over her, he will be allowed to enter heaven by God, as a reward.<sup>25</sup>***



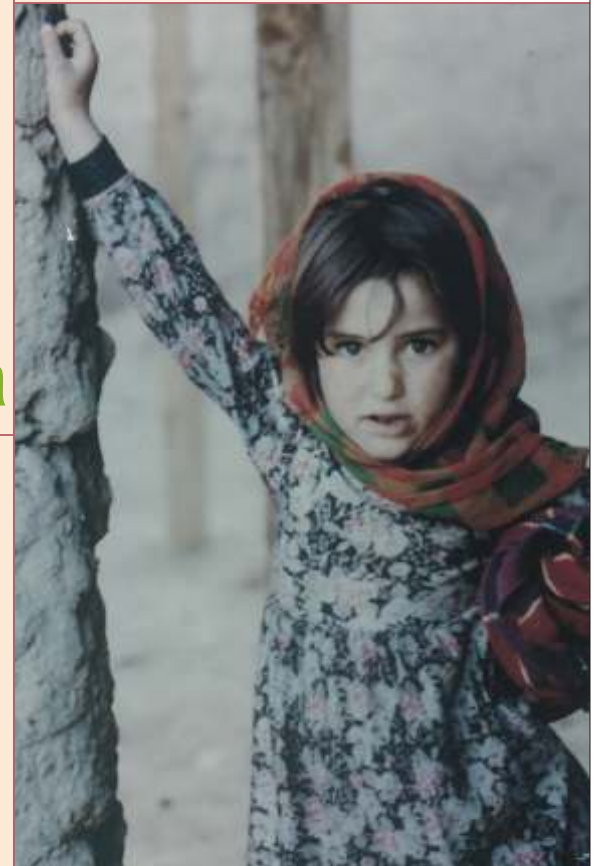
<sup>25</sup> Abu Dawud, Sunan, Kitab al-Adab., 4/337.

## SECTION 4

# Taking Collective Action against Swara

**Amongst Pukhtuns, a mere scorn, or any negative remark against a sister or daughter can lead to murder. In 'Swara' we send our daughter to an enemy's home where she becomes a victim of scorn for the rest of her life.**

(Muqqadam Khan journalist from Swabi)





## Voices of Change

During the research, a large number of cases have been identified which were either given in Swara or were being given as compensation. This helped the research team in documenting the case studies to analyze the custom of Swara holistically. Not only the victims of Swara came forward to talk about their experience, but civil society in general became more aware of the issue prevalent. The research helped in combating the denial of the society in general towards the prevalence of the custom in their area.

### 4.1 Voices of Change

The district workshops titled 'Hamara Moashara Aur Swara Ki Rasm' arranged by Ethnomedia, were attended by local administration, women, 'masharaan' (elders), Ulema (religious leaders), and people from various walks of life. Some of the excerpts from the workshop are presented below as signs of growing agitation amongst the responsible civil society, opinion makers and public representatives all of whom condemn Swara and prescribe its elimination:

*'One finds precedence of culture or Pukhtunwali over the religious injunctions. In the Holy Quran, it is stressed in more than a dozen places that every living soul is answerable for his/her deeds and nobody will be held responsible for the misdeeds committed by others. Nikah is a social contract where Ijab-e-Qabool plays a vital role. Ijab is an Arabic word which means 'to offer' while 'Qabool' refers to acceptance of the offer. According to Quran, "There is no coercion in Islam". Dr Izharul Haq (A Religious Scholar from Swabi)*

*"It is the mother of the aggrieved party who has the strongest fire of revenge in her heart and is adamant on demanding a*





'Swara'. She wants to have the 'Swara' girl's 'konsai' (braid) in her hands!" (Noor-ul-Amin educationist and jirga member from Swabi)

*The main force behind the demand of a 'Swara' is to escape social scorn or taunts for not being able to take revenge or 'badal'. Once a person has a 'Swara' sitting at home, one can proudly boast of having been able to preserve one's lost honour. In all cases, it is the man who is the 'winner'. Firstly, he escapes retribution for the crime he commits. Secondly, he earns honour by having his enemy's sister or daughter brought to his house. Thirdly, he may choose to let her suffer as 'Swara' while he finds himself another wife of his choice.*

*Socially or culturally, he is not expected to treat her with kindness. In the past the logic behind the practice of 'Swara' was to end wars between tribes. The sacrifice of a girl was a need of that time for the sake of the collective good. However, even where the girl was given as 'Swara' she would be returned the same day with gifts and a 'paroonay' (veil) as a symbol of honour. Now, the custom is being exploited and has been given an ugly form. (Noor-ul-Amin educationist and jirga member from Swabi)*

*The institution of jirga is still alive because neither law nor Islam has been able to give justice in many situations. The distinct feature of a jirga is that the issues are resolved through diplomacy not force. We do resolve disputes through 'Swara', but as a last resort. Convincing the parties to comply to the rules is not easy. "I have once literally fallen on my knees to convince a woman to grant me 'khair' (peace) by giving her daughter in 'Swara'. Since the last 30 years we have given several 'Swara' while resolving disputes. All are living happy lives, even the enmity has changed into friendship because of*



*the bond. 'Till today, we are practicing the same 'qanoon' (law) of resolving disputes. Even today, where needed, where the aggrieved does not accept any form of compensation but 'Swara' we will act accordingly. We know it brings peace which is why we opt for it. (Haji Khair Mohammad senior jirga member from Swabi)*

*Lets not deny the fact that a 'Swara' lives a life like that of an enemy. If she opens her mouth, she is reminded of her low status and is asked to keep her mouth shut! In settled areas the form of 'Swara' is worse than what we find in tribal areas. In the tribal areas, the demand for 'Swara' is mostly declined, but here we still have the practice being followed. It is the most inhuman custom I have ever come across. (Professor Munawar from Swabi)*

*Swara is wrong and being Muslims it is our right to call it wrong. I admit, Islam has given rights to women, but have we? It is easy to speak rhetoric, but if we go back and do not practice what we preach there is no use. On one hand we call our daughters our 'honour' yet we contradict this by practicing Swara. We should educate our daughters so that their future is bright and are able to escape any kind of injustice. (Shehraam Khan - District Nazim Swabi)*

*I think the issue of 'Swara' is being sensationalized. It is practiced in a very positive way, where a girl is sent back to her parents home accompanied by gifts and a 'chael' (veil). On one hand the aggrieved 'zra yakh shee' (heart is at peace) to see the girl come to a jirga on the other hand peace is achieved. Swara used to take place in the past but not anymore. (Gul Mast Khan jirga member, Nazim Union Council and Chairman Human Rights Commission of Pakistan)*

*Swara is no different from the custom where people would bury their daughters alive. This custom should have been*



*abolished a long time ago. Islam has asked us to speak for Justice. I plead to all to speak against this custom in our Jirgas and through our mosques.*

*Islam has no place for 'Swara. (Zabiullah Bacha - Religious Scholar from Swabi)*

*Through 'Swara' we push our own daughters and sisters to the fire of hell. I request you all to spread this message through jirgas. (Jaleel Khan journalist from Swabi)*

*Our press is not in chains, and we are going to prove it by highlighting issues related to 'Swara'. (Syed Arif Shah President Union of Journalists, Swabi)*

*The custom that initially started with a positive logic has now transformed into an ugly custom. Even little girls are given to the enemies' family, which is totally against the teachings of Islam. People from all fields of life should be involved in the campaign, especially the musalihati committee members. (Syed Zaada Speaker District Council Swabi)*

*In the past, a 'Swara' girl was considered the 'ambassador of peace'. The logic behind 'Swara' was positive, since the collective good was under consideration. If we do research we will see that 90% of Swara marriages are not successful. The girl is looked down upon with scorn and hatred. (Sher Janaan Nazim Union Council from Swabi)*

*"During the Survey we came across many cases of 'Swara'. We closely observed them. Why do we let a little girl suffer by bringing her to a jirga, ridiculing her in front of everyone? Why should she be taken to a crowded jirga when our brothers, uncles and fathers commit a crime? Don't they have a right to ask us if they should go ahead with committing a crime for*





*which we are to pay the price?" (Shafqat Rani - member District Council and research team)*

*Recently, I have experienced acceleration in awareness regarding 'Swara' in Mardan. In the Criminal Justice Coordination Committee we have recently discussed the issue of 'Swara'. Pukhtu does not mean guns and conflict alone, but respecting the rights of women is as much Pukhtu. It is our responsibility to speak up against it. (Abid Ali Senior Superintendent Police, Mardan)*

*"We all know very well that 'Swara' is against the injunctions of Islam, but still we are Muslims where Islam suits us, Pukhtuns where Pukhtunwali suits us. It is not a game of pick and choose. When we call ourselves Muslims we have to follow its injunctions as a whole." (Pervez Afghani Assistant Superintendent Police Mardan)*

*In all nations and cultures there are both good and bad customs, and 'swara' is one of those negative customs which needs to be uprooted. If the dispute cannot be resolved, let it be. It is better than sacrificing the life of an innocent girl who has nothing to do with the crime. (Abdul Hameed President Bar Council, Mardan)*

*In the past it was seen as an effective form of dispute resolution, as many lives were at stake in a tribal war or a dispute. Today it has been given an ugly form. It needs to be abolished. (Himayatullah Mayar Nazim District Council Mardan)*

*We should have a social boycott against the people who demand, give or decree Swara in Jirgas. There is no place for Swara in Islam and neither can we confuse 'rewaj' with our religion. The dispute can be resolved with qisas, diyat or badal-i-sulah. It is cruel to send the girls to the enemy's family because mostly they are treated cruelly. May God rid us of this evil custom? (Saeed ullah Jan religious scholar from Mardan)*



*We know there is 'Swara' around us, yet we see silence in the society. We try to deny something so evident. (Rafaqat Begum councillor from Mardan)*

*The voice against 'Swara' should be raised through mosques and should be socially condemned. We do have 'Swara' in Mardan, and we are going to fight against this custom and set an example where we will be the first to get rid of it. Islam is against 'Nikah bil jabr' (Nikah by force/coercion), Swara is a form of it. (Ahsan Bacha Nazim Tehsil Council Mardan)*

*We are going to fully support this effort because Islam strongly condemns this evil custom. Mutahida Majlis-i-Amal has strongly condemned it in its Hisba Bill. One of our religious scholars especially asked me to represent him in today's program because we feel it is for a just cause. (Maulana Qaiserudin representative of MMA)*

The workshop in Mardan concluded with a poem written by a young student, Zaitoon Bano which has been translated by Dr. Sher Zaman Taizi.

## سورۂ

کله سورۂ کښې مې پلار بل ته سپاري  
د مور او پلار له کوره ورکه شمه  
د دشمنو هور ته ور لږه شمه  
د پلار د کړو سزا زما برخه شي  
د پیغور غشي مې روح ریز مرېز کړي

زما نامه له خلقو مېره شي ، او  
ماته هر تن سورۂ سورۂ وائي بیا  
دغه گناه دغه تقصیر دی زما  
دغه خطا دغه قصور دی زما

چی زه سورۂ کښې ورکړی شوی یئمه  
په هر نظر کښې سپکه شوی یمه  
زه چې سورۂ یمه ، سورۂ یادېږم

څه مې قصور دی څه گناه ده زما  
چې زه پیدا شوم د جینۍ په نامه  
که د نن لور یم د سبا مور یئمه  
بي بي حوا یئمه ، مریم یمه زه  
زه فاطمه یمه ، زینب یمه زه

زما خطا زما قصور دغه دی  
جنت آباد زما د پشو لاندې دی  
زه د اسلام پومبۍ منونکې یئمه  
تول رسولان ، پیغمبران او نبیان  
زما د تن نه زېږیدلی دی تول

د هغو پاکوختو ، پاکو هستو  
دغه منونکي امتیان څه کوي  
کله مې وژني د غېرت په نامه  
کله شم خرڅه د دولت د پاره

## Swara<sup>24</sup>

By Zaitun Bano

Translated by Dr. Sher Zaman Taizi

*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!  
The 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?  
Some times, they kill me in the name  
of honour;  
Some times, I'm sold for money;  
Some times, 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 doing of the 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.  
I am Swara  
And will be called Swara.*



<sup>24</sup> Dedicated to the girls who are married into *Swara*. The marriage is not given usual pomp and show – exchange of visits, gifts, processions, singing, dancing, merry making and other rituals. In this case, individuals from the two parties still avoid coming face to face. The girl is not made up a 'bride' and put in a palanquin, but attired and provided a donkey or horse to ride, the reins of the animal are held by an elder of the 'third party' to take the girl to the house of the 'bridegroom'. As the girl 'rides', she is called *Swara*, which means a female rider. Hazrat Khadija, a Jew, the first wife of the Prophet (PBUH)



At the end of the program a woman from the audience came up to one of the organizers asking for a copy of the poem. She said, “I want my husband to read this since this is the story of my life. I am a Swara”.

### ***There is Hope***

Both in Mardan and Swabi, jirga members, for the first time acknowledged the dark side of the custom of Swara. In one of the jirgas in Mayar, Mardan, they not only decided not to make reconciliation on the basis of Swara but publicly denounced such decisions. This helped in saving one 8 year old Marina from going as Swara for her cousin's crime. In Mardan, the Nazim in most of his addresses in Public gatherings announced that compensation in the form of a girl/woman was unacceptable and that he will speak against it wherever possible. The news was covered by many newspapers. In a yet another public gathering in Swabi, a jirga member who attended Focus group discussion on 'Swara' announced that he will speak against the custom of Swara in Jirgas and leave the jirga where Swara is demanded.

A man named Shams was murdered in the village Toot Kali. The alleged was named as Farid Gul. In order to settle his dispute, both parties tried to negotiate the settlement through a Jirga. The Jirga decided to compensate the crime with an amount of 300,000 Rupees and a Swara. In the mean while, Farid Gul, the perpetrator, refused to sacrifice his little daughter Gulbibi as Swara who was still a minor. The boy for whom the Swara was demanded was Illyas, aged 25 years. The situation was at the verge of collapse when a lady councillor Ms. Shahida intervened. Before her intervention the Jirga had reduced the amount of money to 100,000 while making another demand of a 10 Marlas plot. However, the demand of Swara remained unchanged. Due to the strenuous efforts of a researcher of Ethnomedia, the dispute was resolved. Ms. Shahida convinced the victim's family about the implications of this customary practice which has nothing to do with religion and morality. Finally, they were all convinced about the harms committed by society against women and the dispute was resolved with Diyat money.

## **4.2 Prioritizing Collective Action**

### ***Individual Action***

The Pakistan penal code of criminal procedure in section 45 (C) makes it incumbent upon every member of the public to inform:

- The nearest magistrate;
- Justice of the Peace; or
- Police In charge of the nearest police station.

If they are aware of the commission or the intention of any person to commit any non bailable offence. Section 45(F) further states that any matter likely to affect the maintenance of order or of the prevention of crime or the safety of person or property has to be brought to the notice of the said authority. The above section with the subsections make it incumbent upon members of the public of a certain area to bring to the notice of (1) the nearest Magistrate (2) Justice of Peace (3) officer Incharge of nearest police station, any commission or intention to commit any non bailable offence. By making Swara a non bailable offence, the law also makes it an offence which must be duly reported by the public.

Police order 2002 also provides relief where the police are averse to taking action in a cognizable offence. Under Article 35 of police order 2002, a complaint can be made to the Zila Nazim regarding police neglect, failure or excess and the Zila Nazim may direct the head of the district police to take remedial measures, including the registration of an FIR in a cognizable offence. Head of District Police U/A 35, if so directed, have to take remedial measures.

### ***Role of the Media***

The media has been extensively giving coverage to the events organized by Ethnomedia and the incidents of Swara in Mardan and Swabi. All the press clippings are attached in the annexure. As the activities carried out by Ethnomedia were being covered by local newspapers of the Northwest Frontier Province, civil society organizations from Malakand, Dir and Charsada showed their interest in sharing and highlighting the incidents of Swara in their particular areas as well. This network helped in unearthing a recent Swara case where two girls Aneesa (2) and Saira (2) were given as Swara in Malakand. Local NGOs from Charsada, Dir and Nowshera offered their voluntary services in working against the custom of Swara as partners with Ethnomedia. As more and more incidents of Swara were coming forward, the national, and international media started highlighting it as well. This helped in strengthening the hearings being held in the Supreme Court of Pakistan during the last two months. The Chief Justice of Pakistan not only commended the work of Ethnomedia in breaking the silence on this issue but also suggested that the work should spread to other parts of Pakistan as well.

For the first time in Pakistan, special committees were formed on the Orders of the Chief Justice of Pakistan which were to be chaired by the President of the District Bar/Tehsil Bar and the General Secretary of the District Bar. The aim is to provide

legal assistance to the victims of Swara and Vanni in all the districts of Pakistan.

### ***Civil Society Networks***

Networks with other civil society organizations and the media of Bhakkar and Mianwali were developed over the course of time. This helped in giving the effort the shape of a movement all over Pakistan. The media from Bhakkar and Mianwali (Punjab), Naseerabad (Baluchistan), Shikarpur, Kashmore and Jacobabad (Sind), coordinated with Ethnomedia to take up the cases in the Supreme Court. More than seven victims of Vanni were freed in Bhakkar alone by the intervention of Ethnomedia and the local civil society organizations and Media.

The Research Project has helped Ethnomedia in identifying many 'Local/Traditional Change makers' from various parts of the Northwest frontier province, who want to be associated with Ethnomedia in the Campaign against 'Swara'. These 'Change makers' have been instrumental in identifying and highlighting incidents of 'Swara' that needed immediate interventions. Many religious scholars have shown their willingness to support the Organization in future projects. Their support at the local level is vital in raising awareness against the custom.

### ***Local Administration***

Ethnomedia has developed many linkages with the government departments, Nazims and lawyers and Judges. Ethnomedia has been providing the preliminary results of its research findings to many lawyers on their request. Many civil society organizations have also shown interest in the Research Report.

The SSP (Senior Superintendent Police) Mardan not only provided full support in intervening in some Swara cases, but announced in a gathering of more than 150 that the police department of Mardan would provide full support to the Swara victims and the Ethnomedia project. This was announced on the 16<sup>th</sup> of May at the Workshop conducted by Ethnomedia in Sheen Gul Hotel, Mardan.

District Nazim Mardan, Himayat ullah Mayar, District Nazim Swabi, Shehram Khan assured their full support in combating the curse of Swara. The Nazim Mardan admitted the presence of the custom in Mardan and pleaded the audience carry out a social boycott from those who favour the custom of Swara. The District Bar President Mardan and the Session's Judge Mardan appreciated the research project and offered their support wherever needed regarding Swara.



### 4.3 Recommendations

#### *Capacity building of Traditional Institutions*

Jirga is the most commonly used platforms of informal legal system for dispute resolution. Jirga Leaders need to be imparted formal legal training and sensitization. If done according to the cultural parameters, the jirga would play the role of a catalyst for social change. More incentives should be given to the jirga maars (members) who manage to resolve disputes amicably without 'Swara'. It is vital that the government and non government organizations should design interventions in which the institution of jirga is included rather than excluded. The jirga members need to be part of the development and planning stage of any intervention.

#### *Formalizing Jirga Proceedings for Conflict Resolution*

There is a need to formalize the proceedings of the jirga so that the decisions are available in writing. A need for an institutional linkup of Jirgas and law enforcement agencies can help in monitoring the dispute resolution process. This would help in keeping a watch on the number of cases that are resolved silently within the jirga. The locals, even if they want to, are too afraid of reporting the incident. For an outsider, the fear of social isolation will not be there.

#### *Supremacy of Shariah Law over Unwritten Traditional Codes*

Traditions and common laws are regarded superior as compared to Sharia Law or Statutory Laws. Religious leaders are always present in a jirga. Although ideally they are to apply Sharia Law, they themselves are influenced by traditions. There is a strong need to sensitize the religious leaders to play the role of a catalyst for social change. According to our research findings, 95% of the decisions are taken in the presence of a local mosque leader. Sensitizing this group of stakeholders would have a strong impact as they in return can effectively use Friday sermons for spreading awareness. Since the tradition is against Islamic principles, Ministry of Religious Affairs and the Ministry of Women Division can arrange collaborative meetings to streamline a long term awareness raising interventions.

#### *Elected Representatives as Vehicles to Eliminate Swara*

In most of the cases of Swara, the presence of elected representatives has been recorded. In cases where the presence of a

responsible official is recorded strict action should be taken. However, it is important to sensitize the local elected representatives and make them equipped to play an effective role in the development process and to advocate against various forms of culturally sanctioned forms of violence.

### ***Public Awareness Programs***

The State and the institutions should carry out broad based awareness and education campaigns regarding legal rights of women and children. It is important to utilize various forms of local, folk or popular media to sensitize the general public in a culturally competent way. For the decision makers and stakeholders, advocacy through electronic and print media should be done in a way that the campaign is sustainable. Television talk shows on the issue of Vanni, Swara, Chatti, Khoon baha, should be arranged to generate dialogue. Similarly, since 'Swara' is as much an issue of Child Rights as it is a Women's Right's issue, therefore it is important that the NGO's working for the Rights of Children should impart assistance to deal with this issue in its advocacy and awareness raising programs at various levels. Advocacy campaigns aimed towards highlighting swara as a form of revenge rather than a peace making custom. A criminal act perpetuating violence rather than peace should be highlighted.

### ***Installing Watchdogs for Swara***

A systematic reporting strategy of the cases should be developed on a community level, involving the women councilors as 'eyes and ears'. Women councilors can have access to otherwise 'private' matters of the community. Having links with the government agencies, women councilors can develop an effective reporting mechanism regarding the custom of Swara. At local and community level collaboration with 'Islahi Committees' or 'Musalihati Anjuman's' which are given compoundable offences to resolve can also be explored.

### ***Linkages Development***

Linkages and networking between the Special Committees dealing with issues of Swara at district level and the local councillors could be developed and strengthened. The reporting mechanism is still ineffective as far as working of these committees is concerned. Headed by the President of the Bar, these committees can be made more effective by arranging seminars and meetings with the local lawyers and involve them in the process.

### ***Sensitization amongst Police***

There is an urgent need to sensitize the police to not treat issues like 'Swara' as a private matter and neither should they resort to reconciliation or mediation only. Where needed, the perpetrators should be dealt with promptly. Special training programs for the Police should be developed by the organizations having prior expertise of working with them.

### ***Clarity in the Law***

The current amended law (Section 310-A) is very brief and thus needs to be given a more precise interpretation. The misinterpretation of law at different levels is acting as a deterrent against the abolishment of the custom. The law does not specify whether it is retroactive or prospective. Because of the misinterpretation of the amended law, fathers who access law enforcement agencies for relief against the decision of 'Swara' are the ones arrested. The parties that demand a girl as compensation or the members of the jirga are not held responsible, thus perpetuating the custom. Jirga Maar's should be strictly dealt with for taking such decisions.

The immediate issue of concern is that the amendments made in the PPC section 310A have yet not been extended to the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA). The disturbing thing is that these are the areas more prone to the inhumane custom of swara. In PATA there are seven districts- Swat, Buner, Shangla, Chitral, Malakand, Upper and Lower Dir. The Child Marriage Restraint Act, 1929, has also yet not been extended to PATA as well as FATA by the Governor and President respectively.

### ***Clarity about Cultural and Islamic Traditions***

Culturally, verbal solemnization of Nikah (matrimonial bond) is considered enough and the recorded document is a mere cultural practice that has nothing to do with Islam. The process of Nikah should be formalized by laying down a criterion for the Nikah Khawan. The person who conducts a Nikah should be registered and monitored through an institution. This way many other violations of laws such as the right to succession, talaq-i-tafweez, dower, that are interlinked to the way a marriage contract is being applied, will also be discouraged.

### ***New Space for Voices***

In the Workshop in Mardan, for the first time, three women who are living as Swara came to attend the workshop to show their support and solidarity. The workshops were covered by various national, local newspapers and electronic media. The urgent need to break this silence on Swara and similar practices can be achieved through creating more such spaces where survivors of gender discriminatory practices can feel safe to voice their stories and in doing so highlight the embedded dynamics that perpetuate these practices.

#### 4.4 In Her Words

***“I live the life of an animal. I would never complain because the life of my brother and father is dear to me!”*** Saeeda.

Saeeda, an 18 year old girl from Swabi sacrificed a year of her life shielding men of her family by braving the scorn and hatred of her in-laws. The family she was married into as swara could see the enemy in her face. Her presence reminded them of the murder her father had committed. In the face of a newly wedded bride, they could only see blood and murder. Her wedding was more of a day of mourning. Sighs and grief substituted wedding songs and laughter. Her bare hands without Henna, remained tightly clenched in uncertainty and fear. Such was the day of her wedding. The girl endured abuse that was meted upon her hoping it would cease the fire of hatred and animosity between the two rival groups. However, the very thought of her being able to protect her brother and father gave her more strength and resistance.

After enduring a year of mental torture, with the help of her brother she mustered courage to file a suit of dissolution of marriage. The brother supported her after witnessing her agony as swara. However, she never knew that her courage would actually make her weak and more helpless. Earlier, at least she had a cause that she was living for but the courage took that away too. The day this report was to go for printing an English newspaper covered the following story.

#### Swara girl's brother killed

The Dawn  
June 06, 2006

By Muqaddam Khan

*SWABI, June 5: The brutal custom of Swara caused another death last week when the 18-year-old only brother of a girl, given in marriage to settle a four-decade old dispute, was killed here. The FIR about the killing of Shamshad has been lodged with the Swabi police against the members of his sister's in-laws family, Asghar, his brother Gul Zar Khan and their relative Zar Nabi Khan.*

*Shamshad's sister had been married to an 11-year old boy of Asghar's family about a year ago. A few weeks ago, she came to stay with her parents due to harsh treatment meted out to her by her in-laws.*

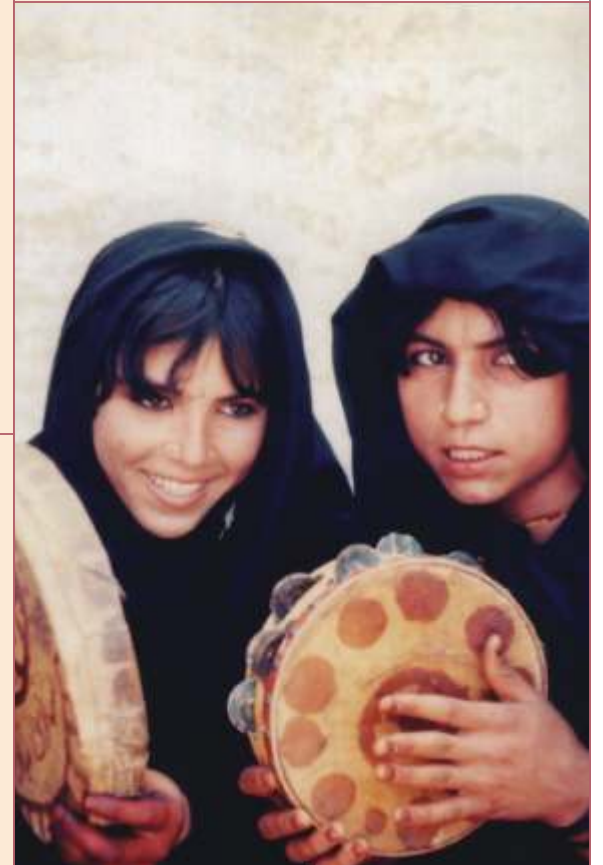
*Shamshad filed a suit for dissolution of his sister's marriage before a family court in Swabi city. He was returning from the court when he was shot dead by some people. The members of the girl's in-laws family have been nominated in the FIR wherein it is stated that they were annoyed with the suit for dissolution of the marriage.*

## ANNEXURE

# Annexure

**No Culture is static. Swara / Vanni and Sang Chatti will one day become customs of the past. Human beings have the ability to redefine Culture.**

Ethnomedia.





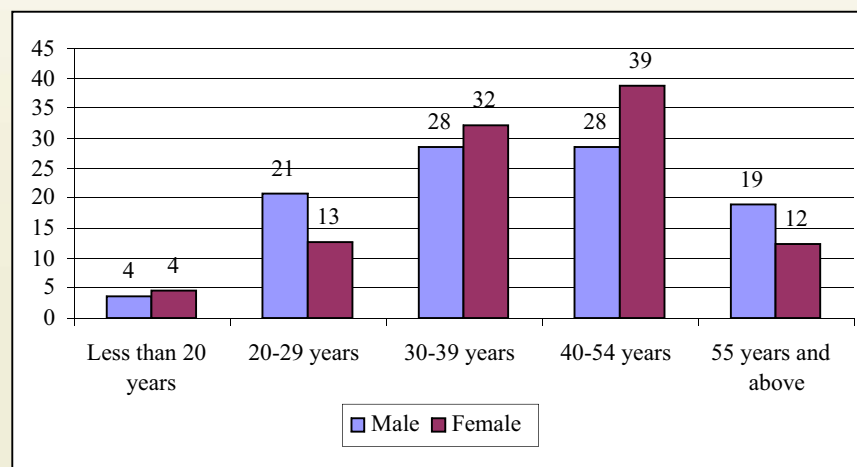
## Annex 1

### Statistical Profile of Civil Society Survey

#### Civil Society Mardan

##### Age

	Male		Female		Total	
	No.	%	No.	%	No.	%
Less than 20 years	8	4	10	4	18	4
20-29 years	46	21	29	13	75	17
30-39 years	63	28	73	32	136	30
40-54 years	63	28	88	39	151	34
55 years and above	42	19	28	12	70	16
Total	222	100	228	100	450	100



**Marital Status**

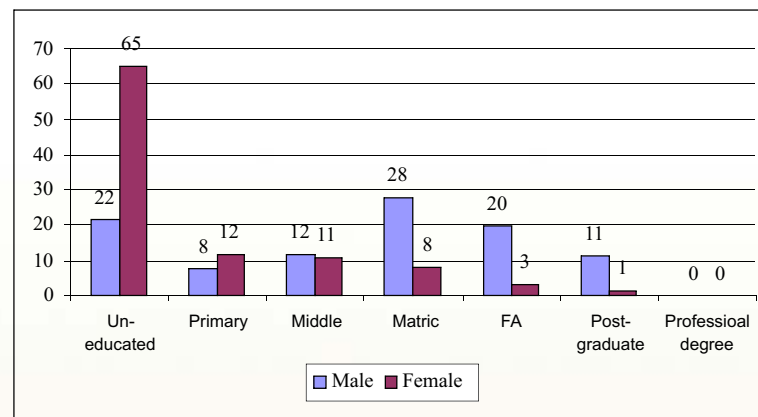
	Male		Female		Total	
	No.	%	No.	%	No.	%
Married	175	79	203	89	378	84
Un-married	37	17	18	8	55	12
Divorced	2	1			2	0.44
Widow			5	2	5	1
2nd marriage	2	1	2	1	4	1
Marriages more than one	6	3			6	1
Total	222	100	228	100	450	100

**Age at the time of marriage**

	Male		Female		Total	
	No.	%	No.	%	No.	%
11 years			2	1	2	1
12-15 years	1	1	43	20	44	11
16-18 years	21	11	77	37	98	25
19-20 years	32	17	47	22	79	20
21-25 years	75	41	26	12	101	26
26-30 years	45	24	13	6	58	15
31-35 years	9	5	1	0.48	10	3
36 years and above	2	1	1	0.48	3	1
Total	185	100	210	100	395	100

**Educational qualification**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Un-educated	48	22	148	65	196	44
Primary	17	8	27	12	44	10
Middle	26	12	25	11	51	11
Matric	62	28	18	8	80	18
FA	44	20	7	3	51	11
Post-graduate	25	11	3	1	28	6
Professional degree						
Total	222	100	228	100	450	100



### Economical Status

	Male		Female		Total	
	No.	%	No.	%	No.	%
Government servant	47	21	4	2	51	11
Business	89	40	4	2	93	21
House hold lady			220	96	220	49
Farmer	51	23			51	11
Own property	10	5			10	2
Private Job	15	7			15	3
Student	2	1			2	0.44
Nil	5	2			5	1
Retired	2	1			2	0.44
Labour	1	0.45			1	0.22
Total	222	100	228	100	450	100

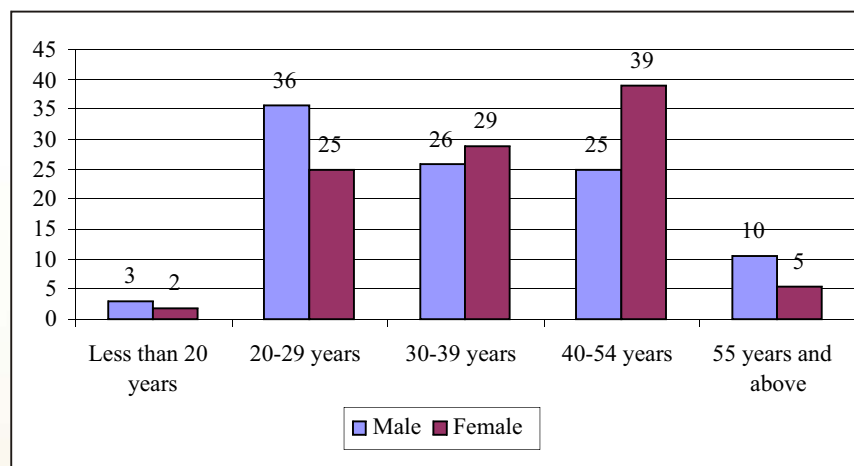
## Civil Society Swabi

### Age

	Male		Female		Total	
	No.	%	No.	%	No.	%
Less than 20 years	9	3	3	2	12	3
20-29 years	102	36	41	25	143	32
30-39 years	74	26	47	29	121	27
40-54 years	71	25	64	39	135	30
55 years and above	30	10	9	5	39	9
Total	286	100	164	100	450	100

### Marital Status

	Male		Female		Total	
	No.	%	No.	%	No.	%
Married	197	69	143	87	340	76
Un-married	83	29	14	9	97	22
Divorced			1	1	1	0.44
Widow	3	1	5	3	8	2
2nd marriage	1	0.35	1	1	2	0.44
Marriages more than one	2	1			2	0.44
Total	286	100	164	100	450	100

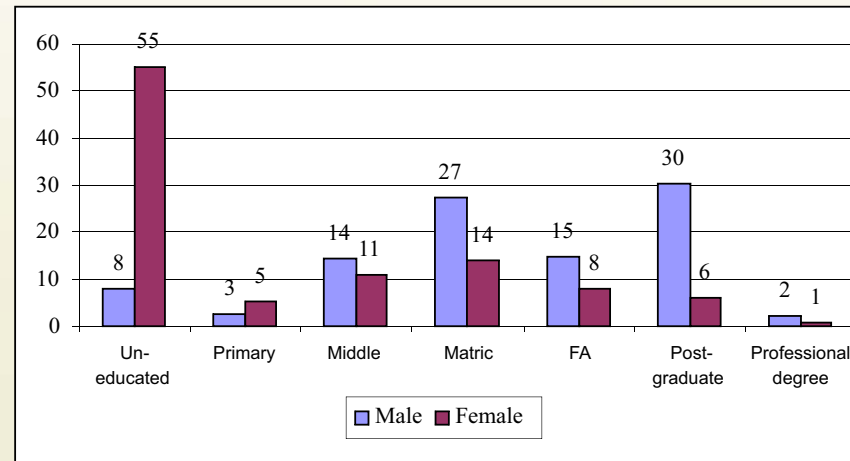


### Age at the time of marriage

	Male		Female		Total	
	No.	%	No.	%	No.	%
11 years						
12-15 years	1	0	18	12	19	5
16-18 years	18	9	68	45	86	24
19-20 years	23	11	41	27	64	18
21-25 years	89	44	20	13	109	31
26-30 years	53	26			53	15
31-35 years	17	8	2	1	19	5
36 years and above	2	1	1	1	3	1
Total	203	100	150	100	353	100

**Educational qualification**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Un-educated	23	8	90	55	113	25
Primary	8	3	9	5	17	4
Middle	41	14	18	11	59	13
Matric	78	27	23	14	101	22
FA	42	15	13	8	55	12
Post-graduate	87	30	10	6	97	22
Professional degree	7	2	1	1	8	2
Total	286	100	164	100	450	100



**Economic Status**

	Male		Female		Total	
	No.	%	No.	%	No.	%
Government servant	73	26	24	15	97	22
Business	105	37	7	4	112	25
House hold lady			130	79	130	29
Farmer	25	9			25	6
Own property	37	13			37	8
Private Job	13	5	2	1	15	3
Student	10	3	1	1	11	2
Nil	10	3			10	2
Retired	3	1			3	1
Labour	10	3			10	2
Total	286	100	164	100	450	100



## Annex 2

### Petition Filed by Ethnomedia in Supreme Court (original transcription)

#### IN THE SUPREME COURT OF PAKISTAN (ORIGINAL JURISDICTION)

Constitutional Petition No \_\_\_\_\_ of 2004

1. **Samar Minallah**, Research Anthropologist and Director 'Ethnomedia', House 11 B, Street 4, F-7/3, Islamabad.
2. **Gul Bibi**, daughter of, Abdul Zaman, c/o Afridi, Shah & Minallah, Advocates and Legal Consultants, 2<sup>nd</sup> Floor, Beverly Centre, Blue Area, Islamabad.
3. **Syed Mansoor Ali Shah**, Advocate Supreme Court of Pakistan, 15/2 FCC, Syed Maratab Ali Road, Gulberg-4, Lahore.
4. **Nusrat Jahan Nabeela**, Advocate, 15/2 FCC, Syed Maratab Ali Road, Gulberg-4, Lahore.

...Petitioners

Vs

1. **Federation of Pakistan, Ministry of Women Development, Social Welfare and Special Education**, through its Secretary, Islamabad.
2. **Ministry of Law, Justice, Human Rights and Parliamentary Affairs** through its Secretary, Islamabad.

3. **Ministry of Religious Affairs, Zakat, Ushr and Minorities Affairs** through its Secretary, Islamabad.
4. **National Commission on the Status of Women**, House no.39, Street no.56, F-6/4, Islamabad.
5. **Ministry of Kashmir Affairs & Northern Areas and States & Frontier Regions**, through its Secretary, Islamabad.
6. **Government of NWFP**, through its Chief Secretary Civil Secretariat Peshawar
7. **Government of Punjab** through its Chief Secretary Civil Secretariat, Lahore.
8. **Government of Sindh** through its Chief Secretary Civil Secretariat, Karachi.
9. **Government of Balochistan** through its Chief Secretary Civil Secretariat, Quetta.

...Respondents

### **PETITION UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973**

Respectfully Sheweth:

- a. That the petitioners bring under challenge the unconstitutional, unlawful and un-Islamic custom of “SWARA”. The custom of SWARA is a mode of dispute settlement whereby a young girl(s) of the offenders family is given in marriage to the family of the victim as a compensation for the offence/crime committed by the male member of the family (e.g., father, brother or uncle, etc.).
- b. That the inhuman custom of SWARA is being practiced unchecked in various parts of Pakistan and a large number of women are being exchanged as compensation for the crimes of their men folk. This practice is abhorred by Islam and the Constitution of the Islamic Republic of Pakistan.
- c. That the petitioners are citizens and members of the civil society of Pakistan. Petitioner no.1 is an anthropologist and has conducted research and prepared a documentary film on the custom of SWARA. Petitioner no. 2 was

given as a SWARA i.e., compensation for the murder committed by her father. She is now 18 years of age and is residing with her parents. Her so-called husband under the custom of SWARA is an old man. She has no option but to remain wedded to this old man for the rest of her life. She is caught in the shackles of this intolerant custom and has no life and no future. Petitioners 3 & 4 are advocates and consider it their duty to uphold the Constitution and the rule of law in this country. The petitioners therefore in their respective capacities and as members of the civil society of this country are seriously aggrieved about the custom of SWARA being practiced in Pakistan.

- d. That the titled petition is in the nature of public interest litigation raising a serious question of public importance i.e., the practice of the custom of SWARA and seeks enforcement of fundamental rights of women guaranteed under the Constitution.

## FACTS

1. That SWARA is a customary practice largely prevalent in various areas of all the Provinces of Pakistan, by virtue of which families, instead of giving blood money as *badl-e-sulha*, give away their girl(s), at times even minors, in marriage, to an aggrieved family as “compensation” to settle a blood feud between them. The said compensation can also be for any offense or crime other than murder. Daughters of the family are compelled to sacrifice their lives to protect their father, brother or uncle for the crime they have committed. Demanding the hand of the women of the family of the victim, in SWARA, is considered to be a matter of prestige. In case a famous or important person gets killed, even two women are given in SWARA marriage. The quantum of compensation i.e. the number of girls/women to be given as SWARA is determined according to the status of the aggrieved party.

2. That girls are given in SWARA marriage as compensation for murder, adultery, abduction and kidnapping committed by the men of their family. The local Jirga decides the fate of the women and the pronouncement of SWARA by the Jirga, is without the consent of the woman concerned. It is important to note that Jirgas constitute only male members of the village or community.

3. That this practice of giving away women of the family to the enemy, though illegal, is historically entrenched in the pukhtoon culture. However, this custom is not limited to the province of NWFP, but also extends to other provinces. In Punjab it is called *VANNI*.

4. That in case there is no major female present in the family a minor daughter is given away as SWARA. The “rukhsatee” (ceremony of marriage) generally takes place when the girl attains majority, but at times the young girls given in SWARA are made to spend one night at their in-laws just to demonstrate the SWARA arrangement. In many cases when minor girls are given in SWARA, they either run away from the houses or commit suicide once they attain majority, realizing the hopelessness of the situation.

5. That sometimes a blood feud between two families is settled by the mere handing over of a female to the enemy without even a marriage taking place and the women who are subjected to this arrangement suffer even more.

6. That the female given in a SWARA marriage is treated as a commodity and is never asked whether she is willing and happy with the arrangement or not. Consent of the women subjected to SWARA marriage is considered to be irrelevant and never obtained. Women made to marry under the custom of SWARA are either forced or emotionally blackmailed to agree to SWARA marriage and asked to sacrifice their lives for their father or some other male member of the family.

7. That the logic to justify this custom given by its advocates is that it is a way to extinguish the fire of revenge and to end the enmity between two rival tribes. But even in that be so the case, the consent of the woman is essential, which is missing. However, the reality is entirely different and this demand for the hand of one of the girls of the enemy family is often made just to degrade the guilty family, and the women, who are subjected to the custom of SWARA, face all sorts of humiliation and hatred from their in-laws for the rest of their lives. At times the girl given in the name of SWARA is shared by the male members of the victims' family. Where a minor girl is given away under the custom of SWARA, her parents pray for the death of their daughter before she attains majority so that she does not have to go through all the pain and suffering mentioned above.

8. That the custom of SWARA is unconstitutional, illegal and un Islamic on the following amongst other grounds:

## GROUND

- a. That the custom of SWARA is in violation of Article 9 of the Constitution. The right to life enshrined in the said article guarantees right to marry with free consent. Right to life includes right to marry or not to marry. The custom of SWARA thrusts upon the the woman the obligation to marry, leaving no choice, consent or freedom

to make her own choice. The so-called marriage under SWARA is not marriage at all, as the status of woman as an individual person does not exist and the woman is treated as a commodity. Any such marriage cannot possibly lead to a happy or balanced life and therefore clearly impairs one's right to life.

- b. That Article 9 further guarantees the right of liberty. The Custom of SWARA stifles personal liberty, choice and consent and treats women as commodities and chattel, who are subjected to the shackles of this custom for the rest of their life. Under SWARA the personal liberty of a woman is lost for the rest of her life which is against all norms of justice.
- c. That the custom of SWARA offends Article 4 of the Constitution. In spite of the fact that no law in the country permits the custom of SWARA, it is being blatantly put to practice in various pockets of this country to the detriment of the women. To enjoy the protection of law and to be treated in accordance with law is an inalienable right of every citizen, still the same is not being extended to the women.
- d. That women are being discriminated on the basis of sex alone, which further violates another constitutional guarantee envisaged in Article 25 of the Constitution. The custom of SWARA is particularly discriminatory against women because firstly, only a woman is the victim of the practice of SWARA and once subjected to a SWARA marriage, the said woman is deprived of a basic right to divorce.

That the custom of SWARA relegates the position of women to that of slaves. In fact, SWARA is no different from slavery, which is explicitly prohibited under Article 11 of the Constitution. In spite of clear constitutional guarantees in favour of women, the practice of SWARA continues.

That the custom of SWARA reduces women to the status of property and household goods. SWARA, therefore, totally tarnishes the dignity of women who are responsible members of this country and mothers to our founding fathers. The impugned custom therefore violates Article 14 of the Constitution.

That the custom of SWARA is against the principle of policy enumerated in Article 35 of the Constitution which provides, that the State shall protect the marriage, the family, the mother and the child. When a female is given in SWARA marriage, she is not accepted as a normal bride and the rights which are part and parcel of the contract of marriage are not bestowed on her. Her rights as a wife and mother are not recognized under the custom of SWARA, and she is treated as a commodity and

not as a human being. It is not difficult to assume that the children this woman bears will never become responsible members of our society, resulting in total destruction of our next generation. The custom of SWARA eats at the very foundation of any balanced society and must be nipped in the bud. The custom of SWARA is, therefore, in violation of this basic principle of policy.

That under Article 29 of the Constitution, the State is under the duty to act in accordance with the principles of policy. Yet, the unconstitutional custom of SWARA is being allowed to be practiced.

That the custom of SWARA also violates Section 5 of the Child Marriage Restraint Act, 1929.

That the custom of SWARA also goes against the provisions of Dissolution of Muslim Marriages Act, 1939. Section 2 of the said Act deals with the grounds for the dissolution of marriage and provides that if a minor girl is given in marriage by her father or guardian, before she turns 16 years of age, she shall be entitled to obtain a decree for the dissolution of marriage before attaining the age of 18 years, provided that marriage is not consummated. This option, known as the “option of puberty,” is not available to a woman given as SWARA, and she has no choice but to say yes to an imposed marriage in order to save her father or brother's life. Therefore, the practice is completely unlawful and liable to be declared void.

That section 2 of the West Pakistan Muslim personal law (Shariat) Application Act, 1962 has abolished customs with respect to marriage, dower, and divorce etc. and Muhammadan Law has been held to be the basis of decisions where the parties are Muslims. The custom of SWARA is patently illegal, being contrary to the said Act.

That in Islam, in the case of murder, there are only three options available to the victims' family. One is taking the life of the murderer (*qisas*) in case the victims' family is not willing to pardon the murderer. The other two options are blood money (*diyat*) and completely forgiving the murderer for *badl-e-sulh*. There is no other punishment for murder, recognized in Islam, therefore SWARA falls outside the ambit of Islamic punishments.

In Islamic jurisprudence, there are four characteristics of punishment i.e Punitive, Retributive, Reformatory and Deterrent and none of the above characteristics exist in the customary practice of SWARA. In SWARA the actual murderer gets away completely and an innocent woman has to pay the price for the crime committed by her father or some other male member of the family. The Custom of SWARA is being practiced unlawfully and in complete ignorance of the teachings of Islam and

thus liable to be struck down.

That the key component of any marriage is consent and willingness of the spouses. However in SWARA, the marriage is forced on the woman, making it completely deplorable. In essence, the SWARA arrangement amounts to *zina-bil-jabr*, and the women forced to marry under this custom desperately need the protection of the law. The said custom is in direct violation of section 6 of Offences of Zina (Enforcement of Hudood ) Ordinance, 1979.

That Jirga is a dispute settlement forum and at best can act as a mediator or an arbitrator. It, therefore, can function on a consensual basis if acting as a mediator/arbitrator and after hearing the parties. The decision of a Jirga can also be challenged like any other award of an Arbitrator. More importantly, the Jirga which draws wisdom from the local customs and practice can at no time decide against the mandate of the Constitution or the law of the land. SWARA is a decision that violates the Constitution and is, therefore, unlawful and no Jirga in the country has the jurisdiction to declare or decide the same. Similarly, in criminal matters the Jirga has no jurisdiction and cannot assume the role of parallel judiciary.

That Article 1, 2, 3, 7, 16, and 25 (2) of The Universal Declaration of Human Rights 1948 (UDHR) ensure basic fundamental rights to all persons. Pakistan, being the signatory of The UDHR, is required to uphold these minimum standards provided under the Declaration.

That Article 16 of Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) clearly states that women are free to choose their spouses for marriage and all appropriate measure shall be taken to eliminate any discrimination against women in this regard. Again, Pakistan being signatory to the convention, has to take necessary steps to eradicate all practices, customs and laws that are in violation of this right.

That Pakistan is a signatory to The International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 10 of ICESCR provides for protection of family, and right to free consent to marriage. Pakistan is required to send a report updating the Human Right issues. The Custom of SWARA is in complete violation of freedom of consent to marriage provided in the said Article.

That The Convention on the Rights of the Child (CRC), 1989 is also violated. Under Article 2(2) of CRC, State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians, or family members.



IN VIEW OF THE ABOVE SUBMISSIONS it is most respectfully prayed that this Hon'ble Court may graciously declare:

That a woman cannot be given as compensation in any form of settlement under the Constitution of the Islamic Republic of Pakistan, 1973.

That marriage under the custom of SWARA does not constitute marriage under the law of the land and therefore has no legal status.

That Jirga decisions in this respect have no legal status as they violate fundamental rights, the Constitution and law of the land.

That the custom of SWARA is unconstitutional, illegal and un-Islamic and in violation of the fundamental rights of women.

That proviso to section 310(1) of the PPC may kindly be declared to be unconstitutional as being in violation of the fundamental rights of women.

It is further prayed that the relevant local governments be directed to ensure that the custom of SWARA, called by whatever name, is immediately stopped and the victims of SWARA be released to lead a new life in accordance with the Constitution and law of the land.

An Order prohibiting the custom of SWARA be graciously passed and state functionaries also be kindly directed to ensure that no such custom is practiced within the area of their respective jurisdiction.

Any other relief this Hon'ble Court may deem fair just and appropriate may also be granted to the petitioners.

Drawn by  
Syed Mansoor Ali Shah  
Advocate Supreme Court of Pakistan  
15/2 FCC  
Syed Maratab Ali Road  
Gulberg-4, Lahore

## Annex 3

### Additional Case Studies Collected during Survey and Interviews

In Mardan, Mohammad Khan's son was murdered and since the culprit did not have any children, a niece, Nageena bibi was given to the bereaved family as Swara. According to reports, Nageena's case is unique since she has not faced any particular hardship at her in-laws and seems to be well settled.

In December 2005, a couple eloped from a village in the N.W.F.P. The girl's family was determined to kill the couple in order to compensate for the dishonour they brought upon the family. The Jirga decided that in order to end the threat of bloodshed the boy's 14 years old sister would be given as Swara to the girl's brother who was 30 years old. The brother called Asad, lost his temper one day over a petty matter and hit the girl over the head, as a result of which she has suffered brain damage.

*Farzana's story began 15 years ago when she married an Afghan refugee named Hameed, who had migrated to Pakistan along with his brothers, Hameed befriended Farzana's father Abdul Qayyum and this friendship led him to give his daughter's hand in marriage to Hameed. The couple were quite happy and would visit Hameed's parents in Afghanistan occasionally. Hameed was the eldest amongst his brothers and he would not only support his family but would also help his in-laws financially whenever needed. The couple had two daughters. Because of his Afghan background, Hameed was very particular about Farzana observing 'PURDAH'. He insisted on her being properly covered at all times, since he had his brothers living in the same house. One day Hameed came home to find Farzana washing clothes with her head uncovered, in fact, she was not wearing a DUPATTA (large piece of cloth to cover the head and body) at all.*

*His brothers were in the house at the time. Hameed lost his temper, shouting abuse and reminding her of the times he had strictly insisted that she must cover herself. In a fit of rage he grabbed hold of her plait of hair and cut it off. Things turned nasty with the two shouting at each other and Hameed beating his wife up. She stormed out of the house and went to her parent's house, telling them what Hameed had done to her. Her mother went straight to the in-laws house and her father picked up his pistol and accompanied by some friends called him out, upon which Qayyum got hold of him by the collar, swore at him and shot him at point blank range. He didn't give Hameed a chance to speak, whereas the latter was trying to*

*apologize for what he had done to his wife. It was the month of Ramadan and the time was around sunset, so there was not a soul around since it was freezing cold and every one was indoors preparing to break their fast.*

*No one found the injured Hameed and he died of excess bleeding. His family searched for him all over and finally found his body in a field. Qayyum and his sons became fugitives, Hameed's brothers lost their main breadwinner and Farzana was sentenced to a status worse than Swara, if that is possible. One of the brothers, Sharif married Ferzana but never acknowledged her as a wife. She was just a slave in the house. Their father tried to contact the brothers to end the feud but his demand was 'two' Swaras i-e Farzana's two sisters. Farzana's mother, who feared this would happen, married her daughters off in the Punjab and herself was avoiding any contact with her husband. Due to one man losing his temper over such a trivial matter, the lives of so many people were ruined. Hameed is dead, Qayyum and his sons are living their lives as paupers on the run. Farzana's mother is in-hiding from her husband and Farzana is spending her life working as a slave in a house hold where there is continuous insult, humiliation and mental torture.*

*In December 2005, at a village called Sikandary Karona, near Mardan a boy named Faisal sodomized the young son of Shah Zaman. The victims' family tried to avenge the despicable act through the Jirga, the father demanded Rs 50000 and a Swara as compensation. The Jirga included the local Nazim, Falak Naz, and they decided that 14year old Rafwatt bibi would bi handed over as Swara to a 35 years old man Fayyaz. The latter abused and humiliated her and finally divorced her after six months. Rafwat's father fought for his daughter's rights in court and finally it was decided that Rafwat would receive Rs.1000/month as maintenance and would be free to remarry.*

*Eleven year old Fauzia was given as Swara when her father killed someone. The victim's family would not accept another settlement. She was made to live in the enemy's home wedded to his son for a month and a half, till her father protested and begged the jirga to help him bring her back. Though, they managed to bring her back with the help of village elders, Fauzia continues living in fear. She knows that she has been returned temporarily till she turns 16. Fauzia is now living at her parent's home, waiting for the day when she will be sent back to face her fate.*

*Bakht Laiqa, an employee of the Municipal Committee, was beaten up by an officer of the same committee. Bakht was to retire soon and wanted her daughter to taken her place, whereas the officer, Rasheed, wanted to employ another girl with whom he had illicit relations. Bakht reported the matter to the newspaper and when the news was published, Rasheed lost his temper and assaulted Bakht. She was on her way to lodge an official complaint with the police when the local*

administration officer intercepted her and persuaded her to settle the matter through a Jirga. Bakht demanded a Swara as compensation for her humiliation and insult. With the help of the researchers and the persuasion of the police and the local Administrative officer the parties were reconciled and Bakht was awarded Rs/10000 cash as compensation, and the assurance that her daughter would get the job. It is rather ironic that in this case a woman is demanding Swara. Thanks to the interventions of those concerned, a 16 year old girl was saved from being handed over to a 35 years old man.

Saeeda, when born, all tightly wrapped in a 'suzni' and was lying in a cradle besides her mother. The maternal uncle on his visit to Saeeda's house announced the newly born girl's engagement to his son, Said wali. Saeeda's fate was decided on the first day of her birth. This traditional form of 'booking' a girl is called a 'niwaka' (to get hold of someone). A girl is considered engaged and as good as married to him. As years passed, Saeeda, who was teased by her friends as Said wali's wife, developed a liking for her fiancé. Knowing she was to marry Said wali, she would make preparations for her upcoming wedding by embroidering caps for Said wali as his wedding gift.

Little did she know that once again, without her consent, her future was being remoulded by her father, Khandeen. On receiving a lucrative offer for his 14 year old daughter Saeeda, her father promised her hand to yet another man. The reason behind the change in decision was a high 'Sar Paisa' (Bride Price) he had been offered for Saeeda.

Saeeda's father was unaware of the fact, that his daughter who was in love with her fiancé and could not imagine getting married to anyone else but him. All alone, without letting anyone know, she set off in a public van to head for Mardan from her village in Darra Adam Khel. While taking the risk, she knew she could be murdered for the bold step she was taking. Upon reaching Mardan, Saeeda was not only accepted by Said wali's parents but was given refuge from her family members who had set off to kill her for the 'disgrace' she had brought to the family.

Meanwhile, several 'jirgas' sat to decide how to resolve the issue. In one of the final jirga's it was decided that the only way left was to get Said Wali (Saeeda's fiancé's) 8 year old sister Bakht Meena as 'swara' for Saeeda's brother Amir Khan. For this final 'jirga' Bakht Meena had to skip school to accompany her father to a jirga where she was to be presented as compensation for the 'shame' Saeeda had brought to her family. The word spread in the village that 8 year old Bakht Meena was to be given as 'swara' to Amir Khan. This led to children teasing Bakht Meena, calling her 'Swara' instead of Bakht Meena. As Bakht Meena puts it, "I have stopped going to school because the children make fun of me and call me Swara instead of Bakht Meena."

*The story of Bakht Meena was highlighted in the local media. The local police took action and got Bakht Meena's father to sign that he would not give his daughter as compensation. The family that demanded a girl as compensation was asked to resolve the dispute through money instead of a girl. Though Bakht Meena has been freed from the shackles of an impending misery, but her name as 'swara' will take some time to go.*

*The girl who had voluntarily eloped and later married the man of her choice was later taken back forcibly by her father, signifying that since, Bakht Meena will no longer be given as 'swara', the enmity is once again rekindled.*

*Gul Bibi's father was accused of having illicit relations with a woman. The woman's family demanded 'swara' as compensation for the loss of their honor. When only 6, Gul Bibi's father took her by the hand and led her to a crowded jirga. She had no idea at the time about what had happened and after coming of age, she refused to accept her fate as 'swara'. The aggrieved party started threatening her that they would simply take her away forcibly. They had no intention of going through any marriage ceremony.*

*The man she was promised to was already married, in his late fiftie and a father of six children, whereas, Gulbibi had recently turned 16. Ever since Gul Bibi realized her fate, she went into depression and threatened to commit suicide. Gul Bibi was supported by her brothers, who took the matter to court. Gul Bibi has finally been freed of the chains of bondage that were tied by her father to save his skin. She has been an example for many other girls who accept the role of a human shield. As for her brothers, they are a beacon of hope in a society where defiance against the norms is dealt with sternly.*



## Selected Press Clippings from Local and National Newspapers

# Annex 1

[illegible]

By ATRD ATRD

By ASAD AHMED

**PESHAWAR** The presence of different social organizations have called for a proper legislative action in the so-called "Bacha" custom giving it a status in marriage to a trial to settle the dispute in the present legislation does not give relief to the women. These claims were expressed by representatives from the various tribes from the districts (SWFO).

These include the various civil society organizations, non-governmental organizations (NGOs) and the indigenous communities called here by Sarama, Kachub, an anthropologist and Director of Information organization, who moved the Supreme Court of Pakistan on April 29, 2004 to seek relief for those girls who fall victim to the antiquated custom known as "tawnee" in NWFP and "Vasul" in Punjab. Participants said that the new law (Series 33-2) and a tam

The participants said that the current anti-terror law (Section 37D) was very strict and required a common purpose and previous intent to be proven in the courts. They said it should be made clear that the current law was restrictive or prospective as the present law did not provide a remedy to those victims of "honor" who were "suffering" on the basis of what is referred to as their "culture."

and now wanted to be rid of it.  
Those at the negotiation said that  
under the prevailing law, if a "Swiss"  
made a loan on such a basis, her father  
would be liable for the loan.

[illegible]

Of the aims and objectives of the consultation, its authorship and its aims meant for dissuading the "ego" aspects of the case in "Sears" and strengthening the public being made by the Supreme Court or Parliament to abolish it. She requested the parties to also discuss the reasons that must be taken to know the magnitude of the influence of the custom.

...for the Senate to pass by the Senate in 1901.  
passed by the Senate in 1901.  
was "House Counsel."  
Kaiser Adolf State, a member of the  
National Assembly from the German  
National Party, declared "There is no  
doubt that the custom of the world such a  
doubtless the provided because the per-  
sonal life provided in others over  
the past procedure in others over  
said. As a public representative,  
I stand against the custom in the  
world, regarding again the custom in the  
world."

As a public defender, I have seen many cases where the defendant is a young man, a student, a worker, a man who is not a criminal, but who is being charged with a crime. I have seen many cases where the defendant is a young man, a student, a worker, a man who is not a criminal, but who is being charged with a crime. I have seen many cases where the defendant is a young man, a student, a worker, a man who is not a criminal, but who is being charged with a crime.

[illegible]

International should be made sensitive to the problems of the Third World. The report also says that the international community should be more sensitive to the needs of the Third World. The report also says that the international community should be more sensitive to the needs of the Third World.

the same way. All Shah Advocates  
Co-ordinators for the Free Loyal, 1933  
Project, published in "General" of the  
appears of the current of the people in the  
said that most of the people in the  
people were believed that was a big  
mantra of "Noble" traditional, be-  
was again and hear the people  
current was a more cultural, pro-  
that had no link to the Christian al-  
that had a special link to the  
British known. Advocate

[illegible]

...one of the few outstanding doc-  
...of South Asia at the Film  
...South Asia, Kathmandu, Nepal.  
...Another work of her is a Pictorial  
...Another work "Dahi Shikharas" which  
...bracket to one from a the re-  
...highlighted the past role of the re-  
...Persian women. Another project  
...—"Dah-e-Dar" Where we hear the  
...is about the plight of the Afghan  
...refugee women living in the  
...borderline border Pakistan.  
...A three-member bench of the  
...Sugarcane Committee appointing  
...Chief Justice M. H. Javed, Justice  
...Chaudhry, Justice M. Javed, Justice  
...and Justice Faizullah, Justice  
...is heading the panel. It was held on  
...The first hearing was held on  
...hearing is February 24, 2016.  
...During the first hearing, Sarwar  
...had handed the "Sara" documentary  
...prepared by her to the concerned  
...Chief Justice who returned back  
...minutes of several "Sara" victims  
...involving 10 years old girl and Sarwar  
...verdict of justice and asked Sarwar  
...and her lawyer to carry out more  
...research to present the next bench  
..."Sara" victim before Chief Justice  
...in the Supreme Court. Justice  
...also directed the NWC and Police  
...inspectors general in police to give  
...state protection to "Sara" who is  
...visiting the court of "Sara".



**Naveed Ahmad**  
BAD: Jirga  
Swat

Contending that Jirga has no legal authority to fund

**Jirga verdicts,  
Swara custom  
challenged in SC**

Continued from Page 7

Women are compelled to sacrifice their lives to protect the father, brother or uncle for the person they have committed. In the important person is killed, two women are given in status marriage. The quantum of compensation is number of girls to be given as Swara is determined according to status of the aggrieved party.

# THE NEWS

Generally, girls are given Swaraj as compensation for murder, adultery, abduction and kidnapping committed by the men of the family. Jirgas decide the fate of men and the pronouncement is without the consent of the concerned. Jirgas consist of male members of the community.

## Survey about Swara marriages in Mardan

The fact that no law in India permits the custom of widow burning is being practised in various places of women. Women are being determined on the basis of gender alone, which further violates Article 25 of the Constitution. The custom is also contradictory to the principle policy enumerated in Article 35, which provides "the states shall protect the marriage, the family, the mother and the child". When a female is given in Swara marriage, she is not accepted as a normal bride and is deprived of all the rights that are part and parcel of the contract of marriage. The logic advocates is that it is custom by its advocates is that it is a way to put off the fire of revenge and to end the enmity between two tribes.

*[A photograph showing a group of people, possibly at a public gathering or protest.]*

*[Caption:] A group of people gathered for a public meeting or protest.*





## SC seeks reports about 'Vani', 'Swara' victims

ISLAMABAD: A three-member bench of the Supreme Court on Friday directed the inspectors general of police of all the four provinces and the Northern Areas to submit detailed reports about "Vani" and "Swara" victims in their respective areas and provide adequate security to them, who are being used in resolving/compromising of major disputes, murder, etc.

The IGPs were also directed by the bench to provide data of such cases related to "Vani" and "Swara" to the court till next hearing, which will be held in the last week of April, 2006.

An apex court bench, comprising Chief Justice Iftikhar Muhammad Chaudhry, Justice Faqir Muhammad Khokhar and Justice Mian Shakirullah Jan, heard the case in brief due to want of time. Assistant Advocate-General Punjab Afshan Ghazanfar appeared before the court on the directives of Chief Justice Iftikhar Muhammad Chaudhry, who took suo moto notice of this case on a news item. Syed Mansoor Ali advocate also appeared before the court and presented a report regarding "Vani" and "Swara".

Samar Minallah, an anthropologist by profession from Peshawar also filed a petition before the court about "Swara", which was clubbed with the case of "Vani" for hearing by the bench.

Samar had already presented CDs of a documentary prepared by herself on "Swara" having interviews of various girls belonging to different areas of the province to the bench and informed that decades ago this custom was used by Jirgas in positive manner but now it had become totally illegal.

"Swara" is also an identical custom, which is being used in various parts of NWFP. Syed Mansoor Ali informed the court that nine NGOs, including Aurat Foundation, Strengthening Participatory Organisation (SPO), Oxfam, Khandu Kour, Sparc, Ethnomedia and Shirkat Gah had launched collective research work in various districts of NWFP.

These organisations will also collect data regarding above mentioned cases of both the old customs through a project namely Gender Equality Project (GEP) being extended to various districts of the country with the funding of foreign donors.

## IGPs made responsible to prevent Vani, Swara

By Our Staff Reporter

ISLAMABAD, Dec 16: The Supreme Court on Friday ordered the inspectors-general of the NWFP and Punjab to protect women in their respective provinces being given in marriage as ransom under unIslamic customs of 'Vani' and 'Sawara'.

A three-member bench comprising Chief Justice Iftikhar Muhammad Chaudhry, Justice M. Javed Buttar and Justice Tassadduq Hussain Jilani also directed the District Police Officer (DPO) of Mianwali to provide security to five girls and submit compliance report before the court.

The court was jointly hearing the case of five girls from Mianwali who have appealed to President Gen Pervez Musharraf and the chief justice of Pakistan to save them from the cruel social rite of Vani and the petition of a freelance anthropologist, Samar Minallah, against the custom of Sawara (a dispute settlement in which, instead of money, young girls of offender's family is given in marriage to victim's family as a compensation for the crime committed by male family members).

The Supreme Court decided to take up

again the matter next year on February 24 after Supreme Court Bar Association (SCBA) president Malik Mohammad Qayyum sought time to research the customs of Vani prevailing in Mianwali district and identical customs in other provinces under which fundamental rights of women were being denied.

Advocate Syed Mansoor Ali Shah, representing Samar Minallah, requested for urgent hearing in view of incidents reported in different parts of the country.

Samar Minallah also presented a recorded compact disc (CD) containing interview of a ten-year-old Norrina of Swat (NWFP) who was forced to stay a night in victim's family without solemnization of marriage. "This is an accepted custom in the province," she deplored.

She also stressed the need to sensitize lawmakers about the ills of Sawara by citing an example of Nowshera where in 2004, a daughter of a watchman was given under Sawara. Ironically the jirga (council of elders) which settled the matter comprised naib nazims and former parliamentarians.

Referring to Vani, the court noted that Amina, Sajida and Abida have threatened to commit suicide if they were not protected from the unconstitutional and unIslamic custom.

Asiya, 8, Amina, 9, Abida, 7, Sajida, 5, and Fatima, 7, were married off in their childhood in a compromise of murder to save their elders.

Samar Minallah in her petition requested the court to declare illegal the handing over of a woman as compensation in any form of settlement and that marriage under the custom of Sawara did not constitute marriage under the law.

She had also requested the court to declare that jirga decision in such cases had no legal value as they violate fundamental rights besides section 310(1) (compounding of Qisas) of the Pakistan Penal Code was unconstitutional.

She also sought a direction from the court to ensure that Sawara custom should be banned immediately and the victims be released to lead a new life in accordance with the constitution.

مبشر زیدی  
بی بی مسی اردو ڈاٹ کام، اسلام آباد

## ضلعی کمیٹیوں کا حکم: ونی، سوارہ

پاکستان کی عدالت عظمیٰ نے بدلہ صلح کے تحت کمسن لڑکیوں کے رشتے دینے کی قدامت پسندانہ رسموں و نی اور سوارہ کو روکنے کے لیے ملک کے ہر ضلع میں ایک کمیٹی تشکیل دینے کے احکامات جاری کیے ہیں۔

**خصوصی اشاعت: بونی اور سوارہ کی غیر قانونی رسم**

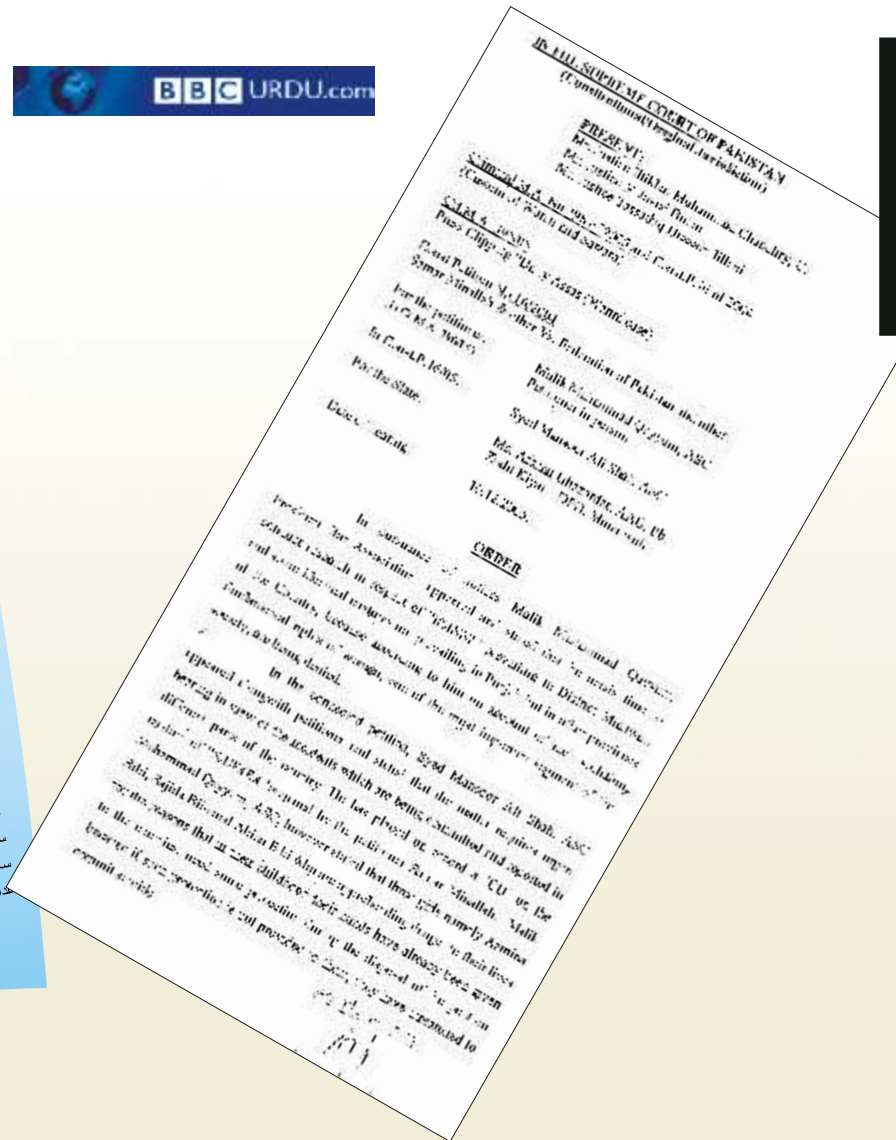
**خصوصی اشاعت ہوئی اور سوارہ کی غیر قانونی رسم**

صوبہ سرحد کی صنعت میٹالیائی کی ونی قرار دی جانے والی اور سوارہ کی  
آج اور درخوستوں کی سماعت کے کارکن ٹمر منٹھ کی درخوستوں کی سماعت کے بعد جاری کیے۔  
عدالت کو بتایا کہ عدالت کے آغاز میں ٹمر منٹھ کے وکیل منصور علی نے  
ان واقعات میں کمی کی ہے تاہم ان کا کیا تھا کہ ابھی بھی کئی  
علاقوں میں مل کے بیٹے موجود ہیں جو ونی کی بھیبت چڑھایا جا رہا ہے۔  
سماعت کے دوران چیف جسٹس نے صوبہ پنجاب کے صنعت پالیسی کارکنان کی  
خاتون کی درخوستوں پڑھی جس میں کہا گیا تھا کہ اس کے ساتھ اس کی تصاویر عازف والا کی ایک  
ریڈائی کی اور اس کے بعد پنجپٹ کے حکم پر اس کا تاج مڑم کے بھتی کے ساتھ جیکہ مڑم کی  
تین سالہ لڑکی کو اس کے کسمن بھتی کے ساتھ ونی کے طور پر دیا گیا۔  
ان کاگھر مسماں کرے کی دھمکی دی۔  
اس درخوست کی سماعت کے بعد چیف جسٹس نے انکار کیا تو انہوں نے  
ملک میں پھیلنے جا رہی ہیں۔  
ہوں نے یہ عرض کیا کہ ونی

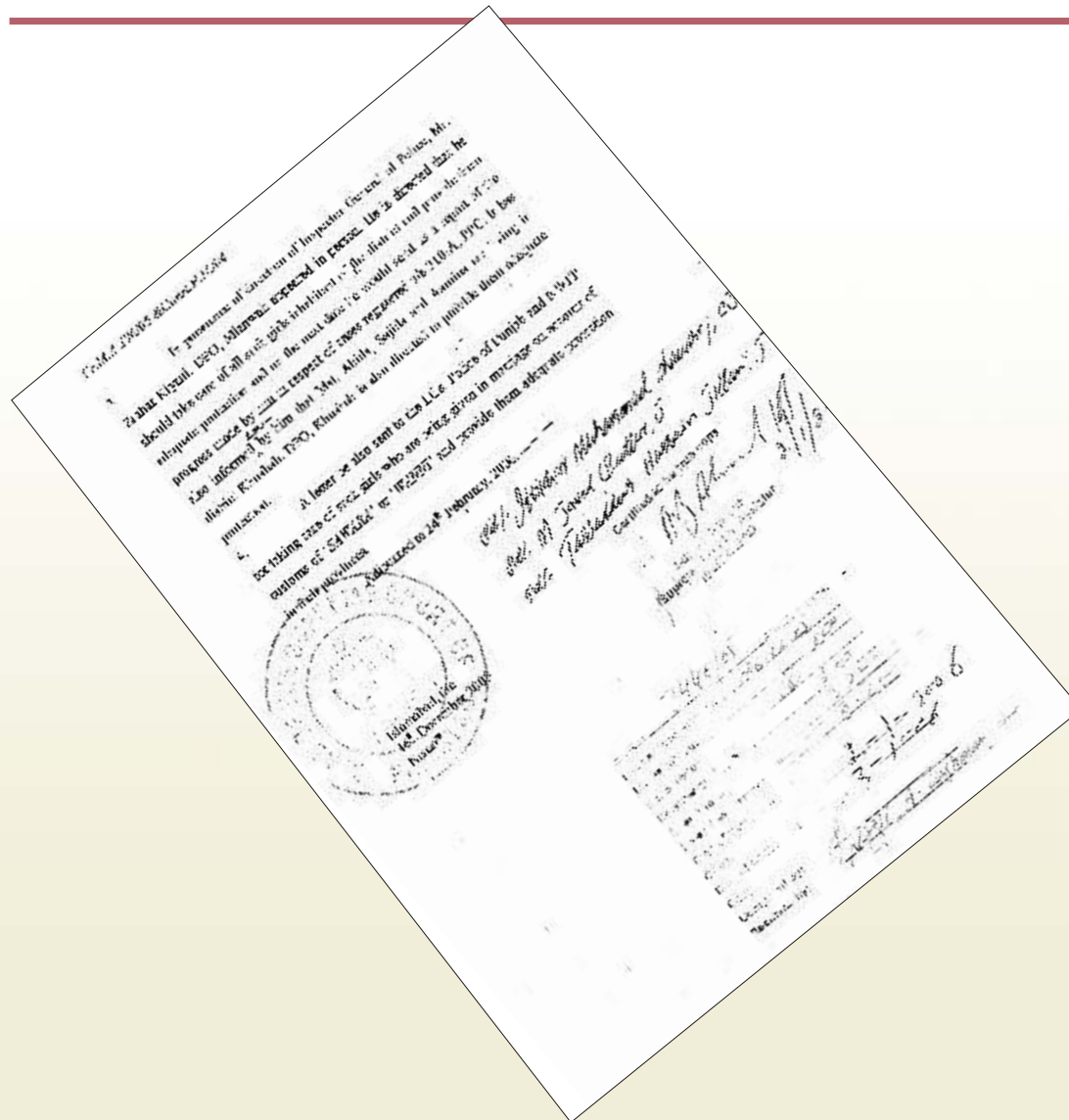
انہوں نے ہر ضلع میں مقامی ضلعی ہار ایسوسی ایشن کے صدر اور جنرل سیکریٹری پر مشتمل کمیٹی خلاف شکایت جمع کریں گی اور ان پر عملدرآمد کے لیے سیشن ججوں سے رجوع کریں گی۔ اگر ان واقعات کی شکایت درج کروائی گئی۔

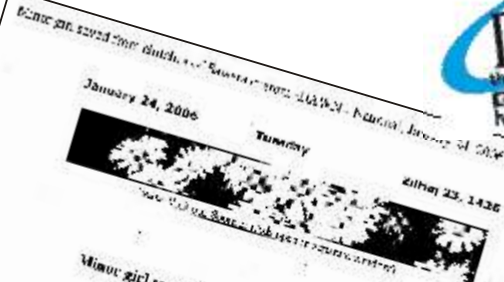
سیکرٹری کوئٹہ نے تمام ضلعی پولیس افسران کو ہدایات جاری کی ہیں کہ وہ ان کمیٹیوں کے ساتھ تعاون کریں تاکہ معاشرے سے ان اقدامات پسند غیر انسانی رسومات کا خاتمہ ممکن ہو سکے۔

حالت نے ان درخواستوں کی سماعت اگلے ماہ کی پندرہ تاریخ تک مؤخر کر دی ہے۔









21177 23. 1420

*Ms. A.9.2.10.1*

[illegible]

Page 3 of 2

A few months ago, a 15-year-old girl was taken to the hospital for compensation for a snake bite. She was from Malakave.

Likewise, 17-year-old Rubina, belonging to Kari Kereva (Dumka) was taken to the hospital for compensation for a snake bite. Rubina had been given money as compensation for a snake bite. She was taken to the hospital for compensation for a snake bite.

There again, the villagers know she was poisoned by her in-laws. Ms. Monalisa claimed.

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# Swara girl decreed by jirga rejected

By Javed Afridi

**PESHAWAR:** A family has refused to accept a thirteen-year-old girl as 'Swara' and demanded a replacement, saying the girl was mentally upset and a minor. Bibi Jan was bought by a family for Rs. 53,000 to be given as compensation to a family whose girl had eloped with a member of their family. However, the recipient family rejected Jan, demanding a 'Swara' girl be given to them as compensation. Following a jirga in Mardan district that had directed Afsar Ali of Shahbaz Gari to hand over a girl to the family of Gul Sanga of Rusthum. Since Ali had neither a sister nor a close relative, the jirga ordered him to buy a girl and then hand her over to the Sanga family. Sajid, a cousin of Ali, helped implement the jirga decision by purchasing Jan from Nothia Bazzar in Peshawar, where he worked at a pump. Samar Minallah, the project director of Ethnomedia, which researches cases of Swara, has held the local police responsible for the incident.

Handwritten notes in Urdu script, likely a translation or commentary on the article.









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