




## HONOUR KILLING AND CRIMINAL JUSTICE SYSTEM IN PAKISTAN: REFLECTIONS ON INCIDENTS IN GUJRANWALA, 2012-2023

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### Abstract

This article examines the factors that contribute to gender inequality and violence against women in Punjab, Pakistan. It focuses on District Gujranwala and examines patriarchal power structures, cultural norms, and restrictive gender roles. The article analyzes court decisions in District Gujranwala from 2012 to 2023, which show a high number of acquittals, mostly because of retracted eyewitness testimony. We argue that despite statutory reforms, there exists an over-reliance on visual evidence that undermines justice. We suggest that a comprehensive policy is needed that challenges cultural norms, advances gender equality, fortifies legal frameworks, and reforms investigation and prosecution techniques to effectively prevent honour killings and increase conviction rates.

**Key Words:** Honour Killing, Code of Criminal Procedure, Eye witness, Pakistan Penal Code, Gujranwala, Pakistan

### INTRODUCTION

Whoever slays a soul unless it be (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind. And indeed again and again did Our Messengers

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come to them with clear directives; yet many of them continued to commit excesses on earth. (Sura Alma'ida, 32)

All forms of violence against a person carried out for the sake of honour that culminate in the killing of that person fall under the definition of "honour killing." When someone commits an "honour crime," it is believed that they have brought shame and dishonour upon themselves as well as their family. By utilizing physical, social, or emotional force against a person who is seen to be guilty of unethical behavior, the honour based violence attempts to get rid of the stain of shame. Physical force may even result in the so-called "honour killing" (HK), which is the death of the "transgressor".<sup>1</sup>

Honour crimes are more of an accepted cultural practice than an outcome of religious doctrine.<sup>2</sup> Culture is made up of societal values, norms of actions, experiences, morality, and rules of conduct.<sup>3</sup> A person's cultural identification can assist in comprehending the opportunities and struggles that each member of that culture confronts. A woman is seen as the personification of the status and dignity of the home from a very young age.<sup>4</sup> Women's independence is limited and often restricted to the home and schools, particularly before marriage, in certain cultures because moral prejudice demands that they have little interaction with non-family male members of society.<sup>5</sup> Any act of misconduct on the part of women destroys their religious identity in the community. In addition, it takes respect and regard to communicate and build relationships in a community with close ties like Pakistan. Any behaviour that undermines this has a ripple effect that affects not only the household and family members but can also have a negative impact on young girls and occasionally young boys' risks of getting married, leading some of these families to move out of their neighbourhood.<sup>6</sup>

Honour Killing is a universal phenomenon. It is known to be widespread in several countries on the continents of Europe, Asia, Africa, and America.<sup>7</sup> However, third-world countries with significant tribal traditions, cultural features, and the "Jirga system" (traditional assembly of the elderly) are where this practice is most prevalent.<sup>8</sup> The United Nations Population Fund (UNPF) estimates that each year, 5,000 women and girls are killed by family members in Pakistan and India and 10,000 worldwide (UNPF, 2014). Every year, 1000 girls are victims of HK, according to the Human Rights Commission of Pakistan

(HRCP, 2021). It is stated that about 20,000 women allegedly become victims each year globally.<sup>9</sup> The idea of honour is often used in South Asia as a classic patriarchal weapon to oppress women.<sup>10</sup>

The criminal justice system's silence over the practice of HK in Pakistan is a point of agreement among scholars. A research go on to explore how strongly power is linked to the creation of a culture of honour.<sup>11</sup> According to the Human Rights Commission of Pakistan (2012), a variant of HK known as Karo-Kari was responsible for the deaths of 158 women and 97 men in the Pakistani province of Sindh. The expression "killing in an act of honour" is incorrectly used to describe the murder of a woman who has lost the respect of the assailant. This crime may be characterized as a "ritualized form of violence, usually committed by male offenders and often, but not always, against female victims".<sup>12</sup> The Federal Minister of Interior presented the following set of national data to Pakistan's Senate in July 2004. In Pakistan, 4,101 cases of HK were documented between 1998 and 2003. There were 1,327 men and 2,774 women among such individuals. According to these figures, males can also fall victim to killing related to honour.<sup>13 14</sup>

Ms. Sharmeen Obaid Chinoy, a journalist and activist from Pakistan, received her second Oscar in 2016 for the biographical film "A Girl in the River: The Price of Forgiveness". The narrative was inspired by an actual incident involving a teenage girl who escaped her father and uncle's attempt at HK. This is representative of the ills of patriarchal Pakistani culture, which is deeply rooted in the concepts of "honour" and "shame," and which have both contributed to the rise in HK incidences and given this crime momentum.<sup>15</sup> As previously said, District Gujranwala is the subject of this study because it represents a primarily rural culture or mindset centered on the patriarchal system with a significant focus on concepts like "shame" and "honour." Pakistan is considered a patriarchal society, and honour-based violence (HBV) is embedded deep into the social fabric.<sup>16</sup> According to the HRCP (2022), the number of women killed in Punjab in the last ten years in the name of honour is 2,966, of which only 176 were killed in 2022.<sup>17</sup> Domestic issues, marriage choice, and illicit relations were the main causes of these murders.<sup>18</sup> In almost all cases of HK, the perpetrator is a close family member or a relative.<sup>19</sup>

The laws governing HK in Pakistan have historically have been weak,<sup>20</sup> but the State has tried to improve the legal framework in recent years. In 2004, the Criminal Law (Amendment) Act defined HK as a distinct crime, separating it from ordinary homicide.<sup>21</sup> Also, in Pakistan, murder is compoundable, meaning a victim's family may pardon the perpetrator in exchange for a (financial) settlement.<sup>22</sup> However, in 2016, the Parliament of Pakistan made the offense of HK non-compoundable and therefore unpardonable. Despite these reforms, conviction rates have still not risen.<sup>23</sup> <sup>24</sup> In Pakistan, the police are solely responsible for the investigation of all crimes. After the completion of the investigation, the case is handed over to public prosecutors for trial in court. Thus, effective prosecution depends on effective investigation. The police build HK cases mostly upon eyewitness accounts.<sup>25</sup> and often it is only the eyewitness statement that serves as the basis of an arrest and prosecution. This is because families and communities are generally unwilling to cooperate and may see the killing as justified.<sup>26</sup> However, once in court, it is not unusual for the eyewitness to recant their testimony. Without any other evidence implicating the accused, an acquittal is the result. Courts often attribute acquittals to the police's faulty investigation and the prosecution's failure to supervise the police.<sup>27</sup>

Each year, hundreds of women become targets of Honour Killing (HK) in Pakistan, yet the perpetrators escape punishments mainly due to the ineffective Criminal Justice System's response to such cases.<sup>28</sup> In 2021-22, 17 incidents of HK were reported in Gujranwala as compared to 13 in 2017-18 even after the legal intervention in 2016, making the offense of HK non-compoundable (HKRC, 2022). Over the years, the increase in these cases hints at the chronic flaws in the prevailing justice system and investigations, making it imperative to review the legal regimes and particularly investigation, practices in vogue. To analyze the efficacy of the Criminal Justice System in dealing with HK cases in Gujranwala, this research will focus on and address the following questions.

- a) What is the status and determinants of honour killings in society and the legal framework concerning HK?
- b) How far the legal intervention of making HK uncompoundable was successful in enhancing convictions in HK cases?

- c) How does dependence on ocular evidence in trials of HK cases in Gujranwala affect acquittals?

### **1. Literature Review**

Several studies have been done on HK, particularly those that focus on its causes.<sup>29</sup> Many scholars have concentrated on the statistics on the prevalence of HKs in society.<sup>30 31</sup> There is a lot of literature on HK that is the result of individual study projects and work done by NGOs, but there aren't many studies that are based on actual research on the investigations and court cases involving the HKs. Infidelity, elopement, marriages without the consent of one's parents or biological relatives, and other factors are discussed by <sup>32</sup> as contributing factors to the HK in a community. Some parents refuse to accept and allow the freedom of women to live their own lives and make their own choices for the sake of religious regulations, upholding familial customs, and social culture. In the same vein,<sup>33</sup> discussed the moral dilemmas and practical difficulties researchers encountered in researching HBV perpetrated against women. According to the author's analysis of instances, the cultural defense can be used to defend illegal behavior to lessen the severity of the punishment. Due to specific religious and tribal beliefs that limit individual rights, HK has especially infiltrated South Asian patriarchal society.<sup>34 35</sup>

However, it is common for an eyewitness to withdraw their statement after testifying in court. An acquittal occurs when no more evidence relates the accused to the crime. The prosecution's inability to regulate the police and the Police's faulty investigation are often blamed by courts for dismissals.<sup>36</sup> In an interview, prominent women's rights activist Farazana Bari said that HK is a commutable crime in which the accused and the victim's family resolve the conflict by compromise.<sup>37</sup> In almost all instances, the accused gets released by the complainant's or victim's family members since they are related to the victim.<sup>38</sup> Due to a lack of adequate evidence, the accused is often forgiven in court trials. Due to inadequate evidence and the lack of any eyewitnesses, the court released Erkal, a government employee who was found accused of inflicting over forty bruises on his small daughter.<sup>39</sup>

Both financially and socially, women are dependent. Before marriage, women are dependent on their parents; after marriage, this

dependence is transferred to their husband's family, where they may experience domestic violence from both male and female family members, especially mothers-in-law.<sup>40</sup> Domestic despotism, dominating marital relationships, as well as physical and verbal abuse, are employed against them. Due to their need for money, women in these neighborhoods are more exposed and have fewer opportunities to flee or find safety. The fact that murdering a man might start endless feudal battles since males are seen as more honorable than women for financial and other motives is yet another factor contributing to the rise in incidences of women becoming victims.<sup>41</sup>

The offenders use the immoral behaviors of women as a justification for their horrible behavior. Although many actions violate honour but adultery and even the allegation of adulterous activity are at the top of the list. Similarly, love marriage and pregnancy before marriage are considered terrible sins. According to<sup>42</sup>, love marriage occurs mostly outside of the family or clan without the consent of the family's elders (parents, brothers, or close relatives).

## **2. Research Methodology**

The study's methodology is argumentative since it began with a hypothesis that was then examined and evaluated (one of the research questions is based on the assertion that Police and prosecution reliance on eyewitness testimony considerably enhances the chance of acquittal in HK cases). The design centered on gathering information that would assist establish or explain the connection between the inquiry and the results of HK trials. Court decisions from HK cases served as the primary source of data since they provided in-depth explanations of the factors or reasons that led to a certain outcome (conviction or acquittal). Eyewitness evidence was cited in judgments so that the investigator may see what an eyewitness said during the trial and its effects thereof. The court verdict explains the conclusion (conviction, acquittal), followed by several pages of reasons.

Both a quantitative content analysis<sup>43</sup> and a qualitative theme evaluation<sup>44</sup> were performed on this data. This particular type of analysis uses a variety of methodologies. Both qualitative and quantitative procedures "share the broad aim of generating accurate and descriptive inferences," as stated by.<sup>45</sup> The two types of data

strive to identify causal linkages, however, qualitative inquiry focuses on "explaining results in individual cases," whereas quantitative research concentrates on "estimating the average impact for distinct variables". The quantitative data also contained frequency details, such as the number of instances in which testimony from witnesses was utilized. The important aspect of the eyewitness account was one of the judgments that were discussed in the qualitative data.

Throughout this study, examples were chosen from Punjab, Pakistan district Gujranwala. There are 150 districts in Pakistan, which have an estimated population of approximately 231 million individuals (Pakistan Bureau of Statistics, 2021).<sup>46</sup> Due to time and resource limitations (there was a single researcher who completed the investigation), the scope of this study was restricted to one district, the Gujranwala in the Punjab province, which has almost 6 million people (Pakistan Bureau of Statistics, 2021). This district has a traditional, patriarchal societal framework that is most similar to conditions associated with HKs.

The chosen time frame for the instances was 2012–2023. This spans the time frame before and after the significant law revisions in 2016. The purpose of this legislation, as previously said, was to decrease HKs by making it unlawful to pardon suspected HKs perpetrators. Consequently, one would anticipate an increase in convictions. Human rights NGOs have noted that even though these instances persist, some aspect of the police investigation and conviction is likely to be causative. The research topic is then raised, and it is addressed using the techniques mentioned. Every year, there are usually 3-4 HK court judgments in Gujranwala, with 22 Judgments generated between 2010 and 2022, there is a lot of data to be analyzed.<sup>47</sup> Court judgments are public documents that may be readily acquired from the legal divisions of law enforcement and prosecuting agencies.

To address the study questions, patterns concerning and demonstrating the connection involving the police investigation, eyewitness accounts, and acquittal surfaced via a quantitative content evaluation of the judicial trials. As per the statement of<sup>48</sup> "Its [content analysis] capability lies in offering a fair assessment of an extensive amount of [legal] judgments." The number of judgments where eyewitness testimony served as the sole or primary data, the

percentage of instances in which acquittal resulted, the number of instances during which an eyewitness was unwilling to stand by the authenticity of their original assertion, and a cross-tabulation of incidents which resulted in dismissal due to evidence type (e.g. having just an eyewitness account as the sole or primary evidence) all had to be manually identified. While the qualitative thematic evaluation centered around how witnesses portrayed the incident and how they explained the rationale behind the court's testimony shifted from their initial statement made to police throughout the inquiry. It demonstrated more than only the relationships underlying witness testimony and verdicts, which clarified the reasons why juries acquit defendants by using evidence from witnesses and the courts.

By examining the possible causal connections between eyewitness accounts and low convictions in HK cases, the research provided insight into the procedures of investigation as well as prosecution throughout HK trials. Due to the lack of research on the investigation and trial procedures in HK cases in Pakistan and the fact that the research's theory was developed based on first-hand professional and personal encounters, this research served as an assessment of existing theory and a foundation for the new theory. This effort is an attempt to explore a probable causal link between the importance of eyewitness testimony and acquittals throughout the HK cases. To try to evaluate and analyze the link between investigation, prosecution and acquittal as well as identify the mechanisms that ensure these events might occur as a means to inform subsequent studies and ultimately result in change, an approach involving both methods was purposefully chosen for this research. The dependent variable for this research was the HK case result of the accused person's acquittal. The present study did not examine any other independent factors that might either directly or indirectly impact the result of a court case; it solely examined the contribution of eyewitnesses in the dismissals of defendants in HK cases. Police corruption, for instance, may have been involved (because of their sympathies or kinship ties to the family when the HK happened). However, it is difficult to demonstrate and quantify corruption or compassion. According to the research's premise, the courts are exonerating the HK offenders because the eyewitnesses retracted withdrew, or altered their testimony in court. Thus, the eyewitness



evidence in an HK prosecution served as the research's independent variable.

Due to tiny sample sizes and a dataset of just 22 instances, one drawback of the study design is that it is extremely limited in scope. Since the research concentrates mainly on a certain place and period, it may restrict reliability and validity. Pakistan is a big nation, with about 1,000 cases reported annually, according to HRCP, 2018, which is much more than our sample size. To qualify over research with a comparable design to get the same results as the current study, the results must be consistent. In terms of how well-founded the findings are and how substantially they can be relied upon to establish a causal connection, this is known as validity. On the contrary, eyewitnesses and sufferers of HK instances may have been a superior source of original data, but, owing to geographical distance, a lack of time, and difficult ethical decisions, I limited my effort to only the court decisions in HK cases. Direct interviews with victims' friends and relatives would provide firsthand insights into the murders; however, they pose ethical and factual issues. This means that the member of the family will probably hesitate to talk to the researcher since they are also reluctant to talk to the authorities. Furthermore, if researchers are seen to be poking about and casting doubt on village institutions and the honor system, despair from revisiting distressing events and continuing danger to susceptible women is probable. This research issue is centered on the function of investigation and prosecution, rather than judgments, therefore, interviewing judges was not the only option available. Additionally, judges are often not permitted to communicate with outside scholars.<sup>49</sup>

### **3. Laws Related To Honour Killings In Pakistan**

- The 1973 Constitution of Pakistan guarantees the basic liberties of the individual, equality, social justice, and democratic principles. Under articles 8 to 28 of the Pakistani Constitution, all citizens, men and women alike, are entitled to basic rights, which include the right to be treated equally before the law regardless of their status.
- The Pakistan Penal Code 1860, Section 302, establishes that murder is a crime punishable by either life in prison or death, but it also lists some exceptions, such as the statement that "it is not considered a murder if the perpetrator, whereas devoid of the

authority of self-control by serious and unexpected provocation, results in the death of the individual who caused the provocation."

- The Criminal Law (Amendment) Act 2004 was approved and then adopted on December 8, 2004, as an important milestone in strengthening HK laws. Any murder perpetrated in the name of or under the guise of honour will be considered and handled as a separate act of homicide under this amendment, and its punishment has been significantly increased. The sentence in HK cases was increased to at least 25 years in jail if the crime of Qatl-i-Amd (culpable homicide) is committed in the name or under the pretense of honour. Sections 299 (ii) and Section 302 of the Pakistan Penal Code 1860 were also modified.
- According to Pakistani Shariah Laws, murder is a compoundable crime; however, after the anti-HK law was passed in October 2016, the parliament made homicide in the first degree non-compoundable<sup>50</sup> and made this murder of the degree of "Fasad fil Arz" under Section 311 of the PPC.
- In 1996, Pakistan approved the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Pakistan accepted responsibility for safeguarding women from sexual and other forms of gender-based violence under CEDAW.<sup>51</sup>
- The basic criminal code of Pakistan, known as the Pakistan Criminal Code (PPC) 1860, was drawn from British common law. The portions of the criminal code from 1860 that deal with homicide, murder, and bodily harm were revised in 1990 as part of the Islamization of that law. Following the passage of the "Qisas and Diyat Ordinance" by parliament in 1997, it was later enacted as the "Qisas and Diyat Act" ("Retribution and Compensation Act"). The legal pursuit of HK and homicide had uniform results as a result of this modification. By redefining murder and HK as private acts against the victim rather than crimes against the state, this statute privatized justice. This gave the victim's legal successor (wali) the power to block legal proceedings against the offender, approve monetary compensation (diyat), pardon the offender during the prosecution, and even change the death penalty.

In Pakistan, such offenses, like honour crimes, are rarely recognized and punished due to societal misconceptions and the apathy of law enforcement authorities to examine and investigate violence against women (HRCP, 2012). According to reports, Pakistani police reportedly do not register complaints in incidents of domestic assault and tell the victims to return to their spouses (Human Rights Watch, 2016). Many government officials in Pakistan have authoritatively acknowledged the HK challenge and offered suggestions for how to fix it. For instance, Aftab Nabi, the Inspector General of Sindh Police, proposed that to effectively protect women, the issue of domestic violence and HK should be considered a distinct crime that must be dealt with under separate laws rather than being covered by the Qisas and Diyat Ordinance. The minimized conviction rate and little punishment in the HK cases have also drawn criticism from representatives of the court, who claim that this constitutes the primary cause of Pakistan's intractable honour crimes. Notwithstanding these claims, no tangible actions have yet been taken.

#### 4. Findings

From 2012 to 2023, 22 HK cases were decided by the courts in GRW. The police investigated each one of these incidents and brought charges against the defendants in court. Out of 22 cases, there were only 3 convictions, and the remaining 19 defendants were found not guilty. Among the 19 acquittals, 12 were due to resiling statements by PWs. This was done due to family or cultural pressure, whereby even the state was unable to play its role. A close examination of every proceeding brought by the police and the prosecution, as well as the subsequent rulings rendered by the courts of law, demonstrates that eyewitness testimony was the primary source of support for the offenders' acquittals in the HK cases.

*Table 1: HK Case Details*

#	Particulars of case	Police Station	Date of judgment	of Decision
1	FIR No.398/11 dated 07.06. 2011 u/s 302/34 PPC	Aroop	30.07. 2012	Acquitted on merits

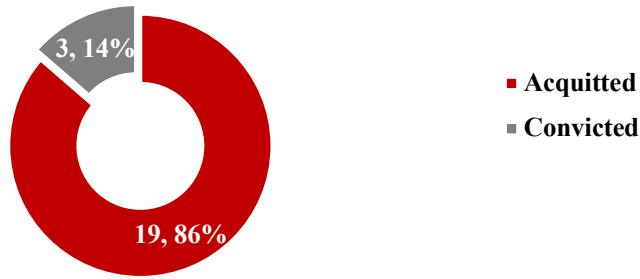
2	FIR No.164/14 dated 25.03. 2014 u/s 302/114Alipur Chatha PPC	05.05. 2015	Resiling statements of PWs
3	FIR No. 83/14 dated 09.02.2014 u/sAlipur Chatha 302/148/149 PPC	27.10. 2017	Acquitted on merits
4	FIR No.414/16 dated 31.08. 2016 u/sAlipur Chatha 302/147/149 PPC	27.10. 2017	Acquitted on merits
5	FIR No.308/17 dated 10.08.2017 u/s Qila Didar 302/34/311 PPC Singh	09.01. 2018	Resiling statements of PWs
6	FIR No.402/17 dated 19.10.2017 u/s 302/201 Allipur PPC Chatha	26.01. 2018	Resiling statements of PWs
7	FIR No. 380/17 dated 10.10.2017 u/s 302 PPC Ferozewala	24.02. 2018	Resiling statements of PWs
8	FIR No. 113/18 dated 17.03.2018 u/s Qila Didar 302/311/109/34 PPC Singh	28.10. 2019	Acquitted on merits
9	FIR No. 213/19 dated 13.08. 2019 u/s 302/34Sadar GRW PPC	08.11. 2019	Resiling statements of PWs
10	FIR No.275/19 dated 01.06.2019 u/s Sadar 302/311/34 PPC Wazirabad	31.10. 2019	Acquitted on merits
11	FIR No. 27/19 dated 15.01.2019 u/sEminabad 302/365/34 PPC	30.11. 2019	Convicted
12	FIR No.116/19 dated 02.05. 2019 u/s 302/311Wahndo PPC	17.03. 2020	Acquitted on merits
13	FIR No.116/19 dated 16.06. 2019 u/s 302/311Wahndo PPC	07.01. 2020	Resiling statements of PWs

14	FIR No.516/20 dated 09.06.2020	u/sAlipur Chatha	29.10. 2020	Resiling statements of PWs
15	FIR No.90/19 dated 23.03.2019	u/s 302/311Ahmad Nagar	20.06. 2020	Resiling statements of PWs
16	FIR No. 94/18 dated 20.03.2018	u/sWahndo	15.10. 2021	Acquitted on merits
17	FIR No.720/20 dated 24.08.2020	u/sAlipur Chatha	08.05. 2021	Resiling statements of PWs
18	FIR No.720/18 dated 07.05.2020	u/sAroop	28.07. 2021	Convicted
19	FIR No.247/20 dated 18.04.2020	u/s Ghakhar Mandi	05.10. 2022	Resiling statements of PWs
20	FIR No.1004/20 dated 30.07.2020	u/sSadar GRW	28.02. 2022	Convicted
21	FIR No.281/22 dated 20.02.2022	u/s 302/311Kot Ladha	28.10. 2022	Resiling statements of PWs
22	FIR No.2281/22 dated 30.11.2022	u/sAroop	18.03. 2023	Resiling statements of PWs

The additional evidence presented by the prosecution and police was secondary or, in many instances, tertiary facts in connection to the prosecution's case, such as the forensic examination of the offender's weapon by specialists at the Forensic Science Laboratory. The testimony of eyewitnesses providing visual evidence (direct evidence) or circumstantial proof was always given priority. As previously said, the key witnesses altered their depositions before the case was presented in court, sometimes admitting their involvement in the crime or just doubting the accused without verifying it. The graphs and charts below are used to show the data. Figure 1 displays the proportion of convictions and acquittals in GRW. The courts in HK

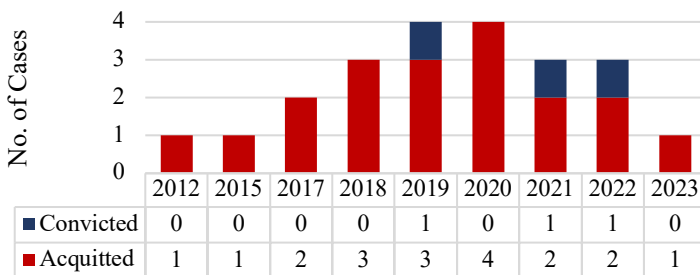
resolved 22 cases between 2012 and 2013. Three instances resulted in a conviction, while in 19 of the cases, judges opted to release the defendant.

Figure 1: Percentage of HK cases resulted in conviction and acquittals.



Only one HK case was concluded in 2012, in which the accused was exonerated by the courts as a result of the merits deemed fit by the court. Only one HK case was decided in 2015, which resulted in the acquittal of the accused as well. In 2017, two cases were decided by the court, resulting in acquittals on merits determined by the courts. In 2018 and 2019, 7 cases went to court for judgment, and in 6 cases, the alleged offenders were found not guilty, whereas there was only 1 conviction in 2019. The following year, i.e., 2020, 4 cases were decided by the court, and all accused were found not guilty, 3 due to the resiling statements of PWs and 1 on merits. In 2022 and 2023, courts decided on 4 cases with 1 conviction and the rest found not guilty due to the resiling of PW's statement.

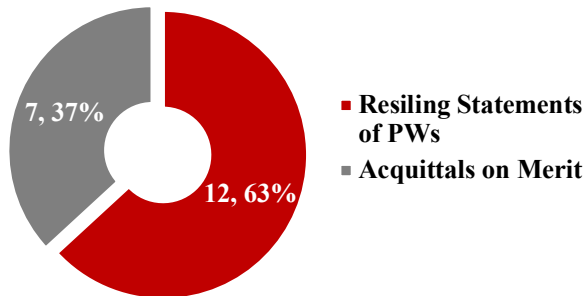
Table 2 HK cases resulted in conviction and acquittals year wise



Out of 22 HK cases from 2012 to 2023, 12 were acquitted as a consequence of resiling statements of PWs, where the eyewitnesses

changed their original statements made to the police during the investigation. The defendant was found guilty in only three cases. It is important to note that in all 22 of the HK cases from 2012 to 2023 in GRW, as shown in Table 1: The Details of HK Cases, witness accounts served as the primary source of evidence. When deciding whether to convict or defend the suspect, the court relied on eyewitness testimony.

Figure 2: Percentage of causes of HK acquittals in the courts



Out of 22 instances in HK, 63% of the suspected criminals were exonerated due to changes in the testimonies of eyewitnesses before the court, while the remaining 37% were exonerated as a result of a deal reached by the parties in question. It is important to notice from Table 1 that witness testimony was the primary form of evidence in every case the police compiled.

### 5. Discussion

The main cause of acquittal in HK cases is the recusal of witnesses from their earlier statements recorded before the investigating officer, on the basis of which accused persons were implicated. As it is evident from the observation of the learned trial court in case FIR No. 398/11, "the complainant mentioned that the accused committed the murder of his son Irfan (deceased) because the deceased keeps an evil eye on their sister, but the complainant did not depose even a single word in his evidence, while the statement of the accused under Section 342 Cr.P.C. shows that the accused had suspicion that the deceased teased their sister. So in this situation, motive was proved not by the prosecution but by the defense. The accused, Imtiaz, was involved in this case just to widen the net. The prosecution failed to

prove the charge against the accused Imtiaz Ahmad beyond any shadow of doubt; therefore, he is acquitted by the court of learned Special Judge Juvenile Court, Gujranwala."

The case FIR No. 399/11 is a befitting case for the attraction of the observation made by the Hon'ble Court in the judgement known as *falsus in unofalsus in omnibus* reported as PLD 2019 SC 527. While acquitting the accused, the learned trial court observed that "the complainant Niamat Ali, while appearing in the witness box as PW1, deposed that on 6.7.2011, when he came back to his house after bringing green fodder at 2.30 or 3.00 p.m., he saw that some unknown accused had committed the murder of his daughter, Ulfat Bibi. Sughran Bibi, while appearing as PW2, deposed that she was not in her house at the time of the occurrence and that she has no knowledge of who committed the murder of her daughter Ulfat Bibi. PW3 Muhammad Ashraf deposed that he did not see this occurrence with his own eyes. Hence, PWs 1, 2, and 3 were declared hostile on the request of the learned ADPP for the state. Hence, the court of learned ASJ, Gujranwala, acquitted the accused Muhammad Fayyaz by giving him benefit of doubt u/s 265-K Cr.P.C."

Critical analysis of the judgements issued by the trial courts of the said period with reference to HK has revealed that investigating officers are shy about collecting scientific and technical evidence, and the learned trial court is also hesitant to attach probative value to the pieces of evidence procured on the basis of modern devices as conclusive pieces of evidence, despite the fact that 164 QS 1984 was amended. Like in other cases, the prosecution has also built its case in FIR No. 316/22 on the evidence of eyewitnesses. The eyewitnesses retracted their statements and exonerated the accused. Consequently, the learned trial court discarded other witnesses and acquitted the accused. In this regard, the learned trial court observed that "the case of prosecution mainly rests upon the evidence of eye witnesses, namely PW1 Muhammad Aslam and PW2 Iftikhar Ahmad. They did not support the prosecution's case against the accused by saying that they knew nothing about the occurrence. Both the said important witnesses were declared hostile and cross-examined at length by the learned DPP, but nothing incriminating could be brought on record to link the accused with the commission of the offence; accused Chand Ali was acquitted u/s 265-K Cr.P.C."



In case FIR No. 886/15, there was one eyewitness who, at the time of trial, did not support the story of the prosecution and was declared hostile by the DDPP. The trial court discarded all the other evidence due to the testimony of the eyewitness and observed that "every criminal charge involves two things, as above talked about: first, whether the offence was committed, and second, who was the author of the crime. The ocular account is the most organic evidence to identify the accused or author of the crime, which has not supported the charge. They were declared hostile at the request of the learned DDPP, but nothing favourable to the prosecution came on record. The complainant PW1 and the aforesaid Sagheer Hussain PW2 and Rehmat Ali PW3 were the basic witnesses to connect the accused with the commission of the alleged offence. The careful perusal of the record reflects that no other person appeared before the court with the claim to have witnessed the occurrence. The medical evidence is helpful regarding the first part of the charge, whether the offence has been committed, but absolutely not helpful to identify the accused. Moreover, the job of the investigator is to collect the evidence and not to create the evidence, and when the ocular evidence does not support the prosecution, the other evidence is at its most corroborative in nature and is not sufficient by itself to support the conviction. Hence, the accused was acquitted u/s 265-KCr.P.C."

According to the judgement pronounced by the learned Sessions Judge, Gujranwala, in first information report No. 308/17 dated August 10, 2017 u/s 302/34/311 PPC PS Qila Didar Singh, Gujranwala, material witnesses exonerated the accused persons from the liability of commission of offence, which impaired the story of prosecution beyond repair. The major cause of acquittal was the resiling of the complainant and the witnesses from their previous statements before the trial court. It is evident from the observation of the Learned Court in the judgement in hand that much evidentiary value and weightage is given to the ocular account of the eyewitnesses instead of circumstantial evidence by the Learned Court while deciding the case, due to which culprits got scot free and were saved from the clutches of law.

It is admitted on all hands that jurisprudence has so far evolved with respect to the probative value of circumstantial evidence in Pakistan as a corroborative piece of evidence. The evidence available

during trial in FIR No. 90/19 is only circumstantial evidence, as all the eyewitnesses and complainant recanted their statements and were declared hostile witnesses. Circumstantial evidence can only corroborate the substantive piece of evidence, like the ocular account of the eyewitnesses, but cannot substantiate the fact at issue. Owing to which the accused were acquitted in this case u/s 265-K Cr.P.C. It is a common observation that in most HK cases, the complainant and witnesses are either close relatives of the deceased or her legal heir. Prior to HK becoming a non-compoundable offence and its declaration as "fasad fil arz" u/s 311 of the Pakistan Penal Code, compromise was affected between the parties. Despite the intervention of the legislature by making this offence non-compoundable and part of 'fasad-fil-arz' u/s 311 PPC, the criminal justice system is unable to punish the perpetrator of the offence. The basic reason behind the inability of the system is the attachment of undue evidential value to the ocular account and the reluctance on the part of the investigation agency to resort to forensic and scientific evidence, as well as the discarding of circumstantial evidence by the learned trial court in the absence of direct evidence. Though the legislature has made the scientific evidence under Article 164 of QS 1984 a conclusive piece of evidence yet discarding circumstantial evidence in cases of resiling of eyewitnesses can be noticed in the ruling of the learned trial court in FIR No. 402/17. In this respect, the learned trial court, while acquitting the accused u/s 265-K Cr.P.C., observed that "it stands crystal clear that PW1 and PW2 have not uttered a single word bringing any incriminating material against the present accused. PW1 and PW2 refused to accept the present accused as their culprit.

Though PW6's lady Doctor/women medical officer conducted a post mortem examination over the dead body of the deceased lady and furnished medical evidence, medical evidence is always considered a corroborative piece of evidence, and the prosecution has badly failed to prove the guilt of the accused, hence, medical evidence too has no bearing whatsoever upon the result of the case. In view of the above discussion, I am of the considered view that the prosecution has badly failed to establish the presence of the present accused on the spot at the time of occurrence, and its ocular account is shattered and shrouded in mystery. The rest of the evidence is secondary in nature, and there is no need to discuss here each and every piece of

evidence, especially when the material private witnesses produced by the prosecution could not connect the accused to the charged offences."

A minute and analytical study of cases of HK reveals that the police and prosecution stand their case on the evidence of eyewitnesses and are least interested in the collection of forensic and scientific evidence. Furthermore, even in the presence of scientific evidence, when eyewitnesses are resiled and consequently disbelieved by the court, circumstantial and other scientific evidence is also discarded by the trial court. The same fact can be observed in the ruling of FIR No. 164/14, in which the learned trial court acquitted the accused person u/s 265-K Cr.P.C. when eyewitnesses recanted from their given statements before the investigating officer. In this regard, the learned trial court observed that "it is a basic rule of criminal jurisprudence that the prosecution has to prove its case beyond any shadow of doubt to procure the conviction of an accused. In the case at hand, all the available material PWs have fully exonerated the accused present in court. In given circumstances, I am of the considered view that the damage caused to the prosecution story by the aforesaid PWs cannot be retrieved by any other possible incriminating piece of evidence, particularly considering the fact of medical evidence. I am of the view that no purpose shall be achieved if the remaining PWs are called for that matter or their statements are recorded. In this context, the contention of the learned DDPP is not plausible at all, as there remains no probability whatsoever of the accused being convicted of the charge. In the light of the above discussion, the application under Section 265-K Cr.P.C. is accepted, and the accused persons present in the court are acquitted of the charge." Similar story in case FIR No. 2281/22.

The accused is considered to be the favourite child of the law, and even a single doubt in the prosecution story is exploited in favour of him. Furthermore, the prosecution is burdened with the responsibility to prove the case against the accused beyond any shadow of doubt, and this favour is based on the maxim "it is better that 10 guilty persons be acquitted rather than 1 innocent person be convicted.". The learned trial court acquitted the accused in FIR No. 493/21 by giving benefit of doubt on the basis of contradictions in the statements of prosecution witnesses. The complainant and

eyewitness in FIR No. 324/21 made their exoneratory statements in favour of the accused. The whole case of the prosecution rested on the evidence of eyewitnesses. On the recanting of the eyewitnesses, the superstructure of the case was dashed to the ground, and the remaining pieces of evidence that were corroborated in nature were discarded by the learned trial court, stating therein that accused persons cannot be convicted on the basis of pieces of evidence as there is no substantive piece of evidence due to the recanting of the eyewitnesses. It is an underlining fact that the propensity for recusal of witnesses is not being discouraged despite the fact that there is provision in the Pakistan Penal Code, i.e., Section 213 to punish those witnesses who favour the culprits by giving false evidence. The learned trial court acquitted the accused persons u/s 265-K Cr.P.C. with the observation that "Nasir Ali complainant PW1, Allah Ditta PW2, and Shahbaz Ali/injured PW3 are only eyewitnesses of the instant case and they have made exonerating statements in favour of the accused persons, and of course, there is no probability of conviction of the accused persons in this case even if remaining evidence is recorded, which will be a futile exercise and waste of court's time. It is, thus, a fit case to invoke the provision of Section 265-K Cr.P.C. Resultantly, while accepting application u/s 265-K Cr.P.C., accused persons are hereby acquitted.<sup>52</sup>

## **6. Recommendations**

- To make it harder for those who committed this horrible crime to act with impunity, the government must address the legal inadequacies by enacting effective and comprehensive legislation that encompasses the cogency of forensic evidence and also enhanced penalties for the malafide recantings of the testimonies.
- The police and prosecution regulations overseeing the investigation of HK ought to be changed, as well as the investigators' established protocols for forensic & crime scene investigation, which must be strictly followed.
- Each instance of eyewitness hostility must be investigated by the prosecution department, particularly the court, and if there is evidence of malice, the offender must be penalized at the very least for squandering the court's time. This will deter people from recanting or resiling eyewitness accounts. Targeting a sizable population, the government, the media, and the NGOs charged

with protecting women's rights all contribute to raising public awareness of the value of crime scenes and other types of evidence in HKs.

- To educate law enforcement agencies, especially the police, prosecutors, and judiciary in particular, about crime scenes and forensic proof like DNA, fingerprints, and other types, in addition to how this evidence is efficiently gathered and processed, the federal government should also start several large-scale programs for this purpose. Everyone in society agrees that religion has nothing to do with the threat posed by HKs.
- Religious leaders, who typically have a large following in rural areas, are the best people to educate the general public on this issue at this time. The ministry of religious affairs along with NGOs, may accomplish this efficiently and straightforwardly by disseminating the necessary materials and information. The problem of gender discrimination and HBV should be included in schools, colleges, and university curricula.
- In particular, its most extreme manifestation, known as HK, should be addressed, and younger generations should be made aware of the legislation and legal procedures concerned. During the last 20 years, despite the lobbying and campaigning of human and women's rights groups with government agencies, the courts, and political parties on both a national and global scale, virtually nothing has been accomplished to avert violence based on honour in Pakistan. Except for when political leaders were trying to win votes by campaigning for power, women's rights weren't ever a priority for political parties. Political parties need to step up and include this issue at the top of their agendas.

## **7. Conclusion**

HKs in Pakistan are tragic and highly complex occurrences that still affect society at an enormous level. Although there has been some progress in recent years, this problem continues to thrive because of cultural norms, patriarchal views, and a lack of effective law enforcement. HKs are primarily motivated by the mistaken notion that a woman's activities, which are deemed dishonorable or against cultural or religious norms, bring shame onto her family. Close relatives who feel forced to use violence and murder to restore their

family's honour frequently commit such crimes, including dads, brothers, and spouses.

Despite the introduction of the laws that make HKs unpardonable with more stringent punishments yet effective prosecution and reduction in the HK instances has not been realized. Additionally, it can be challenging to obtain evidence and bring offenders to justice because victims and witnesses frequently experience intense societal pressure and intimidation. In Pakistan, HKs must be stopped, and this requires a comprehensive strategy. This comprises: combating the deeply ingrained attitudes that support HKs requires educating communities about gender equality, women's rights, and the value of individual liberty. To make sure that those who commit HKs are held accountable, stricter implementation of current laws against them is necessary. To give victims of honour violence the essential support and safety, it is crucial to establish safety nets, shelters, and helplines. Survivors and their families should also have access to counselling services and rehabilitation programmes.

The HKs can also be stopped by investing money in education, especially for women and girls, which can encourage gender equality, challenge old gender norms, and provide people the knowledge they need to make wise life choices. Moreover, addressing the transnational components of HKs and encouraging a coordinated response can be facilitated by working with international organisations and bordering nations to share best practices, information, and resources can also reduce HKs. The government, civil society, religious leaders, and individuals must all make a sustained effort to challenge ingrained cultural norms, advance gender equality, and defend the rights and lives of women and girls if honour killings are to be eradicated in Pakistan. The creation of a society where each person can live without being threatened by violence or injustice is a shared duty.

## NOTES

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