

A Social Custom "Vani": Introduction and Critical Analysis

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Introduction:

We are living in 21st developed, cultured, educated and sophisticated century. In this world, some incidents show that we are breathing in cave age or before, especially in Pakistan, where women are being ill-treated with the name of cultural diplomacy. For several years, Pakistani women have been deprived of the most fundamental of rights, such as the rights of education and even the rights to decide issues connecting to their own marriage and divorce. Those denied these rights are also deprived of the right of equality in a male dominated society where women remain subservient to men. In a society where family and tribal customs are very strict as well as lack of education and misinterpretation of Islam have forced women into a position of obedience and horror, so most survive an existence of oppression without the most essential of rights or the ability to defend them. The Sale of women, karo kari (Honour Killing) issues, death by burning, forced marriages and the curse of a dowry reflect the real state of affairs in the country. And with the passage of time, these social evils have become more complicated. Practice of Vani is not only one of the above social problems but also an old age tradition. This Custom is also known as "Swara". According to Piggin "In a throwback to medieval time "Swara" blood price is still practiced in Pakistan. Women and girls, even babies in their cradles, are given away in marriages as compensation for crimes committed by their men folk" (1).

Meaning of Vani:

Vani is a Pashto word derived from "VANAY" which stands for blood (2). The meaning of the Vani is to hand over the girls in marriage or exchange marriage to the aggrieved party to resolve the blood feud (3). According to Capt. Revert "Swara means a female rider, but in traditional terminology it refers to a girl given over to the aggrieved family as compensation for blood (4). Bedell says that a vani bride is a young woman who is given in payment for the crime of a male relative (5). In the majority cases, this type of "compensation" is awarded by an informal court and not determined by the relatives of the girls. Resistance by the relations or the

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- 37 *Mst. Zaitoon Begum & Another Vs The Central Exchange Bank Ltd.*, Lahore PLD 1961 LHC 888; *Abdul Ghani & Others Vs Mst. Taleh Bibi* PLD 1962 LHC 531; *Muhammad Riaz Vs Noor-ul-Islam* 1998 CLC 1038 [LHC]; *Muhammad Asad Vs Humera Naz* 2000 CLC 1725 [LHC]; *Sardar Muhammad Vs Faqir Muhammad* 1996 CLC 916 [LHC]; *Abdul Hameed Vs Muhammad Mohyuddin Siddiqui* 1996 CLC 227 [LHC]; *Anila Vs Muhammad Munir* PLD 1996 LHC 65; *S.M. Aslam Vs Rubi Akhtar* 1996 CLC 1 [Karachi]; *Zahid Farooq Vs Anjman Jamia Masjid* 1995 SCMR 1584; *Hina Jilani Vs Sohail Butt* PLD 1995 LHC 151; *Barkat Ali Vs Aftab Ahmad* 1992 CLC 1490 [LHC];
- 38 Syed Ameer Ali, *Commentaries on Mahommedan Law*. Edited by Justice S. H. A. Raza, (Allahabad: Hind Law Publishing House) at pp. xxv-xxvi.
- 39 *Ibid* at p. xxv.
- 40 *Ibid* at p. xviii.
- 41 There are numerous editions of the book published by various publishers. Some of the well known editions are following:
1. Mulla's *Principles of Mohammedan Law*, Edited by M. Hidayatullah & Arshad Hidayatullah (Bombay N. M. Tripathi Private Ltd., 1990).
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 3. D. F. Mulla's *Principles of Mohammadan Law*, Edited by Syed Ali Hassan, (Lahore: Civil & Criminal Law Publications, 2010).
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- 23 Neil Baillie, *The Land Tax of India*, (London: Smith, Elder and Co., (2nd Edition) 1873). It's 1st edition was published in 1853. Available at <http://archive.org/details/landtaxofindiac00bailrich> (Last accessed on 13/09/2013).
- 24 Muhammad Akram Vs Haji Muhammad Ali 2003 CLC 301 [LHC]; Khurshid Ali Vs Abi Ali 2000 YLR 1787 [Karachi]; Anila Vs Muhammad Munir PLD 1996 LHC 65; S.M. Aslam Vs Rubi Akhtar 1996 CLC 1 [Karachi]; Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187; Malik Aslam Pervez Advocate Vs Province of Punjab 1994 MLD 1986 [Lahore]; Hina Jilani Vs Sohail Butt PLD 1995 LHC 151; Mir Zaman Khan Vs Ajaib Sultan 1994 CLC 991 [LHC].
- 25 Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850) at p. xv.
- 26 Koodoree is another famous book among Hanafi Muslim all over the world.
- 27 Neil Baillie, *The Moohummadan Law of Sale*, (London: Smith, Elder and Co., 1850) at pp. xv-xvi.
- 28 Some of his books on Islam and Islamic law are following:
1. Life and Teachings of the Prophet (Edinburgh, 1873).
 2. The Spirit of Islam (London, 1891).
 3. Real Status of Women in Islam (London, 1891).
 4. Muhammadan Law (Tagore Law Lectures) (Calcutta, 1884).
 5. The Personal Law of the Muhammadans (London, 1880).
 6. Ain ul-Hidaya; an Urdu translation of the famous Hanafi law book, Hedaya.
- (M. A. Rahim, Syed Ameer Ali and Muslim Politics and Renaissance, *Islamic Studies* (Islamabad) 7:2 (1968) pp. 93-112 at 107-8).
- 29 Syed Mahmood was a son of famous Muslim leader Syed Ahmad Khan (1817-1898). Syed Mahmood was the first Muslim who was appointed as a Judge to High Court at Allahabad in 1882. He wrote many famous judgments.
- 30 M. A. Rahim, Syed Ameer Ali and Muslim Politics and Renaissance, *Islamic Studies* (Islamabad) 7:2 (1968) pp. 93-112 at 93; Shahid Hussain Razzaki, Syed Ameer Ali: Hallaat aur Siyasi, Dini aur Ilmi Khidhmaat, (Lahore: Institute of Islamic Culture) at p. 50.
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- 32 Available at <http://archive.org/details/personallawofimah00alisuoilt> (Last accessed on 02/09/2013).
- 33 Syed Ameer Ali, *The Personal Law of the Mahommedans*, (London: W. H. Allen & Co., 1880) at pp. v-x.

- at <http://archive.org/details/hedayaorguide029357mbp>. The latter version has been relied upon by me because of it is more clearly printed than others. The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at p. x.
- 6 Ibid.
 - 7 Sir Roland Wilson, Anglo Muhammadan Law A Digest, Edited by A. Yusuf Ali (Calcutta: W. Thacker & Co., 1930) at p. 41.
 - 8 Jafri Begam Vs Amir Muhammad Khan The Indian Law Reports 7 All. 822; Gobind Dayal Vs Inayatullah The Indian Law Reports 7 All. 775.
 - 9 The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at p. iii.
 - 10 Ibid at p. vi.
 - 11 Sir Roland Wilson, Anglo Muhammadan Law A Digest, Edited by A. Yusuf Ali (Calcutta: W. Thacker & Co., 1930) at p. 41.
 - 12 The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House) at pp. v to ix.
 - 13 Bijay Kisor Acharyya, Codification in British India (Tagore Law Lecturers 1912) (Calcutta: S & K Banerji & Sons Book Sellers & Publishers, 1914). Available at <http://archive.org/details/codificationinbr00achajala> (Last accessed on 02/09/2013).
 - 14 Act V of 1843; Code of Civil Procedure (Act VIII of 1859), Indian Penal Code (Act XLV of 1860); Criminal Procedure Code (Act XXV of 1861); Indian Evidence Act (Act I of 1872).
 - 15 Michael R. Anderson, Islamic Law and the Colonial Encounter in British India, WLUML Occasional Paper No. 7 (June 1996) p. 8. Available at <http://www.wluml.org/node/5627> (Last accessed on 02/09/2013).
 - 16 Ibid.
 - 17 <http://archive.org/details/hedayaorguideac00hamigooq> (Last accessed on 02/09/2013).
 - 18 See The Hedaya Translated by Charles Hamilton & Edited by Standish Grove Grady, (Lahore: Premier Book House).
 - 19 Muhammad Sadiq Vs Mrs Sadiq Safoora PLD 1963 LHC 534; Gulbaz Khan Vs Faiz Ullah Khan 1994 SCMR 435; Malik Aslam Pervez Advocate Vs Province of Punjab 1994 MLD 1986 [Lahore]; Hina Jilani Vs Sohail Butt PLD 1995 LHC 151; Abdul Hameed Vs Muhammad Mohyuddin Siddiqui 1996 CLC 227 [LHC]; S.M. Aslam Vs Rubi Akhtar 1996 CLC I [Karachi]; Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Muhammad Akram Vs Haji Muhammad Ali 2003 CLC 301 [LHC]; Qadar Gul Vs Moember Khan 1998 SCMR 2102.
 - 20 W. H. Macnaghten, Principles and Precedents of Moohummudan Law, (Calcutta: The Church Mission Press Mirzapure, 1825). Available at <http://archive.org/details/principlesandpr00macnogoq> (Last accessed on 13/09/2013).
 - 21 I could not have direct access to this book but the fact that it was the first book of Neil Baillie was established by his self projection in his second book that the same author has contributed another book earlier titled as "Moohummudan Law

References

- 1 This exploratory exercise was carried out on the biggest and the most updated database of Pakistani reported cases during the last few months. The website of this database is located at this address www.pakistanlawsonline.com.
- 2 In addition to the books analyzed in the paper, the following books have also been relied on by the courts in various decided cases:
 - a. Fatwa-i-Alamgiri in Nisar Ahmad Khan Vs Mst Ismat Jehan Begum PLD 1969 SC 194; Karim Bakhsh Vs Muhammad Nawaz 1989 CLC 807 [LHC]; Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Intiaz Begum Vs Tariq Mahmood 1995 CLC 800 [LHC]; Allah Dad Vs Mukhtar 1992 SCMR 1273; Razia Bibi Vs District Judge, Bahawalnagar 1992 CLC 1981 [LHC].
 - b. Jawahar-ul-Hukam (Part 1,2,3) by Maulana Syed Muhammad Badar Alam in Muhammad Rafiq Vs Kaneez Fatima 2000 SCMR 1563.
 - c. Maulana Ashraf Ali Thanvi's Hela-e-Najiza in Muhammad Rafiq Vs Kaneez Fatima 2000 SCMR 1563.
 - d. Fatwa-i-Kazi Khan in Muhammad Asad Vs Humera Naz 2000 CLC 1725 [LHC]; Mumtaz Ali Vs Dr Gulnaz 2000 YLR 1258 [Karachi]; Said Mahmood Vs The State PLD 1995 FSC 1.
 - e. Kitab al Fiqh Ala Al-Mudahib Alarbaha by Abdur Rehman Al-Jazairi in Sabira Sultana Vs Maqsood Sulari 2000 CLC 1384 [LHC]; Mst Rani Vs Bilal Ahmad 2000 MLD 1967 [Lahore].
 - f. Bidaie As-Sanaie By Allama Abu Bakr Ala ud Din al-Kasmi in Sabira Sultana Vs Maqsood Sulari 2000 CLC 1384 [LHC].
 - g. A Code of Muslim Personal Law by Dr Tazil-ur-Rehman in Mst Humaira Mehmood Vs The State PLD 1999 LHC 494; Anees Ahmad Vs Uzma PLD 1998 LHC 52; Sardar Muhammad Vs Faqir Muhammad 1996 CLC 916 [LHC]; Razia Bibi Vs District Judge, Bahawalnagar 1992 CLC 1981 [LHC].
 - h. Institutes of Mussalman Law by Nawab A.M.F. Abdur Rehman in Mst Humaira Mehmood Vs The State PLD 1999 LHC 494.
 - i. Muhammadan Law by Tayyabji in Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187.
 - j. Raddul Mukhar by Ibn Abidin in Allah Dad Vs Mukhtar 1992 SCMR 1273.
 - k. Anglo-Muhammadan Law by Sir Roland Wilsons in Qambar Murtaza Bokhari Vs Zainab Bashir PLD 1995 LHC 187.
- 3 Scott Alan Kugle, Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia, Modern Asian Studies, Vol. 35, No. 2 (May, 2001), pp. 257-313 at p. 259.
- 4 See Article 251 of the Constitution of Pakistan; Faizullah Jan, Language Policy in Pakistan, available at <http://southasiacommunication.wordpress.com/report-1-language-policy-pakistan/> (Last accessed on 11/09/2013).
- 5 There are many versions of Hamilton's Hedaya available at www.archive.org. For instance, Grady's 2nd edition at <http://archive.org/details/hedayaorguideac00hamigoog> and its Pakistani reprint

accurately.(50) Though his account is an easy way to fathom certain aspects of the categories of marriage in Islam but the same does not sufficiently bring out the complexity of Islamic law in this matter.(51)

6. Conclusion:

The paper has presented a genealogical analysis of four most relied upon books on Islamic law in the Pakistani courts. All of these were written during the colonial period and regarded with deference. It is an incontrovertible fact that the most relied upon books in the Pakistani courts are in English language and overwhelming majority of which have been transcribed during the colonial era. This aspect makes it evident that the task of ascertaining Islamic law in the Pakistani courts is not carried out substantially differently from the colonial period. At the same time it is not put forward as a definitive proposition that the Pakistani courts exclusively refer to the books written in the British colonial era. There are instances in which we come across references to the original Arabic versions of authoritative books or their Urdu versions. But the persistent and uninterrupted reliance on the books put into transcription during the colonial era demonstrates how the legal cum judicial system of Pakistan is indebted to her colonial legacy. On the other hand, this fact alone is not sufficient to question the authenticity of the decisions rendered by the Pakistani courts on the issues of Islamic law. Each decision ought to be evaluated on its own merit and context. There are occasional flaws in the books written during the colonial period some of which have been highlighted in the paper while analyzing the selected books but this aspect does not overshadow the efficacious role played by such books in maintaining the Muslim identity.

aware of the pattern of enacting the legislative instruments by the colonial government of that period, he tried the same in his book. This pattern of writing Islamic law in form of sections or propositions of law was not in vogue then. Mulla's main inspiration in this regard was the monumental work titled *Digest of Anglo Muhammadan Law* by Sir Roland Wilson.(45) One of the reasons which Mulla has pointed out in the prefatory note of his book for going for this pattern is that reducing main principles of Islamic Personal law in "series of propositions arranged in consecutive sections" would make the law easily comprehensible.(46)

In the first section of the book Mulla states the real legal position of the application of Islamic law that it is not "the law of British India: it is only the law so far as the laws of India have directed it to be observed".(47) This very appraisal of the application of Islamic law in British India guided him to select only those topics for discussion in his book which had relevance to the legal cum judicial system of that period. There are twelve chapters in Mulla's original book dealing with subjects of history of Islamic law in British India, sects and sub-sects of Muslims, inheritance, will, gift, wakf, pre-emption, marriage, dower, divorce, parentage, guardianship and maintenance.(48)

Another important issue was regarding the substance of these propositions. In other words, what was the source from which Mulla took these propositions/sections? He proclaimed in the prefatory note that the substance of these propositions was from "judgments to be found in recognized reports". Where he could not find the judgments sufficiently instructive, he relied on "the *Hedaya* and the *Fatwa Alungiri*".(49) When we go through his book to verify his above contentions we are obliged to say that he was an honest academician who never maneuvered to hide his reference material.

Mulla's overwhelming reliance on judgments of the courts of British India to formulate various propositions of Islamic law in his book suggests that the Pakistani courts' reliance on his book would be indirect reference to the Islamic law developed and refined by the colonial courts. This single inference shows how important Mulla's book is because it has been a bridge between the Pakistani courts and the courts of British India so far as the Islamic Personal law is concerned. There is no inherent objection to rely on the laws developed during the colonial period, but if the law is stagnated to that period then it may lead to problematic situation.

For the most part Mulla's book is genuine reproduction of propositions of Islamic law, but there are a few areas in which his book lacks authenticity. For example, his categorization of marriages into valid, void and irregular does not put forward the stance of Islamic law on the point