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SHARI'A AND RESEASRCH REVIEW OF HONOR KILLING REGARDING THE "RIWAJ NAMA E SWAT" (DECREE NO. 52 TO 58)

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ABSTRACT

The state of Swat was an organized government in the Pakhtun regions of Pakistan. The rulers of Swat state were educated, experienced and loved the citizens of the state. This state was merged into Pakistan in 1969. The judicial affairs of this state were very simple and mirrored the traditions, civilization and religion of the local Pakhtun population. Swat Nama was the constitutional document of the Swat state which was agreed upon by the entire Pakhtun nation. "Riwaj Nama e Swat" of the State of Swat contains a large number of decrees in which criminal, civil and other types of decrees are recorded in a detailed manner. In this article a shari'a and research review of honor killing among civil powers has been done regarding the order of the same "Riwaj Nama e Swat".

This paper is divided into two main topics. In the first part, the introduction and background of "Riwaj Nama e Swat" is described, while in the second part, various cases of honor killings are explained in the light of "Riwaj Nama e Swat".

At the end of the paper, the summary discussion, recommendations and references are listed in the form of endnotes.

DISCUSSION 1:

Introduction and Background of "Riwaj Nama e Swat"

Introduction to "Riwaj Nama e Swat"

The laws of "Riwaj Nama e Swat" compiled by Ghulam Habib Khan (died 2004) are also related to a book which is a historical document for the state of Swat¹. In this book, the characteristics of every sector of the social life of Swat can be seen, which can be well understood in the light of the cases written in it and the decisions made.

There is no written record of the decisions that were taken during the reign of Mian Gul Abdul Wadud known as Badshah Sahib². But when Mian Gul Abdul Haq Jahanzeb³ popularly known as the Wali e Swat [Governor of Swat] took charge of the state, he began to systematically record the court and office matters and the decisions he made according to his personal orders, local customs, traditions of the region and Sharia. They were preserved in written form.

The orders of "Riwaj Nama e Swat"

"Riwaj Nama e Swat" contains the orders of the rulers of the state of Swat, official matters, court decisions and rules and regulations made for various regions, which contains the rulings of the State, relating to the inhabitants of the State as well as to the forests and wild animals and to the customs of Swat, which were in force in the State of Swat. Since it was a Pakhtun state and the roots of religion are strong in the Pakhtun nation, most of the decisions were made under the supervision of scholars and judges in accordance with Islam. , but there were also legislations for certain decisions that ignored Islamic injunctions to govern the state. All these decisions were written and handed over to the Qazis and Tahsildars of different areas as law books, so that the state could be run in an efficient manner by assisting in decision-making⁴.

Residents of the state of Swat

At that time, most of the residents of the state were Pashtons, so all these decisions and decrees were in Pashto language. Then all these decisions and rulings were first compiled in Urdu language by Ghulam Habib Khan. In which all the laws have been compiled numerically in a common-sense manner for the convenience of the reader.

This book was published earlier but there were many mistakes in language and expression in its publication and secondly it was published in an unwieldy size, similarly its writing and printing were also not standard. Therefore, Fazal Rabi Rahi has given a brief introductory review of this book at the beginning and revised the first published version to correct the errors of language and expression and has republished this book in a suitable size, so that the former state of Swat This historical document reached every special and ordinary person and they could use it when needed.

Introduction of the Compiler of "Riwaj Nama e Swat".

Ghulam Habib Khan son of Qadir Khan, born in 1920, was a resident of Kot near Dargai in District Malakand Agency, he was a position holder in matriculation, holding the post of reader in the office of the political agent at Malakand, during which he also compiled the "Riwaj Nama e Malakand". When there was a need to compile "Riwaj Nama e Swat", in view of his experience and expertise, he was transferred to Swat and thus the task of compiling "Riwaj Nama e Swat" was also taken from him. He was also appointed to the post of Tehsildar, but did not take charge of this post, finally appointed to the post of Assistant Commissioner, and retired from the same in 1980. He died in September 2004⁵.

DISCUSSION II:

Different forms of honor killing in the light of "Riwaj Nama e Swat"

Honor killing is a ritual that has been going on for ages. According to this ritual, a man and a woman are killed on the basis of illicit relations. Legally and traditionally, this killing is not a general killing but honor killing.

In this discussion, the honor killing decrees are derived from the "Riwaj Nama e Swat" which is mentioned along with the order of the original Constitution Riwaj Nama. Each ruling is accompanied by its Shariah and research review.

Decree No. 52: Killing of man and woman in connection with adultery

A. If a man and woman are killed in adultery, the government will not take any action in this regard. If one of them is killed and the other runs away, the plaintiff can kill him without the assistance of any other person.

B. If someone kills a man on the spot while doing evil, then he is allowed to do so. If it happens out of opportunity and it is reported to the government, then the government will charge one hundred rupees as fine.

SHARIAH AND RESEARCH REVIEW

Three things are stated in this order:

- a) It is permissible to kill man and woman in the state of adultery.
- b) If one of them escapes, he can kill him without the help of another person.
- c) If the killing is done after reporting it to the government, it will levy a fine of one hundred rupees on the killer.

Many incidents are mentioned in the books of Tafsir and Hadith, such as the incidents of Hilal bin Umayyah⁶, Uwaimir Ajlani⁷, and Saad bin Ubadah⁸, which proves that initially it was necessary to present four witnesses to witness both the wife and the unwife committing adultery, otherwise there was an order of qazaf. Then came the order of "Li'an" regarding the wife, in which both of them will take five oaths and there will be separation⁹.

According to most of the scholars, it is not permissible to kill an adulterer, but four witnesses will be presented, otherwise it will be Li'an in the case of the wife and Qadhaf in the case of the non-wife, and in the case of murder, retribution will be taken¹⁰.

According to Ahanaf, the killing of adulterer is justified, but it is not mentioned in Zahir al-Riwayah, but this view is from Hinduwani¹¹. In the explanation of which three limitations have been described,

One is that if he does not refrain from shouting or hitting, he can be killed¹². Secondly, the killing of an adulterer is justified without a court. If the case goes to court, it is necessary to produce witnesses¹³.

Thirdly, it is permissible to kill an adulterer if he is "*Muhsan*", but it is not permissible to kill an adulterer if he is *Non-Muhsan*¹⁴.

Hinduwani's view has been adopted by most of the Hanafi jurists¹⁵. If you see a man or a woman in the state of adultery, it is permissible to kill them, their blood will be in vain. But looking before adultery, if it is possible to prohibit them without killing, then killing is not permissible, and if it is not possible without killing, it is permissible to kill. If it becomes known after committing adultery (or escapes from the opportunity), then it is not permissible to kill at that time, but it will be punished by the court according to the Shariah method¹⁶.

From the above-mentioned details, it is known that if a report is made to the government and after that someone kills them, the killer will not be fined one hundred rupees, rather, witnesses have to be presented on adultery or on the confession of the deceased adulterer, otherwise retribution will be taken.

ANALYSIS

This edict often seems to be against the opinion of the scholars, while only agreeing with the opinion of the Hinduwani.

Decree No. 53: Killing for adultery outside the home

If someone kills his wife and other estranged man 30 or 40 yards away from his house due to adultery, then the arrest of this murderer will not be carried out. Or if he kills both the adulterer (the wife and the stranger) in a desert or forest, even in that case the murderer will not be caught.

SHARIAH AND RESEARCH REVIEW

This Decree is similar to previous Decree No. 52, its Shari'a research can be found there.

Decree No. 54: If the man is killed in adultery and the woman survives, then she cannot live with her husband.

In this case, Alam Gul, the accused, killed Aqlemoon resident of Mingora, inside his house. The accused has stated that the deceased and his wife Musamat Bakht Nazira had an illicit relationship. He explained a lot to the deceased

through the words of Sohrab Khan etc. that he should refrain from illicit relations with his wife, but it did not have any effect on him. Finally, when he entered her house that night, he killed her with a knife and an axe.

The accused, Qalandar, a resident of Mingora, claimed that the murderer unlawfully killed his son, Aqlemoon, by inviting the deceased to his house with the help of other people.

Bakht Nazira has said in the statement that the victim came to our house on the night of the incident. He mistakenly turned to my husband's bed instead of mine. My husband woke up and killed him with an ax.

Shah Bakht Rawan, who is the brother of Bakht Nazira, is reported to have had an illicit relationship with his sister and the victim. He is well aware that his sister is evil.

Both parties in this matter were presented before the Ruler of Swat dated: 09-06-1956. Statements were heard. Later, it was decided that since the victim had met the killer's wife with bad intentions, he was forced to kill him.

The murderer was acquitted and his wife was separated from him for defamation (Li'an).

SHARIAH AND RESEARCH REVIEW

The slain adulterer did not stop despite being explained, so according to the specification of Hinduni, his killing is permissible¹⁷, Therefore, it is right to acquit the murderer, while in the opinion of most of the scholars, it is not permissible to do so¹⁸.

Decree No. 55: Killing in adultery and escape of the adulterer

If a person finds another man having forbidden intercourse with his wife and kills both the woman and the man, the government will not have any objection to the said person.

If during this time a woman is killed and the man escapes or a man is killed and the woman escapes, others can support him in killing the escapee.

SHARIAH AND RESEARCH REVIEW

The slain adulterer did not stop despite being explained, so according to the specification of Hinduni, his killing is permissible¹⁹, Therefore, it is right to acquit the murderer, while in the opinion of most of the scholars, it is not permissible to do so²⁰.

Decree No. 56: In adultery, the husband's relative also has the right to kill

Name: Syed Mahmood resident of Mingora
Crime: Murder of Ziarat Gul along with his aunt

In this case, the accused killed his aunt in his house along with Mr. Ziarat Gul, a resident of Mingora. In this regard, the supreme ruler made a report by phone for guidance, and on return, an order was received by phone that if the girl's husband has no objection, then the accused should be released. The deceased's husband had gone to the lower area for work. Today, he registered his thumb in the court that he has no objection, therefore Mahmood was released as per the order.

SHARIAH AND RESEARCH REVIEW

According to the details recorded under Decree No. 52, this decree is also similar, therefore according to the definition of Hindwani, killing her in the exact state of adultery is permissible. Therefore, it is right to release the murderer, while it is not permissible to do so according to most of the scholars.

Decree No. 57: Killing of the woman who ran away from home and the kidnapper

If someone's sister, daughter or wife runs away with a stranger, they will be killed wherever they are caught.

SHARIAH AND RESEARCH REVIEW

The Shariah order of this matter is not murder, because there is no witness for the adultery of a woman and a man, and it is also not proven that a woman or a man is married. Therefore, it is not right to order to kill them in every situation.

Decree No. 58: Killing the kidnapper

Name: Ameer Chamand Khan resident of Goda Tehsil Kabal

Crime: Murder of Said Qadar

In this matter, the parties appeared before the ruler of Swat. Statements were heard. The brother of the deceased said that my deceased brother had abducted the wife of the accused Amir Chamand Khan, therefore the murder was done by Amir Chamand Khan. The ruler of Swat issued an order that the murder of a woman due to her defamation cannot be called illegal, so the accused Amir Chamand Khan was released.

SHARIAH AND RESEARCH REVIEW

In this case, if the abduction was done with the intention of committing adultery, as it is known from the last sentence of the decree, if actual adultery is not proven, but adultery is suspected from the appearance, in such a case, if someone kills the adulterer. So Ibn Taimiyyah has declared such killing as killing by mistake (قتل خطأ) .

"وَأَمَّا إِنْ كَانَ الرَّجُلُ لَمْ يَفْعَلْ بَعْدَ فَاجِسْتَهُ؛ وَلَكِنْ وَصَلَ لِأَجْلِ ذَلِكَ فَهَذَا فِيهِ نِزَاعٌ، وَالْأَحْوَجُ لِهَذَا أَنْ يَثُوبَ مِنَ الْقَتْلِ مِنْ مِثْلِ هَذِهِ الصُّورَةِ، وَفِي وَجُوبِ الْكُفَّارَةِ عَلَيْهِ نِزَاعٌ، فَإِذَا كَفَرَ فَقَدْ فَعَلَ الْأَحْوَجُ؛ فَإِنَّ الْكُفَّارَةَ تَحِبُّ فِي قَتْلِ الْخَطِئِ. وَأَمَّا قَتْلُ الْعَمْدِ فَلَا كُفَّارَةَ فِيهِ عِنْدَ الْجُمْهُورِ: كَمَا لِكِ، وَأَبِي حَنِيفَةَ، وَأَحْمَدَ فِي الْمَشْهُورِ عَنْهُ. وَعَلَيْهِ الْكُفَّارَةُ عِنْدَ الشَّافِعِيِّ وَأَحْمَدَ فِي الرَّوَايَةِ الْأُخْرَى²¹."

“Translation: If the deceased did not actually commit adultery, but he committed it with this intention, in such a case, the scholars have different positions, the most careful of which is that in the case of such a murder, the murderer must repent to Allah Ta'ala. There is a difference of opinion as to whether kaffarah is obligatory on him, but if kaffarah is paid, it is more careful, because kaffarah is obligatory in case of wrongful killing and there is no kaffarah in the case of intentional killing, as per the famous tradition of Imam Malik, Abu Hanifa and Imam Ahmad. And according to the second tradition of Imam Ahmad and Imam Shafi'i, expiation is required for this.”

It is known that even in the case of suspicion of adultery, the murderer will be declared a murderer, but he will be declared murder by mistake instead of an intentional murder.

ANALYSIS

Therefore, in the above ruling, it is correct to free the murderer from qisas, but according to the cautious opinion, due to the crime of murder, he should pay expiation.

SUMMARY OF DISCUSSION

"Riwaj Nama e Swat" which consists of the orders of the rulers of the State of Swat, matters of office, judicial decisions and rules and regulations made for various areas containing the rulings of the state, which are applicable to the inhabitants of the state as well as the forests. and related to forest animals and customs of Swat, which were in force in the State of Swat, , since this state was a Pakhtun state, most of the decisions were made under the supervision of Islamic scholars and judges, but for some decisions there were also legislations that ignored the Islamic injunctions to run the state.

After a Shariah and research review of rulings 52 to 58, it is known that the public jurists and legal scholars do not allow this murder at all. Yes, there are two opinions about murder, but they are not enforceable in the Sharia court. It should be noted here that these edicts are clearly against the Shari'a rules, however, since they were in accordance with Pakhtun traditions, they were continued and forgotten and there was no revision.

RECOMMENDATIONS

After doing the research work on the paper the following recommendations are presented below:

- It is the urgent need of the hour to conduct a Shariah and research review of all rulings of "Riwaj Nama e Swat".
- It is an ancient constitutional document, so on one hand its importance has been recognized, on the other hand it should be compared with the present constitution of Pakistan.
- Research work can be done on "Riwaj Nama e Swat" in many other ways, for example, arranging to compile it anew and publish it for public benefit, researching and analyzing it.

REFERENCES & CITATION

- Swat is one of the most beautiful regions in the world. Swat State was founded on 24th April 1915. On September 1917, Mian Gul Abdul Wadood was made the ruler. During his time, education, health and resources and newspapers developed a lot and such laws were formulated which included local traditions and to some extent Sharia system.
- [Ghulam Habib Khan, **Riwaj Nama e Swat**, Translator: Fazal Rabi Rahi, (Mingora: Shoaib Sons, Year of Publication: July 2021), p:35]
- Mian Gul Abdul Wadud bin Mian Gul Abdul Khaliq, son of Hazrat Akhund Sahib, born in 1883, he was the grandson of Saido Baba of Swat, he became the ruler of the state of Swat in 1917. On December 12, 1949, he handed over his government to his son Mian Gul Abdul Haq. He died on October 1, 1971 and He was laid to rest in Saidu sharif as per the will.
- [Khalil-ur-Rehman, "**Fatawi Wadudiya Ke Takhreej O Tahqeeq**" (M.Ph. Dissertation: Allama Iqbal Open University, Islamabad, 2018), p:23]
- In 1926 he passed the FA exam and returned to Swat, and at the age of 15 he became the crown prince, became the ruler of Swat on 12 December 1949, in 1951 he was made an honorary brigadier in the Pakistan Army, while in 1955 he was made a major general. On August 15, 1969, after the merger of the state of Swat with Pakistan, he resigned from the rule.
- Died on 14 September 1987, and was buried in Saidu sharif. [abed, p. 24]
- Fazal Rabi Rahi, "**Maqdama Riway Nama e Swat**", p: 36
- Atif Khan son of Muhammad Aslam son of Ghulam Habib Khan, MA, BA, Teacher: Primary School, Karapa, Kot, Dargai, Malakand, Interviewer: Saifullah, via WhatsApp, 19 March 2022
- Sunan Abi Dawud, Kitab al-Talaq, Chapter Fi Al-Li'an, Number of Hadith: 2254
- Sunan Abi Dawud, Kitab al-Talaq, Chapter Fi Al-Li'an, Number of Hadith: 2245
- Sunan Abi Dawud, Kitab al-Hudood, Chapter Fai al-Rajam, Number of Hadith: 4417
- Ahmad bin Ali Abu Bakr Jassas, **Ahkam al-Qur'an** (Beirut: Dar al-Kutub al-Ilmiyyah, first edition, 1415 AH = 1994 AD) Volume: 3, p: 370
- Ahmad bin Ali bin Hajar Asqalani, **Fat'h Ul-Bari** (Beirut: Dar Al-Marifah, 1379 AH) Vol: 9, p.: 449,
- Mahmoud bin Ahmad Badruddin Aini, **Umdat Ul-Qari** (Beirut: Dar Ihya al-Turath al-Arabi, 2011) Vol: 24, p.: 22
- Uthman bin Ali Fakhruddin Zailai Hanafi, **Tabi'in al-Haqaiq** (Cairo: Matba'a Kubra Amiriya Bolaq, first edition: 1313 AH) Volume: 3, p: 208
- Uthman bin Ali Fakhruddin Zailai Hanafi, **Tabi'in al-Haqaiq**, vol.3, p.208
- Mahmood bin Ahmad Badruddin Aini, **Umdat Ul-Qari**, vol.: 24, p.: 21
- Muhammad Amin Ibn Umar Ibn Abidin Shami, **Rad Al-Muhtar Ala Al-Dur e Al-Mukhtar**, vol.4, p.63.

-
- Mufti Syed Najam-ul-Hassan Amrohi, **Najm Ul-Fatawa** (Karachi: Darul Uloom Yasin Al-Qur'an Publishing year: 1437 AH = 2016) Volume: 6, Pages: 567-574
- Muhammad Amin Ibn Umar Ibn Abidin Shami, **Rad Al-Muhtar Ala Al-Dur e Al-Mukhtar**, vol.4, p.63-64. A Committee of Scholars under the Chairmanship of Nizamuddin Balkhi, **Al-Fatawa Al-Hindiyah**, Volume 2, Page 167
- Muhammad Amin Ibn Umar Ibn Abidin Shami, **Rad Al-Muhtar Ala Al-Dur e Al-Mukhtar**, vol.4, p.63-64. A Committee of Scholars under the Chairmanship of Nizamuddin Balkhi, **Al-Fatawa Al-Hindiyah**, Volume 2, Page 167
- Ahmad bin Ali bin Hajar Asqalani, **Fat'h Ul-Bari** , Vol: 9, p.: 449, Mahmoud bin Ahmad Badruddin Aini, **Umdat Ul-Qari** , Vol: 24, p.: 22
- Muhammad Amin Ibn Umar Ibn Abidin Shami, **Rad Al-Muhtar Ala Al-Dur e Al-Mukhtar**, vol.4, p.63-64. A Committee of Scholars under the Chairmanship of Nizamuddin Balkhi, **Al-Fatawa Al-Hindiyah**, Volume 2, Page 167
- Ahmad bin Ali bin Hajar Asqalani, **Fat'h Ul-Bari** , Vol: 9, p.: 449, Mahmoud bin Ahmad Badruddin Aini, **Umdat Ul-Qari** , Vol: 24, p.: 22
- Ibn Taimiyyah Taqi Uddin Ahmad bin Abd Al-Halim Al-Harrani, **Al-Fatawa Al-Kubra** (Beirut: Dar Ul-Kutub Ul-ilmiyah, first edition, 1408 AH = 1987 AD) Volume: 03, p: 406