

Weather the Shadow: Social justice within cultural relativism in Pakistan

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Abstract

There is a frequent issue in Pakistan with the occurrence of some crimes that, in the eyes of several disciplines, could be considered as culturally motivated and sanctioned. This brings into play not only several unresolved academic definitions, but as well the reality of a clash of traditional or customary laws with modern or common law at all levels of society. Efforts to proactively sensitise legislators and the public often exacerbate the context for the very people the efforts are aimed to help. Moreover, the continuation of cultural related crimes demonstrates either an inability to resolve severely divisive issues, or else the persistence of vested interests within influential segments of society to sustain such practices. A gamut of well-intentioned individuals and groups has attempted to formulate and enact changes in order to stop these crimes, without meeting with much success. This article is therefore an attempt to highlight the complexity of justice/culture interplay and to proffer concrete suggestions for enabling movement towards peaceful resolution.

Keywords: Pakistan, social justice, cultural relativism, perceptions, law reform

Introduction

Friction exists in Pakistan, wherein the evolution of a disjointed mix of modernization, westernization and cosmopolitanization is trying to coexist with a neoconservative element and ineffectual blending of laws with societal changes. "Traditionalist and modernist elements at present lie in extreme juxtaposition, often within the ambit of a single piece of legislation".¹ This, frankly, has been exacerbated by foreign interlocutors to reform police and judicial systems: divergent systems from multifarious cultures to be managed through projects outlined in Logical Framework Analyses and implemented via Results Based Management with international loans or donations.

There is a frequent issue with the occurrence of some crimes that, in the eyes of several disciplines, could be considered culturally motivated and sanctioned. This brings into play the clash of traditional or customary laws with modern or common law at all levels of society. Efforts to proactively sensitise legislators and the public often worsen the context for the very people the efforts are aimed to help. Moreover, the continuation of culturally related crimes² demonstrates either an inability to resolve severely divisive issues, or else the persistence of vested interests within influential segments of society to sustain such practices. Many well-intentioned individuals and groups have attempted to

formulate and enact changes in order to stop these crimes, without meeting with much success. This article is an attempt to highlight the complexity of justice/culture interplay and to proffer concrete suggestions for enabling movement towards peaceful resolution.

Salient Issues

How can we define social justice?

A broad perspective on social justice (*adl*) subsumes all the elements of general public social services: education,³ physical and psychosocial health, water and food supply, adequate shelter and clothing, gainful employment as well as extra support for the weakest and most deprived members of society. Absence of any of the preceding belittles life and portends anxiety and machinations to use any means to appropriate those rights (*taghoot*, or anti-social behaviour). Perspectives are as important as reality. When it concerns social justice, we can clearly see perspectives in human rights reports by non-traditional *rapporteurs* such as China and Russia:⁴ this is not a judgement on truth, but a reality that the same severe divergence in perspectives about right or wrong in the international arena exists within our own respective societies, including Pakistan. Continuing to clamour about one side being saintly and the other demonic only serves but to prolong any resolution of festering issues.

How can we define culture?

Culture may be defined as “a system of exclusion (i.e., historical, modifiable, institutionally constraining) in the process of development.”⁵ Culture is not just the domain of beliefs and values, but also the product of institutional arrangements, political structures, and legal regulations. As these institutions change, so do beliefs, values, and practices. “It is important to remember that culture is not static, rather always transforming, as any social process. There are creative ways to challenge the cultural patterns in communities. No culture is immune to historical and political change.”⁶ By the same logic that national laws have necessarily changed over time, traditional laws must also transform. Most people could understand and admit belonging to subcultures, such as neighbourhood gangs (e.g., Karachi’s Lyari), ethnic minorities (e.g., Baluch, Kalash), immigrants (e.g., Afghan, Uzbekh), displaced (e.g., by militancy or natural disasters), or religious groups (e.g., Barelvi, Ahmaddiya, & Christians). Nonetheless, descriptions of overt cultural and subcultural uniqueness cannot extensively enough explain progressively instilled, multi-generations’ long customs and obligations which, in

many instances, seem unable to accept or compromise with nationally legislated laws.

What is cultural relativism?

“Laws are made for actions; and while they cannot interfere with mere religious beliefs and opinions, they may with practices”.⁷ This succinctly describes the dilemma with accepting all cultural practices as being valid and leading to dysfunctional national laws.

An apt illustration of how we perceive and the resulting bias is the recent emotional response for the funeral of DPRK's Kim Jong Il. We may be jumping to conclusions by labelling reactions in the DPRK “fake”—as many news media and public have done. The level of pavement-thumping histrionics was impressive; the mass of spectators were partly from compulsion but also as few television sets were available. But do seemingly theatrical expressions of grief in public have less value than over 30 million viewing other dignitary funerals (e.g., Diana) on TV being entertained out of public sight, many with desert plates or drinks at hand? Even if contrived, is explicit sycophancy (*chaploosior khushamad*) in public less ethical than the same in private? Being outside that society, can we distinguish true grief from obligatory hysteria?

These are not questions about right or wrong, simply about perceptions. Statistics alone cannot elucidate the genuineness of people's reactions, nor the level of compulsion. Even watching television cannot sufficiently clarify the authenticity of such because of a myriad of underlying factors. Understanding of actions within a particular culture requires systematic, conscious study within the society, complemented by interdisciplinary insights.

Relativism cannot be judgements based on scant facts, insufficient local knowledge, nor a paucity of understanding of reasons behind particular practices; but clearly, neither can it mean tolerance without limits, without making any moral judgments about other societies. From real life experience, we are advised that....

“....relativistic morality, according to which right and wrong....are in the eye of the beholder; a "terrorist" to one eye is a "freedom fighter" to another....and so on. Such blurring of distinctions....leads to moral bankruptcy....These symmetries should be broken by reference to objective norms of right and wrong adopted by civilized society. There is simply no moral

equivalence between those who labor to minimize the suffering of innocent and those who pride themselves on maximizing such suffering".⁸

Cultural relativism, then, in our focus on injustices committed in the name of culture, cannot be simply regarded as Hegel's "good vs. good".

Indeed, global economic contortions since 2008 have not induced us to critique Icelandic, Greek, or American cultures *per se*, but rather the mismanagement and fraud from the greed of a select banking, industrialists and politician subculture along with sloppy government oversight. Similarly, the actions of a single *Jirga* in Pakistan or defensive, fatuous rant of an egregious politician⁹ should not indict an entire ethnic group or country.

Many localized practices and laws ('*urf*') are neither homogeneous nor ancient, but have produced perhaps previously suitable desired and acceptable results; many have historically changed in tune with socio-economic pressures, education, migration, disasters, etc. Of course, modern jurisprudence must be just and effective in order to moderate or invalidate undesirable practices; otherwise, craving for more efficient systems, such as the Shari'ah demanded in Swatand elsewhere, easily persuades inhabitants to support such changes as might be later regretted.

A common defensive posture of some subcultures in Pakistan has been the rise of state-sponsored and political militias(*lashkar*), as well as sectarian and nationalist firebrand organizations that heighten tensions by temporarily taking the law into their own hands, and thereafter becoming emboldened to independently decide about law and order and thus accelerate and expand criminal and antisocial activities. Similarly, obsessive protection of some customs belies a false group-homogeneity, harmony and newly imagined history within a particular culture. Absolute deference to cultural customs can also perpetuate exploitative relationships, as between landowners (*zamindars*)and workers (*haris*).¹⁰ Exacerbating all of this are patterns of psycho-physical abuse for those trying to change the system.¹¹

Within any country there exists cultural relativismwith subgroups which we do not understand, nor like, for various affronts to the general public's norms, or else subgroups that overtly confront the State. Whether it be polygamous communities in western Canada, Roma (Gypsies) worldwide, "Occupy" groups around the globe or Taliban in

Pakistan.... each nation has examples of subcultures with which it feels comfortable or uneasy. And each country wishes to independently decidewhich subgroup is acceptable and to what extent, by virtue of the rights it allows through its corresponding laws. The reality is that no country or culture readily accepts the imposition of a “universal” human right when that right clashes with internal viewpoints.¹²As a consequence, arriving at a universal meaning in an international....legal text containing moral and political values is futile since all....political and legal principles are determined and informed 'by.... substratal cultural forces"¹³and overwhelming socio-political priorities.

Above and beyond internal constitutional provisions, Pakistan has international commitments to satisfying specified rights¹⁴ and to accountability with its own citizens to not only pursue globally accepted standards,¹⁵but also to improve and implement national statutes. Nonetheless, ratification may simply serve political, not humanitarian, interests, and implementation to date has resembled more “elevator chitchat” than a genuine effort for reasons of:

- Absence of genuine intent,
- Inability to correspond implementation skills or resources to even genuine intent,
- Stranglehold by powerful stakeholders on proper implementation, if perceived to be counter to their self interest, and
- Too many simultaneous, complex environmental factors and ooverwhelmingsocio-political prioritiesoverride treaty obligations and dilute coping mechanisms.

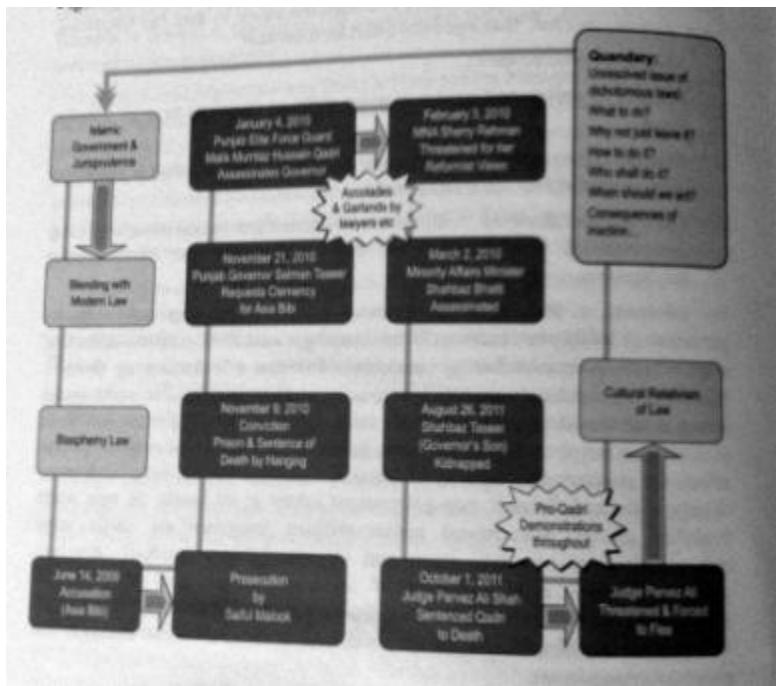
Ironically, as Ban Ki-moon expressed celebrating 50 years of Pakistan’s participation in UN peacekeeping, “Peacekeeping is a credit to us thanks to the fine work of our troop-contributing countries – Pakistan a leader among them”¹⁶ Peacekeeping mandates team members to safeguard human rights,¹⁷ in which social justice is subsumed; yet, at home, those same rights are grossly disregarded. Such dichotomy is not unusual, even in more democratically advanced nations. Unrest affects the government's capacity to function, forcing aid agencies to work more closely with, and through, non-government actors at all levels; in turn, such modality dilutes government responsibilities, progressively shifts state responsibilities to non-state actors and –in many cases—gradually absolves government from even oversight of non-state implemented services and programmes. The vicious circle is completed when

inadequate domestic oversight with tattered accountability lines results in broken communication channels and ensuing recriminations.

A highly visible case in Pakistan

Illustrative of the consequential web emanating from interconnected major crimes in Pakistan is the blasphemy law and its misuse. Let us look at the following chart to see the series of progressively exacerbated events.

Figure 1 A trail of compounding consequences



A similar cycle of retribution and escalation can be demonstrated in thousands of culturally induced crimes and traced in the escalation of international disputes (i.e., the festering of unresolved issues, abandonment of continuous reform and rehabilitation efforts, over-reaction to tragic events, endless recriminations and paucity of visibly encouraging progress; differing truths, divergent realities, all based on diverse backgrounds!) What needs to be understood is that eclectic interpretations of laws and religious edicts shall continue forever; we can see that while the existence and definition of cultural relativism can be

rationalised in the toleration of certain acts, and sympathy evoked from those understanding the concept, a successful process to encourage and support polylogue amongst disagreeing societal segments is still wanting; so we must proactively redouble efforts to appropriately intervene at all stages of foreseeable conflict with a gamut of communication, education and training modalities.

Conscientious Reform Efforts

A balance is needed in states transitioning through critical times: a concerted blending or synchronicity of the rhythms¹⁸ of the national government with less advantaged and culturally distinct populations who are to be the beneficiaries of legal interventions. An approach to culturo-legal regeneration must acknowledge that there are three alternatives:

1. Maintaining the *status quo* of protracted instability: while being a global standard practice of those in power, this is a patent abdication of government responsibility in harmonizing the citizenry.
2. Aggressive crackdown on intranational nonconformist cultures: this is another power game used by the ruling aristocracy and contributing to relentless –at times eternal—enmity, thus being counterproductive.
3. Polylogue with all adversaries and stakeholders to peacefully progress towards resolving protracted misunderstandings: a comprehensive, systematic process might take many years. Nevertheless, “(t)his ought not be an impediment to trying, nor need it be thought of as a pessimistically long timeframe. Why? Because striving towards meaningful negotiations and resolutions under the current practices has already taken (many) years without having borne fruit”.¹⁹ The conversation about criminal justice, social justice, human rights and legal transformation cannot exist outside of those potentially affected; otherwise, there will always be the perception—if not the fact—that laws are determined for, and not by the people, and thus be used to define and control.

It is worthwhile to note that the concept of peaceful suasion by legitimate authority for the smooth functioning of society is not a novel idea—simply a sound idea that keeps having to be rediscovered, viz.

....“legal authority depends not only upon familiar jurisprudential notions such as reciprocity and positional duty, but also upon the concept of Rechtsgefühl—namely, the idea that authority is conditioned by citizens’ feelings of what is right or just. Jhering (1818-1892)....believed that the authority of a legal system depends very much on its ability to negotiate and accommodate struggles based upon feelings of right—struggles between citizens, between citizens and State, and between States.”²⁰

Start with understanding domestic law

The Pakistani legal system is an amalgamation of the numerous subcultural societal norms, the princely states systems evolved over the past centuries, the infusion of Islamic concepts and the gradually transplanted British laws from about 250 years ago. While cultural diversity is now a reality in Pakistan, the consequences of this for the legal system have not yet been fully dealt with, especially in FATA, “where *Jirgas* enforce both customary and Shariat, state representatives administer the FCR, and the Federal Shariat Court oversees the implementation of the Hudood laws”²¹.

Article 2 of the 1973 Constitution declares Islam as the state religion; via Article 31 it is the country's duty to foster the Islamic way of life; and according to Article 33, it is the country's duty to discourage parochial, racial, tribal, sectarian, and provincial prejudices among the citizens.²² Interpretive issues aside, it is clear that on paper there are reasonable directions to citizens. While the Constitution stipulates that all laws conform to the Holy Qur'an and Sunnah²³, there is no mention of the Shari'ah, thus, presumably, providing the right of interpretation of state laws to elected legislators and appointed Judges.

Prophet Mohammed, himself, aimed to replace the old tribal organization by the “Community of the Faithful” so as to diminish vulnerability for his followers: a visualized transition facilitated with determination to a new reality. Due to Islam's own flexibility as it evolved, it contextually accepted, transformed or forbade existing local practices. Resulting interpretations in its vast dynasty produced great diversity in legal practice and ensuing grouping of like-minded scholars who, through their entitlement to personal reasoning (*ra'y*), eventually founded the variety of jurisprudence schools. The Prophet's foresight and generous adaptability

ought to be regarded as a standard against which today's conflicting parties in Islamic communities should judge themselves.

Acknowledge reasons for non-conformity to national laws

Relativism, while not proffered as an *excuse* for violations of the law, often is a *rationalisation* for aberrant behaviour. Understanding the context of non-conformity would help the government and civil society more logically and pragmatically interact with recalcitrant people and plan appropriate interventions. In Pakistan, the following stand out as important reasons.

1. Isolation, illiteracy, ignorance of languages in which laws are expressed: Pakistan's disparate communities —e.g., FATA, Baluchistan, etc.—cannot but remain somewhat removed from the ambit of national laws, their logic and their interpretation, if they rarely have any possibility to learn about laws, thus at times having justifiable ignorance of the law. Energy shortages, sparse mass communication, absence of legal education programmes, combined with personal or anecdotal experience with abusive, elite or government encounters²⁴ cannot properly sensitise people to respecting laws. "About ninety per cent of litigants....come in contact with the district judiciary. Therefore, the impression and confidence of the public regarding the judicial system is directly dependent upon their experience at this level," according to Chief Justice Iftikhar Muhammad Chaudhry, who added that of necessity "an anti-corruption cell for the judiciary has been established!"²⁵
2. Reprisals and fear for many attempting to improve conditions and understanding for particular subcultures. "No-one would say this out loud, but you don't want a bunch of people trying to burn your office down. So....on matters of religious sentimentthe media organisations end up toeing such a conservative line that....they have not taken a stance at all."²⁶ Such rationalisation applies to even peace activists, of whom "Taliban have killed at least seven....committee heads in the past two months."²⁷
3. Non-absorption into main culture: Certain minorities, be they even nonviolent if having aberrant segments within (e.g., Gypsies) remain so far out of the mainstream culture that socio-economic or cultural deprivations could cause differing levels or kinds of criminality.
4. Cooption of group or law or circumstances to misuse culture: Influential pressure groups, such as the Taliban demanding Shari'ah, landlords forsaking peasants' livelihoods or politicians manufacturing self-protective ordinances use their traditional or developed influence²⁸ to retain and strengthen laws which could selfishly be used in their favour.
5. Dominant culture's acceptance of the *status quo*: Even if not everyone mistreats minorities, many do tolerate inappropriate behaviour, including false allegations and accusations of criminality, malicious prosecution, and even manoeuvred decisions by judges²⁹. While acceptance may be from fear of reprisals, there is also apathy towards a sustained need for countering seemingly endless problems — somewhat similar to the "donor fatigue" nowadays after major disasters.
6. Proactive and blatant misrepresentation of intent and/or disregard of commitments, such as when national laws and international treaty obligations are ignored.

Interpretations and their unintended consequences

In some cases, “pro-subculture” legislation intending to improve human rights – provisions recognizing the rights of members to their own norms and practices – has, in practice, worked to the disadvantage of weak and marginalized groups *within* these communities.

Illustratively, blasphemy is a caustic issue,³⁰ allowing laws to be used to get rid of business rivals or punish personal enemies.³¹ Attempting to gain pardon for unproven blasphemy by a Christian farmer, the Punjab Governor was killed by his own elite guard,³² as witnessed by this author from Kohsar’s Mocha Café.

Gender represents another major concern: for women have to not only defend their special rights *vis-à-vis* the state, but simultaneously question within their cultures perceptions of tradition that have negative implications for realization of their rights. The experiences of women as “subcultures” highlight the dangers of highlighting notions of a “minority culture”.³³ Women in Pakistan may also demand their right to select a husband, but thus risk shunning by family and community and losing whatever traditional protection may otherwise be available in case of harm or hardship. Social justice-oriented legislation by itself is inadequate without corresponding education and modifications in the socio-economic and ideological structures within which women live.

Dual perceptions tend to understand such laws as reflecting a different cultural logic to ‘national law’; however, by idealizing any kind of subcultural normative systems, such approaches fail to address the unequal power relations that exist *within* minority communities. In practice, leaving conflict resolution of sexual and domestic violence to local indigenous authorities often means reduced access to justice for women. And it is evident by the current state of social service delivery that mechanisms reinforcing these identities continue within families, as in the educational, health and water collection systems, the media, within religious institutions, etc.

Criminal cases, too, may be settled through court-recognized cultural compromise. For instance, a murder case may be resolved by compensation or “blood money” (*diyat*) paid from the incriminated one’s side to the victim’s family.³⁴ While culturally appropriate and reducing court backlog, this approach often fails to ensure adherence to human rights standards, particularly for cases involving gender-based violence.³⁵

In short, positive interpretations and efforts, if improperly developed, may lead to unnecessary and divisive labelling of people, affirmation of subordinate roles³⁶, and increased oppressiveness of the very people whose improvement was intended.

So, where and when to intervene?

Interventions must start at all actual and predictable stages of conflict. Pakistani lawyers gained favourable inspiration for public shows of force during their 2007 to 2009 efforts at judicial reform, at least for less intrusion into the judiciary; yet, when lawyers, who are supposedly neutral, publicly rally in favour of a self-admitted assassin, their inspired social justice reformation takes on a macabre aura and evokes incredulity as to their professional ethics and the meagre influence of the institution of justice.

At the level of the reform process foundation

1. Multicultural and interdisciplinary teams should be willing to undergo cross-cultural training to understand the perceptions of their work area communities,³⁷ and should check cultural bias when facilitating the investigation and resolution of culture-based social injustices and crimes. Team composition must include experience from within the cultures in conflict. "Responses barriers are factors that influence a person to answer a question in a manner that may not necessarily reflect the person's views (e.g., peer pressure, fear of retaliation.... malevolent use of information)."³⁸ Culturally sensitive topics could result in a "chance that: '...some respondents may also accommodate fears that their countries may be portrayed unfavorably if the researchers are foreigners, thus leading them to adulterate their responses'."³⁹ Therefore, preparation of any investigation and vetting of the environment is essential for optimizing truthfulness; it helps to have a local person help with the data collection to gain greater trust with the respondents and to avoid being considered (*an outsider*) who may be ineptly trying to understand a (*local*) issue.⁴⁰ Conceptually, an outsider may also be a Punjabi bureaucrat in Baluchistan or a Pashto officer in a Muhajir neighbourhood.
2. Legal terms can be conceived with differing intents and interpretations. Consensus needs to be reached for the acceptable meanings of laws and of procedural jargon which may disadvantage individuals from minority linguistic backgrounds. (For example, '[p]olitically speaking, the concepts of autonomy and

sovereignty....are radically different. It has been understood traditionally that sovereignty is an attribute of states... whereas autonomy is the ability of communities within the framework of the state.... to determine, together with agencies of the state and federal government, their general living conditions).⁴¹ However, with regards to Kashmir and Baluchistan, such a definition requires elaboration.

3. The complexity of multi-sectorial, multidisciplinary, cross-cultural justice and transformation demands that State and Society must be capable of analysing and understanding all issues and aligning appropriate methodologies. A pragmatic,systematic modality for developing empathy amongst dissident stakeholders is the “Infinity Loop” developed by this author⁴² and presented in some detail below.

- a. Acknowledgment. All stakeholders should try to understand and accept that there are differences in the majority society’s culture generally, and the subgroups specifically, in patterns of thought, behaviour, attitudes and ethics. Not in every culture can people provide concrete answers to abstractions such as “loyalty” or “truthfulness”. Subsumed in these differences is the reality that reasons for wishing to collaborate may be poles apart. The parties would be successful were they to candidly admit that while one stakeholder does not necessarily agree with any or all differences, it nonetheless recognizes that local context obligates or shapes these differences.
- b. Transpection. If the first step is completed, the respective institutions would be open to other ideas and ways of doing. Then, they could endeavour to step into the minds of their counterpart institutions and explore the reasons behind the differences; this process helps to develop empathy. It is essential to distinguish between the mind of an individual and the collective culture. Patient and persevering Transpection should lead to the realization that understanding and trust come
- The diagram illustrates the 'Infinity Loop' process. It consists of two main rectangular boxes, one on the left labeled 'YOU' and one on the right labeled 'YOUR COUNTER-PART / COLLEAGUE'. Each box has a clockwise cycle of four steps: 1. ACKNOWLEDGEMENT (bottom), 2. TRANSPERCEPTION (right), 3. REPLY (top), and 4. CATION (left). Arrows indicate the flow from one step to the next within each box. Additionally, there are vertical arrows connecting the 'ACKNOWLEDGEMENT' steps of both boxes, and horizontal arrows connecting the 'TRANSPERCEPTION' steps of both boxes, creating a continuous loop between the two parties.
- not by majority upon the
- Rather, would be
- that our practices
- could be through the
- minority or weaker culture. Thus, our ultimate intent is not to interpret the minority culture through the majority culture’s mind, but minority culture through the minority culture mind – and *vice versa*. In this way, it would gradually become evident that in some societies, the "how" of social development is more important than the "why", and that – among other considerations – hierarchical and spatial

arrangements have more significance than in many other cultures. Now we arrive at a crucial "junction".

- c. Replication. Regardless how assiduously the first two steps are done, if these steps be taken by only one of the counterparts or stakeholders, then an intended "dialogue" remains but a "monologue". Without a conceptual reciprocation of "Acknowledgment" and "Transpection", mutual understanding, communication and growth are impeded. So, each step has to be replicated by the others.

Like Westerners' incomprehensibility of the Hindu belief in reincarnation (*samsara*), or Islamic jurisprudence (*fiqh*), the process of replication does not guarantee any resolution to the intercultural philosophical quandary, but it should improve understanding from each other's perspectives. Every single religion has divergent interpretations of immutable divine laws; it is incumbent on us mortals to harmoniously synergize even antithetical and heteroclitic dogmas, providing they are not harmful to anyone, for the sake of peace, sanity and societal progress.

At the level of law and regulations

1. Laws and corresponding regulations must be discussed in a conciliatory, trusting atmosphere with the inclusion of stakeholders from all facets of the complexity through a TransStakeholder Approach (TSA).⁴³ Properly facilitated, a TSA could optimise internal development of laws, render more understandable any transplanted laws (from outside or within the country), and familiarize the population with the complete process.⁴⁴ Such a process should result in increased effectiveness of legal institutions. And, as this author has often stated, the process of implementation of any new idea or plan is as important as the intended result, be that the creation of a just law, its explanations or its application.
2. Compare law and enforcement systems from other Islamic and non-Islamic jurisdictions. Analysis of cultural practices is instructive in learning different balancing attempts, patterns of cultural values and individual rights⁴⁵, ⁴⁶Feuerbach (1833) stressed the necessity of a comparative jurisprudence:

*"The richest source of all discoveries in every empirical science is comparison and combination. Only by manifold contrasts the contrary becomes completely clear; only by the observation of similarities and differences and the reasons for both may the peculiarity and inner nature be recognized in an exhaustive manner. a comparison of laws and legal customs of the most varied nations, both those most nearly related to us and those farthest removed, create universal legal science, i.e., legal science without qualification, which alone can infuse real and vigorous life into the specific legal science of any particular country."*⁴⁷

“Canada’s innovative bijural⁴⁸ legislative draftinghas been harmonizing (*British-based*) federal legislation with (*French-based*) Quebec Provincial civil law; (*this has*) led not only to the development of innovative drafting techniques and methodology but also to the development of new concepts and terminology.”⁴⁹ Research into the Canadian process may provide adaptive ideas to Pakistani legal experts.

3. Enhance enquiry and understanding of rural and urban differences; the social rift between the two sustains chasmal ignorance of culture-induced crimes and defences.
4. Negotiate with subcultures regarding their justice processes and the use of alternative dispute resolution mechanisms that recognise the diversity of internal subnational laws that are consistent with international human rights instruments.
5. Do not hesitate to innovate! Innovation is neither colonial nor Western, but a universal striving to accommodate inevitable changes in all societies.

At the level of school education

1. Children’s education must be guaranteed and enforced to continue anywhere in order to preserve the foundation of the future. Children are vulnerable in conflict, not just because of the constant visibility of violence, but because they can easily be ensnared as victims of physical, psychological and sexual harm, get separated from their families, lose security, become deprived of proper nutrition and remain as migrants for years or generations. In such an environment, they are susceptible to ideological adulteration, recruitment and as subsequent perpetrators themselves of crime. As in sports, an incorrect foundation can be very difficult to regenerate.
2. Build intercultural competencies by ensuring that school textbooks “include chapters that discuss the cultures and histories of Balochis or Pathans or Sindhis in comprehensive detail”⁵⁰, in order to sensitize majorities to sub nationalities and instill historical consciousness.
3. Include compulsory refreshers on culturally unique and valid differences.

At the level of the judiciary

1. The various levels and branches of the judiciary and administrative arms of government must be willing to consider the validity of evidence of cultural practices and the resulting possible inconvenience of obtaining the same.

2. Deprived and minority societal segments deserve facilitation through legal representation and interpretive services.
3. A holistic, systemic oversight is necessary, as the effectiveness of Pakistan's legal system is "contingent upon the effectiveness of a number of other institutions"⁵¹ and absence of interference.

At the level of enforcement

1. Pakistan is a complex society in which socio-economic class pressures could override moral and ethical constraints by ultraconservative influences and seductive enticements which purport to provide elusive remedies to their problems. It thus becomes imperative that law enforcement officers at all levels must be professionally screened, trained, oriented, motivated and regularly refreshed until such time as their attitudes and behaviours align with expected norms and morality standards.
2. The perturbations of Pakistani society demand composition restrictions on some security force groups until such time as their understanding demonstrates public neutrality in minority issues whilst exhibiting bias in favour of those harmed and oppressed.

At the level of administration

1. Foster minority collaboration in the development of proactive, positive discrimination in hiring, promotion and retention policies and procedures, especially in tribal areas.
2. Orientation/training of government officials, legal system representatives and the general public who work with minorities and deprived majorities (not all minorities are weaker than the majority—e.g., Fiji; Bahrain; UAE; certain castes in India and Nepal).
3. Provide legal information and advice in multilingual and oral formats.
4. Reframe international human rights declarations into local vernaculars and facilitate discussions to create common understanding.

Conclusion

This article attempted to highlight the complexity of justice/culture interplay. With irregular application of national laws and deference to discrete subnational group laws, Pakistan has sustained weariness and confusion drawing suspicion towards the government. Aside from looking at individual criminality and human rights issues *per se*,

government and its stakeholders must acknowledge limitations of the existing system as a whole; therefore, any hope of enabling movement towards peaceful resolution of social injustices must encompass a broad systemic approach. Focus must be realigned to understanding and reforming the underlying processes and strategies. Systemic reform must thus intervene in the structural causes of non-compliance with laws and continuance of social injustices, to therefore optimize chances for structural improvement in the application of laws.

The concept of borrowing foreign ideas –as opposed to money—is commendable; however it requires exceptional contextual awareness and an ability to adapt in culturally relevant ways.

“Transplant of legal concepts from one constitutional system to another necessarily raises the question of transformation of those concepts and consequently the further questions of hybridization and perhaps convergence of legal systems. In the new context, with its unique politics, history, and culture—legal and otherwise, the transplant may, in ways determined by its host environment, thrive, wither or transform itself. A transformed transplant may work differently, serving distinct ends, or replicate its original model. It may induce legal systems to converge or to evolve in continued independent ways.”⁵²

Some optimism is evident seeing the number of concerned human rights and social-oriented NGOs and the attempts by some articulate, ethical legal torchbearers in government. Notable has been the Khyber Pakhtunkhwa legal and judicial culture that “appears to be one that is open to innovations in expediting cases at all levels” and “to improve case processing.”⁵³ Yet hope of reform must be continuously conjoined to endeavour, the latter requiring passion in one’s contributions.

The respect for diversity within Pakistan must be balanced with the need to protect the vulnerable. The overriding human rights consideration must be to do that which is fair, just, equitable and not harmful to victims. More importantly, the interests of young and aged dependants should be paramount.⁵⁴ Reflection and reason must trump laws which, while perhaps customary, cannot be acceptable in a modern society attuned to social justice and human rights.

References& Notes

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- ¹Derrett, D.M. (Ed.). (1968). *An Introduction to Legal Systems New York*.Praeger. p.77
- ²e.g.,Honour killing (*Karokari*); conflict-compensational child marriage (*Vani*in Punjab; *DandorBaddaorAddo-Baddo*inSind; *ValverorSwaraor SwaraNani* in KkyberPakhtunkhwa, Balochistan and other tribal areas; *WattaSatta*; *Paitlikkhi*; bonded labour (*peshgi*); etc.
- ³e.g., "Not a single girl got admission to ninth class in Bajaur, FR Kohat and FR LakkiMarwat during 2009-10 due to Taliban threats"and "no girls went to college in Bajaur, FR LakkiMarwat or FR Peshawar either". In *Mutilated for venturing outdoors*. Retrieved from <http://www.irinnews.org/report.aspx?reportID=94628>; also see <http://www.khwendokor.org.pk/documents/Annual%20report%20July%202009-%20Dec%202010.pdf>
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- ⁵ Foucault, M. (1971). *L'ordre du discours*. Mayenne: Gallimard. ("un système d'exclusion [système historique, modifiable, institutionnellement contraignant] qu'on voit se dessiner.") p.16
- ⁶Center for Women's Global Leadership, Rutgers University (2002, August 20). 2002 Campaign Announcement. Retrieved from <http://www.wougnet.org/News/GetInvolved.html>
- ⁷Reynolds v. U.S.98 U.S. 145(1878). Retrieved from <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=98&invol=145#165>
- ⁸Pearl, J. (2005). On Clash, Morality, Renaissance and Dialogue, *After Terror: From Clash of Civilizations to Dialogue*, Akbar Ahmed and Brian Forst Eds., Cambridge, Polity Press. Underlining by this author.
- ⁹ e.g.,Mir IsrarUllahZehri, Senator; graduated with major in Agriculture from the **Londondiploma mill 'International University of America'**. (Retrieved from <http://improudpakistani.blogspot.com/2011/01/nawabzada-mir-israr-ullah-khan-zehri.html>; and <http://blog.dawn.com/2010/07/16/choosing-the-right-degree-and-right-college/>); Standing Committee Member -Ports & Shipping, Planning & Development, Textile Industry, Interior; Federal

Minster for Post; Food & Agriculture; Minister for Food Security & Research. Public apologist for live burials, viz.(2008, November 12). *On the Patriarchy Highway-honour killing defenders get a prize*. Retrieved from <http://www.sacw.net/article283.html>

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¹¹Karim, F. (1995). Contemporary forms of slavery in Pakistan; *Human Rights Watch/Asia* 1995. Retrieved from http://www.brandeis.edu/investigate/pol/trafficking/docs/Slavery_Pakistan_HRW.pdf; also (2010, November 23). Pakistan: Peasants Released From Illegal Captivity of Zamindar; *The Pak Banker*.

¹²Reichert, E. (2006, April). Journal of Comparative Social Welfare; Vol. 22, No. 1, pp. 23–36 Human Rights: An Examination of Universalism and Cultural Relativism, p.24

¹³Joyner, C., and Dettling, J. (1990). "Bridging the cultural chasm: cultural relativism and the future of international law" 20 *California Western International Law Journal* 275, p. 278

¹⁴*ibid*, p.25

¹⁵Relevant ones for purposes include (ratification dates by Pakistan in parentheses): Universal Declaration of Human Rights (1948); Geneva Conventions I, II, III, IV 1949 (1951); ILO Convention No. 29 on Forced Labor, 1930 (1957); UN Supplementary Convention on Abolition of Slavery, Slave Trade & Practices Similar to Slavery, 1957 (1960); International Convention on Elimination of All Forms of Racial Discrimination (1966); Convention on Rights of the Child (1990); Vienna Declaration (1993); Beijing Fourth World Conference on Women (1995); Convention on Elimination of all Forms of Discrimination against Women (1996); International Covenant on Economic, Social & Cultural Rights (2008); International Covenant on Civil & Political Rights (2008); UN Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment/UNCAT (2010); Optional Protocol to Convention on the Rights of the Child (2011)

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¹⁷UN Peacekeeping (2012, December 22). *Human Rights*. Retrieved from <http://www.un.org/en/peacekeeping/issues/humanrights.shtml>

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- ²¹Francois Tanguay-Renaud, *Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan*, 6 Singapore Journal of International and Comparative Law 541 (2002), p.543.
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