

'Honour'-Based Violence: Challenges of Law Implementation in Iraqi Kurdistan Region

One of three women worldwide has been victim to physical, sexual or physiological violence, and in times of calamity, it is often the women who suffer due to their sub-ordinate position in large parts of the world.¹ Here, Honour-based violence is essentially part of the larger gender-based violence paradigm and is conducted in both psychological as physical forms against women around the world. According to the United Nations more than 5000 women worldwide are killed in the name of honour annually.² In this paper, the practice of honour-based violence in the Iraqi Kurdistan Region (IKR) will be assessed, as it poses an extensive challenge in the largely patriarchal society. Firstly, the practice of Honour Based Violence (HBV) will be analysed, and subsequently, the problem will be conceptualized in the context of the Iraqi Kurdistan Region. Thereafter the legal institutions will be outlined, and how the law in the IKR is affected by the federal Iraqi Penal Code (IPC) and Islamic elements. Based on this foundation, it will be attempted to provide insights into how the regional law unfolds in reality, and why it is problematic to implement legal reforms within the largely patriarchal and tribal environment. Considering the findings, It is argued that despite the international efforts and the legal reforms of the Kurdistan Regional Government (KRG), honour based violence remains a severe challenge, because of the challenges that are ingrained in a largely traumatized, patriarchal and tribal society. In addition, the lack of collective political commitment by the various state and non-state actors such as the judiciary and police and is also a countering factor, which is also rooted in the Kurdish social structures and tribal mentality.³

Today the practice of honour based violence is often associated with regions in North Africa and the Middle East, yet it is crucial to refrain from any stigmatization, as research has suggested that HBV is not related to any particular religion or culture.⁴ In fact, HVD has existed in ancient Roman times, medieval Europe, Latin America and South-east Asia.⁵ Honour Based violence is one of the most ancient practices of the larger gender-based violence paradigm, and is conducted in both physical and psychological forms.⁶ HBV is mostly conducted by close family members of the victim, e.g. uncles, fathers and brothers, and it is aimed to protect or restore the threatened or lost honour of the family or community. An essential distinguishing factor of HBV is that it is collectively sustained and utilized through so-called honour-codes in patriarchal family and community environments. For that reason, it is important to underline that patriarchy is a deep-rooted political-social structure in which men are inherently dominating in society, as they seek and justify the right to rule over women, and alarmingly, maintain that power by using various forms of physiological and physical violence against women.⁷

¹ World Health Organization, "Violence against women", 2016.

² United Nations News Centre, "Impunity for domestic violence, 'honour killings' cannot continue – UN official", 2010.

³ Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 146-152.

⁴ Brah, Avtar., Gill, K. Aisha., "Interrogating cultural narratives about 'honour'-based violence", *European Journal of Women's Studies*, 2014: 74-78.

⁵ Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence", 2015: 5-9.

⁶ Department of Justice, "Preliminary Examination of so-called "Honour Killings" in Canada", *Government of Canada*, 2017.

⁷ Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence", 2015: 52-54.

In the Iraqi Kurdistan Region (IKR) women are usually expected to be well educated and to become submissive wives and dutiful mothers who must take care of the whole family. In contrast, most men learn by their dominant fathers that it is vital to become powerful and controlling leaders of their family, and more importantly, to protect the 'honour' of their family and tribe. Honour is represented in the body of a woman, and by her social and sexual behaviour. Therefore, in most families the freedom of women is perceived as a transgression of traditional values and customs.⁸ Moreover, tribalism in Kurdistan is dominant and mainstream, and this has fundamental impact on the social and political organization of Kurdish society, as women are intimidated and restricted within these collective structures which leads to extensive capability deprivation.⁹ Therefore, gender violence does not only prevail physically, but is actively and collectively sustained through the socio-cultural elements of society, which silently utilize these so-called 'honour-codes'.

Prior to proceeding to the legal infrastructure in the IKR, it is important to elaborate on the extensive implications of tribalism. Tribalism in Kurdistan is historically a collective defence instrument for survival in times of conflict, instability and political competition. In fact, tribalism is more pervasive in Kurdistan than 30 to 40 years ago, as it is utilized for social organization, mobilization and various types of enterprises. As has been discussed in the paper of William J. Chambliss regarding the Law's of Vagrancy, "vested interest groups" can play a crucial role "in the emergence and/or alteration of laws". The "vested interest" groups within the context of the IKR may be defined as the tribal and patriarchal structures, which aim to maintain their power-position in society.¹⁰ In parallel, male actors may also collectively pressure and reinforce each other in certain practices, including those of HBV, in fear of stigmatization and exclusion from their environment and in the pursuit of their perceived honour. Consequently, progressive actors are under significant pressure in their quest for reforms, for the very stigmatization and the security of their employment. This can be perceived as one of the fundamental challenges in the quest of effective law implementation and enforcement, as most institutions are to some degree influenced and regulated by tribal male actors.¹¹

In contrast, women have traditionally little access to the outside world in the IKR. Therefore, it is difficult for women in this controlling environment to reach out to International organizations or start a campaign on schools and social media to raise awareness and demand change by the establishment viz. "vested interests". Moreover, as male violence is common in domestic and public life, most women feel intimidated and therefore refrain from acting in order to stimulate emancipation. This capability deprivation makes it very challenging for women, if not almost impossible, to counter the patriarchal structures from a grassroots approach. The majority of women in Kurdistan live in 'purdah', as they are mostly excluded from public life: however, there are also many women who work as civil servants and teachers, yet they have to be obedient and respect the 'unwritten rules' of society.¹² These suffocating circumstances also provide an explanation for the limited legal consciousness of these women, because the fear for stigmatization and the severe consequences thereof heavily influence the claim-making potential and collective mobilization of women.¹³

In addition to the perceptions of the women in the IKR, M. Young elaborates in his paper about the factors that shape the "actions, understandings, and beliefs with regard to law".¹⁴ He affirms that the perception of law are fundamentally defined by the sociological and anthropological traditions, and affect "a person's attitude toward, willingness to mobilize, suppositions about, and experience of the law"¹⁵ This also indicates that the non-enforcement of the HBV-reform laws by state-actors, contributes to the illegitimacy and perception of women that they are not sufficiently protected by the law.

⁸ Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence", 2015: 15-17 / 48-49.

⁹ Bruinessen, van, Martin., Dawon, Hosham., Jabar A. Faleh., "Kurds, States, and Tribes", *Tribes and Power: Nationalism and ethnicity in the Middle East*, 2002: 1-3.

¹⁰ Chambliss, J. William, "A Sociological Analysis of the Law of Vagrancy", *Social Problems*, 1964.

¹¹ ¹¹ Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence", 2015: 47-48 / 113-115.

¹² Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence", 2015: 46-49.

¹³ Abrego, J. Leisy, "Legal Consciousness of Undocumented Migrants: Fear and Stigma as Barriers to Claims-Making for first- and 1.5-Generation Immigrants", *Law & Society Review*, 2011: 354-360.

¹⁴ Young, M. Kathrynne, "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight", *Law & Society Review*, 2014: 525.

¹⁵ Young, M. Kathrynne, "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight", *Law & Society Review*, 2014: 501.

Hence, these challenges contribute to the utilization of these covert 'honour-codes', which are collectively – arguably involuntarily by women – sustained.

Honour based violence has been widely practiced in the last decades, and in a response, the Kurdish authorities initiated legal reforms and essentially distinguished the judicial system from the rest of Iraq. However, it is important to note that these legal reforms have been opposed by various "socio-cultural boundaries and ineffective institutional functioning".¹⁶ Related to the grassroots communal application of the Gacaca courts in Rwanda, the IKR knows a similar informal legal process called *Solhi Ashayri*, which literally means 'tribal conciliation'. This grassroots application of the law is conducted through the tribalism which is embodied in governance structures and subsequent interventions, and further consolidates the tribal influence in society.¹⁷ Similar to the pre-colonial era of Rwanda, the *Solhi Ashayri* was also used to resolve "local disputes over family matters, property rights and other local concerns".¹⁸ In addition, similar to the Gacaca courts, the 'judges' are not legally qualified, the 'victim and offender' are not represented by a lawyer, and the process may be heavily influenced by subjective testimonies and judges, rooted in the very same fear of stigmatization and collective pressure.¹⁹ These countering factors that have been illustrated also contribute to the ineffective legal reforms and the enforcement thereof by the KRG. In contrast, the local application of 'justice' may contribute to the detrimental implications, although not to an ethnically defined group, but to a gender-defined group, viz. the women in their sub-ordinate position.²⁰

The Iraqi Kurdistan Region (IKR) is an autonomous region within the Federal state of Iraq. The Kurds are the largest ethnic group in the world without a representative and sovereign state, and as a result, decades of persecution and genocidal violence have been inflicted upon them in their volatile region of the Middle East.²¹ Iraqi Kurdistan is officially recognized by the Iraqi constitution, and consequently, it is partly affected by the Iraqi Penal Code which was constructed in 1967 by the Ba'ath regime. However, the KRG has the ability to counter the implementation of certain Iraqi legal articles, and instead replace those articles with alternative regional laws. These reforms, including those that aim to counter HBV in theory, are constructed by the Iraqi Kurdistan Judicial Council, with the objective to empower the judicial authority in the IKR. Ideally, these reforms should be in harmony with international treaties and human rights conventions.²²

Until 2002, the crime of honour based violence was not treated as a violation of human rights, but rather as a cultural affair. What made this worse is that HBV were not included in the 1993 UN resolution on violence against women, called the 'Declaration on the Elimination of Violence Against Women'. However, in response to research and international advocacy by researchers and activists, in 2003 the United Nations adopted honour crimes in a specific resolution, called "Working Towards the Elimination of Crimes Against Women Committed in the Name of Honour".²³ This has been a major development and furthered the KRG's legal reforms in the fight against HBV. However, it is important to note that the Iraqi judicial system is based on Islamic law, and explicitly expressed leverage for 'religious codes' utilized by religious minorities. As Begikhani affirms in her paper, "the IPC reflects social norms and traditions in which women's honour is central to 'family honour', and its preservation is inscribed in the law."²⁴

A worrisome example hereof is article 41 of the IPC, enabling "the exercise of violence in the name of correction as a legal right, establishing the right of a husband or father to 'discipline' (!! his wife or children"

¹⁶ Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 132.

¹⁷ Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 132-133.

¹⁸ Corey, Allison., Joireman, F. Sandra, "Retributive Justice: The Gacaca Courts in Rwanda", *African Affairs*, 2004: 81-82.

¹⁹ Corey, Allison., Joireman, F. Sandra, "Retributive Justice: The Gacaca Courts in Rwanda", *African Affairs*, 2004: 83-84.

²⁰ Corey, Allison., Joireman, F. Sandra, "Retributive Justice: The Gacaca Courts in Rwanda", *African Affairs*, 2004: 89.

²¹ Packard, Matthew, "Earning Independence in Iraqi Kurdistan", *Temple International and Comparative Law Journal*, 27 (1), 2013: 180-183.

²² Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 137.

²³ Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 138.

²⁴ Begikhani, Nazand., Faraj M. Najat, "Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 2016: 139.

In response to this article various – mostly female – KRG representatives had lobbied to government to change this law, for it would be in violation with human rights, and essentially justified the conduct of domestic violence. However, despite the efforts for the reform of the IPC in Iraq, the call for action of these women have been refused by the theocratic government in Baghdad. Despite these obstructions, the KRG managed to perform substantial legal reforms, and the most important is article 409 of the IPC. As stated by Begikhani, “the amended article stipulates that if a man finds his wife in an act of adultery (*zina*) or in the same bed with her partner and kills her, he shall be sentenced with murder and there will be no mitigating circumstances”; in contrast, before the reform the mitigating circumstances limited the sentence to a theoretical maximum of three years imprisonment. Furthermore, the KRG implemented a “Combating Domestic Violence Law” (CDVL). In response, international organizations became hopeful and this was a major advancement in the human rights protection within the IKR.²⁵ These examples illustrate the goodwill of progressive actors within the KRG and the Kurdish society to make meaningful reforms and empower the position of women, while simultaneously reforming and consolidating the rule of law. However, as explained, the conservative tribal elements within the context of a largely patriarchal society, inflicted various challenges in the effective implementation and enforcement of these laws. Consequently, the grassroots application by patriarchal actors of the law embodied in the *Solhi Ashayri*, essentially dominates and replaces the formal legal system, especially in the rural areas. Contributing to this negative vicious cycle was the emergence of extremist and fundamentalist elements within the society, partly caused by a poor socio-economic status and patriarchal beliefs. This has resulted in an negative equilibrium where patriarchal and tribal norms and values are reinforced and pose a substantial obstacle for the law-enforcement by formal legal and political institutions.²⁶

The aforementioned leads to a conclusion that the tribal mentality – reinforced by patriarchy – hinders the effective law-implementation regarding sensitive issues of honour based violence. Furthermore, progressive actors within community’s fear stigma and exclusion, which is even worse for the women who seek to advocate for changes in the mentality. As the government actors are also people who live in communities, and fear losing their jobs and stigmatization, there is a lack of substantial political will and commitment. It is therefore argued that a holistic grassroots approach is required to counter the deep-rooted patriarchal structures within communities and to gain traction for fundamental change in the Kurdish cultural norms and values regarding the perception of ‘honour’ and the related conduct. The implementation of the legal reforms can only be viable when the grassroots communities change their mentalities and collectively agree that certain practices cannot be allowed anymore, in the pursuit of equal rule of law and protection of human rights.

²⁵ Begikhani, Nazand., Faraj M. Najat, “Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region’s Laws”, *European Journal of Comparative Law and Governance*, 2016: 142.

²⁶ Begikhani, Nazand., Faraj M. Najat, “Legal treatment of honour crimes: comparison between Iraqi national and Kurdistan Region’s Laws”, *European Journal of Comparative Law and Governance*, 2016: 144-146.

Bibliography

Abrego, J. Leisy, "Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for first- and 1.5-Generation Immigrants", *Law & Society Review*, 2011.

Begikhani, Nazand., Faraj, M. Najat, "Legal Treatment of Honour Crimes: Comparison between Iraqi National and the Kurdistan Region's Laws", *European Journal of Comparative Law and Governance*, 3, 2016.

Begikhani, Nazand., Gill, K. Aisha., Hague, Gill, "Honour Based Violence: Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora", 2015.

Bruinessen, van, Martin., Dawon, Hosham., Jabar A. Faleh., "Kurds, States, and Tribes", *Tribes and Power: Nationalism and ethnicity in the Middle East*, 2002. Retrieved 10 March 2017 from: http://www.hum.uu.nl/medewerkers/m.vanbruinessen/publications/Bruinessen_Kurds_States_and_Tribes.pdf

Packard, Matthew, "Earning Independence in Iraqi Kurdistan", *Temple International and Comparative Law Journal*, 27 (1), 2013.

¹ Brah, Avtar., Gill, K. Aisha., "Interrogating cultural narratives about 'honour'-based violence", *European Journal of Women's Studies*, 21(1), 2014.

Chambliss, J. William, "A Sociological Analysis of the Law of Vagrancy", *Social Problems*, 12(1), 1964.

Corey, Allison., Joireman, F. Sandra, "Retributive Justice: The Gacaca Courts in Rwanda", *African Affairs*, 2004.

Department of Justice, "Preliminary Examination of so-called 'Honour Killings' in Canada", *Department of Justice, Government of Canada*, 2017. Retrieved 10 March 2017 from: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/hk-ch/p3.html>

United Nations New Centre, "Impunity for domestic violence, 'honour killings' cannot continue – UN official", *United Nations*, 2010. Retrieved 10 March 2017 from: <http://www.un.org/apps/news/story.asp?NewsID=33971#.WMIzcvnhBnl>

World Health Organization, "Violence against women", Media Centre, World Health Organization, 2016. Retrieved 10 March 2017 from: <http://www.who.int/mediacentre/factsheets/fs239/en/>