

GENDER BIAS AND THE LAW: A CRITICAL STUDY OF THE WANDERING FALCON

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Abstract: *This research is an explorative study of the novel The Wandering Falcon written by Jamil Ahmad (2011). The aim of the paper is to draw the attention of the powerful elite towards the alarming effects of the unfair laws in promoting gender inequality. The text has been analyzed through the lens of post-colonialism to explore the role of unfair laws, exercised over the women of tribal region, in the context of erstwhile FATA (Federally Administered Tribal Areas) Pakistan. Close reading technique has been used for data analysis to dig out the deeper meanings. The findings of the study explain that the set of laws (FCR) had gaps and was apparently biased. It is concluded that FCR, implemented in the erstwhile Fata by the British, had treated tribal women with discrimination, resulting in gender inequality.*

Keywords: FATA; FCR; Gender; Inequality; Law; Post colonialism

INTRODUCTION

History has witnessed how the powerful and the majority have ruled over the weak and minority, due to which, the latter seems to have been exploited in many different ways. The West was once ruling the majority of the regions who considered themselves superior and the colonized as inferior, other, subaltern and oriental (Leitch, 2001). This fact is evident from their political, economic and controlling system of the colonized. The colonized were not provided with the system (the way to govern and educate people) that the colonizer entertained themselves. British ruled the subcontinent and exploited the resources and system of the region greatly. Their policies and administration also exploited and corrupted the erstwhile FATA socio-culturally. They, through the consent of the tribal elders, implemented colonial system, such as FCR (Frontier Crimes Regulation) that had dealt the tribal women with inequality.

Research Objectives

1. To explore the possible factors behind the production of gender inequality in the erstwhile FATA.
2. To analyze the ways in which the novelist has represented gender inequality in the novel.

Research Questions

1. What are the possible factors behind the production of gender inequality in the erstwhile FATA?
2. How has the novelist represented the gender inequality in the novel?

LITERATURE REVIEW

The British imposed FCR (the set of laws) to civilize the tribal men, apparently. However, they did not focus on the tribal system which was in need of some improvement to ensure equal rights and provide equal opportunity to everyone without any discrimination. The set of laws had made the

situation worse than before. The British, in the name of civilization, abolished certain practices in the region that did not have any positive outcome but instead made the situation in the FATA regions more critical. As, Gayatri Spivak (1994) has stated that Sati (widow burning) was practiced in India which was thought by the British as a crime. This practice increased with colonization to show resistance against the colonial authority. It is also assumed that in Bangladesh, women used to have the right to inherit the cause of such a practice. According to Spivak (1994), brown women could not speak; first, they could not resist the Indian and then the colonial authority. The British considered this as a mission to save the brown woman from a brown man. Therefore, the British, instead of focusing on the real cause, abolished these practices from the Indian and Bengali culture. The brown woman, who performed this practice, did not say anything about it. Spivak (1994) termed the woman as a 'subaltern', who cannot speak. Subaltern is a word which is actually used for poor and marginalized people but in her essay, she refers to the colonized women in India, who cannot speak.

The British for their own colonial purposes abolished the socio-cultural practice in Bengal and India. The people without using their own minds followed the colonial stereotype and did not criticize their own practices that can be improved and should have positive consequences. In the same way, women in the tribal region were treated unequal. Tribal women were considered feminine and were misrepresented accordingly in the set of laws as in India and Bangladesh. Instead, the tribal people should have thought about gaps or lacks in their own system; they had encouraged a new set of laws of the British that made them more subaltern. The said set of laws, as a result, created stereotypes on the part of the tribal people that acted as reality. It is abolished by the British in the name of civilization which, Spivak (1994) considered a form of colonization.

The colonized are so much influenced by the colonizer that they do not have their own mind. They followed the colonial ideology, economy, and political system without thinking or criticizing their own. Their intellectuals even compare themselves with the intellectuals of the West. The banning of Sati practice was also the result of race and power. The people of tribal areas were considered as other in the matter of law. Farooq Yousaf (2019) discourages the Orientalized picture of the tribal Pashtuns as violent and warrior-like by referring to the present movement for peace and freedom Pashtun Tahafuz Movement. The Frontier Crimes Regulation and Frontier Govern mentality argues that imperial authority has divided North West Frontier into two subjects civilized; those people living in the cultivated plain area and wild tribes; those living in the hills. The wild is excluded from the main colonial judicial system through FCR.

In a nutshell, it can be concluded that the British colonized the people of the subcontinent in the name of civilization. Such practices particularly targeted women in the erstwhile FATA, and the set of laws known as FCR formulated by the British treated women with discrimination. The British on the basis of a biased set of knowledge formulated the set of laws. The set of laws did not represent its people. The representativeness mechanism is the best use of limited information, but it deviates most from existing reality (Samson, 2014). Due to the loopholes holes present in the defunct FCR; the culprits would freely move without any punishment in the erstwhile FATA. It can be argued that the law may give way to crime. FCR did not represent the cultural context of these set of laws.

Loopholes in a law provide grounds for crime and are detrimental to society in the long run. Such is the case with the British who left loopholes in the set of laws (FCR), making the tribal people vulnerable to crimes. For example, recent analysis of Jaffri (2022) states that due to excessive use of social media there is a rapid increase in cybercrimes, especially cases regarding revenge porn (to share someone private videos, messages, pictures without his or her permission in order to blackmail or embarrassed the person). She mentioned that around 4000 cases have been reported regarding revenge porn by females. However, the real numbers are more than these because most people due to family honor do not like to report. The said practice has increased the ratio of honor killing that is in critical situation. She makes her point stronger by refereeing to Qandeel Baloch. The same kind of loophole in the Pakistan Panel Code (PPC) led to the brutal

killing of Qandeel Baloch. Umm-e- Habiba (2018) also supports the argument that the factor behind the Qandeel's case is weakness in the law. Qandeel, who posted bold videos and pictures on social media, was killed by her brother in the name of honor killing and recently the culprit in her case is released by the law. Qandeel reported to the Federal Investigation Agency (FIA) and Ministry of Interior regarding her insecurity, but neither department responded. The reporter has sought out lawlessness or gap in the law as a factor behind such like killings. While supporting her argument, Umm-e- Habiba refers to the Indian Penal Code (IPC) 1860, which was drafted by the colonial regime, that there were some loopholes in IPC that encouraged culprits to commit crime and would get privilege from the court without any punishment. As a result, it is increasing day by day. As these are the outcomes of improper law in the other context, similar was the case in the erstwhile FATA at the time of defunct FCR. Therefore, there is a need for a homogeneous and universally accepted set of laws to solve this problem

Based on the gender discrimination, Human Rights Commission of Pakistan (2005) has also criticized the set of laws (FCR) in the erstwhile FATA as a violation of the Universal Declaration of Human Rights and the Constitution of Pakistan (Pakistan Panel Code). In the same terms, the Federal Sharia Court of Pakistan has also remarked, "FCR: A bad law nobody can defend" (2005). The court has passed categorical judgments to repeal these set of laws. In the judicial system of erstwhile FATA, there was no representation of women. This means that women were not treated equally in the set of laws, thus paving the way for gender inequality.

Women's vulnerability to crimes and other violations varies from culture to culture or region to region. D'Lima et al. (2020) found that there are approximately 83% of honor killing cases in India's upper caste system. These cases are the result of premarital or romantic involvement or marriage in a lower caste without the father's consent. However, in Pakistan, the situation is different. Most of the cases in Pakistan (areas where Pakistan Panel Code is applied) are due to the refusal to take permission from the parents in marriage. In the context of Pakistan, patriarchy is the real cause of the heinous violation. Considering this in the erstwhile FATA, honor killing was due to the FCR. There were gaps in these set of laws where there was no representation of women in the legal system. It did not protect the rights of women, which is why crimes in general and honor killing in particular increased in the erstwhile FATA.

Naila Aman Khan (2012) has stated that women in the erstwhile FATA did not have the right of share in both moveable and immovable property in the inheritance of both Father and Husband. Jirga is the main pillar of tribal judicial structure but women are not part of it. The matter is directly addressed to them and they cannot take part physically in Jirga.

Patriarchy is a socially constructed phenomenon. It is established through different ways in different contexts. In the erstwhile FATA, the defunct FCR formulated by the British had made the woman feminine and man a patriarch. Elaborating it further, Aleena Khan (n.d.) traces the root of patriarchy in the British colonial law (1835) that has given leniency to men in case of honor killing. Men were given the privilege to live freely after committing the crime. She made both administrative and legal apparatus responsible for patriarchy in the given context that has constructed masculine and feminine thinking; men to be strong and aggressive while women to be weak, submissive, and delicate by the elite class (who comprised men). The socially constructed ideologies like socioeconomic position of men to protect women's chastity, and family values to maintain social order, are the reasons behind the vulnerability of women to be the victim of different crimes.

Nabila Feroz Bhatti (2022) states that the reason behind gender discrimination is poor legislation, which also promoted early child marriages. The law actually has created the difference in age for a child in Khyber Pakhtunkhwa; it has kept 16 years for a girl and 18 years for a boy. It is actually the law that created gender discrimination and marriage at an early age. Due to this, girls face many issues, such as divorce, health issues, economic, and domestic issues etc. She has sought for the unbiased legislation in the matter of early marriage to prevent girls from such exploitation. Similarly, in the erstwhile FATA, the increasing ratio of early child marriages was due to the lawlessness regarding the said problem. It is a law that ensures justice and prevents people from



violation of their rights.

According to Durrani Shazminay (2021), women are not only singled out by violent males but also by the system in Thomas Hardy's *Tess of the D'Urbervilles*. Some systems are created to impose certain values. Such a mechanism would then mould people accordingly. Shazminay (2021) asserts that John Galtung coined the phrase "structural violence", which frames the status and function of women in society. The perpetrators of the violence are institutions, schools, family media houses, etc.

According to Khan Zeb and Zahid Shahab Ahmed (2019), the British-framed FCR gave the tribal territory a semi-autonomous status, which Zeb and Ahmed claim, was the cause of the US-led invasion in the erstwhile Fata. The reasons of structural violence include the issues the region is now experiencing, including terrorism, socioeconomic instability, and political instability. He referred to the FCR law in the tribal belt as structural violence.

METHODOLOGY

It is a qualitative research. The researchers have used dialectical relations in the support or contradiction of ideas. Data is analyzed with the help of different patterns, themes, settings, characters, plots, and history. Close reading technique is the method used by the researchers for the analysis of data. According to Mario Klarer (2013), close reading is used for looking closely into the text. The researchers closely read the text many times in order to interpret the text from different angles. With the help of tools like plot, point of view, character, setting, title, foreshadowing, semantic context, syntactic context, thematic context, iterative context, generic context, and adversarial context, they have analyzed the text to bring out the targeted deep meaning of the text.

Theoretical Framework

In history, postcolonial study refers to the movements that ended colonial domination. In Pakistan's history, 1947 is considered as one of the milestones as India got its independence from the British Empire. In a general sense, it refers to the struggles against (European) colonialism, and the rising of new cultural and political entities on the platform of the world, in the second half of the 21st century. These struggles have changed and reshaped academic knowledge and the world power. It has also made the old tradition modern in the presence of colonial practices. The colonizer had brought forth new structures and implemented them in their territories. These structures are in the form of parliaments, territorial boundaries, and censuses, which have ended and transformed traditional practices of the territories' or colonized' regions into modern ones that can never be refused by a nation that wants to participate in the international state system (Schwarz, 2005).

In the erstwhile FATA, the British used FCR as a weapon to oppress the tribal women. According to Fanon (as quoted in Leitch, 2001), oppression, such as political, social, and economic, are actually a matter of class and race in a third-world country. He divided countries into three classes: first world countries (developed countries), second world countries (developing countries), and third world countries (underdeveloped countries). Pakistan and Africa come under the third world countries. The British formulated a set of laws for the erstwhile FATA that was in its function and purpose different from that of the West.

According to Spivak (as quoted in Moore-Gilbert, 2005), one of the prominent postcolonial critics argues that the colonized have no voice under the colonial structure of governance. Subaltern as they are called means tribal, poor farmers, unorganized peasant laborers, and other communities with no workers in the countryside. The subalterns are those who are to be represented by the outsider and especially by those who exploit them in each and everything. The subaltern was silenced by the radical intellectual i.e., they have no space to represent themselves. Simon De Beauvoir's (as quoted in Leitch, 2001) famous remark on such occasion as, "one is not born, but rather becomes a woman" (p. 1262) means that men grows up in such a system, which empowers toxic masculinity, and not due to the fact that men are violent.

Analysis and Interpretation

Using close reading technique and different other tools, as mentioned above, the following themes emerged from the text.

Vulnerability of Women to Crimes

“When the veil slipped from the woman’s face...and the unearthly expression on her face told the story clearly” (Ahmad, 2011, p. 2).

This paragraph is narrated from a third-person point of view. It is narrated in a context when the couple came across forces. The novelist while describing the unsuccessfulness of FCR has used the noun “veil” which metaphorically refers to protection. Before FCR, women were not vulnerable to crimes as much as in the present. After the implementation of FCR, they become victims of different crimes. The conjunction clause, “When the veil slipped from the woman’s face” shows the vulnerability of women to crimes. The veil that protects one identity and honor can no more be protected. The other clause in the sentence, “most of the soldiers turned their heads way” where soldier in the novel is metaphorically used for FCR, in this context, it metaphorically shows that when women become victims of different crimes, FCR does not provide any protection under the umbrella of law. “They turned their head away”, a law which is logical construction of different codes of society that provides shelter to the victims. Similarly, the writer has used the head as a symbol of logic and reason, which refers to these flaws existing in society. When someone is not given their right, they claim it in the prevailing set of laws. Tribal women considered FCR as a shelter for themselves but when they asked for help; there was no place for them. The adjectives “red-rimmed swollen eyes” qualifying the noun eyes show the long-lasting suffering of women. It takes time for the eyes to be swollen and rid-rimmed. The writer did not use tear, which is temporary and has temporary effects, but “red-rimmed swollen eyes” show the continuous suffering that has no solution; the person merely endures calmly. Adjective “matted” qualifying the noun hair, shows psychological disability and disappointment, which is caused by the set of laws. Hair as a symbol of beauty and attraction is untidy and charmless. In the same way, women who were once living happy and satisfying life are now the victims of crime, which has made their life charmless and disappointed. The discriminatory approach towards male and female genders in the set of laws made the latter more vulnerable than the first.

Insecurity and Patriarchy

“He cradle her head in the crook of his arm... which finished whatever was left in a single gulf” (Ahmad, 2011, p. 2).

The writer draws the attention of the international community by presenting the true picture of the region. The lines are narrated from third-person narrative. The writer has caught the scene in which the man provides water to the thirsty woman “squeezed some drops of water onto her face”. Metaphorically, it refers to the standing of men for their women’s rights in the region. The verb “cradled” shows the helpless situation in which a child is given rest. Here, the writer has metaphorically used the helplessness of women who are tortured by the system and who are in need of rest. The crook of the arm is used for protection when there is any danger. The crook side is also soft, which means that it does not harm. A woman is given protection in the crook of her husband’s arms. Metaphorically, it refers here to the sincerity and fight of men for their women in difficult time of their life. Women, who are not given representation in these, live their life at the mercy of men. Men are also not given their due rights but they still try not to let their women be the victims of the set of laws. The strong standing of men for women in the tribal region is termed patriarchy, but actually, it is the necessity of the time, not the patriarchy. The writer while showing the true picture of the tribal men has used the adverb “tenderly” and the noun “feeling” to show the sincerity of tribal men for their women. Although, considered violent and patriarchal by the international communities, yet they are fighting for their women’s rights. The writer wants to draw the attention of the people that tribal men are only struggling for themselves, and the international community is merely watching the situation. They do not help them as the writer metaphorically used the phrase “many eyes watching them”, which refers to all those international organizations that voice for women’s rights. The word splashed in “splashed driblet

of water onto her lips”, which is used to draw the attention of someone towards a particular thing, is used to draw the attention of the people towards the inhuman life of women in the region. They are not given their rights. The word “splashed” is merely used for catching the attention of the people, but also to show the insignificant amount of the thing. The word “dribble” further signifies the scarcity and insignificance. Water, which is the basic ingredient without which a person cannot live, has been used with the negatives. It metaphorically refers to the basic human rights that are not given to women of the region. They are intentionally deprived of their rights. In this context, it is men who provide some of their rights, making a compromise on their own. The man has used his right hand instead of his left, which signifies that there is no evil intention behind the action. The British, although, having given a system, yet had their evil intentions of colonization behind it. On the other hand, the tribal people deal with their women equally as humans. That is why the writer has used the word “right hand” to show the sincerity of the tribal people towards their women. The women who are facing extreme injustices in the region are hopeful to be treated as humans by the people, and not by the law. The simile “like a small animal” shows that the new born cattle has no knowledge about the sucking of milk and still sucks it. Similarly, women of the region who have no hope from the law are looking for their rights in the hand of men. Men do not know how they will provide them their rights but have great hope for them. The word “sensed” is used in the context when someone is waiting for a very long time for something. The women of the region were looking for their rights from the set of laws but that was in vain. They were dissatisfied with the set of laws. They are now hopeful that their men will provide those rights. Men are giving sacrifices; they give rights to their women which they themselves do not entertain. In the paragraph, the man first gives water to the woman, then himself, and lastly to a camel. Metaphorically, it refers to the rights provided by the set of laws to women, men, and the tribal chief. Later, the man gives water to the camel, and the camel drinks it in a single gulp. The water in the bucket was not enough. No one drinks enough water. This means that in the region, no one is given equal rights. They are given a share of rights. The factor behind patriarchy is the absence of law in the set of laws regarding women’s rights.

Findings

The researchers have critically analyzed the data, and have found that gender specific issues in the erstwhile FATA do not have any traditional link with the tribal people. During the deep analysis of the text under the lens of postcolonial study and method of close reading technique, the researchers have found the unequal treatment of women. The writer has criticized the set of laws in the novel and considered these as a major factor behind gender inequality. Similarly, the researchers have found out that biased epistemology is used deliberately to make the tribal women of the region vulnerable to different sorts of crimes and inequality for political purposes.

Defunct FCR in the erstwhile FATA was imposed by the colonizer. In the set of laws, biased knowledge was used in order to create stereotypes against tribal Pashtuns to make them politically and economically less stable for the sake of their manipulation in future wars. Factors that are the cause of sociocultural issues are: epistemic violence, colonialism, biased and discriminatory law, Self vs. Other concept, racist ideology behind law, deficient law, and culturally aligned law. The researchers have highlighted the colonial and biased nature of the set of laws (FCR) in different ways in the novel, that is, FCR, remained silent in all these matters. It did not react in the context. The lawlessness situation in the region compelled people to act on their own. When there is absence of law, people will definitely protect themselves in their own way. In such an environment, thousands of innocent people become victims of injustices and discriminations, which leave its impact for decades. Different kinds of stereotypes are created in such situations, which act as a reality for the rest of the world like: Pashtuns being labeled as wild and not giving rights to women, not abiding by the law, not in favor of progress, and they are terrorists etc. Such stereotypes are the cause for the political intervention and the manipulation of Pashtun people in using them in different wars. Therefore, the researchers have found out that law must be free from any kind of bias and it is to be accepted universally. There is need of fair and pure epistemology to be used in the formulation of laws to avoid any gaps. Laws must be

formulated according to the culture and tradition of the region to represent people in the best possible way. Governments must keep in notice the cultural context of the set of laws to know its pros and cons. Such kind of laws will be fruitful and can play a constructive role in the community. Every country should focus on the formulation of law to avoid discrimination among people and gender to decrease the crimes ratio and lead the world into a peaceful and prosperous globe where there is no injustice, discrimination, gender biases, conflict, poverty, and inequality.

DISCUSSION

The powerful class blindly produces truth that usually has no real existence (Rabinow, 1991). This could result (as is the case in this study) that tribal women become vulnerable to violence. Such violence is called epistemic violence i.e., the violence of knowledge (Spivak, 2010). Tribal women became vulnerable to socio cultural issues and the powerful class takes advantage of such state and stereotype tribal men regarding women rights as is the situation in this study. The tribal Pashtuns were negatively represented that had negative impacts on the tribal people. It had negatively influenced them as in the case of aging which is negatively stereotyped having negative impacts on the elder (National Academy of Sciences, 2006). Tribal people faced economic instability in erstwhile FATA. Their economic situation was so poor that they became vulnerable to socio-cultural issues. Humanitarian organizations and political activists termed such law as Black Law, an obstacle in the way of human rights (Liwal, 2010). Law becomes a great hurdle in the future of that region if it does not represent its people (Mather, 2008). The people of the erstwhile FATA were deprived of their basic rights and needs (Renaud, 2002). It has been stated that the set of laws in the erstwhile FATA violates the fundamental rights of tribal people (Rumi, 2012). The present distorted picture of the tribal Pashtuns is a result of the same practice.

Foucault (as quoted in Leitch, 2001) asserts that epistemic powers on the basis of certain information make certain interpretations real. The prevailing misconception regarding Pashtuns i.e., that they are not giving rights to their women, is also a result of the biased and discriminatory set of laws. In the judicial system of erstwhile FATA, there is no women's representation (Fatanews, 2005). Khan (n.d.) has made responsible the complex nature of law a major factor behind the increasing ratio of crime in Pakistan. No one is born inferior, weak, or strong but rather, it is shaped by society or people themselves (Beauvoir, as quoted in Leitch, 2001). Patriarchy in the erstwhile FATA was strengthened because of the set of laws, due to which honor-related killings increased. The cause behind the increasing ratio of honor killings is a biased set of laws and lawlessness. The socio-cultural issues, especially gender issues in the erstwhile FATA were overacted by the British that has created stereotypes (patriarchy in the Pashtuns). Bordello et al. (2016) state that the powerful elite class shows over reaction to certain issues due to which they create stereotypes or confirm stereotypes. It creates inequality among groups in which there is very little truth. Spivak (1994) talks about the abolishment of Sati (widow burning) practice in India, which was a colonial interest rather than something in favor of women. Habiba (2018) has made laws responsible in the case of Qandeel Baloch. Bhatti (2022) has stated that behind the early child marriages and gender discrimination is the poor legislation. The set of laws also targets the religion of the tribal people. The set of laws promoted secularism in the erstwhile FATA.

Research Inference

The researchers on the basis of the above discussion concluded that the prevailing gender inequality in erstwhile FATA was due to the lawlessness and biased set of laws in the erstwhile FATA. The women of the tribal area were considered as 'Other'. The set of laws is playing destructive role in society; it divides people instead of uniting, creates enmity among people instead of peace, encourages crimes instead of curtailing them, creates chaos instead of harmony, creates difficulties rather than ease, and violates basic human rights rather than to support or safeguard. Such a destructive nature of law is due to a small group of elite, who for their own colonial interest, creates a biased set of laws to pave way for their ruling. They, with the help of experts in the formulation of law, created and used biased and self-centered epistemology that

has no grounded reality, to make people dependent. People are starting to act on their own instead of relying on the law. If powerful do not act to formulate unbiased, homogenous, and constructive laws, the world might go back to the Stone Age or will see great disaster. Therefore, universally accepted laws should be formulated to protect the globe and safeguard people's rights, which are free from racial, religious, ethnic, and geographical discrimination, to achieve the greater unity.

In a nutshell, the aim of this research is to heal the crisis and protect the globe from gender related issues. The researchers came to the point to deconstruct laws and formulate fresh laws using globally accepted epistemology that truly represents its people and is free from any bias. The aim is to utilize the potential of human beings for the betterment of the globe.

CONCLUSION

This research shows the issues of gender inequality in the erstwhile FATA. It brings into light the biases and gaps in the set of laws (FCR) due to which women became vulnerable to social and cultural issues. To deal with women issues in the region, the researchers propose the formulation of a fair and universally accepted set of laws that is to be implemented according to the culture of the region and that can represent its people in the best way.

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