

VIOLENCE AGAINST WOMEN IN PAKISTAN

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Litigation Report
Spring 2000

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Background

Women in Pakistan live in a world structured around strict religious, family and tribal customs that essentially force them to live in submission and overall fear. In a nation where Islamic law dictates traditional family values and is enmeshed in the legal system, Pakistan's government, law and society discriminate against women and condone gender-based violence. Though Pakistan ratified the United Nation's Convention on the Elimination of Discrimination Against Women in 1996, herein referred to as the Women's Convention, it has failed to remove discriminatory laws against women. It has additionally failed to create new laws and to enforce existing laws that protect women from discrimination and violence. Pakistan has yet to integrate many of the Women's Convention's provisions into domestic law and educate the Pakistani population of its responsibilities under international law to promote women's rights. Due to these failures, women's rights in Pakistan are progressively deteriorating.

Women are subjected to discrimination and violence on a daily basis due to the cultural and religious norms that Pakistani society embraces. Pakistan's interpretation of Islam views women as needing protection, which essentially results in their suppression physically, mentally and emotionally. Though they constitute approximately forty-eight percent of the population, women have a low percentage of participation in society outside of the family.¹ According to the 1999 report by the Human Rights Commission of Pakistan, only two percent of Pakistani women participate in the formal sector of employment. Ninety-three percent of rural women and seventy-two percent of urban women are illiterate.² Women are often confined to "char divari," a term translated literally to mean "the four walls of the house." Men are the decision-makers, especially in family matters such as marriage and divorce.

Strict family, tribal and traditional Pakistani Islamic values dictate that women are considered property of male family members. Pakistani society essentially views a woman as being owned by her father or brothers before marriage, and her husband after

¹ United Nations' Women's Indicators and Statistics, 1994, Pakistan Gender Indicators - projections for 1995

² Human Rights Commission of Pakistan's 1999 Report, www.hrcp.cjb.net.

marriage. This commodification of women is one of the main factors contributing to violence against women. If men believe that women are mere property, men are more inclined to feel that they may do as they please to women. Women are viewed as chattel. Therefore they are not allowed to offer their own opinions, as that is viewed as talking back. Nor can they disobey men. Women are taught to live in submission.

Even though Islamic law requires that both partners explicitly consent to marriage, women are often forced into marriages arranged by their fathers or tribal leaders. The Constitution of Pakistan does not require anyone older than 18 years old to have parental permission to marry.³ Additionally, Article 16 of the Women's Convention states that nations must ensure that women have an equal right to marry the partner of their choice. Though these laws exist in Pakistan, if a woman chooses her husband it is often viewed as a shameful act of defiance against her family and defiles the honor of both her family and, if the family has arranged a husband, the future husband that the family has chosen. The marriage of a daughter is seen in terms of price and honor. Thus, a woman's honor, "purity" and demeanor are prized possessions controlled by men. Only a few sections of Pakistani society allow for women to freely choose their husbands.

Male dominance and commodification subjects women to violence on a daily basis in Pakistan. Approximately seventy-percent to ninety-percent of Pakistani women are subjected to domestic violence.⁴ Typical violent acts include, but are not limited to, murder in the name of "honor," rape, spousal abuse including marital rape, acid attacks, and being burned by family members (often labeled an accident by family members). A rape occurs in Pakistan every two hours with one in every 12,500 women being victims of rape. Five women per day are killed and two women per day in the region of Punjab alone are kidnapped.⁵ Incidents of women being burned by men throwing acid, an act that severely disfigures its victims, has increased as well.

It was estimated that over 1,000 women were killed in the name of honor in 1999 alone, a phenomenon that is growing annually.⁶ Amnesty International reported that in 1998 in Punjab, 888 women were deliberately killed with 595 of these being killed by

³ "Pakistan: Violence Against Women in the Name of Honor," Amnesty International, September 1999, p. 41.

⁴ "Crime or Custom? Violence Against Women in Pakistan," Human Rights Watch 1999, p. 1.

⁵ Human Rights Commission of Pakistan's 1999 Report, www.hrcp.cjb.net.

⁶ Ibid.

relatives and 286 of these women killed for reasons of honor. In the Sindh region, in just the first three months of 1999, 132 honor killings had been reported.⁷

Women are killed in the name of honor due to society's view that a woman's every action reflects upon a family's honor, especially a man's honor. Therefore, if family members, especially a male family member, view that a woman's action is "dishonorable," he feels that in order to restore that honor to him or his family he must kill her. The decision to kill a female family member is often a family or tribal decision.

Many women are killed due to an unsubstantiated rumor that has been passed around the community. Many men do not give women the benefit of the doubt, or bother to find out her side of the story. Many young women are killed due to the mere accusation of having sexual intercourse outside of marriage, only to have been found to be virgins during autopsy. Women who seek a divorce are also often victims of honor killings. One recent example is the high profile case of Samia Sarwar who was murdered in her lawyer's office in April of 1999 by her family because she was seeking a divorce from an abusive husband.⁸ Even more shocking is that women who are victims of rape often become victims of honor killings because they had intercourse outside of marriage even though it was non-consensual.

Newspapers in Lahore reported that over four women per week were injured when their stoves allegedly burst, killing on average three of the four women. Male family members assert that these incidents were "accidents" though many victims, if they survive, have stated that they were intentionally set on fire by their husbands and/or husbands' families - - a practice similar to honor killings. "Bride burning" is often a result of the alleged disobedience of the wife, the inability of a woman to have male children or a wife failing to have a large dowry.⁹ Amnesty International, along with many other organizations reporting statistics related to violence against women in Pakistan, acknowledged that their numbers should be viewed as conservative due to the fact that many violent acts against women are not even reported. Amnesty International cites one example of this terrifying violence:

⁷ "Pakistan: Violence Against Women in the Name of Honor," Amnesty International, September 1999, p. 6.

⁸ For more information concerning this case, see Report by the United Nations' Special Rapporteur on Violence Against Women, January 27, 2000, U.N. doc. E/CN.4/2000/68/Add.1.

⁹ "Pakistan: No Progress on Women's Rights," Amnesty International, September 1998, p. 6.

Seventeen-year-old Nagina Bibi in Tarali Kalan near Islamabad, was engaged by her father to her cousin but her brother wanted her to marry his wife's brother. After her brother saw her talk to the cousin chosen by their father on the street, he and another brother on April 14, 1999 reportedly tied Nagina with a rope to a wooden post in their home, sprinkled kerosene over her and set her on fire. Neighbors had her admitted to a hospital with 75% burns, which the family claimed to be due to a stove bursting. Nagina told doctors that her brother had set her on fire because she had disobeyed him. Nagina died after 23 painful days in the hospital. It is not known at present if the brothers' case has gone to court.¹⁰

Women in Pakistan continue to be victims of this senseless violence. Though patriarchal family and tribal traditions exacerbate violence against women, it is ultimately the responsibility of the Pakistani government to protect these women and to prosecute those who commit these horrible atrocities. Instead, perpetrators of violence against women are provided with impunity by Pakistan's society, judicial system and overall the government. Pakistani women are left with little, if any, protection from violence and discrimination.

Legal Analysis

Pakistani society and the judicial system often view violence against women in Pakistan as either non-existent or limited to extreme acts. Though the number of violent incidents against women is increasing, the Government of Pakistan continues to condone these acts by failing to hold perpetrators accountable. This lack of accountability undermines gender equality within society and the judicial system. As a result, Pakistani women are unable to live free from fear and submission.

Human Rights Watch in 1999 issued a report addressing the issue of violence against women in Pakistan. The organization interviewed individuals from many sectors of society including women's advocates, police officials, medical examiners and judges. It reported that "[n]ot a single police official interviewed by Human Rights Watch in either city (Karachi and Lahore) acknowledged the seriousness of crimes of violence

¹⁰ "Honor Killings in Pakistan," Amnesty International, www.aiusa/women.

against women or expressed concern over their widespread and unchecked incidence.”¹¹ Many officials in the criminal justice system believe that women fabricate or exaggerate their allegations. In the case of rape, many officials believe that women have consented to sexual intercourse but due to family pressures or the fear of being prosecuted for unlawful sexual intercourse (which will be discussed in more detail below), the women change their stories and report the “alleged” rape.

Gender-bias perpetuates violence against women. Men often believe that if a woman is defiant then there is nothing morally or legally wrong with beating or even killing her. If men do engage in violence, they justifiably believe that they will not be prosecuted. The failure of the justice system to provide women with adequate venues for redress against their perpetrators continues to leave women with little justice. The Government of Pakistan’s failures to educate the public concerning the reality of violence and discrimination against women, to train those in the criminal justice system about these real and profound issues, to remove discriminatory laws against women and to enact and enforce specific laws to protect women are all evidence of Pakistan’s failure to protect women from discrimination and violence.

Pakistani Domestic Law

A. Constitution:

Gender equality is specifically guaranteed in the Constitution of Pakistan under Articles 25 (equality before law and equal protection under the law) and 27 (non-discrimination based on gender alone). The Constitution additionally affords the protection of marriage, family, the mother and the child as well as ensuring “full participation of women in all spheres of national life.”¹² Though these articles specifically prohibit gender discrimination and guarantee the equality of men and women, discriminatory social traditions and the Pakistani interpretation of Islamic law for the most part render Constitutional guarantees meaningless.

¹¹ “Crime or Custom? Violence Against Women in Pakistan,” Human Rights Watch, August 1999, p. 47.

¹² See Constitution of Pakistan Articles 25, 27, 34 and 35.

B. The Zina Ordinance:

In 1979, under the rule of General Zia-ul-Haq, Pakistan enacted the Hudood Ordinance. This ordinance was passed as an effort to Islamicize Pakistan's legal system. As a provision of the Hudood Ordinance, the Zina Ordinance defines "rape" in terms of Islamic law; that is as being sexual relations between individuals who are not married whether it be by either force or consent. However, neither statutory rape nor marital rape are considered a crime under the Zina Ordinance. All sexual relations outside of marriage are essentially considered a criminal act.

The Zina Ordinance is divided into two categories, zina and zina-bil-jabr. Zina is the crime of non-marital sexual relations and adultery while zina-bil-jabr is the category of forced intercourse. Those found guilty of either category can receive harsh punishments, including flogging and death. The death penalty however has never been carried out against a perpetrator under the Zina Ordinance. While the Zina Ordinance was created to impose morality upon society and, in essence, to protect women from rape, it has become a discriminatory law against women. It often leaves victims of rape without justice or, in some cases, it puts the victims themselves in jail.

Evidentiary requirements under the Zina Ordinance are very strict. Women who accuse a man of zina-bil-jabr (rape) must prove without a reasonable doubt that the man (or men) raped her. Due to the apparent bias within the judicial system and society in general, many women fail to even report the rape. If a victim cannot prove to the judicial system that she was raped, she faces the chance that she will end up in jail for adultery or non-marital intercourse. Under Article 17 of the Qanun-e-Shahadat Order of 1984, Pakistan's law of evidence, a woman's testimony is not weighed equally to that of a man.¹³ Under the Hudood Ordinance, in order for a rapist to receive "hadd," the maximum punishment provided for under the Quran, four adult Muslim men must witness the "act of penetration" itself and testify against the perpetrator.¹⁴ Thus, if a woman does not have male witnesses but does have female witnesses, their testimony would not satisfy the evidentiary requirement and the perpetrator may be acquitted. Furthermore, if a woman does not have physical signs of rape or of a struggle such as

¹³ Qanun-e-Shahadat Order of 1984 (Law of Evidence), Article 17, located at www.equalitynow.org/beijing_plus5_toc_eng.html

¹⁴ The Offence of Zina Ordinance, 1979, Section 8, located at www.equalitynow.org/beijing_plus5_toc_eng.html

bruises and scratches, she is often seen as having not resisted. The judicial system oftentimes views the woman not as a victim but instead an “immoral” woman. These biases are a direct violation of the Constitution’s guarantee of equality before the law.

As discussed previously, if a woman accuses a man of rape and the man is acquitted, the rape victim could be found guilty of violating zina. By reporting the rape, a woman has essentially “admitted” to either extra-marital or non-marital intercourse. According to Amnesty International, more than one-third of all Pakistani women in prison are being held due to having been accused or found guilty of zina.¹⁵ The threat of being prosecuted discourages victims from filing complaints.

In addition, Article 151(4) of the Qanun-e-Shahadat Order of 1984 allows the “immoral character” of the victim is allowed to be admitted into evidence.¹⁶ Women fear that their families and communities will feel dishonored due to these allegations, thus leading them to often fear for their lives. Women who have filed complaints of rape have often been murdered by family members on the basis that she “dishonored” her family. These evidentiary obstacles prevent women from being ensured justice. Furthermore, these obstacles encourage violence against women due to the impunity given to male perpetrators.

C. Domestic Violence and Marriage:

Domestic violence is not explicitly prohibited in Pakistani domestic law. Due to this lack of formal recognition, the judicial system, from police officials to Pakistani courts, tends to view domestic violence as a private affair and not open to legal scrutiny. Instances of domestic violence are usually dealt with under the Qisas and Diyat Ordinance of 1990. This ordinance is applicable to crimes that involve physical harm to another including murder, attempted murder and intentionally or unintentionally hurting another individual. Qisas, or retribution, authorizes punishment equal to the crime and has strict evidentiary requirements. If these evidentiary requirements are not met, the court itself can decide the punishment. On the other hand, the punishment of Diyat, or

¹⁵ “Pakistan: No Progress on Women’s Rights,” Amnesty International, September 1998, p. 11.

¹⁶ “Crime or Custom? Violence Against Women in Pakistan,” Human Rights Watch, August 1999, p. 7.

compensation, results in the perpetrator financially compensating the victim or the victim's family for the crime.

In cases involving domestic violence- if they ever make it to the courts- the perpetrator's punishment is often left to be decided by the victim or the family of the victim. The victim or family member can ask that the perpetrator be punished or only that the victim or family members be compensated. This law has been criticized as being discriminatory against women. Under Article 306(c) of the Pakistani Penal Code, if a man murders his wife and they have children, her children cannot ask for Qisas (essentially the death penalty) for her murder. In these circumstances, the maximum sentence that can be given when a man murders his wife is fourteen years. Furthermore, many see a father financially compensating (Diyat) his children for the loss of their mother merely as "being a mockery."¹⁷

Male family members and husbands continue to use the defense of "grave and sudden provocation" in cases of honor killings and are thereby able to avoid punishment by death. Under Article 302(c) of the Pakistani Penal Code, if a family member other than the husband kills a woman they may receive a maximum sentence of twenty-five years. Additionally, many courts have ruled that if a man kills his wife who was found to be in a compromising situation or was thought to be committing adultery, the husband cannot be subjected to the death penalty because the victim was not "innocent." Oftentimes, as discussed in the previous section of this report, women murdered in the name of honor are victims of mere allegations. A dead woman is not able to testify as to her innocence.

Furthermore, Diyat (financial compensation) is used often by family members as a payoff in cases of honor killings and essentially privatizes the crime. For example, if a man and woman are thought to be having an affair, the woman's family members view them both as dishonoring the family. Thus, the family considers both the man and woman as being punishable by death. The woman is often killed; however, the man can opt out of being killed by paying the murdered woman's husband or father what her "worth" was. Often the man pays the family of the victim with another woman such as his sister or cousin. If the issue is resolved through financial compensation the judicial system often

¹⁷ Ibid., p. 42.

does not get involved. Women are viewed as property; therefore mere financial compensation to those “who have restored the family’s honor” suffices for the loss of the wife or daughter.

The Constitution of Pakistan does not require anyone 18 years of age or older to have parental permission in order to marry. Islamic law also requires that both partners explicitly consent to marriage. However, the Pakistani judicial system often does not protect men and especially women from exercising their right to marry a partner of their choice when their family does not approve.¹⁸ Women (and sometimes men) are often killed in the name of honor if they choose to marry someone not approved of or selected by their tribal leader or a male family member. The judicial system’s failure to hold those accountable for honor killings perpetuates the killings of women who do not conform to their family or tribe’s wishes with respect to their choice of marriage partners.

In addition to the very real fear of being killed, if a woman chooses to marry against her family or tribe’s consent, she takes the chance of being prosecuted under the Zina Ordinance. Many women and men have married against their parents’ wishes only to find themselves arrested by the police and being charged with zina by the woman’s family members. Many couples have had to prove to the Court that they are legally married in order to avoid being punished under zina.

D. The Judicial System:

In addition to Pakistani laws being discriminatory, the judicial system condones and exacerbates the problem by failing to view violence against women as a serious violation of women’s human rights. The judicial system, including but not limited to police officials, prosecutors, defense attorneys, judicial medical examiners and judges, is plagued by gender bias. This bias is reflected in the number of violent crimes against women that go unpunished, let alone investigated. The failure of the judicial system to protect women who are victims of violence as well as its failure to prosecute the perpetrators of this violence has perpetuated society’s views that women’s rights are less valuable than men’s rights.

¹⁸ In 1997, the Lahore High Court upheld that a woman can marry without the consent of her “wali” (guardian). However, many courts fail to prosecute family members who kill women (and men in some cases) who chose their own spouse. See U.S. Department of State’s 1999 Country Report on Pakistan.

Gender-bias within the judicial system begins with the police. Police officials often fail to file reports, lose reports, or even “persuade” women not to file a report through harassment or even abuse. In the unlikely event that a report is even filed, the police often conduct improper investigations or fail to even investigate the crime at all. As a result of these inadequate or non-existent investigations, men who have been reported to have committed these violent acts are often not arrested or charged with the crime.

A prevailing view among police officials is that women who have been raped are either scorned lovers or fear family reprisals, thus they “fabricate” a story to frame the men. Police officials often view domestic violence, including honor killings, as a private matter to be resolved within the family or tribe, not the criminal justice system.¹⁹ An example of the police’s bias towards women resonates from the statement to Human Rights Watch by a chief officer in Lahore:

Women have a lot of rights... It is wrong of courts to believe women so that the poor man ends up in jail.²⁰

Though Pakistan has women’s police stations that are staffed by female personnel, gender bias remains rampant within the police force. Police personnel receive little if any gender sensitization training to assist female victims of violence and discrimination. Women are left fearing that if they are brave enough to make a report to the police, the police will harass them or turn them away.

In the high profile case of the murder of Samia Sawar, though there were several witnesses to the honor killing and overwhelming evidence as to the perpetrators’ guilt, the parents and uncle of Samia have not been prosecuted for their daughter’s murder. However, due to Samia’s father being a prominent figure in the community, the police charged Samia’s lawyers, Hina Jilani and Asma Jahangir, with “kidnapping” his daughter. This charge has been viewed as ludicrous by the human rights community since Samia was receiving legal assistance in order to divorce her abusive husband. Samia’s father has additionally “demanded that Hina Jilani and Asma Jahangir be dealt in accordance with ‘tribal and Islamic law’” and be arrested for “misleading women in

¹⁹ “Crime or Custom? Violence Against Women in Pakistan,” Human Rights Watch, August 1999, pp. 45-47.

²⁰ Ibid., p. 46.

Pakistan and contributing to the country's bad image abroad."²¹ These lawyers continue to receive death threats by those who believe that the honor killing was acceptable. The police have yet to prosecute those responsible for these death threats.²²

Medical doctors for the State who are responsible for collecting evidence of rape also tend to be biased against the victims. Similar to the police officials, many doctors believe that if a woman does not have signs of resistance such as bruises and scratches then the rape did not occur. An unmarried woman's virginity is also used to determine whether it is likely that a woman was raped or not. If it appears that a unmarried woman was not a virgin before the rape, they often believe that she was not raped.²³ A woman's sexual history is often scrutinized and often determines whether the judicial system believes the victim or the perpetrator.

In those rare instances that the cases actually make it into the court system, judges often issue gender-biased decisions. Many judges uphold the "laws of Islam" (as interpreted by Pakistan²⁴) over the Constitution's guarantee of non-discrimination and equality under the law. Gender-bias and the enforcement of Islamic law by judges, specifically concerning the issue of honor killings, has been explained by Human Rights Watch in their 1999 report on violence against women in Pakistan:

The court explained that the Koranic verse 34 of *Sura Al-Nisa* establishes men as the "custodians of women;" hence a man who kills another man for defiling the honor of his wife or daughter is protecting his property and acting in self-defense. Quoting *Sura Al-Nisa*, the judge concluded, "I am of the view that the appellant, as the custodian of honor of his wife, had the right to kill the deceased while he was engaged in [a] sex act with his wife and he had not earned liability of qisas or tazir or even diyat, and is hereby acquitted."²⁵

²¹ "Pakistan: Violence Against Women in the Name of Honor," Amnesty International, September 1999, p. 21.

²² Lawyers' Committee for Human Rights, "Lawyer to Lawyer Network- Asma Jahangir and Hina Jilani-Pakistan," May, 1999 at www.lchr.org/121/pakistan0599.htm

²³ For a discussion concerning the issue of virginity status and examinations see "Crime or Custom? Violence Against Women in Pakistan," Human Rights Watch, August 1999, pp. 82-86.

²⁴ Islamic law applying to women as interpreted by Pakistan is interpreted differently than in other Islamic countries. See "Islamic States and the United Nations Convention in the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?" (44 Am. U.L. Rev. 1949, Summer 1945) and "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective" (18 Mich. J. Int'l L. 287, Winter, 1997).

²⁵ "Crime or Custom? Violence Against Women in Pakistan," Human Rights Watch, August 1999, pp. 44-45.

Many judges give men the benefit of the doubt and do not weigh women's testimony equally, therefore specifically violating Articles 25 and 27 of the Constitution of Pakistan. Custom more than often prevails in the courtroom rather than justice. In cases of honor killings, judges often rule that the men were "suddenly and severely provoked," often drastically reducing the killer's sentence or, as we see from the above-mentioned quote, acquitting him altogether of the murder. In the case of "bride burning," courts have acquitted many men by ruling that the victims' deaths were accidents, such as due to a stove catching on fire. Of the sixty "bride-burning" cases that made it to the prosecution stage (though 1,600 cases were actually reported), only two resulted in convictions.²⁶

The lack of protection by the police and punishment by the courts exemplifies that women in Pakistan are often left to live in fear and subjugation. Women who are victims of violence often have no place to turn. They cannot turn to their families, as they fear that they will be killed for "dishonoring" their families. They cannot turn to the police, as they fear being harassed or ignored. They cannot turn to the court system, as they fear that the perpetrator will not be punished or, worse, that the victims themselves will be punished. The Government of Pakistan is ultimately responsible for the failure of these sectors to protect women and to guarantee women their fundamental human right to be free from violence, discrimination and inhumane treatment.

Judicial Remedies under Pakistani Domestic Law:

Gender-based violence is a critical issue affecting the lives of an overwhelming majority of Pakistani women.²⁷ Pakistan must take serious and prompt action to stop these abuses and to ensure justice for the victims. While Pakistan insists that discrimination and violence against women are not prevalent in its society, statistics show that the number of violent acts committed against women continues to rise.

Though there are domestic remedies available to women in Pakistan, the judicial system is plagued by gender-bias and the prioritization of custom over constitutional law.

²⁶ "Pakistan: Violence Against Women in the Name of Honor," Amnesty International, September 1999, p. 26.

²⁷ According to Human Rights Watch, seventy to ninety percent of Pakistani women experience domestic violence. See "Crime or Custom? Violence Against Women in Pakistan," Human Rights Watch 1999, p. 1.

Women can continue to file reports against their perpetrators as the law allows and attempt to proceed with their complaint in the judicial system. Unfortunately, most women do not proceed past the reporting stage- if they even make it that far. Though Pakistani law provides judicial remedies, in reality women are not given equal access to the judicial system nor equal treatment within the system. Women who do attempt to use the judicial system often fear for their lives due to threats and discrimination. More often than often not, it is futile for female victims of violence to fight for justice and to expect legal redress from the Pakistani judicial system.

Pakistan Responsibilities under International Law:

A. Treaty Law

1) Convention on the Elimination of All Forms of Discrimination against Women

In 1996, Pakistan became party to the “Women’s Convention.”²⁸ By adopting this convention, Pakistan agreed to incorporate the provisions that are set forth in order to eliminate discrimination against women. Pakistan has nevertheless failed to incorporate many of these provisions into domestic law and into Pakistani society. One important issue identified in the Women’s Convention is the need to eliminate cultural practices and customs that discriminate against women. Both Articles 2(f) and 5(a) specifically state that State Parties agree to modify customs and practices that discriminate against women. Many nations, such as Pakistan, believe that cultural practices are not a violation of human rights since they are customary. When Pakistan ratified the Women’s Convention and issued its reservation, it did not make a reservation concerning these articles nor did it state that Pakistani customs and practices were to be prioritized over constitutional or international law.²⁹ Though Pakistan has ratified the Convention of the Elimination of All Forms of Discrimination against Women, it has failed to implement and enforce many of the Women’s Convention’s provisions.

Additionally, Pakistan has failed to submit its initial report that was due in 1997 to the Committee on the Elimination of All Forms of Discrimination against Women (hereafter

²⁸ As of May 15, 2000, 165 states had ratified CEDAW.

²⁹ Pakistan has issued a reservation to Article 29(1) only.

the “Committee”) as provided for under Article 18 of the Women’s Convention. Pakistan is scheduled to issue its four-year report in 2001.³⁰

The Committee adopted its General Recommendations No. 12 and No. 19 in 1989 and 1992, respectively. As provided for in Article 21 of CEDAW, these Recommendations legally bind states party to the Women’s Convention to actively combat violence against women, an issue that is not specifically addressed within the Women’s Convention. General Recommendations No. 12 and No. 19 directly link together gender-based violence and discrimination. General Recommendation No. 12 emphasizes that the international community should implement anti-discriminatory provisions that already exist within the Women’s Convention to combat gender-based violence. Additionally, it requires State Parties to include in their periodic reports information as to what they are doing to combat violence against women at the national level. General Recommendation 19 provides that states are responsible for violence and discrimination by individuals in addition to being responsible for state-based violence and discrimination against women. A state can be held accountable for violence committed by an individual when the state fails to act “with due diligence” in prevention, investigation, punishment of perpetrators and requiring compensation for the victims of violence.

In December of 2000, the Optional Protocol to the Women’s Convention was entered into force. The Optional Protocol guarantees judicial remedies to individuals under the Women’s Convention. Individuals, groups of individuals, persons given consent and acting on behalf of an individual and/or a group are able file confidential complaints with the Committee against states who are party to both the Women’s Convention and the Optional Protocol.³¹ The Optional Protocol additionally affords the Committee the ability to investigate situations that involve “grave and systematic violations by a State party of rights set forth in the Convention.”³² Additionally, states

³⁰ See Report by the Committee on the Elimination of All Forms of Discrimination Against Women, May 1, 2000, U.N. doc. CEDAW/C/2000/II/1.

³¹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Articles 1 and 2.

³² *Ibid.*, Article 8(1).

that ratify the Protocol are not allowed to issue reservations. Thus, they are bound to the entire Protocol.³³

To date, Pakistan has not signed nor ratified the Optional Protocol of the Women's Convention.³⁴ If Pakistan does choose to ratify the Optional Protocol, it will no doubt receive many complaints. Since Pakistan has not ratified it, avenues for filing grievances by individuals or groups against Pakistan under the Women's Convention are currently not available. For this report, I will not expand on the numerous provisions to the Women's Convention that Pakistan has violated.³⁵ Human rights activists should seriously revisit this issue if Pakistan does ever ratify the Optional Protocol.

2) International Convention on Civil and Political Rights and the Convention Against Torture

Two additional widely ratified conventions, the United Nation's International Convention on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) establish that torture and inhumane treatment violate international human rights law.³⁶ Gender-based violence is a direct violation of a woman's inherent right to life, liberty and security of person and to be free from torture or to cruel, inhuman or degrading treatment or punishment as provided in the Universal Declaration of Human Rights (discussed below), the ICCPR and CAT. Pakistan is not party to either the International Convention on Civil and Political Rights or the Convention Against Torture.

B. Non-Treaty Law:

1) Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), entered into force by the United Nations' General Assembly in 1948, established basic rights and freedoms of individuals "without distinction of any kind such as race, color, sex"(Article 2). These rights include the "right to life, liberty and security of person" (Article 3) and to be free

³³ Ibid., Article 17.

³⁴ The Optional Protocol was entered into force on December 22, 2000. As of that date, 13 countries have ratified the Optional Protocol.

³⁵ With respect to violations addressed in this report, Pakistan has specifically violated Articles 2, 3, 5, 7(c), 12(1), 15, 16 and 18 of CEDAW.

³⁶ As of May 15, 2000, ICCPR has been ratified by 144 states and CAT has been ratified by 119 states. Pakistan has not ratified either conventions.

from “torture or to cruel, inhuman or degrading treatment or punishment” (Article 5) to name just a few. All of these articles are relevant to gender-based violence due to the threats to, and deprivation of, these rights once women become victims. The Declaration, however, does not specifically address violence against women as an independent and important issue. Nonetheless, the Universal Declaration establishes a basis for ending discrimination against women through the identification of rights that are inherent to all humans regardless of gender.

2) The Declaration on Elimination of Violence Against Women

In 1993, the United Nation’s General Assembly adopted the Declaration on Elimination of Violence against Women (hereafter “DEVAW”). Though it is not legally binding, the Declaration is viewed as a normative force that influences international standards concerning violence against women. The Declaration was created to strengthen and complement the Women’s Convention. In the preamble, the General Assembly proclaimed that the “effective implementation of the Convention on the Elimination of All Forms of Discrimination Against Women would contribute to the elimination of violence against women.” Additionally, it proclaims that “there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and commitment by the international community at large to the elimination of violence against women. . .”

DEVAW specifically addresses the issue of cultural traditions and custom in Article 4 by stating that “States should condemn violence against women and should not invoke any custom, tradition or religious considerations to avoid their obligations with respect to its elimination.”(emphasis added) Again, though DEVAW is not a legally binding document, the fact that a provision concerning customary practices was included in the Declaration’s wording and was adopted by the General Assembly must be viewed as an important issue to all states, including Pakistan.

3) Customary International Law:

While both the Universal Declaration of Human Rights and the Declaration on the

Elimination of Violence against Women are non-binding, they are often viewed as reflecting international customary law due to their widespread acceptance within the international community.³⁷ The General Assembly, consisting of nations with different cultures, religions and histories, came together to create these documents specifically addressing human rights violations. The Universal Declaration on Human Rights proclaims that the right to be protected from human rights abuses is inherent to every man and woman. DEVAW in essence declares that the international community recognizes that gender-based violence is an issue that demands immediate attention.

The International Convention on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), in combination with the landmark U.S. Federal case of Filartiga v. Pena,³⁸ establish that torture and inhumane treatment violate customary norms of international law.³⁹ Gender-based violence is a direct violation of customary law in that women who are victims of gender-based violence are subjected to torture and inhumane treatment. Due to the overwhelming consensus within the international community that “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and fundamental freedoms, and [it is] concerned about the long-standing failure to protect women and promote those rights and freedoms,”⁴⁰ the elimination of gender-based violence has essentially evolved into an international customary norm. The General Assembly’s creation of the Declaration on the Elimination of Violence against Women in conjunction with the Committee’s General Recommendations confirm that the international community views these abuses as a direct violation of women’s fundamental rights and freedoms as well as customary international law.

³⁷ For discussion on gender-based violence and customary international law see Center for Constitutional International Women’s Rights Human Rights Law Clinic’s “Amici Curiae Brief Respecting Violence Against Women Act in the United States” (Submitted to the United States’ Supreme Court), pp. 25-27, located at www.law-lib.utoronto.ca/diana/fulltext/cope.htm and Radhika Coomaraswamy, United Nations’ Special Rapporteur on Violence Against Women, *Reinventing International Law: Women’s Rights as Human Rights in the International Community*, In *Debating Human Rights: Critical Essays From The United States and Asia*, Van Ness (ed.), 167-198 (London: Routledge, 1999).

³⁸ Filartiga v. Pena-Irala, 630 F.2d 876, 879 (2nd Cir. 1980)

³⁹ As of May 15, 2000, ICCPR has been ratified by 144 states and CAT has been ratified by 119 states. Pakistan has not ratified either conventions.

⁴⁰ Declaration on the Elimination of Violence against Women, Preamble, paragraph 5.

Legal Recommendations

Although Pakistan has violated many provisions of the Women's Convention, the Universal Declaration of Human Rights and the Declaration on the Elimination of Violence against Women, an international complaint cannot be lodged against Pakistan under any of these human rights instruments. Nonetheless, these violations can be used to exemplify Pakistan's "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."⁴¹ This pattern of violations would predicate a request for intervention and relief to the Economic and Social Council's Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights under the Economic and Social Council's Resolution 1503.⁴²

Under the 1503 procedure, confidential communications may be filed by a person or group of persons who are victims of the violation or any person or group of persons who have direct and reliable knowledge of those violations. Non-governmental organizations acting in good faith and in accordance with recognized principles of human rights are also allowed to file communications with the Sub-Commission on the Promotion and Protection of Human Rights.⁴³ The University of Denver's Human Rights Advocacy Clinic would therefore have standing to submit a communication on behalf of abused women in Pakistan.

Under Article 6(b)(i) of E.S.C. Resolution 1503, for a complaint to be admissible, all reasonable and available domestic remedies must have been resorted to and exhausted. It is evident that Pakistani women who use the judicial system are fiercely discriminated against. Indeed, the crux of the problem arguably lies within the judicial system. Under the 1503 procedure, if domestic remedies are not exhausted or the complainant cannot prove that exhausting her domestic remedies is futile, the Sub-Commission can find the communication inadmissible.

⁴¹ E.S.C. Resolution 1503, adopted May 27, 1970, 48 U.N. ESCOR Supp. (No.1A) at 8, U.N. Doc. E/4832/Add.1 (1970).

⁴² The University of Denver's Human Rights Advocacy Clinic could also use the procedure provided for in the United Nation's Economic and Social Council's Resolution 1235 in the event that the Clinic would represent an individual woman from Pakistan. The 1235 procedure is public and is designed to investigate complaints from individuals. The 1503 procedure on the other hand is designed to investigate gross patterns of violations, such as what is evident in the case of violence against women in Pakistan

⁴³ The Sub-Commission on the Prevention of Discrimination and Protection of Minorities was changed to the Sub-Commission on the Promotion and Protection of Human Rights in July of 1999.

The fact remains that women in Pakistan using the domestic legal system continue to be discriminated against, put in jail or even murdered. There is clear evidence that Pakistani women's attempts to exhaust their domestic remedies are "ineffective or unreasonably prolonged." The judicial system has failed to protect these women and to act in a non-discriminatory fashion.

In addition to the 1503 procedure, human rights advocates may also use the complaint procedure of the United Nation's Special Rapporteur on Violence Against Women, herein the Special Rapporteur, established in 1994 by the United Nation's Commission on Human Rights. The Special Rapporteur is allowed to "seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations including women's organizations..."⁴⁴ The Special Rapporteur may also "recommend measures, ways and means, and national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences..."⁴⁵

The Special Rapporteur has received information in the past concerning violence against women in Pakistan. She has issued statements with respect to women's rights being violated in Pakistan. However she has not issued an individual report on this issue nor conducted an investigation into the situation by visiting Pakistan itself.⁴⁶ If the Special Rapporteur conducted an in-person investigation and issued an individual report on Pakistan criticizing the Government's failures to implement provisions of CEDAW and to protect women in general, the report may be highly influential in pushing the Government to change its policy of impunity and apathy to one of attention and serious action.

Though the 1503 procedure and the findings of the Special Rapporteur do not provide for monetary compensation or prosecution of individual perpetrators by the international community, they both could be viewed as a normative force. The Special Rapporteur and the 1503 procedure may influence Pakistan to take seriously the

⁴⁴ See March 4, 1994 "Question of Integrating the Rights of Women into the Human Rights Mechanism of the United Nations and the Elimination of Violence Against Women," Paragraph 7(a).

⁴⁵ Ibid., Paragraph 7(b).

⁴⁶ The United Nation's Special Rapporteur on Violence Against Women has discussed issues affecting women in Pakistan in the following reports: U.N. docs E/CN.4/1997/47, E/CN.4/1998/54, E/CN.4/2000/68/Add.1.

provisions that they have agreed to under the Women's Convention, the Universal Declaration on Human Rights and the Declaration on Elimination of Violence against Women. Although the 1503 procedure is confidential, if Pakistan fails to respond to the allegations or fails to implement the Commission's recommendations, the Commission's report can be made public. The Special Rapporteur's investigation on the other hand is not confidential. The public scrutiny resulting from both investigations could influence Pakistan to take its international responsibilities seriously. Pakistan continues to deny that violence against women exists within its society. Thus, if the Commission and/or the Special Rapporteur condemns Pakistan for its failure to protect women, Pakistan may feel compelled to apply the Commission's and/or the Special Rapporteur's recommendations. If this issue is not brought to the attention of the international community, these women will have nowhere to turn. They will continue to be discriminated against and abused.

Conclusion:

While the debate concerning cultural relativism and human rights continues within the international human rights community, many women continue to suffer in the name of custom. Though various human rights conventions and declarations acknowledge the issue of culture relativism, violence and discrimination against women are so universally condemned that the issue should transcend cultural differences.

Women in Pakistan continue to be systematically discriminated against by society, the judicial system and the government. This abuse stems from religious interpretations and cultural views. Religious and community leaders within Pakistan argue that the international community is trying to change their culture and religion. However, Pakistan must realize that within these religious and cultural groups there is another group, women, who are struggling – with the approval of the international community-- to advance their own rights and protect themselves from violence. There is a fine line between promoting one group's rights while diminishing another's. Culture is not static and is continually evolving. History has shown that cultural practices can evolve without abandoning the culture.

The international community must take action to help women in Pakistan by condemning the Pakistani government and its failure to comply with international treaty and customary law. A woman should be guaranteed her inherent right to live her life free from fear and violence. Women in Pakistan must not be denied justice and protection under the law. The government of Pakistan must be held accountable.

REFERENCES

1. Amnesty International, "Pakistan: Violence Against Women in the Name of Honor," (New York, September, 1999) ASA 33/17/99
2. ---, "Government Indifference as Lawyers Defending Women's Rights are Threatened with Death," April 15, 1999, ASA 33/06/99
3. ---, "Women in Pakistan, Murdered in the Name of Honor," located at www.aiusa.org/women
4. ---, "Pakistan: No Progress on Women's Rights," September, 1998, ASA 33/13/98
5. Center for Constitutional International Women's Rights Human Rights Law Clinic, "Amici Curiae Brief Respecting Violence Against Women Act in the United States" (Submitted to the United States' Supreme Court), located at www.lib.utoronto.ca/diana/fulltext/cope.htm
6. Constitution of Pakistan located at www.stanford.edu/group/pakistan/pakistan/constitution
7. Coomaraswamy, Radhika, "Reinventing International Law: Women's Rights as Human Rights in the International Community," *Debating Human Rights: Critical Essays From The United States and Asia*, Van Ness (ed.), 167-98 (London: Routledge, 1999)
8. Filartiga v. Pena-Irala, 630 F.2d 876, 879 (2nd Cir. 1980)
9. "Historical Development of Constitutional Rights of Women in Pakistan," located at www.ualberta.ca/~mupal/pacawom/politics.html
10. Human Rights Watch, "Crime or Custom? Violence Against Women in Pakistan," (New York, 1999)
11. ---, "Police Abuse of Women in Pakistan," *Global Report of Women's Human Rights*, (New York, 1995)
12. Human Rights Commission of Pakistan's 1999 Report, located at www.hrcp.cjb.net.
13. Lawyers' Committee for Human Rights, "Lawyer to Lawyer Network- Asma Jahangir and Hina Jilani- Pakistan," May, 1999 at www.lchr.org/121/pakistan0599.htm
14. Offence of Zina Ordinance, 1979, Section 8, located at www.equalitynow.org/beijing_plus5_toc_eng.html

15. O'Hare, Ursula A., "Realizing Human Rights for Women," *Human Rights Quarterly* 21.2 (1999) 364-402
16. Qanun-e-Shahadat Order of 1984 (Law of Evidence), Article 17, located at www.equalitynow.org/beijing_plus5_toc_eng.html
17. Quraishi, Asifa, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective" (18 *Mich. J. Int'l L.* 287, Winter, 1997)
18. Qureshi, Shujauddin, "When Honour Becomes Dishonourable," located at www.winmagazine.org/issue/issue7/win7a.htm
19. Stewart, Neil, "Honor Killings, Human Rights Defenders Face Death Threats While Killers Walk Free," *Tribune Des Droits Humains*, Vol. 6, No. 3, September, 1999
20. United Nation's Commission on Human Rights, "Question of Integrating the Rights of Women into the Human Rights Mechanism of the United Nations and the Elimination of Violence Against Women," March 4, 1994, U.N. doc. E/CN.4/RES/1994/45
21. United Nation's Committee on the Elimination of All Forms of Discrimination Against Women, May 1, 2000, U.N. doc. CEDAW/C/2000/II/1
22. United Nation's Convention on the Elimination of All Forms of Discrimination Against Women, U.N. doc. A/RES/49/164 (1979)
23. United Nation's Declaration of Human Rights, U.N. doc A/810 (1948)
24. United Nation's Declaration on the Elimination of Violence against Women, U.N. doc. A/RES/48/104, December 20, 1993
25. United Nations' Economic and Social Council Resolution 1503, adopted May 27, 1970, 48 U.N. ESCOR Supp. (No.1A) at 8, U.N. Doc. E/4832/Add.1 (1970)
26. United Nation's Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, U.N. doc. A/RES/54/4, October 15, 1999
27. United Nations' Special Rapporteur on Violence Against Women, February 12, 1997, U.N. doc. E/CN.4/1997/47
28. United Nations' Special Rapporteur on Violence Against Women, January 26, 1998, U.N. doc. E/CN.4/1998/54
29. United Nations' Special Rapporteur on Violence Against Women, January 27, 2000, U.N. doc. E/CN.4/2000/68/Add.1

30. United Nations' Women's Indicators and Statistics, 1994, Pakistan Gender Indicators- projections for 1995
31. United States' Department of State, 1999 Country Report on Human Rights Practices in Pakistan located at www.state.gov/www/global/human_rights/1999_hrp_report/pakistan.html
32. Venkatraman, Bharathi Anandhi, "Islamic States and the United Nations Convention in the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?" (44 Am. U.L. Rev. 1949, Summer 1945)