

**“TAKE MY RICHES, GIVE ME JUSTICE”:
A CONTEXTUAL ANALYSIS OF PAKISTAN’S
HONOR CRIMES LEGISLATION**

MAZNA HUSSAIN*

You must understand the environment in Pakistan This has become a money-making concern. A lot of people say if you want to go abroad and get a visa for Canada or citizenship and be a millionaire, get yourself raped.

—Pakistani President Pervez Musharraf,
September 13, 2005¹

I offer all the “riches” I’ve made out of the panchayat-enforced gang-rape to the president in return for justice.

—Mukhtar Mai,
September 15, 2005²

I. INTRODUCTION

In February of 2002, schoolteacher Mukhtar Mai was repeatedly gang-raped by four men in the village of Meerawalla in Pakistan. While she pleaded for mercy, hundreds of jeering villagers stood outside the hut.³ The young woman was forced to walk home naked after the horrifying ordeal.⁴ A Mastoi tribal council allegedly ordered the rape to punish a transgression supposedly committed by her brother; he was accused of having sexual relations with a woman of the higher Mastoi tribe. Deciding that the boy had impugned the honor of the tribe by engaging in sexual relations with its female member, the tribal council ordered that Mai be

* J.D. Candidate, The George Washington University Law School, Class of 2006. The author wishes to thank the members of the *Harvard Journal of Law & Gender* for their diligent efforts in preparing this Note for publication. Special thanks to Professor Stephanie Ridder for her invaluable encouragement and advice during early drafts of this piece. The author gratefully acknowledges the support of her family members who remain a constant source of inspiration. This Note is dedicated to Zahida Perveen, Mukhtar Mai, and all of the other honor crime victims and survivors.

¹ Glenn Kessler & Dafna Linzer, *Musharraf: No Challenge From Bush On Reversal*, WASH. POST, Sept. 13, 2005, at A19.

² Nadeem Saeed, “*Take My Riches, Give Me Justice*,” DAWN: THE INTERNET EDITION, Sept. 16, 2005, <http://www.dawn.com/2005/09/16/nat34.htm>.

³ See, e.g., Marie D. Castetter, Note, *Taking Law into Their Own Hands: Unofficial and Illegal Sanctions by the Pakistani Tribal Councils*, 13 IND. INT’L & COMP. L. REV. 543, 544–45 (2003).

⁴ *Id.* at 545.

raped in order to restore its honor. It was later discovered that the accusation against Mai's brother was fabricated by members of the Mastoi tribe in order to cover up their own sodomization of the boy.⁵

The story quickly gained international attention after a reporter heard about the attack and published the story in a local newspaper. Pakistan's president, General Pervez Musharraf, ordered local police to apprehend the offenders, and, unlike many victims in her position, Mai decided to bring the rapists and tribal council members to justice.⁶ She brought charges against fourteen people, but eight of them were found not guilty in August of 2002 by an expedited criminal trial court. The remaining six were sentenced to death. The defendants then appealed to the Lahore High Court, where five of the six defendants were acquitted in March of 2005 on the basis of insufficient evidence and incorrect investigation procedures. These acquittals shocked human rights groups and were followed by widespread publicity and nationwide protests. Mai publicly appealed to the President and Prime Minister of Pakistan to intervene to ensure her safety from the newly released men against whom she had brought charges. The Prime Minister ordered the re-arrest of those individuals under the Maintenance of Public Order Act, compelling them to remain in detention until the Supreme Court decided Mai's appeal.⁷

Against the backdrop of this and other increasingly publicized "honor crimes" in Pakistan within the past several years, on March 1, 2005, amendments proposing to strengthen the existing law against honor killing were defeated in the Pakistani Parliament. Government officials who opposed these proposed amendments characterized the proposals as "un-Islamic" for their attempts to repeal existing Islam-based laws that were seen as debilitating the efficacy of honor crimes legislation.⁸

The government's intercession on behalf of Mai and its rejection of the proposed honor crime amendments bill in virtually the same timeframe highlights the classic struggle taking place in many Islamic societies today, as progressive efforts for reform, particularly on the issue of women's rights, are met by fundamentalist opposition and government inaction. This Note will discuss the contours of the problem of honor crimes with a particular focus on Pakistan's honor crimes legislation and will analyze the various factors contributing to both the practice of honor crimes, as well as government resistance to reform.

⁵ *Id.* at 544.

⁶ *Id.* at 545.

⁷ *Pakistan Rape-Case Men Rearrested*, BBC NEWS, Mar. 18, 2005, http://news.bbc.co.uk/2/hi/south_asia/4361289.stm.

⁸ Raja Asghar, *MMA Joins Government Against Bill*, DAWN: THE INTERNET EDITION, Mar. 2, 2005, <http://www.dawn.com/2005/03/02/top1.htm>.

II. OVERVIEW OF HONOR CRIMES

A general background in crimes of honor is necessary to understanding the recent honor crimes legislation in Pakistan. This Section will provide an overview of the problem of honor crimes and will analyze both the cultural mindset and economic incentives promoting honor crimes.

A. Examples

In Pakistan, in April of 1999, Samia Sarwar was shot and killed in her attorney's office as she was filing for divorce from her abusive husband. The murder was perpetrated by her own parents, who felt that she had tarnished their honor by seeking a divorce, even though they knew that her husband had violently abused her throughout their marriage.⁹

When Amal, a seventeen-year-old Jordanian girl, informed her family that she had been raped and impregnated by her father's friend, the family immediately tried to raise money for an abortion in an effort to avoid the stigma that would attach as a result of a premarital pregnancy. After a doctor refused to perform the abortion, Amal's father took the money, bought a shotgun, and, along with Amal's brother, shot Amal eight times in an attempt to kill her.¹⁰

Nawal, a twenty-four-year-old Palestinian woman, was accused by her family of behaving dishonorably because people in their village were gossiping about her. Fearing for her safety, she asked for police protection, and the police consequently made her brothers sign a pledge not to hurt her. Only three out of the four brothers signed the pledge. The fourth killed her by beating her repeatedly and then strangling her with a plastic wire around her neck.¹¹

B. Definition

Human Rights Watch defines honor crimes as "acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family."¹² Such "dishonorable acts" include seeking divorce, adultery, premarital sex-

⁹ Yolanda Asamoah-Wade, *Women's Human Rights and "Honor Killings" in Islamic Cultures*, 8 BUFF. WOMEN'S L.J. 21, 21-22 (1999).

¹⁰ Kathryn Christine Arnold, Comment, *Are the Perpetrators of Honor Crimes Getting Away with Murder?: Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women*, 16 AM. U. INT'L L. REV. 1343, 1345 (2001).

¹¹ Nadera Shalhoub-Kevorkian, *Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?*, 36 LAW & SOC'Y REV. 577, 589 (2002).

¹² Human Rights Watch, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and "Honor" Crimes, Intervention Before the 57th Session of the U.N. Commission on Human Rights* (Apr. 6, 2001), available at http://www.hrw.org/press/2001/04/un_oral12_0405.htm.

ual relations, premarital pregnancy, or being the victim of a sexual assault or rape. However, honor crimes are by no means limited to these circumstances, as a wide range of activities can trigger suspicion of dishonorable activity and result in subsequent attacks.¹³ In December of 2002, a sixteen-year-old Pakistani girl was killed after she joined a dance with other family members at a wedding reception. One of the young men present caught hold of the girl's hand, and, although she quickly snatched it away, her male relatives noticed the exchange and later killed her.¹⁴

The allegation of female impropriety is often enough to trigger an honor attack. Indeed, in Jordan, approximately ninety percent of honor crimes were committed on the basis of mere rumor or complete fabrication.¹⁵ Honor crimes are overwhelmingly perpetrated by men against women, although there are cases in which female family members have either been involved in, or have themselves carried out, honor crimes upon women.¹⁶ Sarwar's mother agreed to meet her daughter at Sarwar's attorney's office, purportedly to deliver documents necessary for obtaining a divorce. The mother feigned a leg injury and pretended to need the assistance of her male driver in order to walk into the office. Upon entrance, the driver pulled out a pistol and killed Sarwar.¹⁷ After Salwa, a sixteen-year-old Palestinian girl, confessed to being pregnant with her fiancé's child, her sister put ten bags of detergent into a large plastic bag, placed the bag over Salwa's nose while she was sleeping, and smothered her to death.¹⁸

Honor crimes vary from culture to culture, and include a wide range of brutal physical assaults, such as acid attacks, maiming or cutting off organs, rape, and murder.¹⁹ The United Nations Population Fund estimates that as many as five thousand females are killed worldwide every year as a result of honor killings.²⁰ The actual figure could indeed be greater, considering the covert nature of these attacks, as well as the willful ignorance of government officials. The seriousness of the problem of honor crimes is compounded by their increasing use; for example, in Pakistan, the rate of increase is estimated at more than thirty percent annually.²¹ And although these crimes often occur in rural tribal areas, they are by no means limited to uneducated classes. Sarwar's mother, who partici-

¹³ Arnold, *supra* note 10, at 1346–47.

¹⁴ Owais Tohid, *Pakistan Outlaws "Honor" Killings*, CHRISTIAN SCI. MONITOR, Jan. 20, 2005, available at <http://www.christiansciencemonitor.com/2005/0120/p06s01-wosc.html>.

¹⁵ Arnold, *supra* note 10, at 1369.

¹⁶ Rachel A. Ruane, Comment, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1533 (2000).

¹⁷ *Id.* at 1524.

¹⁸ Shalhoub-Kevorkian, *supra* note 11, at 589–90.

¹⁹ See Wendy M. Gonzalez, *Karo Kari: Honor Killing*, 9 BUFF. WOMEN'S L.J. 22, 23 (2000).

²⁰ United Nations Population Fund, UNFPA in the News: Killings in the Name of Honor (Dec. 11–17, 2004), <http://www.unfpa.org/news/coverage/december11-17-2004.htm>.

²¹ Muzhur Javed Malik, Letter to the Editor, *Misplaced Notions of Honor*, DAWN: THE INTERNET EDITION, Mar. 20, 2005, <http://www.dawn.com/2005/03/20/letted.htm>.

pated in the attack against her daughter, for example, was a doctor residing in the major Pakistani city of Lahore.²²

C. Cultural Conceptions Promoting Honor Crimes

“Honor” is a deep-rooted traditional notion that originated in pre-Islamic eras in the ancient culture of desert tribes and shaped the formation of both Western and Islamic family law.²³ In Muslim societies today, the concept of honor influences and constrains the daily activities of individuals who consider themselves and their family members bound by it.²⁴

This cultural conception of honor is modulated by a gender construct under which women, and particularly their sexual activities, represent the honor of the family, and men are considered the protectors of this honor.²⁵ Rather than possessing honor herself, a woman is a symbolic vessel of male honor, therefore all of her actions are considered to reflect upon her male family members.²⁶ Because of this vesting of such a socially crucial male interest in the body of a woman, men accord themselves complete authority and control over their female family members in order to protect their interest.²⁷ Consequently, when a woman takes her sexuality into her own hands, or even exercises independent freedom to act, she disturbs this conception, and the male responsible for controlling her then becomes “ungendered.”²⁸ A man may be considered effeminate by his peers if he does not take authoritative action to re-assert his authority over a transgressing woman; it is through an act of violence toward the woman that he demonstrates the power of his masculinity.²⁹ The cases of “mistaken” honor crimes based on rumors in which the victims were actually innocent of any perceived wrongdoing highlight the manner in which honor is socially constructed and material truths of innocence or guilt are irrelevant.³⁰

²² Ruane, *supra* note 16, at 1533. Honor crimes also occur in Western countries, as in the case of Rukhsana Naz, a nineteen-year-old woman living in England, who was killed by her family for having an extramarital affair giving rise to pregnancy. *Life for Killing Pregnant Daughter*, BBC NEWS, May 25, 1999, <http://news.bbc.co.uk/1/hi/uk/352649.stm>.

²³ Ruane, *supra* note 16, at 1530; see Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 MICH. J. INT'L L. 287, 298 (1997).

²⁴ Ruane, *supra* note 16, at 1530–31.

²⁵ *Id.* at 1531. This notion is not dissimilar to the early Western legal concept effectively according men a property interest in their wives' chastity. Quraishi, *supra* note 23, at 298.

²⁶ Ruane, *supra* note 16, at 1531.

²⁷ Arnold, *supra* note 10, at 1358.

²⁸ Ruane, *supra* note 16, at 1532.

²⁹ *Id.* Compare to Western scholarship on battery as a means of power and control that furthers male privilege. Manar Waheed, Note, *Domestic Violence in Pakistan: The Tension Between Intervention & Sovereign Autonomy in Human Rights Law*, 29 BROOK. J. INT'L L. 937, 945 (2004) (citing ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAW-MAKING 21–22 (2000)).

³⁰ Ruane, *supra* note 16, at 1531–32.

D. Economic Incentives Promoting Honor Crimes

Aside from the cultural justifications for honor crimes, Dr. Tahira Khan, a professor at Pakistan's Agha Khan University, argues that financial interests also promote honor killings, effectively creating an "honor killing industry."³¹ Financial and property considerations, more than simply an obsession with female chastity, fuel male control over female sexuality.³² Dowry and inherited property are central to the regulation of female behavior, especially in landowning families, and particularly as such behavior relates to the woman's prospects for marriage.³³ Marriages are often well-calculated and arranged within the family in order to keep the property together.³⁴ Thus, a daughter's refusal to marry a person chosen by the men of the family represents a threat to property interests and also negatively affects the marriage prospects of her female relatives.³⁵ A widowed or divorced mother is often forbidden from remarrying altogether; her sons want her to stay dependant on them, particularly if she owns property.³⁶ If she remarries, her wealth is likely to transfer to another family.³⁷

Because a son will always remain a family member and a successive patriarch of his own family, his exercise of personal choice in marriage is usually accepted. Females, on the other hand, once married, are often regarded as the property of their husband, particularly in cases where the husband paid a bride price or *mahr* to the wife's family.³⁸ As Rukhunda Naz, the director of Pakistani NGO Aurat Foundation, stated on the subject: "Women are considered the property of the males in the families irrespective of their social status, ethnicity, or religious group. Thus the fate of the property is in the hands of the owner, and that perception has changed women into a commodity that can be bartered, bought, and sold like cattle."³⁹ When a wife brings a dowry, she loses value after marriage

³¹ Tahira Khan, *Honor Killings: A Definitional and Contextual Overview*, <http://usconsulate-istanbul.org.tr/reppub/vawo/tkhan.html> (last visited Nov. 10, 2005).

³² *Id.* Additionally, Sharif Kanaana, a professor at Palestine's Birzeit University, argues that honor killings are a male means to control reproductive power. Susan Ruggi, *Commodifying Honor in Female Sexuality: Honor Killing in Palestine*, MIDDLE EAST REPORT (Spring 1998), available at <http://www.merip.org/mer/mer206/ruggi.htm>.

³³ Dowry, although a pre-Islamic cultural tradition, is nonetheless adhered to in some Muslim countries. In Islam, the husband is required to pay a gift of money to his wife upon marriage. This *mahr*, or bride price, is hers alone, and among other benefits, provides a financial safety net for a woman if the marriage ends. Azizah Y. al-Hibri, *An Islamic Perspective on Domestic Violence*, 27 *FORDHAM INT'L L.J.* 195, 199-200 (2003). The reality, however, is that the *mahr* is often collected by the wife's male family members, which effectively removes her right to an independent source of money, as well as affirms her status as buyable "property." *Id.*

³⁴ Khan, *supra* note 31.

³⁵ See Arnold, *supra* note 10, at 1356.

³⁶ Khan, *supra* note 31.

³⁷ *Id.*

³⁸ *Id.* For an explanation of *mahr*, see *supra* note 33.

³⁹ Tohid, *supra* note 14.

because the dowry becomes the husband's property. A husband may kill her under the guise of an honor crime in order to remarry another woman who brings a new dowry.⁴⁰ Even where the family's reaction to a son's assertion of personal choice in marriage is contentious, the blood of male heirs is often considered too precious to shed in the patriarchal tribal framework.⁴¹ Since genealogy is traced through the male members, and men control the material resources of the family, male heirs are privileged over their female counterparts.⁴²

The tradition of honor killings is also manipulated in the tribal context as a tool for settling old scores amongst rival tribes; maiming, burning, or sexually assaulting the female family member of a rival devalues her worth and dishonors the family.⁴³ Since a daughter may be considered useful only for her potential to either strengthen ties with other tribes, command a high bride price, or consolidate property within her own family through marriage, disfiguring attacks leave her economically, and therefore socially, worthless to the family members. Since a raped woman is often killed by her own family members in an attempt to remove the stain on the family honor, a woman can easily face multiple cycles of violence under the guise of honor killing.⁴⁴

When these economic interests are combined with the tribal concept of retribution money and the honor schema, the result is literally deadly. Because illicit sexual activity is considered to tarnish the male relative's honor, and honor is so culturally privileged, the male members can demand financial compensation from a man accused of engaging in sexual relations with a female member of the family.⁴⁵ The justification of the honor crime is used as a cover-up for extortion and blackmail for the purposes of increasing personal wealth.⁴⁶ For example, in order to blackmail a rival man to extract money, a husband may kill his wife and assert that she had an extramarital affair with the rival; the rival male would then be forced to pay a heavy sum of money or transfer property to the husband in order to preserve his life.⁴⁷ Any male member of the family reserves the right to assert the violation of his female members' chastity in such a way. In Pakistan, a man accused a wealthy man of sleeping with the accuser's mother; he then demanded and received money from the accused and killed

⁴⁰ Khan, *supra* note 31.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Gonzalez, *supra* note 19, at 23.

⁴⁴ Rape as a political tool has also been used in Pakistan in the context of national political feuds. After Benazir Bhutto, the first female head of state in a Muslim country, was ousted from the prime ministership, women personally or politically related to Bhutto were raped, in a symbolic "rape"/dishonorment of Bhutto herself. See Shahla Haeri, *The Politics of Dishonor: Rape and Power in Pakistan*, in FAITH AND FREEDOM 161, 163–66 (Mahnaz Afkhami ed., 1995).

⁴⁵ Khan, *supra* note 31.

⁴⁶ *Id.*

⁴⁷ *Id.*

his own mother, claiming to have done so out of “honor.”⁴⁸ Both men and women who are “blackened” by accusations of impropriety thus become unfair targets in this honor crime industry. However, the penalty weighs much more severely on women, as their “blackness” can only be removed by their death, whereas a man can remove his “blackness” by paying the demanded fee.⁴⁹ Finally, killing a sister or female cousin also removes competition to the succession of property, and killing a widowed or divorced mother amounts to the immediate succession of her wealth and property to her son.⁵⁰

III. ISLAMIC CULTURAL AND LEGAL NORMS

As honor crimes occur predominantly, although not exclusively, in Muslim countries, an examination of the treatment of women in Islamic culture deserves scrutiny in order to reveal underlying notions supporting this deadly problem. This Section will discuss how inequitable legal codes, biased tribal arbitration and formal justice systems, and male-dominated interpretations of Islamic law sustain the practice of honor crimes.

A. *Legal Codes in Muslim Countries*

This Subsection will address the three different types of laws related to honor crimes codified in various Muslim countries: honor crime exculpation and mitigation laws, crime of passion provisions, and Qisas and Diyat ordinances.

1. *Honor Crime Exculpation/Mitigation Laws*

Some Muslim countries have codified laws that allow for mitigation or exculpation for murderers who purport to have killed for the sake of “honor.” The Jordanian Penal Code contains a representative example of a “defense of honor” statute in Article 340(i) and (ii). Section (i) states that “[h]e who catches his wife, or one of his female mahrams committing adultery with another, and . . . kills, wounds, or injures one or both of them, is exempt from any penalty.”⁵¹ There is no such comparable exculpatory provision for a woman who murders an adulterous husband or family

⁴⁸ Amnesty International, Pakistan: Violence Against Women in the Name of Honour, <http://www.amnestyusa.org/women/document.do?id=1DF2FA05A016701B8025690000693498> (last visited Nov. 10, 2005).

⁴⁹ In certain tribal areas of Pakistan, honor killing is referred to as “karo-kari,” which literally means “blackened man—blackened woman.” *Id.*

⁵⁰ Khan, *supra* note 31.

⁵¹ Arnold, *supra* note 10, at 1362. *Mahram* is a person to whom marriage is forbidden by Islamic law. For men, this includes, but is not limited to, sisters, mothers, and daughters.

member. The killer must prove that he actually witnessed the act of adultery before he will be exempt from punishment.

Section (ii) states that “[h]e who catches his wife, or one of his female mahrams with another in an unlawful bed, and he kills or wounds or injures one or both of them, benefits from a reduction of penalty.”⁵² Only men can benefit from a reduced penalty for murder. In order to receive mitigation, the male killer does not have to prove he witnessed actual intercourse, but must show he witnessed one of his female relatives in “an unlawful bed,” that is, in a clearly sexually compromising situation.

Such honor crime mitigation statutes are at least a partial byproduct of Western legal influences.⁵³ Section 340 is similar to Western crime of passion statutes to the degree that it requires traditional Western passion requirements of *flagrante delicto*, surprise, and immediacy of action. However, Section 340 has been used successfully as a defense in cases in which the killer acted in cold blood.⁵⁴ Legal codes such as Section 340 are modeled on the Ottoman Penal Code of 1858 and the French Penal Code of 1810, and, indeed, while several Muslim countries share similar legal codes, secular countries such as Turkey, Spain, Portugal, Italy (abolished in 1979), and France (abolished in 1975) have or until very recently have had similar codes.⁵⁵

Interestingly, most honor crime perpetrators do not use the defense of honor crime exculpation or mitigation laws because such statutes often require proof that the perpetrator witnessed sexual activity. Since statistics indicate that most honor crimes occur on the basis of mere allegations, many perpetrators are unlikely to meet the evidentiary burden required by statutes like Section 340.⁵⁶

2. *Crime of Passion Provisions*

As an alternative to honor crime mitigation/exculpation statutes, most honor crime attackers turn to general crime of passion statutes that allow for mitigated sentences for any crime committed in the heat of passion. Jordan's Article 98 reads that “[S/he] who commits a crime in a fit of fury caused by an unlawful and dangerous act on the part of the victim benefits from a reduction in penalty.”⁵⁷ This is the provision usually applied to honor crime cases because a defendant is not required to have witnessed the alleged sexual impropriety in order to be able to take advantage of this mitigating statute. The successful use of a crime of passion statute can lead to lenient sentences or total exoneration for perpetrators of honor crimes,

⁵² *Id.* at 1362.

⁵³ Shalhoub-Kevorkian, *supra* note 11, at 580.

⁵⁴ Ruggi, *supra* note 32.

⁵⁵ Shalhoub-Kevorkian, *supra* note 11, at 580–81.

⁵⁶ Arnold, *supra* note 10, at 1360.

⁵⁷ *Id.* at 1357.

even when the murder was premeditated and not committed in the heat of passion. Jordanian courts have not enforced the requirement that the honor killing occur simultaneously with discovery of the illicit sexual activity, and critics argue that such application of the passion clause to premeditated murder cases completely disregards the entire purpose of the provocation defense.⁵⁸ Pakistan's crime of passion clause of "grave and sudden provocation" was inherited from British penal code, and although the Pakistani clause was omitted in 1990, Pakistani courts have gradually reintroduced the mitigating provision in their interpretations of the law to grant convicted defendants more lenient sentences.⁵⁹

Although these general crime of passion provisions facially apply to both men and women, they are often invoked in the context of honor crimes, where women are usually the targets.⁶⁰ Therefore, as applied in Muslim countries, crime of passion statutes effectively discriminate against women and are major obstacles for any victim seeking justice.

3. *Qisas and Diyat Ordinances*

In Pakistan, Qisas and Diyat ordinances present another legal obstacle to effective redress of honor crimes. Qisas and Diyat ordinances are a codification of the Islamic concept that a victim or her heirs can accept a form of monetary compensation from the murderer in return for "forgiveness," i.e., an agreement not to pursue a legal claim against him.⁶¹ The state is statutorily required to do its best to assist family members who choose to exercise forgiveness rights under the ordinances.⁶² Qisas and Diyat ordinances essentially place the choice of prosecution wholly in the hands of the victim or her heirs, rather than the government.⁶³

The codification of Qisas and Diyat concepts further hinders chances of redress because of the familial structure within which such crimes occur. Saba Gul Khattak, executive director of the Sustainable Developmental Policy Institute and a Pakistani women's rights activist, identifies the implications of Qisas and Diyat ordinances in supporting family complicity and inaction: "A son could forgive his father for murdering his mother, a mother could forgive her husband for killing their daughter, a father could forgive his brother and so on."⁶⁴ Because honor crimes are considered personal family disputes, most family members are either coerced into silence or were themselves accomplices to the crime.⁶⁵

⁵⁸ *Id.* at 1368.

⁵⁹ See Ruane, *supra* note 16, at 1535, 1542.

⁶⁰ See Arnold, *supra* note 10, at 1366.

⁶¹ Asian Centre for Human Rights, *Cultural Cruelties: Confronting Honour Killing* (Oct. 27, 2004), <http://www.achrweb.org/Review/2004/44-04.htm>.

⁶² Ruane, *supra* note 16, at 1540.

⁶³ *Id.* at 1539.

⁶⁴ Tohid, *supra* note 14.

⁶⁵ See Ruane, *supra* note 16, at 1534.

Due to the intense poverty afflicting the majority of Pakistanis, many families are also virtually forced to make compromises with the murderer of their family member for the sake of a financial benefit, which is prioritized over the unlikely possibility of legal justice. National Geographic's 2002 documentary on honor killings depicted the plight of a Pakistani village woman whose son-in-law killed her daughter in a purported honor crime.⁶⁶ Although the elderly mother abhorred the man who killed her daughter, she accepted the financial compensation package he offered, amounting to the equivalent of two hundred U.S. dollars because she needed the money to support her other children.

Victims' heirs have very little incentive to bring criminal charges, not only because of financial concerns, but also due to the cultural obstacles and familial ties that deter them from seeking redress. Numerous statistics show that chances of successfully pursuing a case against an honor crime perpetrator are extremely low; it is estimated that only three percent of honor crime cases actually result in convictions.⁶⁷ Qisas and Diyat ordinances allow the government to avoid appointing itself as prosecutor of honor crimes, leaving it instead in the hands of individuals who either have little alternative but to drop charges, or who themselves were involved in committing the crime.

B. The Justice System

Most Muslim countries today are characterized by a legal justice system that is comprised of a seemingly erratic mix of cultural, religious, and Western models.⁶⁸ Many Muslim countries have a more secular court system, as well as *Shariah* courts that govern particular religious and family law matters. Additionally, tribal council arbitration, although not part of the formal justice system, wields incredible control over all manner of disputes arising amongst peoples living in tribal areas.

In Pakistan, the majority of people live in rural areas as opposed to the few urban centers.⁶⁹ For rural members of society, the tribal councils are the first, and often final, authoritative decision-makers. Such councils, which are feudal vestiges, are composed only of men, particularly those who already wield financial or inherited power within the tribes. The government is perceived to have limited authority over its tribal peoples, and therefore the federal court system is entirely neglected in favor of tribal council arbitration in rural areas.⁷⁰ Although many human rights groups call for the elimination of the tribal decision-making system altogether, the tribal system, if modified, can be an asset to the arbitration of justice

⁶⁶ *World Diary: Honor Killings* (National Geographic Television 2002).

⁶⁷ Gonzalez, *supra* note 19, at 25.

⁶⁸ Ruane, *supra* note 16, at 1535.

⁶⁹ Castetter, *supra* note 3, at 548.

⁷⁰ *See id.* at 552–53.

within countries like Pakistan.⁷¹ Oversight of the councils by local governing bodies, as well as mandatory female representation on the tribal councils, may promote fair resolution of issues that would otherwise be backlogged within the formal court system.⁷² However, the existence of such councils, at least in their current form, represents a threat to the fair administration of justice for women.

Even within the formal justice system, many obstacles prevent victims seeking legal redress from achieving justice. The foremost of these occur during the initial stages of investigation, during which police officers often either overlook honor crimes or conduct faulty investigations that result in evidence insufficient for a conviction.⁷³ Victims who complain to police may be turned away or harassed by the often exclusively male police force.⁷⁴ Benazir Bhutto, the former female Prime Minister of Pakistan, instituted women's police stations around the country in an attempt to address complaints of male officer harassment and insensitivity. However, most of these stations were rendered ineffective and were under-equipped due to a lack of funding.⁷⁵ The police are generally perceived as corrupt by the public; they reportedly accept bribes to buy culprits' freedom.⁷⁶ Worst of all, many police officers themselves sexually and physically assault women who go to police stations to report domestic violence claims in efforts to humiliate, deter, intimidate, or extract bribes from them.⁷⁷ As a result, most citizens who have been victimized never report their ordeals to the police.

Of the few women who do make it to court, they may effectively become victimized by the legal outcomes. By and large, prosecutors, the so-called "advocates" of the female victims, openly disavow a belief in the occurrence of rape or sexual violence against women.⁷⁸ And judges, like prosecutors, hold biases which similarly discriminate against female victims of male violence.⁷⁹ In September of 2005, during a dialogue on the U.S. legal treatment of domestic violence between Joan Meier, a clinical professor at the George Washington University Law School, and a visiting delegation of *Shariah* judges from Jordan, one of the judges declared that there was "virtually no" domestic violence in Muslim countries.⁸⁰

⁷¹ *Id.* at 569–70.

⁷² *Id.* In the Indian state of Uttaranchal, women comprise forty-five percent of the tribal council, and despite the challenges presented by the patriarchal system, corruption seems to have lessened considerably because of the female representation. Nitin Jugran Bahuguna, *Women are Naturals at Grassroots Governance*, INTER PRESS SERVICE NEWS AGENCY, Sept. 10, 2005, <http://www.ipsnews.net/news.asp?idnews=30212>.

⁷³ Ruane, *supra* note 16, at 1543.

⁷⁴ *See id.* at 1543–44.

⁷⁵ *Id.* at 1543–44.

⁷⁶ *Id.*

⁷⁷ Waheed, *supra* note 29, at 953–56.

⁷⁸ *Id.* at 958.

⁷⁹ *Id.* at 960.

⁸⁰ Joan Meier, Address to the Jordanian Delegation of *Shariah* Judges at the George

Rape victims who bring charges against their rapists, but are unable to convince courts that the sexual activity was forcible, face punishment under adultery laws for having engaged in consensual illicit sexual activity.⁸¹ Even when an honor crime conviction is obtained, eighty-five percent of perpetrators are either acquitted or given lenient sentences.⁸² The frequent light sentences allow the killers to return to the same community and threaten the victim or the victim's family. Incarceration for the victim is also a possibility. Amal, the raped and impregnated Jordanian girl whose father and brother shot her eight times in an attempt to kill her, was held in jail by the Jordanian government because of its belief that without protective custody, she would be killed.⁸³ Meanwhile, her brother received a seven-year prison sentence (reduced from the usual minimum of fourteen) and her father received no sentence at all for his part in the crime.⁸⁴ In Jordan, younger relatives are often chosen to carry out honor crimes since juveniles serve shorter prison sentences than adult males, they learn a trade while in prison, and the crime is not noted on a criminal record.⁸⁵ These practices deter victims from seeking justice and constitute a virtual blank check for those who commit honor crimes.

C. Islamic Jurisprudence

As previously discussed, honor crimes are by no means an Islamic conception. Derivations of honor crimes existed even before the advent of Islam, and the concept of honor certainly was a part of the legal history of Western countries before its institutionalization in Muslim countries.⁸⁶ Islam does not sanction honor crimes, and indeed, Quranic law repeatedly condemns murder.⁸⁷ However, the concept of carrying out an "Islamic" obligation has become the internal and external justification for many perpetrators of honor crimes. This Section will briefly touch on Islamic views on chastity, male authority, and adultery in considering the extent to which Islam is used to support violence against women. It will also interweave Muslim feminist interpretations of the same Islamic concepts in order to

Washington University (Sept. 14, 2005).

⁸¹ Gonzalez, *supra* note 19, at 24.

⁸² Editorial, *Why We Are Not Making Whoopee*, SHE MAG., Nov. 2002, available at <http://www.shemag.com.pk/newsite/2002/nov/editorial.html>.

⁸³ Arnold, *supra* note 10, at 1346. Jordanian statistics indicate 112 of 220 women incarcerated are in prison for their own protection, and in order to be released, they must obtain permission from a legal guardian, often the same person from whom the woman is seeking protection. Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 PENN ST. INT'L L. REV. 251, 259 (2004).

⁸⁴ Arnold, *supra* note 10, at 1345-46.

⁸⁵ *Id.* at 1347.

⁸⁶ Quraishi, *supra* note 23, at 298.

⁸⁷ Kathleen A. Portuan Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law—Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT'L L. REV. 65, 91-92 (2003).

demonstrate that Islam can be alternatively constructed as a vehicle for female empowerment.

Although the concept of “honor” does not originate from Islam, it is worth considering the effect of the differing religious obligations of men and women, particularly in regard to chastity. The Quran admonishes both men and women to guard their modesty. However, women have the greater burden, as they are required by the text not only to “lower their gaze” but to cover “their adornments,” whereas men are simply admonished to “lower their gaze.”⁸⁸ When combined with the concept of male authority over women attributed to other Quranic verses,⁸⁹ such interpretations taken out of context create an inordinate focus on male responsibility to regulate female chastity, as exhibited by the varying clothing requirements imposed upon women in some Islamic countries and the lack of a respected female public space. Feminists argue that Islam was revolutionary in according rights of property, inheritance, and political participation to women, and they assert that gender equality is actually an underlying concept of Islam which has been subverted by self-serving, male-dominated jurisprudence.⁹⁰

The Quran imposes a heavy burden on an individual who accuses a woman of adultery by imposing a requirement of at least four eyewitnesses.⁹¹ Islamic jurisprudence interprets the Quranic evidentiary rule of testimony as requiring the viewing of the actual penetration during sexual intercourse, without having violated the defendant’s privacy.⁹² In fact, the punishment has been commonly interpreted to be one for a crime of public indecency rather than private sexual conduct.⁹³ The Quran emphatically condemns anyone who brings a false charge of adultery or lack of chastity against a woman.⁹⁴ Numerous traditions of the Prophet Muhammad indicate that he tried to avoid even the voluntary confessions of adulterers, and only upon the adulterer’s persistent repeated confession would he ultimately order punishment.⁹⁵ The Quranic punishment for extramarital

⁸⁸ *Id.* at 102; THE NOBLE QUR’AN: ENGLISH TRANSLATION OF THE MEANINGS AND COMMENTARY 470–71 (Muhammad Taqi-al-Din al-Hilali & Muhammad Muhsin Khan eds., 1997).

⁸⁹ See generally al-Hibri, *supra* note 33, at 204–24 (discussing the “chastisement clause,” which is interpreted as allowing men to beat their wives for disobedience). Al-Hibri argues, among other things, that the Prophet’s flat prohibition on hitting women renders the Quranic interpretation allowing wife-beating erroneous. *Id.* at 211–12.

⁹⁰ See, e.g., *id.*; Quraishi, *supra* note 23; AMINA WADUD, QUR’AN AND WOMAN: RE-READING THE SACRED TEXT FROM A WOMAN’S PERSPECTIVE (1999).

⁹¹ Quraishi, *supra* note 23, at 294.

⁹² *Id.* at 295. Thus, even if four eyewitnesses viewed a couple having sex under a blanket, their testimony would be insufficient to meet the burden of proof. *Id.* at 296.

⁹³ *Id.* at 295.

⁹⁴ *Id.* at 294.

⁹⁵ Such traditions, also referred to as *hadiths* comprising *Sunnah*, or the practices of the Prophet, constitute one of the major bases of Islamic law today. The Prophet’s tradition of avoiding confessions of adultery can be deemed a disapproval of the societal focus on female chastity. See *id.* at 297–98; see Karamah: Muslim Women Lawyers for Human Rights,

sexual activity is severe as it mandates a punishment of flogging or stoning; however, punishment is to be meted out to both (male and female) adulterers.⁹⁶ Although this provision facially applies equally to both sexes, it is women who are usually the sole targets, in some cases because an unmarried woman's pregnancy is used as proof of her affair.⁹⁷ In any case, an adjudication of guilt and subsequent punishment should be determined by a fair judicial process, rather than by an extra-legal honor killing.⁹⁸

Therefore, although Islamic law certainly does not condone honor killings and condemns murder as well as false accusations of adultery, male-dominated interpretations of concepts like female chastity and male authority, when combined with feudalistic ideas, reinforce an Islamic culture of male dominance. Muslim feminist scholars have made significant progress in deconstructing Islamic jurisprudence and uncovering an Islamic foundation for gender equality. However such interpretations are not yet the prevailing attitude in Muslim countries today.

IV. HONOR CRIMES IN PAKISTAN

This Part will focus on legislative responses to honor crimes in Pakistan such as the "Honour Killings Bill" of 2004 and subsequent proposed amendments to the Bill. It will first provide a brief overview of Pakistani historical developments of women's status and then will discuss Pakistan's honor crimes legislation, the country's obligation to work toward eliminating honor crimes, and reasons for its failure to effectively do so.

A. *Historical Context*

In Pakistan, tension in defining its national identity characterizes much of the human rights discourse and reactions to calls for reform among its constituents. On the one hand, Pakistan struggles to be a modernized Islamic society which guarantees democratic freedom to its populace; on the other hand, the theocratic ideals underlying the nation's freedom movement adopted by successive governments mandate a strict adherence to Islamic law and conceptions of morality.

Mohammad Ali Jinnah, the founder of Pakistan, imbued the Pakistan movement with a call for securing the political rights of Muslims by the creation of their own nation at the end of colonial rule in British India. Jinnah himself was not considered a religious man and was primarily con-

Zina, Rape, and Islamic Law: An Islamic Legal Analysis of the Rape Laws in Pakistan, 4–5, http://www.karamah.org/docs/Zina_article_Final.pdf (last visited Nov. 28, 2005).

⁹⁶ Quraishi, *supra* note 23, at 293–94.

⁹⁷ *But cf. id.* at 300–01 (stating that the majority *Shariah* opinion is that pregnancy alone is insufficient to prove adultery and that using pregnancy as proof contradicts the intent of the Quranic verses to shield women from false accusations).

⁹⁸ *Id.* at 299.

cerned with the Muslim as a political, rather than religious, being. In 1944, Jinnah delivered a speech in which he addressed the rights of women, stating:

No nation can rise to the height of glory unless your women are side by side with you; we are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of their houses as prisoners. There is no sanction anywhere for the deplorable conditions in which our women have to live.⁹⁹

Jinnah lived up to this rhetoric by entrusting significant responsibility in his sister, Fatima Jinnah, who was by his side at significant political events, rallied Muslim women, and represented a public female face for the Pakistan movement.¹⁰⁰ Jinnah died just thirteen months after the nation was created in August of 1947. The succession of leadership in Pakistan after his death began a chain of Islamicization of political and social discourse, which decreased the space for free and intellectual discourse.¹⁰¹ Pakistani Professor Ishtiaq Ahmed explains, “Historically, each time a government felt threatened or insecure it resorted to Islamic rhetoric in the hope of gaining legitimacy and prolonging its existence.”¹⁰²

When General Muhammad Zia-ul-Haq seized power as dictator in 1977, he wanted to concretely establish a society entirely regulated by Islamic law.¹⁰³ Declaring that he had a God-given mission to bring Islamic order to Pakistan, he instituted a number of fundamentalist laws, including the Hudood Ordinance, a new Law of Evidence, and a Blasphemy Ordinance.¹⁰⁴ Under the newly established *Zina* (Adultery) Ordinance, punishment for extramarital/premarital relationships was a hundred lashes for an unmarried individual and death by stoning for a married individual.¹⁰⁵ In the case of rape (legally classified as *zina-bil-jabr* and in the same criminal category as adultery), a court that could not determine whether a rape actually happened may deem the act as consensual and charge the victim with the crime of *zina*.¹⁰⁶ The Qisas and Diyat ordinances, which allowed the victim or the victim’s heirs to “forgive” the perpetrator of the crime and drop charges at any point of a prosecution in return for “blood money”

⁹⁹ Federal Research Division, Library of Congress, *The Status of Women and the Women’s Movement*, in *PAKISTAN: A COUNTRY STUDY* (Peter R. Blood ed., 6th ed. 1995), available at <http://countrystudies.us/pakistan/37.htm> (last visited Nov. 10, 2005).

¹⁰⁰ AKBAR S. AHMED, *JINNAH, PAKISTAN AND ISLAMIC IDENTITY: THE SEARCH FOR SALADIN* 11–13 (1997).

¹⁰¹ Ishtiaq Ahmed, *Globalisation and Human Rights in Pakistan*, 9 *INT’L. J. PUNJAB STUD.* 57, 71 (2002), available at http://www.statsvet.su.se/publikationer/ahmed/andra_artiklar/ahmed_globalisation_human_rights_right.htm.

¹⁰² *Id.*

¹⁰³ *Id.* at 72.

¹⁰⁴ *Id.*

¹⁰⁵ Gonzalez, *supra* note 19, at 24.

¹⁰⁶ *Id.*

from the criminal, were also codified during this time period.¹⁰⁷ These ordinances effectively changed the role of the government because it was no longer a self-appointed *wali*, or heir of the victim, with the authority to prosecute as it was under the previous legal code.¹⁰⁸

Successive democratically elected governments refrained from challenging the fundamentalist laws established during Zia's reign, including former Prime Ministers Nawaz Sharif and Benazir Bhutto.¹⁰⁹ Musharraf, the current President of Pakistan, who seized power in a bloodless coup in October of 1999, initially had a progressive stance on Islam but has repeatedly retreated from his professed ideals in the face of opposition from the now politically powerful Islamist groups.¹¹⁰ After Musharraf took power in Pakistan, he banned both Bhutto and Sharif, the leaders of the two major secular political parties, in order to solidify his position. This created a space for a coalition of Islamist groups to rise to political power as never before.¹¹¹ This party, the Muttahida Majlis-i-Amal ("MMA"), now wields significant influence in the Parliament.

B. Pakistani Honor Crimes Legislation

1. Honour Killings Bill

In the beginning of 2005, Musharraf signed the Criminal Law (Amendment) Bill 2004 (Honour Killings Bill or Bill) into law, passed by the National Assembly and Senate, which stiffened punishments for honor killing, including affixing the death penalty as the maximum punishment in extreme cases.¹¹² It was the first piece of legislation passed (albeit with great opposition) officially acknowledging the problem of honor crimes.¹¹³ Wasi Zafar, a governmental minister, hailed the Bill as "a landmark decision" in protecting the rights of women and eliminating honor crimes.¹¹⁴

However, women's rights advocates criticized the Bill as "defective and incomplete."¹¹⁵ National Assembly member Sherry Rehman, who introduced the original Bill in a provincial house, termed the current state of the law "a great shame."¹¹⁶ She pointed out that the Bill did not address the

¹⁰⁷ Ruane, *supra* note 16, at 1539.

¹⁰⁸ *See id.*

¹⁰⁹ Ahmed, *supra* note 101, at 72.

¹¹⁰ *Id.*

¹¹¹ Terence N. Cushing, Comment, *Pakistan's General Pervez Musharraf: Deceitful Dictator or Father of Democracy?*, 21 PENN. ST. INT'L L. REV. 621, 634 (2003).

¹¹² *See Karo-kari Law Signed by President*, DAWN: THE INTERNET EDITION, Jan. 4, 2005, <http://www.dawn.com/2005/01/05/top5.htm>; *Pakistan Honour Killing Bill Passed*, BBC NEWS, Dec. 8, 2004, http://news.bbc.co.uk/1/hi/world/south_asia/4077887.stm.

¹¹³ *Id.*

¹¹⁴ Tohid, *supra* note 14.

¹¹⁵ *See id.*

¹¹⁶ Sherry Rehman, Op-ed, *No Honour in the Honour Killings Bill*, DAWN: THE INTERNET EDITION, Jan. 13, 2005, <http://www.dawn.com/2005/01/13/op.htm#2>.

severe obstacle posed by the Qisas and Diyat laws, which posit “forgiveness” power in the hands of the victim or her family. She emphasized that it was crucial for the Bill to contain a clause appointing the government as *wali*, or heir, of the victim, instead of a relative who easily could have been involved in the crime. The stiffening of penalties introduced by the Bill, and even the mandatory death penalty for certain aggravated cases, were simply ineffective in the face of the Qisas and Diyat ordinances. Indeed, Rehman explained that the death penalty had always been available for criminals convicted of honor crimes, but that “the problem was never just the sentence, but the absence of actual convictions.”¹¹⁷

Other critics also argued that although the intention of increasing the penalties for honor crimes may have been well-meaning, the measure is actually detrimental. The likelihood, they argued, is that the minimum imprisonment or death penalty sentences imposed by the Bill may discourage courts to convict the accused altogether, just as the mandatory death sentence for gang-rape victims makes conviction nearly impossible.¹¹⁸ Finally, the Bill had no provisions to ensure that other parties who are typically involved in such incidents, including tribal council members or relatives, would also be liable for punishment.¹¹⁹ The Bill also refused to characterize honor killing as intentional murder, leaving defendants subject to mitigating provisions.¹²⁰

2. Proposed Amendments to Honour Killings Bill

Because of the weaknesses in the existing Honour Killings Bill, NGOs and other activists lobbied the legislators to amend the Bill to provide more effective protection of women. Member Kashmala Tariq of the government-endorsed Pakistan Muslim League (PML-Q) proposed amendments to the Bill in early 2005.¹²¹ These amendments included rejection of the forgiveness option for honor crimes derived from Qisas and Diyat ordinances, no concession in punishment, and determination of government as *wali*.¹²² Tariq also called for declaring honor killing as *qatal-i-amd*, or intentional murder, and suggested punishment for those who abet, encourage, conspire in, or validate the commissioning of honor killing.¹²³ Even the mere introduction of the proposed amendments into the National Assembly for debate was initially delayed after members of the MMA voted

¹¹⁷ *Id.*

¹¹⁸ Malik, *supra* note 21.

¹¹⁹ *Id.*

¹²⁰ Aileen Qaiser, *Improving the Status of Women*, DAWN: THE INTERNET EDITION, Mar. 14, 2005, <http://www.dawn.com/2005/03/14/fea.htm>.

¹²¹ See *Pakistan Rejects Pro-Women Bill*, BBC NEWS, Mar. 2, 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/4311055.stm.

¹²² *Id.*

¹²³ Amir Wasim, *Two Bills on Honour Killing Tabled in NA*, DAWN: THE INTERNET EDITION, Mar. 9, 2005, <http://www.dawn.com/2005/03/09/top2.htm>.

as a bloc to oppose it. Heated debate ensued within the National Assembly, particularly on the proposal to prevent application of Qisas and Diyat laws in the circumstances of honor crimes.¹²⁴ The MMA members argued strongly against the proposed amendments; although they conceded that honor killings were un-Islamic, they defended the Qisas and Diyat ordinances as required by Islam.¹²⁵ However, the opposition included not only the fundamentalist MMA members, but members of the other political parties, as well as Musharraf's own cabinet. They argued that Pakistan was an Islamic republic, and its Parliament therefore was subject to a constitutional obligation not to make any law contrary to the Quran and *Sunnah* (the practices of the Prophet Mohammad).

Support for the proposals was limited. The Religious Affairs Minister indirectly backed the Bill by stating the Saudi state acted as *wali* in murder cases in Saudi Arabia. And Rehman argued that the proposed amendments had only sought more protection for women, and there was no issue that even implicated Islam. Despite this backing and the support of liberal members of the National Assembly, the proposals were defeated.

C. Pakistan's Obligation To Act

Pakistan is obligated to protect its women against honor crimes, due not only to its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but also by the guarantees offered by its Constitution, judgments of its Supreme Court, and official statements of its government. Pakistan is a signatory to CEDAW by which member states are obligated to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women."¹²⁶ Even though honor crimes are not explicitly covered under this Convention, the Committee on CEDAW has stated that "violence that is directed against a woman because she is a woman or that affects women disproportionately" is itself a form of discrimination within Article 1 of CEDAW.¹²⁷ Although Pakistan has made an in proviso reservation to CEDAW by making it subject to the dictates of the Pakistani Constitution, and CEDAW has its own weaknesses, including lack of adequate enforcement mechanisms, Pakistan's ratification of CEDAW still stands as a declaration that gender-based violence and discrimination are unacceptable.¹²⁸

In various judgments, the Supreme Court of Pakistan emphasized that "neither the law of the land nor religion permits so-called 'honor'

¹²⁴ Raja Asghar, *Fiery Debate in NA on Honour Killing: Govt Agrees to Discuss New Bill*, DAWN: THE INTERNET EDITION, Mar. 3, 2005, <http://www.dawn.com/2005/03/03/top4.htm>.

¹²⁵ *Id.*

¹²⁶ Castetter, *supra* note 3, at 564–65.

¹²⁷ Arnold, *supra* note 10, at 1378.

¹²⁸ *Id.*

killings and it [sic] amounts to international murder ('qatl-i-amd')."¹²⁹ The Court has also noted that "such iniquitous and vile" acts violate the fundamental rights as enshrined in Article 9 of the Pakistan Constitution, which provides that no person shall be deprived of life or liberty except in accordance with law.¹³⁰

After taking power in late 1999, Musharraf declared the year 2000 as the Year of Human Rights in Pakistan and made public statements against honor crimes, asserting that the new government "vigorously condemned the practice of . . . honor killings" and that "killing in the name of honor is murder, and it will be treated as such."¹³¹ However, he was only able to pass the Honour Killings Bill four years later, and the actual efficacy of the Bill is considered doubtful, particularly in light of its failure to address the impact of Qisas and Diyat ordinances.

D. Reasons for Pakistan's Effective Failure To Act

In spite of its many public declarations and honor crime legislation, the Pakistani government has failed to address the cultural, economic, and legal factors that undermine efforts to safeguard women from the violence of honor crimes. This Section will focus on the national political dialogue in the aftermath of the Sarwar honor killing incident, in order to tie together the many factors preventing Islamic governments from taking effective action on the problem of honor crimes.

After Samia Sarwar was shot and killed in the office of her attorney, Hina Jilani, the Pakistani public overwhelmingly sided with Sarwar's parents, who participated in the murder. Members of the Peshawar Chamber of Commerce (of which Sarwar's father was a chairman) and several religious organizations accused Jilani and her sister Asma Jahangir (also a leading Pakistani human rights attorney) of "misleading women in Pakistan and contributing to the country's bad image abroad."¹³² Religious organizations publicly stated that honor crimes were condoned by religious and tribal traditions and issued *fatwas* against the two women declaring them "kafirs" or "nonbelievers," calling upon all Muslims to kill the two women.¹³³

International outrage over the Sarwar killing and the harassment faced by Jilani and Jahangir in the wake of the murder prompted Senator Iqbal Haider to present a resolution in the Pakistani Parliament condemning the killing of Sarwar.¹³⁴ In response, Senator Ilyas Bilour, in reference to Jilani and Jahangir said, "We have fought for human rights and civil liberties

¹²⁹ Asian Centre for Human Rights, *supra* note 61.

¹³⁰ *Id.*

¹³¹ Cushing, *supra* note 111, at 627.

¹³² Ruane, *supra* note 16. Asma Jahangir is also currently the U.N. Special Rapporteur on Freedom of Religion or Belief. *Id.* at 1523.

¹³³ Ahmed, *supra* note 101.

¹³⁴ *Id.*

all our lives but wonder what sort of rights are being claimed by these girls in jeans.”¹³⁵ Other members supported his statement and shouted threats against the attorneys; several more argued that honor killings are a part of cultural and even religious traditions. The resolution was tabled after only four members out of a House of eighty-seven supported it.¹³⁶ Members of the government also accused human rights groups supportive of Jilani and Jahangir of “spreading vulgarity and obscenity in the name of human rights” and threatened to penalize the groups.¹³⁷

Deconstruction of Bilour's statement, “[w]e have fought for human rights and civil liberties all our lives but wonder what sort of rights are being claimed by these girls in jeans,” reveals the intersection of cultural conceptions on the national political level, which reinforce a culture of violence against women. Specifically, the statement highlights the placement of blame on the female victim, a lack of prioritization of the issue of violence against women, and the privatization of the issue, all three of which will be examined in turn.

1. *Female Blame/Burden*

Bilour's statement projects the problem onto the female attorneys by its particular focus on their inappropriate appearance. Classifying them as “girls in jeans” is a vocalized expression of the veiling mentality;¹³⁸ indeed, it represents the concept that women are measured by their conduct and dress, and the extent to which it conforms (or, more importantly, does not) to constructed Islamic modesty standards. The phrase highlights the greater religious burden on women to guard their modesty.

By characterizing them as “girls in jeans,” Bilour also explicitly invokes the stereotype prevalent in most Muslim countries that women's rights activists are agents of Western, anti-Islamic ideology. Considering the historical conflicts between the West and Islamic societies, it is understandable for Muslims to mistrust what they perceive to be universalistic attempts to subordinate Islamic law to secular Western human rights standards.¹³⁹ Many Muslims consider an imposition of such standards to be simply another form of cultural imperialism.¹⁴⁰ However, as Islam itself

¹³⁵ Amnesty International, *supra* note 48.

¹³⁶ *Id.*

¹³⁷ Ahmed, *supra* note 101. Although the government assured the U.N. Commission on Human Rights that it would protect Jahangir, it never ultimately issued a public condemnation of, or otherwise addressed, the numerous death threats against Jahangir and Jilani. Waheed, *supra* note 29, at 958–59.

¹³⁸ In using the term “veiling mentality,” I refer to the patriarchal mindset which seeks to place disempowering restrictions on female conduct but not likewise on male conduct.

¹³⁹ Natana J. De Long-Bas, Book Note, 15 J.L. & RELIGION 495 (2000-2001) (reviewing FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD (Mahnaz Afkhami ed., 1995)).

¹⁴⁰ *Id.*

safeguards the basic human right to life of all people, including women, the characterization of women's rights activists as Western agents is merely an attempt to forego the necessary discourse demanded by reformists. By twisting the debate into an attack on Islam, Bilour's professed lack of understanding of "the human right" is a dogged refusal to even consider the right in question. It is immediately characterized as immoral, Western, and un-Islamic, and as such, summarily dismissed. It is within this context that a woman's basic human right to life is not only devalued, but completely overlooked in relation to other types of human rights.¹⁴¹ Just as honor killings place blame on the perceived inappropriate actions of the victim, the author of this statement trivializes the legitimate complaints of Jilani and Jahangir based on the perception that their behavior is inappropriate and their advocacy is un-Islamic.

2. *Prioritization of Issues*

Lack of prioritization of the issue of female violence is an obvious implication of Bilour's statement, and indeed, prioritization of issues is important to consider in the context of Muslim societies, many of which are plagued by political instability, poverty, ethnic, or sectarian conflict, and tense foreign relations. Regarding the problem of honor killings within Palestinian society, a Palestinian judge stated, "There are more important issues to be discussed on the Palestinian current agenda than raising the problem of woman killing."¹⁴² When Musharraf was questioned on the amount Pakistan spent on military and nuclear defense efforts in lieu of committing greater financial resources toward combating honor crimes, he stated that maintaining Pakistan's sovereignty was its first and foremost goal, and all issues, including honor crimes, were to be considered a lower priority.¹⁴³ Such a prioritization has dangerous implications for women because the excuse can always be made that the higher priorities of state sovereignty or military defense continue to require attention, which would effectively amount to the government turning its back on the actual violence and justified fear that its female citizens are subject to on a daily basis.

Even where nations do legitimately face other overwhelming problems, the basic right to life needs to be given at least equal priority, as women are a vital component of the future of any nation. Some scholars argue that the Palestinian statehood movement may be an effective way to create a dialogue on the issue of honor crimes because the movement can incorporate protections for women in its construction of a national government

¹⁴¹ The prioritization of male, not female, rights may also be reflected in the formulation of the global human rights regime. See Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59, 60-61 (1993).

¹⁴² Shalhoub-Kevorkian, *supra* note 11, at 596.

¹⁴³ *World Diary: Honor Killings*, *supra* note 66.

or identity.¹⁴⁴ It is therefore possible that the formulation or even reformulation of a national identity can also become a space for discourse on improving the status of women.

3. *Characterization of the Problem*

Because honor crimes often occur within families, such crimes are characterized as personal rather than public matters.¹⁴⁵ This characterization is reinforced by the Qisas and Diyat laws and the government's refusal to act as *wali* of the victim. The government also promotes the privatization of justice in its tolerance of the extra-judicial tribal decision system. Because of the Pakistani government's tenuous relations with its tribal areas, it is often hesitant to interfere with tribal council authority.¹⁴⁶ Also, many government officials hail from tribal backgrounds and have ties with tribal council elders, or rely on them for political or financial support.

The silence of many Muslim governments also stems from the concern about reinforcing Western stereotypes of Muslim men as violent and aggressive; such anxiety results in a resistance to even admitting the problem. The Pakistani government was initially praised for supporting Mai in her battle against the rapists.¹⁴⁷ However, in the summer of 2005, after Mai gained international prominence and received invitations to speak abroad at women's conferences, the Pakistani government suddenly withdrew support by temporarily placing Mai on its exit-control list, effectively preventing her from leaving the country.¹⁴⁸ The government was apparently concerned that she would promote a negative image of Pakistan abroad and only withdrew her name from the list under international pressure.¹⁴⁹ Musharraf was subject to even more scathing criticism when, during an interview with *The Washington Post* in the fall of 2005, he stated, "You must understand the environment in Pakistan. This has become a money-making concern. A lot of people say if you want to go abroad and get a visa for Canada or citizenship and be a millionaire, get yourself

¹⁴⁴ Shalhoub-Kevorkian, *supra* note 11, at 581. The first Intifada called upon female participation and hailed women as "mothers" of the country. *Id.*

¹⁴⁵ Waheed, *supra* note 29, at 970. The underlying private/public dichotomy has similarly plagued Western domestic violence efforts. See MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 383 (2d ed. 2001).

¹⁴⁶ Castetter, *supra* note 3, at 552–53.

¹⁴⁷ Shehar Bano Khan, "I Am Not Going to Spend Life Crying," *DAWN: THE INTERNET EDITION*, Mar. 8, 2005, <http://www.dawn.com/2005/03/08/fea.htm>. The Pakistani government granted Mai a sum in the equivalent of approximately US\$10,000 which she used to open a girls school in her village. *Id.*

¹⁴⁸ *Rape Victim Cannot Travel Abroad*, BBC NEWS, June 12, 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/4085178.stm.

¹⁴⁹ *Travel Ban on Rape Victim Lifted*, BBC NEWS, June 16, 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/4095912.stm.

raped.”¹⁵⁰ Musharraf uttered the statement after mentioning his financial support of another prominent Pakistani rape victim, Dr. Shazia Khalid, who, alleging that a Pakistani military officer had raped her, received asylum from Canada.¹⁵¹ Musharraf denied ever having made the statement and asserted that Pakistan did not deserve to be singled out on the issue of violence against women.¹⁵² He lashed out at human rights advocates, demanding an apology for the statement, attributing political motives to their criticism and characterizing them as enemies of Pakistan.¹⁵³

V. CONCLUSION

Passing legislation condemning honor killings, as Pakistan has done, is an acknowledgement of the severity of the violence. However, a bill which does not address the pervasive discrimination faced by women at every level ignores the need for systematic change and disregards the root of the problem. Combating the multitude of factors leading to honor crimes requires comprehensive strategies which target the many holes in the justice system, promote education on Islamic legal rights of women, compel the government to stand by its declarations and responsibilities, and introduce legislation that is truly effective while repealing harmful and discriminatory legislation like Qisas, Diyat and *Zina* ordinances. Many of these efforts are underway, and the voices of women’s rights activists, scholars, the media, and courageous individuals like Mai keep the dialogue alive and strong. The feminist reinterpretation of Islamic concepts can affirm a basis for gender equality in Islam, as well as bridge the gap between universalists and cultural relativists by enriching the Western-dominated human rights regime with Islamic human rights norms. Ultimately, Pakistan needs to believe in the vision of its founder, that “no nation can rise to the height of glory unless your women are side by side with you,”¹⁵⁴ in order to recognize its goal and its responsibilities toward its women.

¹⁵⁰ Kessler & Linzer, *supra* note 1.

¹⁵¹ *Remarks Reported Correctly, Says Post*, DAWN: THE INTERNET EDITION, Sept. 20, 2005, <http://www.dawn.com/2005/09/20/nat4.htm>. He also stated:

It is the easiest way of doing it. Every second person now wants to come up and get all the [pause] because there is so much of finances. Dr. Shazia, I don’t know. But maybe she’s a case of money, that she wants to make money. She is talking all against Pakistan, against whatever we’ve done. But I know what the realities are.

Glenn Kessler, *Musharraf Denies Rape Comments*, WASH. POST, Sept. 19, 2005, at A12.

¹⁵² *Id.* *The Washington Post* stated that Musharraf’s comments were tape-recorded, quoted verbatim and in context. *E.g.*, *Musharraf: “No Need To Apologise,”* BBC NEWS, Sept. 21, 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/4256218.stm.

¹⁵³ *Opponents are Enemies of Country: Musharraf*, DAWN: THE INTERNET EDITION, Sept. 18, 2005, <http://www.dawn.com/2005/09/18/top8.htm>.

¹⁵⁴ Federal Research Division, Library of Congress, *supra* note 99.