

POLITICS OR PIETY  
THE WOMEN OF PAKISTAN

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Drew University in partial fulfillment of  
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## ABSTRACT

Politics or Piety, the Women of Pakistan

Doctor of Letters Dissertation by

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My dissertation is on how the combination of religious law and constitutional law in Pakistan affects the daily lives of the women living there. The time frame to be discussed is from Pakistan's inception as a country in 1947 through the most prominent regimes that changed the Constitutional law, i.e. to the mid 1980's. During this epoch, Pakistan adopted Shari'a Law (law based on the Islamic faith) into its constitution. By chronicling the historic development of the Pakistan's Constitution, I will show a correspondence between the specific laws and amendments with the attrition of women's rights in Pakistan and the deterioration of the quality of their lives. Although, Shari'a Law is based on the teachings of Islam, I contend these laws run contrary to the traditions and directives of the sacred texts, the Qur'an, Hadith (recorded oral traditions), and Sunnah (habits and practices of Prophet Muhammad). By tracing specific Shari'a laws back to their roots and investigate the circumstances that impact Pakistani women to ascertain if they indeed burden, restrict and quite possibly, endanger the lives of Pakistani women, and furthermore, violate the principles taught by the Prophet Muhammad, who exhorted to his followers, "Be kind to your women." The constitution of Pakistan claims it provides equal rights for its citizens by proclaiming all people are equal (Preamble of the

Constitution of Pakistan #8). I argue that the oppression of women in Pakistan can be linked directly to the introduction of Shari'a Law into the Pakistan Constitution and Shari'a Law is being used to justify the poor treatment of women, but it is in fact a distortion of the teachings of Islam. Therefore, women's lack of civil rights in Pakistan is attributable to male chauvinism that is based in culture, rather than religion. What can be done to reconcile the gender discrimination in Shari'a law with parity for all citizens stated by the constitution?

## **IN MEMORIAM**

To my Dad, who taught me to appreciate history, relish learning, and display  
kindness and gentleness to 'all creatures, great, and small'.

## CONTENTS

ACKNOWLEDGEMENTS.....	ix
GLOSSARY.....	x
CHAPTER	
1. THE POLITICAL CLIMATE AND THE ROLE OF WOMEN IN PAKISTAN.....	1
2. UNDERSTANDING THE TRIBAL AREAS OF PAKISTAN.....	16
3. ESSENTIAL INSIGHTS AND THE CREATION OF ISLAM AND THE DEVELOPMENT OF IISLAMIC JURISPRUDENCE.....	25
4. THE STATUS OF WOMEN IN PAKISTAN.....	34
5. WHAT IS KARO KARI-THE PRICE OF HONOR.....	48
6. ANALYSIS OF HUDOOD ORDINANCE AND ZINA LAWS.....	71
7. THE EVOLUTION OF THE MILITARY REGIMES.....	82
8. THE GOVERNMENT OF PAKISTAN’S INFLUENCE ON WOMEN...	88
9. THE 1973 CONSITUTION.....	105
10. SEVERAL CASE NARRATIVES AND SOCIETAL NORMS.....	119
11.CONCLUSIONANDRECOMMENDATIONS.....	133
APPENDIX	
A. WOMEN’S ORGANIZATIONS.....	142
B. TIMELINE.....	147
C. STATISTICS OF VIOLENCE.....	
1. VIOLENCE AGAINST WOMEN IN PAKISTAN-2009.....	151
2. VIOLENCE AGAINST WOMEN IN THE TRIBAL AREAS-2006...	153
D. IMAGES	
1. THE AURAT FOUNDATION’S WOMEN WITH INJURY.....	154

2. ACID ATTACK SURVIVOR.....	155
3. FLOGGING OF A 17-YEAR-OLD GIRL.....	155
4. WOMAN LOSES EYE AFTER ACID ATTACK.....	156
5. A WOMAN’S FACE AFTER ACID ATTACK.....	156
E. MAP OF PAKISTAN.....	157
WORKS CITED.....	158

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## GLOSSARY

**Abbasids**-Major dynasty in mediaeval Islam, which flourished between 132/750-656/1258 in Bagdad. The dynasty took its name from the Prophet Muhammad's uncle-al'Abbas b. 'Abd al-Muttalib.

**Abu Bakr** (573-13/634)- Father of A'isha bint Abi Bakr (one of the wives of the Prophet Muhammad) and the 1<sup>st</sup> Khalifa.

**Abu Hanifa** -(80/699-150/767) He gave his name to the Hanifi School of Islamic law, which was really founded by his disciples. He was one of the most important jurists and theologians of medieval Islam.

**Ahmad b. Hanbal**-(164/780-241/855) One of the most distinguished mediaeval jurists and theologians in Islam. He founded the Hanbali School of Islamic law. Because he refused to agree that the Qur'an was created (as opposed to the mainstream view that it was uncreated), he was imprisoned and persecuted during the Mu'tazilite inquisition. He became an inspiration for the later Wahabi movement.

**'Ali b. Abi Talib**-(598-40/661) 'Ali was the First Shi'ite Iman and the 4<sup>th</sup> Khalifa. 'Ali was the Prophet Muhammad's cousin and he became his son-in-law by marrying the Prophet's daughter Fatima.

**Allah**-This word for the Deity is formed from the *Arabic al-Ilah*, which literally means 'The God'. The name Allah is for Muslims the supreme name. Allah is the eternal and uncreated Creator of the universe and mankind.

**'Asabiyya**-Meaning group solidarity, kinship ethos. The term was popularized by the mediaeval historian Ibn Khaldun.

**Aya**-Verse, especially a verse in the Qur'an.

**Ayyubids**-Important dynasty in mediaeval Islam, which flourished between 564/1169-648/1250 in Egypt. Damascus, Aleppo and Yemen were also popular areas.

**al-Banna', Hassan**-(1323-4/1906-1368/1949) Founder of the Ikhwan al-Muslimum, better known as the Muslim Brotherhood.

**Barelwis**-Indian Muslim sect with a particular veneration for the Prophet Muhammad. The word *Barelwi* (or *Barelvi*) in Urdu is an adjective deriving from the city of *Bareilly* (*Bareli*) in Uttar Pradesh, and are often compared to the *Deobandis* who live in the FATA region of Pakistan.

**al-Bukhari, Muhammad b. Isma'il**-(194/810-256/870) One of the most famous compiler of *Hadith*, whose collection, entitled the Sahih, meaning the *Sound, True or Authentic* was selected from 600,000 traditions.

**Burqa**-Long veil for women, which covers most of the body, except the eyes.

**Calendar**-The Islamic calendar is lunar rather than solar. It formally began with the *Hijra* of the *Prophet Muhammad* from *Mecca to Medina*. This took place in 622 CE, which became the first year of the Muslim lunar calendar.

**Chador**-(Persian) Large black cloak and veil which envelops the women's' entire body.

**Deobandis**-Members of fundamentalist Indian Muslim group of reformers originally centered on an academy of theology started in the town of *Deoband*, in (1282/1867). The object of the academy was the training of the future ' *ulema*, who would be devoted to the reform of Islam.

**Diya/Diyat**-Blood money, indemnity, or compensation for injury or death.

**Faqih**-Jurisprudence, Jurist, or one that practices Jurisprudence.

**Fatimids**-Major dynasty in mediaeval Islamic history, which flourished in North Africa (from 297/909) and later in Egypt (from 358/969-567/1171). It derived its name from *Fatima*, (605-11/632-3),the daughter of the *Prophet Muhammad*, and its *caliphs* claimed descent from *Fatima and 'Ali b Abi Talib*.

**Fatwa**-A term used in Islamic law to indicate a formal legal judgment or view.

**Fiqh**-Originally the word means 'Islamic jurisprudence'. *Sunni* jurisprudence is founded upon or divided into four major Schools of law: *Hanafis*, *Hanbalis*, *Malikis* and *Shafi'is*. *The Kharijites and the Shi'ites* have their own system of jurisprudence.

**Hadd**-Literally means 'edge' or boundary. As a technical term in Islamic law it indicates God's 'limits' and denotes the punishment for certain crimes which are mentioned in the *Qur'an*. There are five of these and they are listed here with the formal punishment in brackets: (1) Fornication or adultery (*zina*), (stoning or 100 lashes); (2) False accusation of unchastity (*qadhf*), (80 lashes); (3) Wine, drinking, (80 lashes); (4) Theft, (amputation of hand (s) and/or (feet)); and (5) Highway robbery, (execution if homicide occurs). Some commentators and jurists have added, not quite accurately, apostasy to this list.

**Hadith**- This Arabic word has a vast number of meanings including: speech,

report, narrative. It is also has the very important specialist sense of tradition, a record of saying and doings of the *Prophet Muhammad* and his companions, which is regarded by Muslims as a source of Islamic law, dogma and ritual second only in importance to the *Qur'an* itself.

**Hajj**-Pilgrimage. This is one of the five *arkan* or Pillars of Islam.

**Halal**-That which is permitted or lawful.

**Hanafis**-One of the four schools of Sunni Islam, named after the jurist Abu Hanifa.

**Hanbalis**-Adherents of one of the four main law schools (*madhahib*) of Sunni Islam, named after the jurist and theologian *Ahmad b. Hanbal*. It has a reputation for being the most rigorous of the four schools and is the foundation upon which the *Wahhabis* built their movement. *Hanabalism* is the official *madhhab* of Saudi Arabia.

**Haram**-That is which forbidden, unlawful and sinful.

**Hasan**- Fair or good. This word is used in technical *Hadith*. It is a criticism as to indicate the relative strength or reliability of a tradition.

**Hashim**- Meccan clan to which the *Prophet Muhammad* belonged; it was part of the tribe of *Quraysh*.

**Hijab**- Veil. Worn by many Muslim women out of modesty. It may be a piece of plain cloth or highly decorated, depending on the wearer.

**Hizb Allah**- *The Party of God*. This is the name born by a major fundamentalist Shi'ite group founded 1979 after the Iranian Revolution.

**'Ibada**- Worship, devotional action, observance required by the Islamic faith.

**Ibn 'Abd al-Wahhab, Muhammad**- (1115/1703-1206/1792) Founder and inspiration for the *Wahhabis* and adherent of *Hanbalism*.

**Ibn Khaldun**- (732/1332-808/1406) One of the most famous Arabic-Islamic figures, known in the West. He was well known for his theory on history. His most famous literary work was the *Muqaddima* or Introduction to History and Historiography. Which explains his theory of history: simplistically put, a nomad tribe struggles to achieve urban power, becomes corrupt and luxurious after a few generations having achieved power, and is in turn overthrown by a rising less eminent tribe.

**'Id**- Feast, holiday, festival.

**‘Id al-Fitr-** The feast of Breaking of the Fast of Ramadan.

**‘Idda-** Legal waiting period before a divorced or widow can remarry.

**Ijma’-** In jurisprudence the term may be translated as consensus. This can mean two types: consensus of a local group of jurists in a particular generation or the consensus of a whole Muslim community.

**Ijthad-** Means the exercise of independent judgment, unencumbered by case law or past precedent.

**Iihad-** Heresy.

**IIm-** Knowledge, learning science.

**Iman-** Islam has no priests, and thus *iman* attached to a mosque is not ordained. Any male Muslim may lead the prayer in the absence of a mosque *iman*.

**Inheritance-** The *Qur’anic* legislation considerably ameliorated the old pre-Islamic customs of inheritance and gave women the right of inheritance for the first time. It is part of *Shari’a Law*.

**Irtidad-** Apostasy, also called *ridda*. The death penalty for apostasy is not prescribed in *the Qur’an*, yet it is articulated in both the Hadith literature and *Fiqh*.

**Islam-** The word literally means submission (to the will of God). It is a monotheistic religion founded in the 7<sup>th</sup> century by the *Prophet Muhammad* as a result of the revelation of the *Qur’an* which he received via the angel *Jibril*.

**Isnad-** Chain of authorities at the beginning of a *hadith*.

**Jihad-** Holy war. All Muslims are obliged to wage a spiritual *jihad* in the sense of striving against sin and sinful inclinations within themselves.

**Jinah, Muhammad ‘Ali-** (1293/1876-1367/1948) He was the founder of Pakistan, the Pakistani’s called him ‘Greatest Leader’. *Jinnah* was the first Governor General of an independent Pakistan in 1366/1947, and President of Pakistan Constituent Assembly.

**Jirga-** A gathering of elders or leaders in Pakistan or Afghanistan, especially within a tribe.

**Kari/Karo-** honor killing - an ancient tradition still sometimes observed; a male

member of the family kills a female relative for tarnishing the family image

**Khalifa-** Caliph, Head of the Islamic Community. The Arabic word in early Islamic history meant literally ‘successor’ or ‘deputy’.

**Kharijites-** Members of an early Islamic sect. The word means ‘those who seceded’ from supporting ‘Ali . Abi Talib.

**Lahore-** Major city of Pakistani Punjab.

**Madhhab-** In *Fiqh* it indicates of the four major Schools of Law: *Hanafis*, *Hanbalis*, *Malikis* and *Shafi’is*. In addition to these *Sunni Schools*, there are a number of *Shi’ite Schools of Law*.

**Madrassa-** School, college, place of education, often linked to or associated with a mosque.

**Mahr-** (*muhur*) A Dowry, bridal gift, bride price, bride wealth. Islamic law, *Shari’a* enjoins that the bridegroom give his bride a gift when the marriage contract is instituted. In the times before the *Prophet Muhammad*, the *mahr* was given to the father, but the Qur’an decreed that it should be kept by the wife, even if she divorces.

**Malik b. Anas-** (94/716-179/795) He gave his name to the *Maliki School of Law* whose real founders, strictly speaking were his disciples. He is considered a great jurist who exercised his own opinion. He spent most of his life in Medina.

**Mamluks-** Major dynasty of late medieval Islam, which flourished between (648/1250-922/1517) in Egypt.

**Mashaf or Mushaf-** Copy of the *Qur’an*.

**Masjid-** Mosque. The word literally means bowing down.

**Matn-** The main text of the *hadith*, distinct from the *isnad*.

**Mawdu-** In *hadith* criticism this word has the technical sense of invented when used to describe a *hadith*.

**Mawlid al Nabi-** the birthday of the *Prophet Muhammad*. It is celebrated with much festivity in the Islamic world on the twelfth day of the Islamic lunar month of *Rabi’ al-Awwal*.

**Mecca-** (*Makka*), this is the holiest city in Islam. The *Prophet Muhammad* lived there most of his life. The *Qur’an* was first revealed to *Muhammad* near this city and

it was from Mecca that he made his famous migration or *Hijra to Medina*.

**Medina-** This is the second holiest city in Islam. Its early name was *Yathrib*. It was here that the '*Constitution of Medina*' was formulated. And it is here that the *Prophet Muhammad* is buried. The city is located in Saudi Arabia.

**Mufti-** One who delivers, or is qualified to deliver a fatwa. The *mufti* constitutes the bridge from pure Islamic jurisprudence to everyday Islamic life.

**Mullah-** Word derived from the Arabic *mawla*, meaning master. It was born out of respect by religious figures and jurists in Iran and other Muslim countries.

**Muslim-** Literally 'submitter' one who submits. A Muslim is one who professes and practices the faith of Islam.

**Muslim League-** Political group founded on the Indian subcontinent in 1324/1906 which supported demands for constitution reform and ultimately an independent Pakistan.

**Muslim World League-** International Muslim organization with a particular interest, among other things, education. It opened an office in London in 1984.

**Musnad-** The word is much used as a technical term in *hadith*. Criticism to characterize a tradition whose complete *isnad* link its directly, usually to the *Prophet Muhammad*.

**Mut'a-** Temporary marriage.

**Nabi-** Prophet. Islam teaches that *Muhammad* was the *Last or Seal of the Prophets*. A total of 28 prophets are named in the *Qur'an*.

**Nikah-** Marriage, marriage contracts. The *Qur'an* permits a Muslim male to marry up to four wives, provided that he feels able to treat them all equitably.

**Purdah-** A word deriving from the *Urdu and Persian* word *pardah* meaning veil or curtain. The concept of *purdah* embraces the whole idea of general seclusion of women.

**Qadi-** Judge. Some people refused to become judges in early and medieval Islam since their judgments lead them to condemnation in Hell fire. The institution dates from the time of the *Umayyads*.

**Qisas-** Retaliation. Pre-Islamic blood revenge was replaced by the concept of just retaliation in Islam.

**Qiyas-** Analogy, analogical reasoning. This was one of the four main sources of law

for *al-Shafi'i*. It has been described as a type of *Ijtihad* and implies an extension or elaboration of the basic guidelines and principles which may be derived from the other three major sources of law enunciated by *al-Shafi'i*.

**Qur'an**-Means recitation. The *Qur'an* is Islam's holiest book, being the uncreated word of *God* revealed through *Jibril* to the *Prophet Muhammad*. The text contains 114 chapters or *sura*. They are arranged from the longest to the shortest. And a *sura* is divided into a verse called an *aya*.

**Qutb, Sayyid-** (1324/1906-1386/1966) A major thinker and ideologue of the *Muslim Brotherhood* in Egypt. His most notable piece of writing was his book of the early fifties, *Signpost on the Road*.

**Rasul**- Messenger, envoy, apostle.

**Ra'y**- Opinion, idea. In Islamic law *ra'y* has the sense of personal opinion, individual judgment or speculation not based on a recognized source of law. It may be compared with *Ijtihad*.

**Safavids**- Major dynasty ruled Persia from 907/1501-1145/1732. They drew their name from the founder of the *Safawiyya* order of dervishes.

**Sahabaha**- Companions of the *Prophet Muhammad*.

**Sahih**- Sound. Technical term in *hadith* criticism indicating the highest level of trustworthiness in a tradition. The compilation of *hadith* by *al-Bukhari* and *Muslim b. al-Hajjaj* are both the authorities on *hadith*.

**Salat**- The prayer and its accompany ritual performed by practicing Muslims, five times a day.

**Sariqa**- Theft. The prescribed punishment in the *Qur'an*, *Surat al Maida* is the amputation of the hand. *Shari'a law* prescribes the corroborating testimony of witnesses or the thief's own confession, and insists that the property have some value. In practice, the usual punishment has often been imprisonment. This will of course depend on the country in which the theft took place.

**Sawm**- Fasting, one of the five pillars of Islam.

**al-Shafi'i, Muhammad b. Idris-** (150/767-205/820) Muslim jurist, widely recognized as the '*Father of Islamic Jurisprudence*'. His key methodological significance was to found the law upon four points: *Qur'an*, *Sunnah*, *Ijma* and *Qiyas*.

**Shahada**- Profession of faith.

**Shari'a-** The Holy law of Islam.

**Shi'a-** Party of 'Ali b. Abi Talib those who follow and accept the claims of 'Ali.

**Shura-** Consultation, counsel, consultative body.

**Sufi-** Islamic mystic.

**Sunnah-** Literally, this word means 'trodden path'. It has now developed to mean the customary practice specific action and sayings of the *Prophet Muhammad*.

**Sunni-** One who adheres to the *Sunnah*, or customary practice of the *Prophet Muhammad* himself. The word is used to designate the mainstream or majority branch of Islam.

**Sura-** Chapter of the *Qur'an*.

**Swara-** "Often, family feuds are settled by giving away daughters or sisters (some as young as a few months old) to the enemy camp, in a custom called 'swara' or 'vani'."

**Tafsir-** Exegesis, interpretation, commentary, especially relating to the *Qur'an*.

**Taliq-** Divorce.

**Tawhid-** Declaration of the 'Oneness' of God. This is one of the most fundamental Islamic doctrines.

**Tawil-** Interpretation, allegorical interpretation of the *Qur'an*.

**al-Tirmidhi, Abu 'Isa Muhammad-** (209/824-270/883 and 279/892-3) One of the six major compilers of hadith for *Sunni Islam*.

**'Ulama-** Religious scholars, jurists learned men, imams, judges, Ayatollahs and similar people.

**Umayyads-** First major dynasty in medieval history which established itself in Damascus after the death of 'Ali b. Abi Talib. They ruled from 41/661-132/750.

**Umma-** Community, people, nation.

**Usul al Fiqh-** The roots or sources of jurisprudence, Following *al-Shafi'i's* ideas on the *Qur'an*, *Sunnah*, *Ijma*, and *Qiyas*.

**Vani-** s a child marriage custom in tribal areas of Pakistan. Besides tribal areas, it is widely followed in Punjab in Pakistan. This custom is tied to blood feuds among the different tribes and clans where the young girls are forcibly married to the members of different clans in order to resolve the feuds. The Vani could be avoided if the clan of the girl agrees to pay money, called *Deet*. Otherwise the young bride may spend her life paying for the crime of her male relatives.

**Wahhabis-** Followers of the strict puritanical teachings of *Ibn 'Abd al-Wahhab*. They obeyed the teachings of *Ahmad b. Hanbal*. Their ethos pervades in Saudi Arabia.

**Wali-** Saint, holy man.

**Waqf-** In Islamic law, the legal creation of a pious foundation or endowment whereby the owner relinquishes his right of disposal provided that the use is for charitable purposes.

**Wudu-** Minor ritual washing of parts of the body before prayer.

**Yawm al-Qiyama-** The Day of Resurrection, the Day of Judgment, the Last Day. Also called *Yawm al Din*.

**Zakat-** Obligatory alms tax, which constitutes one of the five pillars of Islam.

**Zayd b. Thabit-** Secretary to the *Prophet Muhammad* and later copied and editor of the *Qur'an*.

**Zina-**The Arabic word means both adultery and fornication, sins strongly condemned in the *Qur'an*.

## CHAPTER 1

### PAKISTAN'S TURBULENT HISTORY; A BRIEF SYNOPSIS

*“On the tree of peace we hope they will be a leaf”  
— Syed Ali Abbas Zaidi*

Religion is arguably one of the most powerful and pervasive forces in the world. This dynamic force has shaped societies from the dawn of time. The rigid exclusiveness of how religion is perceived by those who interpret belief can unleash violence and destruction, especially against women.

The topic of this paper was chosen out of the conviction that humanity is suffering today from a number of serious social problems relating to women. Therefore, there is a pressing need to discuss the problem of how women are treated in Pakistan, and the relationship between the religious texts of Islam and the Pakistani Constitution.

Since its introduction into the Pakistan Constitution, *Shari'a Law* is being used to justify the poor treatment of women, and is, in fact, a distortion of the teachings of Islam. Shari'a Law is based on the teachings of Islam, yet Pakistan's Constitutional Laws run contrary to the traditions and directives of the sacred texts, the *Qur'an*, *Hadith* (recorded oral traditions), and the *Sunnah* (habits and practices of the Prophet Muhammad). The Prophet extorted his followers to, *“Be kind to your women.”*

Therefore, women's lack of civil rights in Pakistan is attributable to male chauvinism that is based in culture, rather than religion. How can Pakistan reconcile gender discrimination in Shari'a Law with parity for all citizens as stated by the constitution?

A large number of Muslim countries underwent colonization during the 19<sup>th</sup> and 20<sup>th</sup> centuries, and their current legal frameworks are a mixture of colonial/secular and religious law. In most of these countries, the application of religious law is confined to family/tribal laws, while common law forms the basis of commercial and criminal law. This co-existence and discrepancy concerning the legal framework is a remnant of the colonial days, when the *personal status codes* were largely derived from Shari'a Law, whereas the criminal and commercial laws were based on common law (Council on Foreign Relations (CFR)).

The constitutions of many Muslim countries, principally Pakistan, provide for equal rights of all their citizens, (see the Pakistani Constitution, Preamble #8) by proclaiming that all people are equal. This constitution also states that the country is an Islamic state. What is crucial, however, is how such equality can be enforced, and what can be done to reconcile the gender discrimination in Shari'a Law with the equality of all citizens provided for by the constitution (CFR).

The role and status of women is not an isolated social phenomenon, and their struggles do not take place in a vacuum; both are determined, enhanced, or impeded by the social, political, and economic development of a people's history. To understand the forces and evolution of Muslim women's struggles in Pakistan, one has to trace the steps

of political developments and the role of Islam, which are tightly linked (Mumtaz and Shaheed 1).

In the wider political arena, Islam appears as a recurring theme. For over a half century, since 1947, Islam has played a central role in the political thought of Pakistan. Since the country's independence, those in power have used Islam, but inevitably its use has been a bid for political power, consolidating support and legitimizing force. Specifically regarding women in the fifty years preceding independence, progressive Muslim groups justified women's education, emancipation, and rights from within the Islamic framework. As of 1947, having been monopolized by reactionary elements, Islam has been the medium used by those wanting to curb or deny women their rights. Since the turn of the century, women have found themselves confronting religious extremists in their struggle for their rights (Mumtaz and Shaheed 1).

On August 14, 1947, Lord Louis Mountbatten, the last viceroy of British India, administered the oath of office to Muhammad Ali Jinnah as the first Governor-General of Pakistan. In 1971, Pakistan was partitioned into two states, the Eastern portion, which became Bangladesh and the Western area, which became Pakistan. Pakistan, as it turned out, was established with problematic frontiers.

Even today, two of Pakistan's borders—the Durand Line, which is between Afghanistan and Pakistan, and the *line of control* which now divides the old princely state of Kashmir amid the territories occupied by India and Pakistan—neither of which have formally accepted Pakistan's neighbors.

With the war in Afghanistan against the occupation by the Soviet Union that lasted for ten years and the subsequent emergence of Islamic extremists called the Taliban, meaning students as the virtual rulers of Afghanistan, Pakistan continues to experience considerable turbulence along its borders (Burki xvi). With these malleable frontiers and the country's political instability, the last six decades have been stormy, during which a political system has been established to govern its people.

Since 1947, the country has tried four formal constitutions, promulgated in 1946, 1956, 1962, and 1973 (Burki xvi). In its relatively brief existence, Pakistan has engaged in three key wars and a series of minor skirmishes. The first two wars, 1948-1949 and 1965, were fought concerning the disputed state of Kashmir; the third war, in 1971, was fought over Bangladesh. Periodic conflicts have occurred between Pakistan and the *Pathan* and *Balochi* tribes, which live in the Federally Administer Tribal Areas called FATA. Pakistan has been continually preoccupied with its neighbors, which has had a profound impact on their political, economic, and social development (Burki xxi).

The amount of progress women have been able to achieve has depended to a large extent on the political expediencies of the moment. In the 1930s, before the partitioning of Pakistan and India, women played a central role in the Muslim League's efforts under the leadership of Muhammad Ali Jinnah to create a separate Muslim state. In 1944, Jinnah told a gathering at Aligarh University:

No nation can rise to the height of its 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 with four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in

which our women have to live. You should take your women along with you as comrades in every sphere of life. (Mumtaz and Shaheed 183)

Women galvanized popular support for the Muslim League, participated in public rallies and gatherings, and turned out in large numbers to vote in the 1945-46 elections. According to Farida Shadeed, “from 1940 to 1947, unprecedented numbers of women young and old from all classes broke the unwritten rules of prescribed conduct, *purdah*” (Shadeed 8). Religious extremist leaders criticized Jinnah and the Muslim League for encouraging a public role for women, which they felt would disrupt the family and might contribute to the downfall of the Muslim way of life (Double Jeopardy, Women’s Rights Project 28). For example, initially among the League’s chief detractors was Malana Maududi, the founder of *Jama’at-e-Islami* (JI), a conservative Islamic organization started in 1941. The JI advocated, among other things, an end to women’s political participation and their strict adherence to *purdah* (Women’s Rights Project 28).

Thus, in the years immediately preceding Pakistan’s independence, women were at the center of a fundamental paradox, which was to affect their status in Pakistani society for the next sixty years. On the one hand, their freedom was intricately inked with a political movement to create an independent Muslim state, on the other, ultra conservative interpretations of the identity of that same state—depending on social political and economic conditions—was turned against women as a means of consolidating state power in times of instability.

In essence, women were and still are used to stabilize the unsteady balance between women and politics in Pakistan, but their rights are rarely treated with the respect, seriousness, and focus they deserve (Women's Rights Project 29).

The period from 1947 to 1977 saw improvements in the legal status of women, although the changes mainly benefitted a small minority of upper and middle class women and left the vast majority unaffected. In 1937, prior to independence, Jinnah succeeded in securing the adoption of the Muslim Shariat Application Act, which granted women inheritance rights that had been denied them by the British colonial courts' interpretation of customary law, though he did so only after eliminating agricultural land from the list of property that women could inherit. With Pakistan's independence, women hoped to secure full rights to property inheritance and, in 1944, women members of the National Assembly introduced a bill to that effect. When the Assembly failed to act on the bill, thousands of women marched in the country's first mass protest, and secured the laws adoption in 1951 (Women's Rights Project 30).

In the years that followed, two decisive factors emerged: one was the phenomenon of Islam becoming central to the political debates in Pakistan, while the other was the formation of new economic and social structures. Both these factors not only had a direct bearing on the political ethos that developed in Pakistan, but also had an impact on women's positions in society (Mumtaz and Shaheed 9).

The *ulama* (Muslim community) had a different though well-defined position on the nature of an Islamic state. In January 1951, the ulama held a convention in Lahore and passed a resolution prescribing the principles of an Islamic state, which they insisted

should be incorporated into the Constitution of Pakistan. These included: the absolute sovereignty of *God* the *Qur'an*, and *Sunnah*, which was to be the basis of all law; the state would have no right to repeal any Islamic Law or ban preaching and propagation of any ideology that was in consonance with Islam.

In 1953 the ulama held another convention where they reiterated their earlier stance and added the demand for the appointment of five representatives from the ulama to the Supreme Court. They further demanded that Islamic Studies be made a compulsory subject for all Muslim students and that tribal, ethnic and linguistic differences of the provinces should not be recognized (Mumtaz and Shadded 9).

By 1956, when Pakistan's first constitution was finally promulgated, a very fundamental change had occurred in the politics of the country. From the situation at the time of independence, when a broad-based heterogeneous ruling group had tried to share power, Pakistan had arrived at a position where the civil bureaucracy, supported by the army and the bourgeoisie was in complete control. Consequently, the political leadership found itself isolated from the mainspring of support, the people, and pitched against western trained administrators and army officials. While both old and new leadership had similar outlooks for Islam and Pakistan, they were at opposite ends in the power struggle. Moreover, the religious landscape remained further divided; unity of faith did not mean a common interpretation or understanding of Islamic belief and practice. In addition to a sizable *Shia'* minority, the *Sunni* Muslim community included many schools of thought...the *Deobandi*, *Brelevi*, *Wahhabi*, and *Ahl al-Hadith*. Their individual

theological orientations constituted a form of sectarianism and remained an obstacle to any consensus on an Islamic vision and program for state and society (Esposito 116).

The year 1958 marked the changeover of power from civil to military bureaucracy. General Muhammad Ayub Khan assumed power through a military coup and froze all political activity by banning political parties, thus sounding the end of any political institution building in Pakistan. During Ayub Khan's reign (1958-1969) it became evident that it was impossible for any government to form outside the Islamic cultural framework. Ayub Khan was himself a Western-oriented, modernist, and a Muslim, whose outlook was reflected in the new Constitution of 1962, with the establishment of the Advisory Council on Islamic Ideology and the Islamic Research Institute, as well as the reforms embodied in the Muslim Family Laws Ordinance of 1961 (Esposito 117; Mumtaz and Shaheed 11).

Resistance to Ayub Khan's attempts to define Pakistan's Islamic identity in modern terms was seen as forceful. Those from the religious camp took strong exception to Khan's methods for imposing his progressive interpretation of Islam with little regard for the religious establishment whom he viewed as part of the problem, rather than an integral part of the solution (Esposito 118).

Any progressive policies toward women were undercut by Ayub Khan's unwillingness to advance beyond a certain point for fear of compromising his political power base. The adoption of the Muslim Family Laws Ordinance was a noteworthy advance, but the limitations of Ayub Khan's policies toward women were exposed by his vehement opposition to the popular candidacy of Fatima Jinnah, the sister of Pakistan's

founder, for the office of president in the 1965 elections. Khan opposed Jinnah on the grounds that no woman could be the head of state in a Muslim country, and he had several ulama, which he previously denounced, issue religious edicts to the effect that a woman head of state was un-Islamic (Women's Rights Project 32).

In contrast, driven by their own political calculations, the conservative religious parties, including the Jamaat' e-Islami, which had steadfastly opposed every advance in women's rights since the creation of Pakistan, supported Fatima Jinnah's candidacy on the grounds that in "extraordinary circumstances" a woman could hold such an office. In this case, the extraordinary circumstances were that her candidacy, which was very popular, might return power to a government more sympathetic to their views, rather than Ayub Khan's. As noted by writer Farida Shaheed, the Fatima Jinnah controversy underscored the manner in which religion has been constantly used by political forces in Pakistan to further their own purposes and justify contradictory positions (Women's Rights Project 32).

Among the most serious setbacks of this period was the elimination of reserved seats for women in the assembly (included in the 1956 Constitution) from the 1962 Constitution adopted by Ayub Khan's leadership, and the government's failure to implement the Muslim Family Laws Ordinance. In the absence of a concerted government effort, the law's effect was limited, and pre-existing cultural and religious norms continued to hold great sway.

A study conducted twenty years after the law's passage found that women's limited access to legal redress in marriage or divorce related disputes remained severely

limited by “lack of awareness, social and economic pressures, apathy, misconceptions of and lack of faith in legal machinery, and faulty or inadequate implementation of the law” (Women’s Right Watch 33).

In 1969, General Yahya Khan, imposed martial law, replaced Ayub Khan’s government. Yahya Khan’s rule was short-lived, lasting only long enough to preside over the bloody civil war that ended with the partitioning of Pakistan and the creation of Bangladesh. In 1972, General Khan handed over power to Zulfikar Ali Bhutto, whose Pakistan People’s Party (PPP) had won a majority of National Assembly seats in West Pakistan in the election held just before the war. Women played a key role in mobilizing on the PPP’s behalf, and the PPP political platform promised equality for women (Women’s Rights Project 33).

Bhutto’s immediate task was to provide a viable political structure, revive the people’s morale, and rebuild the economy. Equally important was his appeal for women to participate in the structuring. For the first time women experienced some freedom of movement and expression—they were singled out and addressed in an appropriate manner. His other contribution was the Constitution of 1973, which was based on principles of federalism and parliamentary democracy it was approved by all parties, including representatives from the four provinces. The Constitution, for the first time in Pakistan’s history, gave equal rights to men and women and provided for equal opportunities for all. It prohibited discrimination on the basis of sex, class, or creed, and had most of the provisions of a secular and egalitarian document (Mumtaz and Shahdeed 13). The 1973 Constitution reserved ten seats in the assembly for women, who would be

nominated by the assembly members (present day Pakistan has 342 members of which, 70 are women). This provision was not meant to undercut women's rights to stand in general elections, but it made clear that women were still politically disadvantaged and lacked a strong popular constituency (Women's Rights Project 33).

During Bhutto's administration, reforms opened up the Civil Service, the Foreign Service, and other government agencies to women and their participation in government increased dramatically. With government support, an independent Commission on Women's Rights was established in 1975 to examine the status of women in Pakistan and propose legal reforms to improve their social, legal, political, and economic conditions. During this period, a number of independent women's organizations engaged in social welfare and grassroots political activism (Mumtaz and Shahdeed 34).

The general failure of Bhutto's economic reforms alienated a wide spectrum of political alliances, most importantly those from the urban middle class and the liberal left, which had previously supported him. Bhutto's promotion of women's rights, while failing to address the vast social and economic inequities suffered by the majority of women in Pakistan, also added to a conservative backlash from religious parties who drew their support from reforms. Finally, the military, which became increasingly disturbed over the deterioration of law and order, blamed the persisting problems on Bhutto's "populist" policies and overthrew him in a coup led by General Zia ul Haq in 1977 (Mumtaz and Shahdeed 34).

The anti-Bhutto PNA (Pakistan National Assembly) movement culminated in Bhutto's arrest on July 5, 1977, and the imposition of Haq's martial law. According to

Haq's take-control speech, Islam did not appear to have been in any great danger. On the contrary, martial law had been imposed in order to 'avert a national crises,' elections would be held in 90 days, the army would return to its barracks, and the country would revert to civilian rule. Other than to mention in passing that he considered the introduction of an Islamic system a prerequisite for the country, Haq made no other allusions to Islam. Whether Haq originally intended to hold elections within the stipulated time, or whether he had already formulated plans for Islamizing the country is a matter of speculation. Bhutto's release and the enthusiasm, with which he was greeted, first in Lahore, and then in Karachi, left no illusion as to the outcome of the elections if held in 90 days. Consequently, Bhutto was re-arrested and the elections postponed until a process of accountability could be completed (Mumtaz and Shaheed 15).

Elections had been scheduled for March 1978. Instead, nine months after assuming power, Haq voiced his intentions to Islamize the penal code of Pakistan as a first step toward establishing a truly Islamic state. Suddenly, Islam was endangered and it had become imperative to ensure the supremacy of Islam before the country could be entrusted to civilian rule and political parties (Mumtaz and Shaheed 15).

Haq's coup represented the convergence of conservative religious interests with those of the army. In the absence of any clear popular constituency, Haq cultivated the conservative religious parties to bolster the legitimacy. In return, he provided those parties, which had never had strong support from the electorate, with access to national political power.

Haq came to power denouncing Bhutto's regime as un-Islamic, and one of his main rallying cries was the return of Pakistani society "to the moral purity of early Islam." His most vulnerable and strategic targets were women, whom he promised to return to the "sanctity of the *char divari* (the four walls of home)," thus resuscitating the family and women's role in it as the cornerstone of the Muslim way of life. Within months he had introduced a series of legal and social changes that reversed many of the legal advances women had gained over the prior thirty years. This backsliding demonstrated that despite seeming progress, the status of the majority of Pakistan's women had not changed substantially since independence, and their few hard-won legal gains were easily curtailed (Women's Rights Project 34).

With the imposition of martial law, Haq suspended all fundamental rights guaranteed in the constitution, including the right to be free of discrimination on the basis of gender. He then introduced a series of laws that gave legal sanction to women's subordinate status, including the Hudood Ordinance, the *Qanun-e-Shahadat* (Law of Evidence Order) and proposed laws regarding *qisas* and *diyat*, Islamic penal laws governing compensation and retribution in crimes involving grave bodily injury (Women's Rights Project 34).

Briefly summarized, the Hudood Ordinances penalize theft, drunkenness, fornication, adultery, rape, and defamation. The ordinances require the testimony of four male Muslim witnesses to impose maximum punishment for rape, adultery, and fornication, which for married persons carries the maximum punishment of being stoned to death; for unmarried persons it is 100 lashes in a public place. Women's testimony was

excluded, which had the effect of not only protecting men accused of rape from maximum punishments (which are considered cruel and inhuman under international law), but also of disfavoring women who were, in the absence of four male Muslim witnesses to the act of penetration, unable to prove rape. This made female victims of rape susceptible to criminal charges of adultery or fornication thus denying them due justice. The Law of Evidence similarly relegates women to inferior legal status and, in some circumstances, renders the testimony of women equal to only half of that of men. In addition, under qisas and diyat laws proposed at the time, compensation for death of a female victim was half that of a man. On the other hand, a woman charged with murder could receive the same punishment as a man (Kandiyoti 101). Haq, being a wily tactician, calculated that playing the women's card could confirm his regime's commitment to Islam and its legitimacy. Making women the focal point of his Islamization program would win over the religious parties as well as gain the muted approval of broad sections of society. Haq promised to protect the sanctity of the *chador* (the veil) and the *char divari* (the home)—those well-known symbols of women's honor and the security of the traditional family to those who were the pious followers of Islam. (Kandiyoti 101)

Haq had found the elements of a consensus albeit by default. On February 10, 1979, he introduced Pakistan to the first dose of his Islamic laws; people were neither exhilarated nor outraged; apathy and resignation were almost all pervasive. The disgruntled gave vent to their anger in private. He depended on his lay friends to laud the reforms as a real first-step toward giving substance to the Islamic ideology, which as they had maintained, was the *raison d'être* of Pakistan (Kandiyoti 101).

These are precisely the sorts of claims that make Haq's Hudood Ordinance of 1979—with its single-minded emphasis on the Islamic need for punishment rather than justice—seem so insidious from the perspective of Pakistani women. The provisions of the ordinance dealt with a variety of offenses, including the security of property by prescribing such medieval punishments as the amputation of fingers or hands of the accused, and public lashings appropriate for a particular crime. However, the parts most affecting women relate to *zina* (extramarital sex) and *zina-bil-jabr* (rape). The method and marital status of the accused, the witnesses, and the evidence on which the conviction rests, is crucial to the two types of punishment under Zina Laws; *hadd* and *tazir*.

The aforementioned lack of women's rights and the way the government and Islam affect women today are discussed further in the following chapters.

## CHAPTER 2

### UNDERSTANDING THE TRIBAL AREA OF PAKISTAN; A PROFILE

Before stating the conditions of women in the “tribal cultures”, an understanding of the local environment by explication of some basic facts and data of their social structure and political history is necessary. This allows the reader to discern between the image the West has portrayed as opposed to the true nature of these communities.

The following are profile sketches of Pakistan’s seven tribal Agencies known as FATA in the North-West Frontier Province (NWFP). Geographically, FATA runs north to south, forming a 1,200-kilometer wedge between Afghanistan and the settled areas of the NWFP. In 1893, the Durand Line divided the *Pashtun* tribes between British India and Afghanistan and ever since this delineation has been viewed with contempt and resentment by the Pashtuns (Hasan 30). After Pakistan’s emergence as a state in 1947, this line became a major source of tension between Pakistan and Afghanistan.

With the exception of Genghis Khan and Tamerlane, the Pashtun people have not been conquered in their 3,000-year history. As to the number of Pashtun tribes there are approximately 60, but the number rises abruptly when 400 different sub-clans are included. The largest and most influential tribes are the: *Afridi, Acmalzais, Babgashm Durrani, Khattak, Mohammadzai, Mohman, Orakzai, Shinware, Yusufzai, and Waziri.*

Pashtunwali culture, the pre-Islamic Pashtun tribal code, demands hospitality and generosity when someone asks for pardon or protection (Hasan 31). They consider it an

obligation to avenge any wrongdoings that occur within their territory. Honor and chivalry are judged to be the hallmarks of this tradition. Compared to deeply rooted ethos and ethnic pride, the “idea of Pakistan” has proved to be a secondary factor in shaping the identity and character of these tribes even though the NWFP and the tribal agencies decided to join Pakistan in 1947 rather than India.

Although a part of Pakistan, the FATA region functions as a semi-autonomous area. Since the British Raj days, the region acted as a buffer zone between the British and Russian empires. The tribes operated on their own terms, some cooperated with the British off and on in return for financial incentives. This traditional pattern of governance continued even after the tribes came under the jurisdiction of the Pakistani government.

On political and social issues, it is the *jirga* (assembly of tribal elders) that defines the law, regulations, and policies (Hasan 31). Pakistani courts and law enforcement have almost no jurisdiction over this area. Until 1997 a few elected jirga leaders from the regions were invited to become full members of the National Assemblies of Pakistan to represent the FATA region (Hasan 32). Due to their allegiance to the Pakistani Government, they would always vote in favor of the ruling party on critical issues, so in reality the state’s writ is only on paper.

According to the latest figures, close to 3.5 million people live in the FATA region, which covers an area of 27,220 square kilometers. Basic amenities are few and far between, however, courtesy of the Afghan war of the 1980s, the latest weaponry is in abundant supply. There are various political agents that represent the federal government and dispense regular stipends to local leaders called *maliks* (Hasan 33). Electricity is free

and no taxes are collected. Only seven percent of the land area is cultivable and smuggling “custom free” goods from Afghanistan to Pakistan generates most of their income. Car theft rackets, drug trafficking, and the illegal sale of locally made weapons are also frequently encountered.

Religious conservatism clearly holds a controlling influence over numerous militant guests of the past from Arab and Asian countries, which have largely become a part of society through marriages. To understand Shari’a law and how it is maintained in these areas and to gain a better understanding of life for the women in each agency; a profile of the FATA agencies follow.

### **The Khyber Agency**

This area derives its name from the Khyber Pass, which provides a vital link between Afghanistan and Pakistan. The area has a population of approximately 500,000; two important tribes; the *Afridis* and *Shinwaris* live in this area ([www.kyber.gov.pk](http://www.kyber.gov.pk)). The Afridis are known for their fighting skills and are pragmatic in picking their battles and making alliances. They respect *Ṣūfīs* (mystics) and their shrines, which intellectually align them with the *Barelvi* Sunni. This agency is moderate and tries to counter the pro-Taliban Deobandi group. The Shimwaris are the second largest tribe of this agency. They are quite influential, but most of its members inhabit the Ningrahar province of Afghanistan. They are largely involved in business activities. In recent years, the Khyber Agency has been a trouble spot known for hosting illegal radio stations supporting

religious extremism and encouraging pro-Taliban actions; the antithesis of the Afridis ([www.khyber.gov.pk](http://www.khyber.gov.pk)).

### **The Kurram Agency**

This area is comparatively more accessible than other agencies; it has a population of approximately 450,000 and is home to two tribes, the *Turi* and *Bangash*. A land of gardens and orchards, this agency has often been called the pro-Northern Alliance because these tribes are predominately *Shiite*, which are of anti-Taliban orientation. The Turi tribe (Turkic origin) is known for its strong, robust horsemen. They, too, belong to the Shiite sect of Islam and have been at loggerheads with the Taliban. (There are Deobandi in neighboring areas). Some non-Shiite extremists in the area, however, were supportive of the Taliban, yet without much effectiveness ([www.globalsecurity.org](http://www.globalsecurity.org)>Introduction>Government>Pastun).

### **The Bajaur Agency**

Smallest of all the agencies, *Bajaur* is largely inaccessible due to its hilly terrain. With a population of about 600,000, it borders Afghanistan's Kunar Province, which is a hotbed of Taliban forces. The prominent tribes of Bajaur are the *Tarkani* and the *Utman Khel*. The alliance of religious political parties, namely the *Muttahida Majlis-e-Amal* (MMA), has great influence in this area since two of the MMA politicians are representatives in the National Assembly with another in the Senate. There had been some unconfirmed media reports about the possibility that Osama bin Laden hid in this area. There was an aerial attack, which targeted Ayman al-Zawahiri, reportedly executed

by the CIA, that took place in a village near the Bajaur Agency in January 2006, killing eighteen people (Hasan 37).

### **The Mohmand Agency**

The *Mohmand* tribe resides in these territories and approximately 350,000 make this area their home. Mohmands are a very powerful and influential tribe and are known as natural guerilla fighters. One important topic of discourse is the description and details of the wars they have fought. Another distinguishing mark among the Mohmands is the importance they give to their clerics and divine leaders, fighting most of their wars under the leadership of their *mullahs*. Another distinction is they still practice specific primitive customs, as fire walking to prove innocence or guilt if a crime has been committed.

In reference to the political climate, Mohmand tribal leaders challenged the idea of joint inspections of the area by Pakistani and U.S. forces in 2003. Later the NWFP government (led by the MMA) came forward to support the stance of the Mohmand tribe. The Pakistani army did conduct search operations in the area, but tribal leaders decided not to opt for a head on collision with them

([www.globalsecurity.org.Introduction>Government>Pastun](http://www.globalsecurity.org.Introduction>Government>Pastun))

### **The Orakzai Agency**

This is a small agency that has a population of about 240,000 and is primarily inhabited by the *Orakzai* tribe from which it derives its name. The other important tribe in the this area is the *Daulatzai*. Unlike most of the agencies, Shiites and Sunni both live

side-by-side in Orakzai, though there is seldom peace. Regular sectarian clashes have diminished the effectiveness and influence of the Orakzai tribe. This is the only agency that does not have a common border with Afghanistan. The present governor of the NWFP and former corps commander in the region, Lt. General Ali Mohammad Jan Orakzai (retired) belongs to this tribe, as do other bureaucrats in the civil service of Pakistan, showing there is some type of government in this region. Despite having a comparatively high literacy rate, the agency was the first one to ban non-governmental organizations (NGOs) from operating in the area, declaring them anti-Islamic. The local Taliban has also declared the possession of televisions a crime. The ambiguous rulings, government jurisdictions and, at times pro-Taliban support, are indicative of the ceaseless confusion the people are exposed to

([www.articles.timesofindia.indiatimes.com/keyword/Orakzaiagency](http://www.articles.timesofindia.indiatimes.com/keyword/Orakzaiagency)).

### **The North Waziristan Agency**

The *North Waziristan Agency* is the second largest in area with a population of approximately 375,000 people; mostly belonging to the *Waziris* and *Dawar* tribes. The Waziristan region was a chronic headache for the British, even after the creation of Pakistan. Waziris continue to draw attention to Pakistan for their support of the *Pakhtoonistan/Pashunistan* (the joining of all Pashtun areas to create a new state) and have maintained a good relationship with Afghanistan. Since the 1970s, the Waziris joined the ranks of the Pakistani Armed Forces in considerable numbers as compared to members of other tribes.

To show the differences in each tribe and their political alliances, the following is a copy of the peace pact from this area.

### **North Waziristan Peace Pact**

Here is the text of the September 2006, deal between the Pakistani government and local tribesmen in North Waziristan. The Pakistani Army agreed to dismantle checkpoints it had recently set up inside North Waziristan, release tribesmen it had arrested, and return weapons it had confiscated. The army agreed to keep some checkpoints on the border and retain the majority of its forces in the barracks, and in return, the tribesmen agreed to stop attacking the military and cease cross-border infiltration into Afghanistan.

According to this pact, the participants will agree to the following conditions.

#### **Students Scholars Atmanzai Tribes:**

Participant Two meaning Tribal Representatives of North Waziristan and Local Mujahideen Students and Scholars of Atmanzai will make it sure that

1. Law Enforcement Agencies, installations and officers will not be attacked and there will be no Targeted Killing whatsoever.
2. There will be no Balanced Administration. Pakistan Government will be the working body. Political Administration will be contacted for resolving issues. Administration will resolve issues according to the laws implemented by Atmanzai Tribes and FCR.
3. There will be no cross border infiltration into the neighboring country Afghanistan for any type of Armed Activity. However, there will be no restriction on traveling according to the rules and regulations for the purpose of Business, Trade and meeting relatives.
4. There will be no incursions into districts adjacent to North Waziristan. Nor will there be a common government.

5. All foreigners would go outside of North Waziristan Agency. If any one who is not in a position, will be allowed to stay away in the area on surety or guarantee of the local tribesmen. Such type of foreigners would remain with peace and would honour all clauses of the agreement.
6. During the fights, whatever Government [illegible] in the form of weapons and wireless came into the hands of Participant two will be returned to the government.

**Government:**

1. Every person arrested during the operation will be released. They will not be arrested again for what they have done in the past.
2. Government will lift all the public sanctions.
3. Government will remove all the new check posts from the roads and on the old check posts, soldiers and levis will be stationed just like in the past.
4. Government will return the vehicles and other stuff confiscated during the operation.
5. After the pact, government will continue the ground and air operation according to normal routine.
6. For the recovery of those who were innocently killed during the operation and as a compensation for the property that was damaged during the operation, government will provide grants.
7. There is no ban on (use of) weapons according to the Tribal Traditions and there is no ban (on weapons) from the government either; but the ban on large weapons will continue.
8. The implementation of pact will start with the removal of Army check posts.

**All Sides:**

1. According to this pact, a 10-member committee will be formed with mutual consultation. In this committee scholars, elders and representatives of political administration will perform the following duties;
  - a. Constant communication between the government and Atmanzai tribes.

b. To review and ensure implementation of the pact

2. If a person or a group (local or foreigner) will not follow the peace pact and will try to sabotage peace in Waziristan, then action will be taken against him

<http://www.pbs.org/wgbh/pages/frontline/Taliban/etc/nwdeal.html>

## CHAPTER 3

### ESSENTIAL INSIGHT AND THE CREATION OF ISLAM AND THE DEVELOPMENT OF ISLAMIC JURISPRUDENCE

It has been almost 1400 years since the Prophet Muhammad's death in 632 CE, the *Qur'an*, *Sunnah*, *Hadith* and *Fiqh* have held a paramount place in the civilization and structure of the Islamic ideal of the Muslim world. This ethos was uniquely based on the religion of Islam, which has always accorded a preeminent place for Shari'a law. The Shari'a covers every aspect of life and every field of law: international, constitutional, administrative, criminal, civil, family, personal and religious. For the Muslim, Shari'a is literally the source of life. It comprises not only laws, but also a system of ethics and values, a pragmatic methodology geared to solving present and future problems.

The scope of the Shari'a is therefore much wider than any other system of secular law since it regulates not only the society, but functions within the state, which is usually the limit of most legal systems. The Shari'a allows inclusion of God and one's own conscience. Ritual practices, such, as daily prayers, alms giving, fasting, and pilgrimage to Mecca are an integral part of Shari'a law. The Shari'a, therefore, is not merely a system of law, but a comprehensive code of behavior that embraces both private and public life.

The other major distinction between the Shari'a and other legal systems arises from the Islamic concept of law as the expression of divine will. With the passing away of the Prophet Muhammad, communication of divine will ceased; the terms of divine revelation were then fixed and immutable. Consequently, the process of interpretation and expansion of

this source material was held to be complete with the formation of the doctrine in the Medieval Legal Manuals, Shari'a law then became a rigid, static system.

Unlike secular systems that grew out of society and changed with the circumstances of the stratum, Shari'a law was imposed upon society from a sacred source. In Islamic jurisprudence it is not society that molds and fashions the law, it is the law that precedes and controls the society. Such a philosophy of law clearly poses a challenge to contemporary/modern society. How can the traditional Shari'a law be adapted to meet the changing circumstances of modern Muslim societies and its effect on women? This has been a central issue in Islamic law in recent times.

When the first Muslim community was established under the leadership of the Prophet Muhammad, the revelations conveyed through the Qur'an laid down basic standards of conduct. But, the Qur'an had not given a total and comprehensive legal code; no more than eighty *surahs* (verses) out of one hundred fourteen dealt with strictly legal matters; the remaining verses covered a wide variety of topics and introduced many new and, at that time, novel ideas. During the Prophet Muhammad's lifetime, he resolved legal problems as they arose by interpreting and expanding the general provisions of the Qur'an. An interesting story as told by Rafi ibn Khadeej reported that the Prophet Muhammad had come to Medina and found the people grafting their date palm trees. He asked what they were doing and they informed him that they were artificially pollinating the trees. He then said, "Perhaps it would be better if you do not do that." When they abandoned the practice, the yield of the date palms lessened. So they informed him and the Prophet replied, "I am a human being. So when I tell you to do something pertaining to the religion, accept it, but if I tell you

something from my own personal opinion, keep in mind that I am a human being.” (Philips 50). These were the type of stories, which were passed down among the Sabahah and eventually developed into the Sunnah and Hadith. An interesting story as told by Rafi ibn Khadeej reported that Muhammad had come to Medina and found the people grafting their date palm trees. He asked what they were doing and they informed him that they were artificially pollinating the trees. He then said, “Perhaps it would be better if you do not do that.” When they abandoned the practice, the yield of the date palms lessened. So they informed him and the Prophet replied, “I am a human being. So when I tell you to do something pertaining to the religion, accept it, but if I tell you something from my own personal opinion, keep in mind that I am a human being.” (Philips 50).

This activity continued under the *caliphs* in the post-Prophet period. Legal development of much wider dimensions took place under the Umayyad and Abbasid dynasties in the eighth and ninth centuries.

To explain Shari’a law is to define *fiqh*, which is knowledge of the rules of God, which concern the actions of persons who are bound to obey the law respecting what is required, forbidden, recommended, disapproved, or permitted, and this knowledge is acquired from the Qur’an, Sunnah and Hadith. These arguments help legalists adduce the necessary comprehension of the laws contained in them.

To have the proper understanding of historical development in Islamic law, the terms “fiqh” and “Shari’a” need to be defined. “Fiqh” and “Shari’a” have been loosely translated into the English language and interpreted to further promote understanding of Islamic law. “Fiqh” means the true understanding of what is *intended*. An example of that usage can be

found in the Prophet Muhammad's statement, "To whomever Allah wishes good. He gives true understanding of the religion"(Bukhari, Vol. 1,Hadith 71). Technically, Fiqh refers to the science of deducing Islamic laws from the evidence found in all required sources of all Islamic laws. "Shari'a" means a waterhole where animals gather daily to drink, or it can mean the straight path as in the Qur'anic verse, "Then we put you on a straight path (Shari'a) in your affairs, so you follow it and do not follow desires of those who have no knowledge" (THQ 45:18; Philips 16).

Islamic Fiqh differs a great deal from Christian theology. There is no notion of priesthood in Islam, which was rebuked by the Prophet, nor is there any established concept of Church as there is in Christianity. This is the reason why in Islam there is nothing that quite corresponds to the creeds and confessions of Christianity. For Islam there has never been any official formulation of the articles of belief or Church formulated rules of conduct.

Fiqh in Islam provides the detailed code of conduct or cannons comprising the ways and modes of worship, standards of morals and guidelines for a good life of a Muslim. These are the laws that allow and prescribe the difference between right and wrong.

The beginning and early development of the science of fiqh can be traced to an early date at Medina when the *Masjid al-Nabawi* (The Prophetic Mosque of the Companions) was built and where the rules of law were initiated by the Prophet Muhammad and his companions.

The Qur'an is the primary source of fiqh in Islam. The *Qur'an* is the *Book of Allah*, as it was revealed to the Prophet Muhammad, which was made known as the virtue of living and acting according to the way of God and regarding this world as a stepping-stone into the

next world. The Qur'an provides the code of ethics for the individual, society and for the structure of an Islamic commonwealth. Think of Shari'a as the canon and fiqh as the canonical jurisprudence.

The second source of fiqh in Islam is the Hadith (traditions) of the Prophet Muhammad, which have come down to us through a reliable chain of transmission called the *isnad*. This is a list of experts or authorities that have communicated a Hadith, statement, or action of the Prophet Muhammad (Liebesny 6). Thus began the organization of what the Companions had heard and witnessed from the Prophet during his lifetime. Consequently, they committed themselves to memorize and record all statements made by the Prophet Muhammad. It was then that the Hadith became a supplement to the Qur'an as a source of Islamic Law, which Muslim scholars now use.

After the Prophet died, collecting and verifying information was a difficult task due to the many sayings and traditions of the Prophet Muhammad, which were exemplified during the years he was alive. Different schools of jurisprudence arose to insure the information handed down from the various sources was authentic. The four major schools of thought on *Hadith* are *Hanafi*, *Maliki*, *Hanbali* and *Shafi'*, and each used a different method of interpretation. For example *Hanafi* used personal judgment, which utilized a high degree of reasoning, *Maliki* was based entirely on *Hadith* traditions, *Hanbali* supported the *Hadith* and the *Sunnah* (the example and practice of the Prophet's way of life), and *Shafi'*s foundation rested on Civil and Canon Law. *Ijma'* was the third source of reference, which, according to Islamic jurisprudence, means the agreed upon view of the *Sabahah* or Companions of Muhammad. The word *ijma'* literally means, "collecting or assembling" (Liebesny 7).

There are three foundations of *ijma'* which include a unanimous consent expressed in a declaration of opinion, consent expressed through unanimity of practice, the majority of the *Mujtahidun* (Muslims at the highest degree of learning) signified their tacit assent to the opinions of the minority by "silence or non-interference" (Liebesny 10). Whenever points of law arose in the *Umma* (Islamic community), which were not covered by a detailed statement in the Qur'an or Hadith, the majority of jurists had recourse to use an analogical deduction, meaning *qiyas* in Arabic.

*Qiyas* is an application to a new problem in an existing principle or decision that needs to be redefined and is therefore considered a new vexation. Now the religious theologians or *ulama* (scholars of the community) try to find a solution by using comparison and deduction, or *qiyas*. This process of deduction by which the laws of a text is applied to a case is not concerned by the language, but rather governed by the reason of the text. *Qiyas* is applied only in a Shari'a governed state when a solution to problem cannot be found in either the Qur'an, Sunnah and *ijma* ([www.factbites.com/topics/Qiyas](http://www.factbites.com/topics/Qiyas))

Since the Qur'an was revealed to reform human conditions. Islam did not erase all pre-Islamic customs and practices; instead it removed every facet of corruption and canceled all customs, which were harmful to the society. Consequently, Islamic legislation forbade interest on loans because it takes unfair advantage of less fortunate members of society; fornication was forbidden due to its exploitation of women and the destruction of family bonds; and alcohol was not permitted because of the physical, psychological and spiritual damage it inflicts on the individual and on society as a whole. Trade practices were reformed

by making the basis of trade consensual and by disallowing all deceptive business transactions. The existing system of marriage was organized confirming certain forms and prohibiting others. The basis of divorce was also recognized, but its pronouncements were limited.

In order for Islamic legislation to achieve its goals of ‘reformation’, it enacted a series of legal commandments and prohibitions, which made up the rules of conduct that govern the social system within Islam. With the enactment of these laws, the Qur’an’s revelations have taken into consideration the following four basic principles: the relation of men to Islam, family law, trade laws, and criminal laws. The first is the relation of men to religion, so that men could structure laws that would ensure and defend the propagation of Islam. This was done through *jihad*, which is an armed or personal struggle. The family law is for the development and protection of the family system, including marriage, divorce, and inheritance. Trade laws govern business transactions, rental contracts, etc., and criminal laws govern business transactions, rental contracts, and various crimes (Philips 27-28).

By tracing Islam’s development of fiqh and the evolution of *madh-habs*, (any school of thought whether legal or philosophical) shows the different characteristic trends during various periods of political and socio-economic development. One can discern the outstanding characteristics of fiqh and how fiqh evolved into law.

**Simply stated:** THE DISTINCTION BETWEEN SHARI’A AND FIQH

1. Shari`a has wider meaning than fiqh, which includes both laws and a tenets of faith.
2. Shari`a is the whole teachings found in the Qur’an and sunnah, while fiqh is a body of laws deduced from the Shari`ah to cover specific situations not directly treated in both sources.

3. Shari`a is fixed and unchangeable, whereas fiqh may change according to time and circumstances under which it is applied.

4. Shari`a, in most part, are general. They lay down basic principles. In contrast fiqh is specific. It is developed by the exercise of ijtiḥād of the jurists. It demonstrates how the basic principles of Shari`a be applied in given circumstances.

As Islamic laws progressed, it is noteworthy to mention three main trends of thought: ijtiḥād is the reasoning processes by which Islamic laws are deduced after thorough research by scholars; narrations on Hadith (a saying, action or approval of the Prophet Muhammad) became widespread though there was an increasing tendency toward fabrication; and the first attempts to compile fiqh were aimed at preserving the ijtiḥād. To the scholars of Islamic law this was the first evidence that there became clearly divided schools of thought that established various new institutions of learning.

As previously stated, Hadith is a saying, action or approval of the Prophet Muhammad yet, during the time when narration scholars increased the need for evidence of true Hadith statements, Islamic scholars had to examine individual narrations of the Sunnah that were handed down by the ṣabāḥah and their students in order to make their legal judgments. At the same time a new phenomenon developed, false sayings and actions began to be attributed to the Prophet Muhammad.

There was a change of the governmental structure from caliphates to a monarchy during the first attempts at compiling all of the legal rulings. During this period, rulings were increasingly being made which were alien to the rulings of the Companions. Those who have studied under the ṣabāḥah and at the various centers of Islamic learning realized that if a concerted effort were not made to preserve the earlier principles, later generations of

Muslims would be unable to benefit from the contributions. Unfortunately, none of these early collections have survived in their original form. They are only known by references made to them in the books of the following generations of scholars (Philips 70).

In closing, I would like to clarify the difference between fiqh and Shari'a. Fiqh are the judicial opinions that were given by learned jurists from various schools of thought in regard to the application of Shari'a. Shari'a is the revelation that the Prophet Muhammad had received and passed on through his message in the Qur'an and Sunnah. A *fatwa* is the application of Shari'a law. These laws and their political attitudes, which encompass the Shari'a and Sunnah, have had a profound impact on the status of women in Pakistan, which will be discussed further in the following chapters.

## CHAPTER 4

### THE STATUS OF WOMEN IN PAKISTAN

The status of women in Pakistan varies considerably across classes and regions. The rural/urban divides are due to an uneven socioeconomic development and the impact of tribal, feudal, and capitalistic enterprises. The law allocates Shari'a law to be applied more stringently in some regions than others affecting social development. Pakistani women might enjoy a more liberal and better status than other Islamic countries, although there still is a systemic subordination at work. On one side, they are at the center of attention and life, and on the other side deemed they are no more than second-class citizens. In the tribal regions their status is not even judged to be that.

For years, the role that a woman portrayed as a citizen, member of the family or a homemaker has been undermined by the ideas of tradition and law that is antiquated to the point of stifling women's ability to choose a lifestyle, vocation, or marriage. Pakistan was formed on the basis of the two-nation theory, which emphasizes Islamic teaching and values, and few secular laws. Islam gives the best and the most balanced code of life to women. Spurious fundamentalists have converted the true teachings of Islam to read in the best interests of men and are highly unjust to women. There are many faces of women in Pakistan. It is in the rural areas of Kyber Pahktunkhwa, women are the most in crisis; they are constantly fighting for life and struggling by the demands put on them from their tribal society.

The health status of women in Pakistan is directly linked to their low social status. The health and population characteristics of Pakistan are high fertility, low life expectancy, a young

age structure, high maternal and child mortality, high incidence of infectious and communicable diseases, and widespread prevalence of malnutrition among children and women. The country is going through a demographic transition, characterized by a change from high mortality and high fertility to lower mortality, but still relatively high fertility (<http://www.gis.emro.who.int/HealthSystemObservatory>).

The death or disability of a woman is a tragedy in itself, but it also adversely affects the health of her children, household productivity, and the economy. About 25 per cent of children are born with low birth weight due to maternal health problems. Ten per cent of children do not reach their first birthday. High fertility, with an average of 6.5 children in the 1980s to 3.9 in 1995, has resulted in high population growth of 3 percent per annum (<http://www.gis.emro.who.int/HealthSystemObservatory>).

There are also marked differences between the health statuses of women versus that of men in Pakistan. Malnutrition is a major public health concern in Pakistan that disproportionately affects women and girls. More girls, than boys die between the ages of one and four. This is a direct consequence of the lower social status accorded to women and girls, who as a result eat less and face barriers when accessing health care. Women, girls, and infants most often die of common communicable diseases such as tuberculosis, diarrhea, pneumonia, and tetanus, most of which could have been easily prevented and treated. The high prevalence of communicable diseases and malnutrition is not only related to poor living conditions, but also to the lower social status of women and girls; as many as 50 percent of the women suffer from recurrent reproductive and bladder infections which is mainly due to the social stigma attached to visiting a doctor. The role of woman in society is largely influenced by the role of woman prescribed by religious tenets. The interpretation of religion is in the hands of the so-called religious

representatives termed *mullahs*. The average mullah interprets the teachings and tenets of the Qur'an in a very male biased manner. Mullahs are *madrassa* educated in religious schools and, with the role of religious institutions in Pakistani society have dominated the perception of the ordinary women in defining their gender roles. Concepts like “*chaadar and char divari*” have been enforced as decrees by these mullahs (Raines 29). Many women activists have questioned such decrees, but the public's perception is still colored by what they hear repeatedly at Friday prayer sermons delivered by mullahs who denounce every form of female independence and change.

The degradation of women in the rural areas is definitely attributable to beliefs, norms, and the values of local and tribal society. These beliefs may be formed on the basis of historical religious beliefs or perceived on future economic needs of the family. In the tribal areas the role of women is confined to the four walls of the parents, or husband's house. Here the female member is perceived as an economic burden. Lack of education and earning power makes these societies wish for a male offspring, since males can share the economic burden of the family. Parents believe that female job opportunities are limited and once they are married they will stop supporting them. The lower class female often works in the fields in villages. Some women are luckier and live in a large city where they can find employment as housemaids or servants.

Women's rights as it relates to the religion of Islam are confronted by a dilemma. There is great diversity in the situations of women's rights, which have been, revealed in the fourteen centuries of Islamic history—from the seventh-century nomadic and trading societies of the Arabian Peninsula, through which this religion had developed into contemporary Muslim communities that have evolved throughout the world. Yet, this diversity does not rise because of geographic distribution. Muslim countries have brought changes into the national laws of certain

Muslim countries, which have brought changes involving some regional variations in the interpretation of the Islamic Shari'a.

Respect for the law and due process of law have indeed, long been hallmarks of traditional Islam's political ideal. Apart from the sectarian interpretations of Islam, which are theoretically set the ruler above the law traditional Islamic attitudes toward the equality and freedom of women, however, have been remained uneven. While equality of all Muslims in the eyes of God is generally conceded, and the Qur'an's criterion of piety is recognized as the only standards of man's worth, both the traditional Islamic law and social sentiments have long accommodated social, and, in some cases, legal inequality.

Through the legal status of women in medieval traditional Islam was superior to their status in many of its contemporary civilizations, the traditional Islamic law—most provisions of which concerning the status of women are fully accepted by contemporary *ulama*—they acknowledged inequality of women in several legal matters. For example, a woman's witness in a court of law, according to traditional Islamic law, carries only half as much weight as that of a man's the total (Raines 30).

Some of the accusations and complaints about the treatment of women in traditional Islam is that the rights made permissible to men by Islamic law (Shari'a) allows multiple marriages (up to four) and their right to marry Jews or Christians; rights denied to Muslim women. Another criticism is the practice of obligatory female veiling (*hijab*) and the notion behind it that blames women and their bodies for excessive male sexual excitement. The notion that women need to be confined to their household and need strict supervision by men is a control issue, which is tainted by patriarchy. There is segregation of gender in the mosque between men and women and they are excluded from religious leadership. This exclusion is also

extends into civil society where women are excluded from the study of Shari'a law, and thereby eliminated from taking an active role in *shura* (consultation) and *ijma* (the forming of consensus). In pre-Islamic Arabia times, women were assigned a clearly inferior social position that reduced them as a gender to be marginalized (Raines, 31).

*The Holy Qur'an* admonishes this practice:

“Submitting Muslim men and women, believing men and women, obedient men and women...for them God had prepared forgiveness and a handsome reward” (THQ 33: 35).

and

“Whosoever does good deeds, whether male or female and he (or she) they shall enter the garden, and shall not be dealt with unjustly” (THQ 4:124).

or

“they (women) have rights similar to those against them”(THQ 2:228).

and

“To share of what their parents and kinsmen leave and to a women a share of what parents and relatives leave” (THQ 4:7).

or

“To the adulteress and the adulterer, whip each one of them a hundred lashes”

(THQ 24:2).

As to inheritance, the key word “share” is left open to male interpretation that, as a matter of law, decided that daughters were to get half the share that sons get. As for adultery, it is a male interpretation that decides who is, or is not, an adulterer. Pregnancy of an unmarried woman is automatically presented as proof that she is an adulterer, while naming the male

partner in such a case, in absence of witness to the act, is in the eyes of law, tantamount to slander.

Yet, the *Qur'an* is very precise in its treatment of women and orphans. Even more contemptuous is the *Qur'an's* condemnation of the cultural bias of that time of preferring the birth of a son to that of a daughter. The perceived dishonor, which fathers confronted with the birth of a daughter, would sometimes have to bury their female children alive. The *Qur'an* has stated,

“And when the birth of a daughter is announced to one of them, his face becomes black and he is full of wrath. He hides himself from the people because of the evil of what is announced to him. “Shall he keep it with disgrace or bury it (alive) in the dust? Now surely evil is what they judge” (THQ 16: 58-59).

This is a powerful countercultural response. By condemning local customs that assaulted the well being of women the *Qur'an* establishes itself as a text that stands in opposition to and against patriarchal practices then common to a larger society. Yet, this voice of liberation was lost as generations of *ulama* (male legal experts) turned increasingly to the collected sayings of the Prophet Muhammad (some of which are of doubtful origin) and to local customary law (*adat*) and in doing so, enshrines male domination and even misogyny under the mantle of divine legislation (Shari'a).

The Divine Law (Shari'a) or body of Islamic law is held by most Muslims to be divine and thus immutable (Raines, 31). Although, Shari'a was collected and codified under specific historical and cultural circumstances, under the watch full eye of the patriarchal bias of the Arab culture within the early Islamic epoch. For example, the Prophet Muhammad explicitly forbade

the collecting of his own sayings because he anticipated they would be mistakenly venerated and granted a spurious authority.

It is reported in some narratives that during the time of the revelation of the Qur'an, when the Prophet Muhammad wanted all his followers to fully concentrate on writing and memorizing the *Qur'an*, the Prophet Muhammad did not recommend to people, especially those who were involved in writing the revealed word of God to write anything other than the words in the *Qur'an*. This lack of recommendation should not be construed as an absolute 'prohibition' of writing any sayings, actions, or events of the life of the Prophet Muhammad. On the contrary, it was only a means of fortifying any erroneous additions on the part of the transcribers of the Holy *Qur'an* ([www.understanding-islam.com/q-and-a/history/hadiths-are-prohibitedAmjad](http://www.understanding-islam.com/q-and-a/history/hadiths-are-prohibitedAmjad)).

Nevertheless, the collection of the *Sunnah* and *Hadith* was made and became, as the Prophet feared, a foundation stone, equally valid as the *Qur'an*, in the formulation of Shari'a. It is precisely in this Shari'a, codified in the second and third centuries after the Prophet Muhammad's death, that one finds enshrined the restrictive codes on female dress, on access to education and civil society (Raines 32). It also contains restrictions on the role of women in public worship as well as various provisions concerning divorce, custody of children, maintenance, and inheritance that allow privilege to the male position.

According to the teaching of the *Qur'an*, men and women are created mates, a pair, to treat each other with affection and compassion within the bond of matrimony. Yet, the *Qur'an* includes a passage, which produced controversy over male-female relationships, and continues to do so. The passage reads as follows:

“The men are placed in charge of the women, since God has endowed them with the necessary qualities and made them bread earners. The righteous women will accept

this arrangement obediently, and will honor their husbands in their absence, in according with God's commands. As for the women who show rebellion, you shall first enlighten them, and then desert them in bed, and you may beat them as last resort. Once they obey you, you have no excuse to transgress them. God is high and most powerful" (THQ 4:34).

Some scholars interpret the passage to mean that men are given preeminence over women and are their guardians in all matters. Others see the obligation as one in which men, because of their greater wealth, are enjoined to support women materially, and that it does not imply any form of superiority, especially when that passage is allied to the one in which males and females are described as a pair. There is no passage in the *Qur'an* that implies any other disparate relationship.

The scholars who believe the verse to mean a male superiority relationship adduce further proof from the sentence that allows the male to chastise his wife. Other scholars believe the second passage is not related to wives who do not respect or "honor" their husbands when they are away from home. There is no single interpretation, and scholars continue to argue the point, especially in different geographic regions such as the FATA, or tribal areas. The issue of equality, therefore, is one that constantly surfaces in male-female relationships especially in the realm of marriage, divorce, and inheritance.

In *Sura Four, l Nissa*, (the Women), we learn that a man may marry one wife, or two, or three, to a maximum of four, if he can treat them with equity. The passage continues: " But if ye fear that ye cannot, marry only one" (THQ 4:3). Scholars in the past have interpreted this passage to mean that a Muslim man is entitled to marry up to four wives (Imran Rahat). Others

notably interpret the passage as a prohibition of polygamy. They reason that it is impossible to treat four women with equity, so the solution is to marry only one.

The prerequisite for any marriage is the consent of the woman. Her consent can be explicit or implicit; silence is interpreted as a sign of consent. Marriage is expected to occur between equals, the element of parity being of importance, so that a wife expects to receive the same material well being that she had in her father's house. Since marriage is a contract between individuals, and the bride wealth is specified in the contract. It is divided into two equal parts: one portion is paid prior to the marriage and forms part of the bride's personal capital; the other is paid to the bride only if and when her husband repudiates her. The bride wealth is the woman's own property to do with as she pleases, and thus inalienable or surrendered. A woman may choose to have a marriage contract include a prohibition against her husband's taking a second wife.

Today, polygamy is still practiced among the very rich, who can afford to support more than one wife, even though in modern society it is frowned upon and socially unacceptable. Interfaith marriages between Muslim men and Christians or Jewish women are permissible. In such marriages, the wife forfeits her right to inherit her husband's property. Muslim women, however, are forbidden to contract marriages with non-Muslim men. In all references to interfaith marriages, the children are legally Muslim and share in their father's estate.

Men can repudiate their wives at will by repeating three times "I divorce thee." Women must sue for divorce, which is granted on the basis of certain specified grounds that differ in each of the four main schools of jurisprudence; *Hanafi, Maliki, Hanbali and Shafi'*. The Qur'an states that divorce is hateful in the eyes of God and binding on the conscience of man. Should divorce

become necessary, the male is enjoined to treat his wife with kindness and to give her back the remainder of her bride wealth, her property and personal possessions (Kelly 247).

Child custody, as specified by the Shari'a, is automatically awarded to the mother, unless she has been proved guilty of moral turpitude. According to the *Hanafi*, a girl lives with her mother until she reaches the age of puberty and is given preference over a child who is a minor. In the *Maliki School*, she remains with her mother until she is married. A boy remains with his mother from birth until he reaches the age of seven in the *Hanafi School*, and puberty according to the *Maliki School* (Kelly 248). Since custody is traditionally granted to women, if the mother is not granted custody the children go to their grandmother, unless the woman consents to grant custody to her former husband. This is only feasible if the paternal grandmother is willing to take charge of the children. A further complication arises in cases where a mother has custody of her children and decides to remarry, and then her former husband may receive custody of the children unless he waives that right.

The *Qur'an* specifies that a female inherit half of the male share. Inheritance is therefore a basic right granted by God to women (Kelly 249). Both historically and today there is a gap between the religious ideal and reality, and denial of inheritance has often been condoned by a male dominated society. The rationale behind a female's inheriting a lesser share than a male lies in the male's responsibility for the material expenditures of the household. A women's property is her own, to do with as she pleases; she is not expected to support her husband with it. However, non-support of a wife is grounds for divorce, no matter how wealthy the woman. A brother is as responsible for his single or widowed sister's support as he is for his mother, or that of any elderly or unmarried female in the family. In reality her husband, brother, or some other male relative frequently manages a women's fortune.

Most countries today in the Muslim world follow the rules laid down in the *Qur'an* regarding inheritance. A woman can inherit from her father and grandfather, her mother and grandmother, her husband, sibling, children and grandchildren. They in turn have a share in her estate, although children preclude other potential heirs, save spouses, from inheriting (Kelly 250). Some parents have tried to skirt the *Qur'an's* injunctions by giving their daughters shares of their inheritance during the parent's lifetime or by selling property to a daughter, so that it is removed from the estate. This is especially the case if the daughter has no brother, and cousins would inherit along with her. In no case can a Muslim dissipate his or her wealth or cut out legal heirs with a proverbial penny (Kelly 258-259).

Legal heirs can sue profligate relatives on grounds of financial incompetence and have the court name a guardian over the possessions of that person to prevent a loss of patrimony. Still a person cannot bequeath his or her entire wealth to anyone, only a legal heir; he or she can will only a portion of his or her wealth. Such legal injunctions ensure that a later wife or husband or an extramarital relationship does not cut out legal heirs.

A popular tradition from the Prophet Muhammad asserts "Heaven lies at the feet of mothers" (Kelly 251). Consequently the hold of mothers in Muslim societies is particularly strong, especially since they control both sons and daughters through their formative years.

After the age of seven the boy is under his father's care; he helps in the fields, learns his father's trade, and learns the *Qur'an*. Among the middle and upper classes he remains under his mother's control until he finishes school and enters university. However, when children go to school, it is the father who helps them with their homework, unless he is a professional who has no time, for many of the mothers in the poorer classes and in the tribal region are illiterate (Kelly 252). Children, especially sons, are the most important element of a marriage, if not the prime

reason, for it is one's sons who will carry on the family name and it is hoped, provide for their parents when they are elderly. A son provides social insurance and functions as an old-age pension, while her husband's family controls a daughter's economic situation. Among the rural and FATA areas, a son ensures that the land will continue to be serviced and will stay in the family.

Female children are less highly prized because they are viewed as a threat to the family honor if their chastity should be impugned before marriage. This is particularly the case among the tribes, who fear their daughter's being seduced and thereby disgracing the family. Therefore, girls are closely watched and their freedom of movement is restricted. They are married off at the earliest opportunity, so the burden of protecting their virtue is passed onto the husband. Older brothers are expected to be the guardians of their sister's virtue, which is why the birth order within the family is important. It is always hoped that a family's first child will be a boy, so as to ensure protection of the family honor by looking after his sisters. No matter what societal class a girl is from they are believed to need the protection of their families, while men are the ones who do the protecting. Whatever a male child may do, he cannot bring shame on his family because shame is interpreted only in terms of female sexuality, with virginity, being the prize a girl offers only to her husband (Kelly 262).

The extended family, which still exists in tribal regions, the elder women of the household, grandmothers, aunts, widowed family relatives, all share in bringing up the children. This socialization process is used to reduce tensions when there are many children in the family and ensures each child receives adequate attention.

The elders teach the girls' good manners, obedience and social behavior as well as domestic skills and personal hygiene. More important, social traditions are passed down through

the female members. Women assign tasks within a household and up to the age of five or six, both boys and girls help around the house. Among children's education there is a clear difference between male and female roles are marked. Even in schools, which are supposed to have the same curriculum for both sexes, girls will be taught home economics, but boys are not. Thus, social mores and prejudices are the inhibiting factors rather than religious injunction, for there is nothing in Islam that prohibits a female from pursuing the same educational curriculum as her brother (Women's Rights Project 20). From traditions, which dictate society, it is the parents and the educators who have decreed that women are to cook and sew, while boys are to learn mathematics.

In most households it is customary for the female to serve the male members in matters pertaining to food, cleaning, and sewing, which are viewed as "women's business." Even if both parents are working outside of the home, the burden of household tasks falls on the woman. Care of the elderly is also part of the woman's domain, for it is seen as an extension of her role as homemaker and mother. Homes for the aged are rare, and especially in the tribal regions are unheard of. Families take it for granted that they will look after elderly relatives, whether simply aged, senile or bedridden.

Seventy-five percent of Pakistan's female population is rural and the average Pakistani woman is beset with handicaps of illiteracy, constant motherhood, and poor health. In the less populated frontier provinces of Kyber Pahtunkhwa, life for women is very restricted, and women are expected to comply with tribal beliefs and traditions. Any woman who deviates from these traditions can suffer severe penalties, including death. The women observe strict *purdah* or seclusion of women, and are rarely seen outside their homes.

Women's legal and social status has have changed throughout the country's turbulent history, sometimes for the better, sometimes for the worse. In 1947 when British India was portioned along religious lines to create two independent nations: India, which has a Hindu majority, and Pakistan, which is predominantly Muslim (Women's Rights Project 21). Since Pakistan's independence, there has been a continuing controversy over the role of Islam in the nation's political life. And with the tension among the country's ethnic groups, which has dominated and halted the progression of the country's development. Pakistan's relations with its neighbors, India and Afghanistan, have also had critical consequences for foreign and domestic policies, particularly with respect to the role of the military and the course of Islamization.

Since the direction of the debate over the country's political ideology and militarization of the government have had a profound impact on the trajectory of women's advancement.

## CHAPTER 5

### WHAT IS KARO KARI? THE PRICE OF HONOR

What is the *karo kari* tradition? When did this tradition begin and how did it achieve authority? After the interviews I read concerning the women in the FATA region, the majority of women said that this custom had originated in *Baluchistan* from the border area of *Shahdadkot*, which is in close proximity to *Larkana* in *Sindh*. The women explained that people from all over the world, particularly from areas like *Jhal Magsi* and *Khuzdar*. They came to these bordering towns during the cold weather months for economic reasons (Crime or Custom HRW). This influx of people also brought an exchange of customs and traditions, which led to the diffusion of *karo kari*. Even though most people today think the tradition of *karo kari* came from Baluchistan, but its origin can be traced back to the Arab settlers in Baluchistan. This area had similar anti women traditions, even prior to Islam. The men of the region thought that since the Arab presence had dominated Baluchistan for a long time, it could very well be their influence that implanted this particular tradition in the area.

Some men and women held the opinion that this custom was given credence at the same time when patriarchal traditions came in to existence, and when rules pertaining to ownership and inheritance were being articulated. According to this view, the value of women as chattel was tied to her worth as a repository of male, and tribal 'honor' and this perception brought with it the idea of 'honor killings.'

Gender is one of the organizing principles of Pakistani society. Patriarchal values embedded in local traditions and cultures predetermine the social value of gender. An artificial divide between production and reproduction, created by the ideology of sexual division of labor, has placed women in reproductive roles as mothers and wives in the private area of home, and men are expected to function in a productive role as breadwinners in the public arena. This view has led to a low level of resource investment in women by the family and the state. Thus, low investment in women's capital compounded by the ideology of purdah, negative social biases, and cultural practices; the concept of honor linked with women's sexuality; restrictions on women's mobility; and the internalization of patriarchy by women themselves, becomes, the basis for gender discrimination and disparities in all spheres of life.

The social and cultural context of Pakistani society is predominantly patriarchal. Men and women are conceptually divided into two separate worlds. Home is defined as women's legitimate ideological and physical space, while a man dominates the world outside the home. The false ideological demarcation between public and private, outside and inside worlds are maintained through the notion of honor and the institution of purdah. Since the perception of male honor and *izzat* (honor as in purity and modesty) is linked with women's sexual behavior, women's sexuality is considered a potential threat to the honor of the family. Therefore, women's mobility is strictly restricted and controlled through the system of purdah, sex segregation, and violence against them (<http://www.islamawareness.net/HonourKilling/pakistan.html>).

In the social context, women lack value and status because of negation of their roles as producers and providers in all social roles. The preference for sons due to their productive role dictates the allocation of household resources in their favor. Male members of the family are given better education and are equipped with skills to compete for resources in the public area, while female members are imparted domestic skills to be good mothers and wives. Lack of skills, limited opportunities in the job market, and social and cultural restrictions limit women's chances to compete for resources in the public arena. This situation has led to the social and economic dependency of women that becomes the basis for male power over women in all social relationships.

In the tribal regions, the patriarchal structures are relatively stronger and local customs are well established with male authority over women's lives. Women are exchanged, sold, and bought in marriages. Women in this society internalize the patriarchal ideology and play an instrumental role in transferring and recreating the gender ideology through the process of socialization of their children. Every year in Pakistan hundreds of women of all ages are reported killed in the name of honor. Many more cases go unreported. Almost all such killings go unpunished. These women are faced with all kinds of gross violence and abuse at the hands of the male perpetrators, family members, and state agents. Multiple forms of violence occur, including; rape, domestic abuse sometimes ending in spousal murder, mutilation, burning, and disfiguring faces by acid, beatings, ritual honor killings, and custodial abuse, and torture.

The logic of tribal tradition turns the conceptions of victim and perpetrator, right or wrong, on the heads of women. Women who are killed or flee a killing are not victims, but are considered guilty in the tribal setting. The man to whom a woman belongs, whether a wife, sister or daughter, has to kill her to restore his honor. He is considered the victim because he has suffered loss; first to his honor and then due to the loss of the woman he has to kill to recover his honor.

Consequently, he is the aggrieved person with whom the empathies of the tribe endure, not the possibly innocent woman he killed. A man whose honor has been damaged must publicly demonstrate his power to safeguard it by killing those that damaged it and, therefore, restore it. In the tribal setting an honor killing is not a crime, but a legitimate action, seen as the appropriate punishment for those who contravene the honor code. The man who kills for reasons of honor becomes *ghairatman* (possessing honor) and is morally and legally supported by his kinsmen. A man's ability to protect his honor is judged by his family and his neighbors and is taunted with *tano* (insinuations bordering on insult) that he is "socially impotent" and *beghairat* (without honor) if he fails to kill a woman of his household who has damaged his honor (Crestentlife.com). Consequently, honor killings are not concealed, but openly performed, often ritually and with the maximum spilling of blood. The family of the alleged *karo* will never kill even though they do not lose their honor; on the contrary by capturing another man's wife or daughter, they have increased their honor. (<http://www.islamawareness.net/HonourKilling/pakistan.html>).

The possession and control of desirable commodities (*zan* (women) *zar* (gold) and *zameen* (land)) are closely linked with perception of a man's honor. These objects

are worthy of possession and need to be controlled due to their inherent value. *ghairat* (honor) is closely linked with *izzat*, respect or standing in society. *Izzat* bases itself on possession, wealth, and property. A man's property, wealth, and all that is linked with these are the sum total value and are therefore, an integral part of honor of the man, tribe, etc. When the rights of women are transferred from her father to the man she is marrying, the guardianship of honor shifts as well

(<http://www.islamawareness.net/HonourKilling/pakistan.html>).

Although honor is located is ascribed to material wealth, the language and expression of honor resides in the body. Women's bodies are considered to be the repository of family honor. Honor in the traditional settings is a male prerogative for it is men who possess *zan*, *zar* and *zamin*, which allows them to hold their heads up; women in the other hand have no honor

(<http://www.islamawareness.net/HonourKilling/pakistan.html>).

*Satta-watta* marriages, which involve the exchange of siblings across generations, put an additional burden on women to abide by their father's marriage arrangements. Often women choosing another spouse are abducted by their own relatives and not heard from again. Standards of honor and chastity are not equally applied to men and women in tribal areas of Pakistan, although other supplementary codes apply to both equally.

Two main factors contribute against women in the name of honor: women are thought of as a commodity, and what is a women's conception of honor is. This concept is deeply rooted in tribal culture. In the tribal society of Sindh and Baluchistan, a woman is equated with money. Although she has monetary value, her

worth is essentially that of a commodity, and this view goes far towards creating a situation when she may be butchered if she transgresses the conditions under which she is bound to a man for life. She may also be freely traded or given away as part of a *karo-kari* settlement. Ownership rights are at stake when women are to be married, which are almost always by arrangements designed by their parents. A major consideration is the young woman's future inheritance rights over family property or assets. Tribal customs dictate that property must be kept in the family. It is not uncommon for girls to be married to a paternal uncle or aunt's sons, so that control over the estate (*jagir*) is not weakened, which would happen be the case if a daughter married an outsider (<http://www.islamawareness.net/HonourKilling/pakistan.html>).

Tribal areas do not want their *jagirs* dismembered on any account. To keep daughters in the paternal family, they are sometimes married to paternal cousins, 10-20 years younger than themselves. What if there is no paternal uncle available? Maternal cousins become acceptable in that situation. What if there is no maternal cousin? Then the woman has to undergo the ceremony of *haq-baksh-wai* (marriage to the *Qur'an*), which still occurs with the consent of the woman, especially in upper Sindh. In certain tribal communities, women observe strict seclusion to the extent that some may never leave the home in which they are born (<http://www.islamawareness.net/HonourKilling/pakistan.html>).

In Punjab, daughters are kept unmarried till the age of menopause when they take up the *Qur'an* and *tasbeeh* (*prayer beads*) voluntarily. While women are usually forced to accept such marital decisions made by their fathers, men have the possibility to marry a second wife according to their liking and lead a life in the public sphere

where they can find fulfillment. Women by contrast are in the vast majority of cases confined almost entirely to the *char divari*, (the four walls of the home). Women are used as a commodity, which is also evident in every marriage in tribal society that involves payment of the bride price, called *vulver* in Kyber Kahtunkwa, and Balochistan, and *verkro* in Sindh. The girl or woman is exchanged for a price in the market. The groom pays the price to the father for possession and custody of his future wife. The bride price varies according to status, health, beauty, and age of the woman, and, like other possessions, the bride subsequently adds to the honor of the groom. To receive a bride exchange for a daughter is honorable, not only for the family, but also to the woman concerned whose value is thereby acknowledged. Sometimes a bride price is taken in the form of another woman. Men exchange their daughters, even their granddaughters for new wives for themselves

(<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%202007-03-19>)

While demanding a low bride price for their daughters, some men ask in addition that the as yet unborn granddaughters be handed to them to be married off for another bride price.

Women are also the basis for the practice of *khoon baha* (literally, blood money), i.e. the compensation negotiated to end a dispute, which besides money may involve a woman to be given to an adversary

(<http://www.islamawareness.net/HonourKilling/pakistan.html>).

A woman may be handed over to compensate a man whose honor has been damaged, or to settle a conflict between two tribes or families. The standard price to settle a conflict is one girl above the age of seven or two girls under seven). It has

also been seen that the girl's milk teeth have been broken to create a sense that they were above seven years of age, so that a family would only have to give one girl.

<http://www.islamawareness.net/HonourKilling/pakistan.html>).

The *Pashtoon* have codified the honor system in the *Pashtoonwali*, which revolves around four concepts: *malmasty*, the obligation to show hospitality, *badal*, revenge, *nanawaty*, asylum, and *nang*, honor (<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>)

A man's property, and money are linked with the total sum of a man's worth.

A woman is also an object of value and therefore is an integral part of the honor of the man, tribe, etc. Therefore, when the rights of a woman are transferred from a father to the man she is to marry, the guardianship of honor shifts as well. Perceived as the embodiment of the honor of the family, women must remain chaste and guard their virginity. By entering into an adulterous relationship, a woman subverts the order of things, undermines ownership rights of others to her body, and indirectly challenges the social order as a whole. She becomes black, *kari* (Sindhi) or *siahkari* (Baluch). Women's bodies must not be given or taken away except in a regulated exchange. Women's physical chastity is of the uppermost importance and, by the merest hint of illicit sexual interest; a woman loses her inherent value as an object worthy of possession and therefore her right to life. In most tribes, there is no other punishment for a woman accused of illicit sex, but death

(<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>)

*Kari* females remain dishonored even after death. Their dead bodies are thrown in rivers or buried in special hidden *kari* graveyards. Nobody mourns for them or honors their memory by performing their relevant rights. *Karo*'s males by contrast are reportedly buried in the communal graveyard. There are different modes of honor

killings. In Kand Kot, and its suburbs, the *kari* woman is dressed in red. Henna is applied to her hands, and then she is taken to the river where she is shot or slaughtered with an axe

(<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>).

The perception of what defiles honor appears to have been continually widened to the point where it is now considerably lax. Male control does not only extend to a woman's body and her sexual behavior, but to all of her behavior, including her movements, her language, and her actions. In any of these areas, defiance by women translates into undermining male honor and ultimately family and community honor. Severe punishments are reported for bringing food late, for answering back, or for undertaking forbidden trips, etc.

A man's honor defiled by a woman's alleged or real sexual misdemeanor or other defiance is only partly restored by killing her. He also has to kill the man, allegedly involved. Since a *kari* is murdered first, the *karo* often hears about it and flees, aided by the fact that unlike the woman, he is both familiar with the world outside the house and can move freely in it.

However, *karos* who escape will not be able to return to normal life. Nobody will give such a man shelter, he remains on the run until he, and his family is ready to negotiate with the victim, the man whose honor in the *karo* defiled and who has had to kill his wife, sister, or daughter. If both sides agree, a *faislo* (agreement, meeting) or *jirga* (tribal council) is setup, and attended by representative of both sides. Included are the local respectable tribal *sardar* (leader), his subordinate landlord,

depending on the status of the parties involved

(<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>).

The traditional justice dispensed by the *jirga* or *faislo* is restoration of the balance disturbed by a woman's misdemeanor. It is not to illicit truth and punishes the culprit; it is to negotiate compensation for damages only, which restores the *karo's* honor. The *karo* who got away has to pay compensation in order for his life to be spared, and compensate for the loss of honor to the man to whom the *kari* belonged to, and for the loss of value of the woman the man had to kill. The amount of compensation is fixed within each tribe, but *jirgas* also decide how the compensation amount is to be dispensed. Compensation can be either in the form of money, or the transfer of a woman, or both. Several *sardars* think that their decisions effectively settle disputes and provide lasting peace; however, this claim is not borne out by any of the evidence

(<http://www.islamawareness.net/HonourKilling/pakistan.html>).

Such settlements are often flouted, and women are killed despite the *sardar's* decisions. To break *faislo* or *jirga* settlement is not dishonorable. The idea of killing and violence as well as deceit and breaking of promises are not dishonorable, rather they are seen in the context of intending to restore honor, and they are not crimes. This explains partly why the *sardars* mediation efforts do not bring lasting peace. *Karos* who have paid heavy compensation are sometimes killed years later; *karis* who are returned to their families on promises of safety may also be killed. It is believed that if an injustice occurs or compensation is inadequate, *karo kari* killings can and do

lead to a series of further killings

(<http://www.islamawareness.net/HonourKilling/pakistan.html>).

There are a number of reasons for the incidence of honor killing; tribal laws have replaced formal laws, which include the Shari'a, and the Constitutional Laws.

Gender orientation has played into a popular perception that it is acceptable to take the law into one's own hands. There has been a slow constant brutalization of Pakistani tribal society over the last few decades. It started due to the fact that capital punishment was made a trivial matter by prescribing it as the minimum punishment for a variety of breaches of marital law regulation and many new offenses were added to the capital crimes. General Haq gathered crowds to witness hangings in public squares.

The resource to tribal justice and implicit acknowledgement that rural populations fare best under this system is widely and increasingly inefficient, expensive, and inaccessible. There is a fear of change (viewed as westernization) and the repercussions of this fearful reaction are borne by women. This reactionary trend results in a great number of honor killings due to the fact there is a higher suspicion of activities. The increased access to heavy weapons by the rural, tribal areas in the wake of the Afghanistan conflict has made it easier to settle honor issues, violently. There is an economic decline of the rural populations, which has delayed education. And an idea of democracy has increased the lure to exploit the honor system and kill women for the sake of compensation payment. The stress factors of growing poverty and deprivation are the main contributors.

The bias laws of *Hudood*, *Qiyas*, and *Diyat* have contributed to the increase in honor killings. The discrimination by the police and the judiciary also contributes to the problem. Also, the lack of training of medical personnel and inadequate equipment, facilities and the government's failure to seek effective measures to end the practice of honor killings and their inappropriate focus on virginity status, haphazard procedures, mistreatment of victims, all increase the level of discrimination against women and the virtual impunity with which such killings are carried out.

The number of honor killings appears to be steadily increasing as the perception of what constitutes honor, is changing. There are honor killings for rape, marriage, and divorce. Women are not given a chance to clear up possible misunderstandings. Tradition decrees only one method to restore honor and to kill the offending woman. Expressing to choose a marriage partner and actually contracting a marriage with a partner of one's choice in a society where the majority of marriages are arranged by parents are considered major acts of defiance. Women who marry a man of their choice take recourse to state law, placing themselves outside the traditional shame; by the public nature of their action, they shame their guardians leading them to resort to violence to restore their honor. Frequently fathers bring charges of *zina* against their daughters who have married partners of their choice (<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>).

The misuse of honor killings for self-interest is ongoing. This scheme provides easy opportunities for the unscrupulous to make money, obtain a woman in supposed compensation to conceal other crimes, in the near certainty that the honor

killings, if they came to court at all, would be dealt with leniently. Honor killings have become an industry with a wide range of individuals who have a vested interest. Tribal mediators, police, etc. use honor killings as an excuse, and as a blanket for a multitude of sins.

Reports abound about men who, having murdered a man over issues not connected with honor, yet kill a woman of their own family alleged as *kari* to the murdered man as an honor killing. By projecting the murder as an honor killing, the murderer will escape the death penalty and will evade the need to pay compensation to the murderer.

The lust for money appears to have motivated many men to accuse their mothers, wives or female relatives of dishonoring their families and killing them in order to extract compensation from the alleged *karos* who escape the killings. The desire to obtain land and status may also lie behind some fake honor killings. If a woman owns land; her brother may kill her to get the land, but even poor families imitate this pattern though there is no property to grab, it is done simply to attain equality within their tribes.

Some men who are not able to repay their loans, some men will kill a woman in their own family to implicate someone in the debtor's family and to ensure the loan would be canceled as compensation. In 1997, there was an article in a magazine, in which a tribesman killed his mother and labeled the local bank manager as *karo*. A *jirga* directed the supposed *karo* to pay a large sum of money to avoid his own killing and to compensate the aggrieved man for the loss of his mother.

The notion of the defilement of the male honor has extended over time to include not only sexual misdemeanor, but also other acts of male control. Expressing a desire to choose a marriage partner or actually contracting a marriage with a partner of one's choice are major acts of defiance towards parents. Marriage arrangements are delicate and are seen to involve serious balancing acts; any disturbance of this balance by a woman refusing a father's choice is considered to affect the father's standing in society.

*Watta-Satta* marriages, in which siblings are married to siblings of another family, put an additional burden on women to abide by parental marriage arrangements and neither refuses divorce. All marriage arrangements are understood to be about balance, involving the transfer of women for an appropriate bride price; in *Watta-Satta* marriages, the balance additionally involves the exchange of siblings. The two couples so linked must remain perfectly balanced for the sake of the honor of the parents responsible for the arrangement (<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>). If a woman is seeking a divorce, and sends a strong signal of public defiance, punitive action is taken against the woman to restore male honor. Several women who have brought divorce through the courts have been injured, killed, or never heard from again.

A woman subjected to rape brings shame on her family just as she would when engaging in a consensual sexual relationship. According to Shah, "A woman raped shames the community and dishonors the man" (Shah 56). Statutory law under the *Zina Ordinance* does not strictly differentiate between rape and fornication either,

in fact, if a raped woman cannot prove that she did not consent to intercourse, she is considered to have committed *zina*, which attracts severe punishments, yet does not dishonor the rapist (Shah 56).

In March of 1999, a 16 year-old mentally retarded girl, was reportedly raped by a junior clerk of the local government of agriculture who took her to a hotel in Parachinar, N.W.F.P. The girl's uncle filed a report about the incident with the police, who apprehended the accused, but handed over the girl to her tribe in the Kurram Agency, a tribal area which has its own legal and judicial system under provisions of the Constitution of Pakistan (<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>).

A *jirga* Pashtun tribesman decided that she had brought shame to her tribe and that its honor could only be restored by her death. She was shot in front of a tribal gathering. The police reportedly detained the rapist for "his own protection," when the tribesmen demanded that he also be handed over to them, so they could execute him in accordance with tribal traditions.

Girls and women who are being targeted for killing because of an alleged breach of customary norms of honor have great difficulty finding refuge. Women are unfamiliar with the public domain seeking help outside the family when fraught with danger for their women. There are few safe havens for them. Not only does society blame a woman for being targeted for murder, the popular perception is she must somehow deserve it. By seeking outside help, she adds shame to her husband and family by making the issue public. No *kari* who escapes is ever forgiven, even if her

innocence is recognized; some men are known to have traveled hundreds of miles to find and kill *karis*, even years after the alleged misdeed.

One of the few places where a *kari* is safe is in the home of a tribal *sardar*, a *pir* (holy man), or a religious shrine; in these places women are safe, but they are expected to abide by social roles; hence they are not a refuge for girls and women who assert to seek their rights. While providing sanctuary, the shrine cannot give assistance in negotiating a deal; it is merely a place where a woman can rest till she returns to her family.

For women, there are few shelters and those safe places cannot cope with the demand. Once they are there the refuge does not assist women to learn a trade, or any type of education, which would help make the women more economically independent. Women spend their time in the shelter idly, in quasi detention, as they cannot leave except by authorization of the magistrate. Unable to escape forced marriages or violence, some women resort to suicide, driven to resort to the most extreme form of violence against them. In a great many cases, the mental and physical anguish has led to mental illness.

In the tribal regions a majority of women live in a world structured around strict religious, family and tribal customs that essentially force them to live in “*Char Divari*,” submission and overall fear. Due to these cultural and tribal norms discrimination and violence occur on a daily basis. Since the tribal areas are in a hilly, remote location and local women are not educated adequately, mainly because of the non-availability of educational facilities but also the tribal customs do not allow women to travel to urban areas or outside the village. Most women are unable to get

an education past the 5<sup>th</sup> grade with 85% of the female population in the Kyber Kahtunkhwa regions are illiterate.

(<http://www.womenofthemountains.org/files/pdf/Agenda%20for%20web.pdf>).

In early marriages, it is the girl, who faces loss and problems, including denial of education once she is married; girls tend not to go to school. Health problems include premature pregnancies, which cause higher rates of maternal and infant mortality. A child bride can face greater health risks and experiences real physical violation and trauma as their young bodies are forced to deal with early sexual activity and the strains and pains of pregnancy and childbirth. According to a doctor, in the region, one of the more damaging results of early childbearing is vaginal and recto-vaginal fistulas and bleeding

(<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%2007-03-19>).

This complication, due to prolonged obstructed birth, leads to loss of full control of urinary, or rectal function. Given their lack of access to health care.

This complication, due to prolonged obstructed birth, leads to loss of full control of urinary and/or rectal function. Given their lack of access to health care in the tribal areas, most girls with this condition are unlikely to receive proper treatment. Teenage girls are also more vulnerable to sexually transmitted infections, including HIV/AIDS, as many are unable to negotiate for protected sex. Further compounding, their vulnerable position is lack of knowledge of contraceptive methods and lack of access to reproductive health information and services. Abuse is also common in such child marriages.

In some areas and tribes, the fate of a girl is decided in a cruel custom called “*Pait Lekhai*” (pledging the fetus), which is very painful for a mother (<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%2007-03-19>).

When a girl is born to the young mother, there is more cruelty, because normally the girl is then married to an older man. Bigamy or second marriage is popular in some parts of the Kyber Pahtunkhwa. Second marriages may be popular because greedy people think that the new bride will bring an adequate dowry or wealth. In case of a second marriage by the husband, the woman faces difficulties. For instance, a husband does not take the responsibility for the children or pay their expenses. The Family Law in Pakistan specifically states that a man must get permission from the first wife, but in the tribal area, they are not asked when men go for a second marriage.

Islam allows divorce; however, it is not sought readily. It is much easier for a man to divorce his wife than a woman to initiate divorce proceedings against her husband. Islam does give women rights, which is called *khula*. A woman who is not happy with (the behavior) of her husband has the right to ask for a divorce. But, attaining *khula*, she has to go to court and ask for it, and the procedure is quite lengthy.

According to the women in the area the situation is quite miserable, 90% of these women are not allowed by their men to wear shoes, so that they keep looking down at their feet so they do not trip or injure themselves. (<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%2007-03-19>).

Although it is the responsibility of a woman to fetch water from various locations and

take cattle for grazing, some areas are treacherous as far as terrain and without shoes foot problems are rampant. Yet, even if a goat has died, the skin of the goat is not given to them except for one pair of shoes per year. Women are not allowed to wash their clothes for three months

(<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%2007-03-19>).

In his book Socio-Economic, Political and Gender Situation of Tribal Areas, Rana Riaz Saeed, describes several interviews with the local people. They told him of several reasons, which cause quarreling and the beating of women. The elder women said that women make more mistakes upon arriving home by quarrelling with their husbands, whereas men just quarrel to show masculinity. Women do not spend according to their men's income. Because of the low income, family needs are not met and there are problems with not having enough food for the entire family to eat, so women give their husbands a hard time. A wife stated that her husband does not give expenses and asks everything, but when she demands expenses, he beats her. Whenever a man is not employed there are always quarrels. Some people get their sons to marry women with wealth so they (the parents) are taken care of. These men spend their wives' income without any regard for the women who produced the income.

Some women of the area view believe that most of the domestic quarrels are initiated because of mothers-in-law and sisters-in-law, which can trigger violence against the wife. Mothers-in-laws provoke their sons who turn around and they beat their wives. Mothers-in-laws complain that the wife has failed to bear a child after 4-5 years of marriage, the mother and sisters-in-law use physical abuse on the husband

and the wife, so eventually if there were no children she can remarry her son to another woman. Many mothers-in-law who do not like their daughters-in-law tell their sons not to sleep with their wives.

Here is an illustration of this type of abuse from a quote given by a man in the area:

“If a man does wrong, the woman does not have rights to stop it. However, if woman goes against her husband’s decisions then she gets the punishment that may be divorce. The women suffer violence though she serves the men at her best, and if she refuses to go—she is murdered”. It is a Baloch custom to custom to keep woman under dire stress. We give food to women and keep them at home with honor, whereas the man is made to work outside, earn money (<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%2007-03-1>).

A woman stated: “In our society whether or not men fulfill their home requirements for food be given to his wife and children, although men love to buy weapons, and women cannot say anything.”

Many women say, “that they don’t even get even clothes and money from their husbands. Our husbands go outside for earnings or work and do not send money for domestic expenses.”

*Vani* or *swara* is practiced in many tribal communities of Pakistan. About 30% know of this practice and custom. Normally it is followed because of *karo kari*. Parents of unmarried girls may spoil the life of their sisters and daughters by selling them under this custom. The reasoning is to give a woman as penance in *vani*, because if they don’t the rivalry would increase so it is better to compromise through custom.

The people in the tribal areas report another custom, which is prevalent, *Aar* and *Aas* (fire walk). According to a report, this custom forces the accused to walk across a burning fire barefoot in order to prove their innocence. A seven-foot deep trench is excavated and while reading some verses, the accuser performs ablution

then she/he walks barefoot through the fire. Upon receiving signs of a vesicle on the skin, the accused is considered a sinner; otherwise the accuser has to pay the penalty, which could be the hand of a young girl

(<http://www.womenofthemountains.org/files/Microsoft%20Word%20-%202007-03-19>).

These practices neither go to court, nor have a judge, everything must be sorted out in the tribal area. A man explained that a witness is needed to prove *karo kari* act, he considers this an outrageous practice and believes men are not aware of the Islamic rules and regulations; otherwise they perhaps would not practice *vani* or *karo kari*. He claims, “It is wrong by virtue of the Shari’a law. People and government have to abolish this practice. The Islamic scholars can only abolish it and one like me cannot convince a tribe to abolish these customs alone. The whole society needs to change.

Over the past few years, a noticeable debate has emerged in Pakistan calling for the practice of “honor” killing to be made a crime under the law and for it to be punished as murder. These debates have been welcomed by Amnesty International who has for many years called for such incidents to be treated as crimes under the national law. Ex President Musharraf himself has been quoted as saying that “it is totally illegal” and that “we must deal with the culprits of honor killing most harshly” (AFP News Wire. 02/10/04). In 2002, the governor of Sindh issued a draft bill to curb the practice of “honor” killings. In the same year a resolution to condemn and demand legislative action were also introduced both in the National and Sindh Assemblies. A bill put forward by the *Pakistan People’s Party (PPP)* called the *Elimination of Gender Discrimination and the Protection and Empowerment of*

*Women Bill 2004*, addresses “honor” killings and also call for the repeal of the Hudood Ordinances. However, none of these initiatives have led to new legal procedures against “honor” killings. □□

Sadly five years after Amnesty International issued a report on “honor” crimes a statement quoted in it by human rights activist, *Hina Jilani’s* still rings “the right to life of women in Pakistan is conditional on obeying social norms and traditions.”

The ability of individuals to bypass the law without any fear of repercussions has also perpetuated in these customary practices. While the formal laws in Pakistan do not condone these practices, the courts do little to address them, allowing informal justice systems to implement a law of their own. There are national laws such as the Marriage Restraint Act of 1929 and the Pakistan Penal Code (articles 310 & 338E) that prohibit the sale and marriage of underage girls. However, these customary practices are difficult to prevent unless laws are introduced that explicitly outlaw these practices of *vani* and *swara* and are rigorously implemented and with those breaching the law are dealt with severely.

In 2002, the Chief Justice of Pakistan declared *vani* and *swara* (woman given in compensation) as un-Islamic and expressed concern over the number of rising cases. The Chief Justices of high courts were all given instructions to ensure that trial courts do not allow for a woman to be given as compensation.

According to a press report, the Law and Justice Commission stated in March 2004 that all individuals who contract a marriage by *vani* and *swara* through a *jirga* or *Punchayat* should be liable to receive rigorous imprisonment. The Commission also came out with a draft to Article 366-C of the Pakistan Penal Code, which states:

“Whosoever takes part in reconciliation or *Punchayat* and thereby requires any person to offer or accept, and whosoever offers and accepts in marriage of a woman (defined as having reached the age of 16) against her free will, or a female child in lieu of any concession to an accused person, or as a compensation for an act when such an act is an offense under the law, or as a “*Badi-i-Sulh*” shall be punished with imprisonment of either description for term which may be extended to ten years and shall be liable to a fine” (<http://www.islamawareness.net/HonourKilling/pakistan.html>).

At this time this amendment has not yet been passed by the parliament.

In 2005, the practice of giving females in *badai-i-sulah* (as an exchange of peace) was declared a penal offense. Section 310A of the Pakistani Penal Code, states; the offense is punishable up to ten years imprisonment, and not less than three years. Although there is an independent law, it does not denote any type of enforcement by the police or the courts. With inadequate and improper investigations, abusive medical exams, and the lack of forensic knowledge, women after the age of puberty, which could be as early as ten or eleven, are just as terrified to report such abuse, as they are afraid of the system itself.

These old traditions and customs have become the bane of women’s existence. Unless the government implements laws that are compulsory, than the entire system will remain status quo. Consequently, the Pakistani women will continue to trudge wearily along the road of life with the ongoing mistreatment.

## CHAPTER 6

### ANALYSIS OF HUDOOD AND ZINA LAWS

What are the political and social contexts of *Zina Laws*? To begin, Pakistan was created through a division of British Colonial India into the nations states of India and Pakistan. A key proponent for mandating the creation of Pakistan was Mohammad Ali Jinnah as one of the main organizers for the new country of Pakistan declared the country to be secularist. The basis of the demand was for the county to have a two-nation theory, Hindu and Muslim. Pakistani politicians tried to advance their own agendas had used this inconsistency frequently to advance their own agendas. In actuality, they used the rhetoric of religion for there own benefit.

In 1979, under General Zia ul Haq's martial law initiated the process of which helped him to secure his legitimacy. During this time General Haq, also instituted the Hudood Ordinances, which include the Zina Laws.

The Zina Laws are included in the Hudood Ordinances, which seek to define and reinforce the belief of 'pure and chaste Pakistani woman'. The realism of these laws are quite different in a society where police corruption and violence go unpunished, male violence against women has no legal sanction, and the majority of the population is impoverished. The legal system is so inundated that often-incarcerated individuals waiting for trial are held longer than the sentence they would have received if convicted. These laws are subject to widespread misuse and 95% of the women accused of *zina*, are found innocent, and released.

The method and marital status of the accused, the witness, and the evidence on which the conviction rests is crucial to two types of punishment under Zina Laws, *Hadd and Tazir*.

To explain briefly, *Hadd* in the case of fornication and adultery:

1. If the accused either male or female is a Muslim:
  2. Confesses or
    - a. There are four adult, “pious” male Muslim witnesses to the act of penetration, although four female witnesses testimony will not suffice for *Hadd* punishment.
    - b. The accused is married, and then the accused must be sentenced to death by stoning.
3. If the accused is a non-Muslim or unmarried and
  - a. Confesses or
  - b. The crime is witnessed as described above; the accused must be sentenced to 100 lashes with a whip (<http://www.hrw.org>).

The maximum *Hadd* punishment for fornication, adultery, or rape is identical. Although, *Hadd* punishments have been imposed, none have been enacted. Yet, there are those especially in the tribal regions who do take the law into their own hands and enforce these laws, especially in the Tribal regions.

The structure of the laws and the nature of the evidence required establishing guilt made the lesser punishment of *Tazir* more plausible. If one is convicted of one of these crimes and convicted, *Hadd*, or the maximum sentence is mandatory. If the evidence falls short of what is required for maximum punishment, and the case is

proven, then the accused is charged under a lesser group of punishments, which are identified as *Tazir*. Unlike in the case of *Hadd*, women may testify on their own behalf, if the judge allows it.

Punishment for rape is up to twenty-five years in prison and thirty lashes, although the amount of punishment is left to the discretion of the judge. Penalties for adultery or fornication are up to ten years in prison, thirty lashes with a whip, and a fine of an indeterminate amount. There is no distinction between a married or unmarried wrongdoer. Still when there is insufficient evidence to impose *hadd* punishment, there can be a conviction under *tazir*. This happens when women are unable to prove rape under *hadd* or even *tazir*, they can be charged with illicit sex under the law of *tazir* (<http://www.hrw.org>).

The Human Rights Commission of Pakistan that *tazir* punishments or public whippings occur frequently. The Commission argues that prior penal laws, even though they gave a secondary status to women, protected them somewhat. Until then a husband could file a charge of adultery against his wife, and he could revoke it any time. With the Hudood Laws, rape is subsumed under the category of *zina*, so that if coercions cannot be proved, the victim becomes an offender who has enjoyed illicit sexual activity. Now the victim has no right to testify on her own behalf.

As a result of these tactics, instead of protecting Muslim women from violence and rape, the Pakistani *zina* laws actually punish women for reporting crimes against themselves and their families. These laws have shown to be counterproductive over the years, having resulted in an a distressing increase in rapes, knowing in

Muslim societies, acts that involve rape do not only impact the individual woman, but her family as well.

The Hudood Ordinances influence the repression of women's rights in Pakistan. Since the early 1980s these ordinances are the major reasons why women are detained or jailed, and why their complaints of police misconduct go unanswered. The Hudood Ordinances are Islamic penal laws and apply to all Pakistanis, Muslims, and non-Muslims alike. And consist of five sections: the *Offense of Zina* (adultery, fornication and rape); the *Offense of Qazf* (perjury or defamation about fornication or adultery); the Prohibition (of Alcohol) Order; the *Execution of the Punishment of Whipping*; and the *Offenses against Property Ordinance* (<http://www.hrea.org>).

One of the most important changes brought about by the adoption of the Hudood Laws, which has a profound impact on the rights of women, is that for the first time in Pakistan's history, fornication (extra marital sex) is illegal and along with adultery, is non-compoundable. And is one, which, the police or government may continue to investigate and prosecute even if the original complaint withdraws his or her statement implicating the accused. This charge can result in no bail and be punishable by death.

Once convicted of adultery, fornication, or rape a person can be sentenced in one of two ways, depending on the religion and marital status of the defendant, the witnesses, and the evidence on which, the conviction rests. The maximum sentence is known as hadd, the singular of Hudood. It is a mandatory sentence that a judge may not mitigate. In the case of fornication and adultery, if the accused is a Muslim and (a) confesses or (b) there are two pious adult male Muslim witnesses to the act of

penetration, then the accused must be sentenced to death by stoning (<http://www.hrea.org>).

On the other hand, if the accused is a non-Muslim and (a) confesses or (b) the crime is witnessed as described above, the accused must be sentenced to 100 lashes with a whip ([www.hrea.org](http://www.hrea.org)). Sentences vary according to the marital status of the accused: married offenders are to be stoned, while unmarried offenders (including widows, divorced women, and prostitutes) are subject to 100 lashes (<http://www.hrea.org>).

If the evidence falls short of what is required for maximum punishment, but the case is still proven, then the accused is sentenced to a lesser class of punishment known as tazir (<http://www.hrw.org>).

Evidence for tazir punishment is governed by the standard evidence code (*Qanun-e-Shahadat*), which was introduced in 1984 by General Haq. The evidence code states that: “or on, the testimony of one man or one woman” “unless otherwise provided in any law relating to the enforcement of *Hudood*...in matters pertaining to financial or future obligations the instruments shall be attested to by two men, or by one man and two women and all in all other matters, the court may accept, the use of word ‘may’. However, the second part of the law provides for the admissibility of the testimony of women, but does not guarantee that such testimony will be admitted or given equal weight with that of a man” (<http://www.hrw.org>).

In practice, at the lesser tazir level the courts continue to exhibit a bias against female testimony. The courts tend to see women as complicit in sex crimes, notwithstanding a lack of evidence to the contrary. Courts extend the benefit of the

doubt to men accused of rape; they set standards of proof for female rape victims that require extraordinarily conclusive proof that the alleged intercourse was coerced. Moreover, when women are unable to prove rape themselves charged with illicit sex, and that the courts set a lesser burden of proof for the prosecution and fail to extend to female defendants the same benefit of the doubt that is commonly granted to male defendants.

The tazir punishment for adultery or fornication is up to 10 years in prison, 30 lashes with a whip, and a fine of indeterminate amount. The punishment for rape is up to 25 years in prison, and 30 lashes. For the purposes of tazir, no distinction is made between a married and unmarried offender (<http://www.hrw.org>).

It is important to state that insufficient evidence to impose a *hadd* punishment does not eliminate criminal liability. The accused may still be convicted for *tazir*. Most *tazir* convictions result in a sentence of public punishment of whipping, which constitute cruel and inhumane punishment.

The Punishment of Whipping Ordinance provides that women be seated while being lashed, while male individuals must stand during this punishment. Whippings handed down during pregnancy are postponed until either miscarriage or two months after delivery (<http://www.hrea.org>).

The Zina Ordinance discriminate against women and have resulted in a sharp increase in the number of women prisoners, many of whom are innocent of the charges under which they are detained. The steep rise in the number of women prisoners has in turn increased the opportunity for police misconduct toward women. Subsequently, *Zina Laws* have deterred women from reporting these abuses.

The Hudood Ordinances apply to all citizens of Pakistan. However, evidence shows that both in law and in practice the Hudood Laws weigh most heavily on women. First, in determining maximum punishment, the law clearly discriminates against the testimony of women by disallowing it altogether. This means that women who have been sentenced to these punishments have also not been allowed to testify on their own behalf. Men in general accused of rape are effectively exempted from maximum *Hadd* punishment because women victims cannot testify and because it is extremely unlikely that there would have been four male Muslim witnesses to the act of penetration.

The outcome is that the majority of Hudood cases involving *zina or zina-bil-jabr* are heard at the *tazir* or lesser level of punishment (<http://www.hrp.org>). While the testimony of women is admissible at this level, the courts continue to exhibit a bias against women victims and defendants, and their testimony is not accorded equal weight with that of men. This bias has three main results: (a) women find it extremely difficult to prove rape, and if they cannot prove rape, they are themselves vulnerable to prosecution for fornication or adultery; (b) men accused of rape often receive unfairly reduced charges; and (c) women are often wrongfully prosecuted for Hudood offenses and provided with limited protection from such ill founded accusations ([www.crescentlife.com](http://www.crescentlife.com)). It is under these laws that the majority of women in Pakistan are detained, and thus exposed to even more abuse by police authorities (<http://www.hrw.org>).

Even with medical evidence that would normally prove rape, the courts are inconsistent in their judgment towards women. Judges seem to require that women

should resist by fending off a male who weighs twice her weight, by withstanding the force of this physical aggression by standing firm in their intent not to submit.

Many times injury can work against female complaints due to courts believing that many times these incidents are consensual. Other offenses were added to the capital crimes. General Haq gathered crowds to witness hangings in public squares. And the police, with aid from the judiciary also contributed to the problem. The lack of training of medical doctors and personnel, who have inadequate equipment facilities and the lack of compassion toward victims, is appalling. Although the above statement is vile that fathers would bring charges of *zina* against their daughters who have married partners of their choice is abhorrent.

A woman subjected to rape brings shame on her family just as she would when engaging in a consensual sexual relationship. According to Nafisa Shah, “A woman raped shames the community and dishonors the man” (56). Statutory Law under the *Zina Ordinance* does not strictly differentiate between rape and fornication either, in fact, if a raped woman cannot prove that she did not consent to intercourse, she is considered to have committed *zina*, which attracts severe punishments, yet does not dishonor the rapist (Rana).

Under the *Muslim Family Law*, women have unequal rights to inheritance, termination of marriage, minimum age of marriage, and natural guardianship of children; polygamy has not been banned or sufficiently restricted by law; and there are grossly inadequate provisions for women’s financial security after termination of a marriage. Women have unequal rights under citizenship laws, in which citizenship through descent is guaranteed only through a father, and which give the foreign wife

of a Pakistani man the right to acquire citizenship, with no corresponding right for the foreign husband of a Pakistani woman (Rana).

The Hudood Ordinances promulgated in 1979 equated rape with adultery. In the case of maximum punishment, a woman's testimony was admitted to prove rape or adultery. Instead the evidence of four Muslim males of good reputation was required in such cases. This also created a situation where women could be charged for adultery if they reported rape, but could not prove it. The Law of Evidence promulgated in 1984 denigrated women by reducing the value of testimony of two women equal to one man in financial transactions (<http://www.wrp.org>).

*The Law of Evidence, Qisas and Diyat*, institutionalize the compensation for blood money for crimes including murder and bodily harm. According to this law, a women's value would be considered equal to half of that of a man (<http://www.wrp.org>).

Due to their dependent socioeconomic status, the suffering women endure, as litigants are enormous. Very often they lack the financial means to enter into litigation. Complicated legal procedures compounded by gender biases of judiciary and law enforcing agencies, delays, high cost of court fees and corruption of the judiciary make it extremely difficult for women to enter into litigation to pursue justice for themselves.

Even more disturbing is the fact that medical evidence provides little assistance to the victim, which becomes another humiliation. Lawyers are no better. Judges get intimidated and cannot control questioning. The competence of the attorneys is very low. And when questioning the medical doctor, his report is formal

and cursory. According to Hina Jilani, a leading human rights and criminal lawyer, “generally it is devoid of any attempt to grapple with issues raised by the report, is very brief and has minimal impact on the judge’s understanding and consideration of the medical evidence” (<http://www.hrp.org>).

The government must make funds available to provide aid, or finance non-governmental agencies to provide the medical, legal aid, and shelters for these women who are victims of violence. It is incumbent upon the Pakistani authorities, under its own constitution, and that of international law to take mandatory steps to try to eradicate gender discrimination against women.

## CHAPTER 7

### PAKISTAN'S MILITARY REGIMES EFFECT ON PAKISTANI WOMEN

In the last sixty years Pakistan has produced four military regimes. Consequently, the preparation for the first constitution required 8 years to create and formulate. In 1947 the First Constituent Assembly was established under the Indian Independence Act. Essentially this was sovereign law making group, which had the power to frame a constitution for the country pending a new constitution. In the interim, Pakistan was governed under the Government of India Act of 1935.

In 1949, the Constituent Assembly passed the Objectives Resolution. This Resolution was incorporated into three preambles of the constitution. The Objectives Resolution stated: “the principles of democracy, freedom, equality, tolerance and social justice enunciated by Islam” (Iqbal 170). Ultimately the Objective Resolutions remained central to the constitution throughout its many revisions.

The constitutional process had many difficulties. In 1953, the Governor General dismissed the elected prime minister and his government. When the constitution was prepared in 1954, the Governor General dismissed the Constituent Assembly. As a result, a writ petition from the Sind High Court (the chief court) ruled the act of the Governor General was illegal and without authority. The Supreme Court (the federal court) challenged this decision, which validated the dismissal of the Constituent Assembly.

The new Constituent Assembly developed the new draft of the constitution in

1956. The 1956 Constitution provided a political system based on a federal structure of Islamic ideology. It incorporated a list of fundamental rights, designated the Directive Principles of Policy with an independent judiciary and Islamic provisions were listed separately.

However, this constitution was short lived. In 1958, the President of Pakistan abrogated it, dissolved the National and Provincial assemblies and levied martial law. Fundamental rights were taken away and the courts were divested of any knowledge of these undertakings. The Supreme Court legitimized this action by the president and Ayub Khan, the Commander in Chief of the Army. Khan then imposed martial law and deposed the president (Iqbal 148).

The military regime of Ayub Khan adopted a second constitution in 1962. This constitution was based on a presidential form of government. It recognized the fundamental rights of its citizens. Although for the process of the Islamization of the law, two institutions were established, the Advisory Council of Islamic Ideology and the Islamic Research Institute.

The basic Principles of Policy embraced the philosophy of fair treatment of minorities, a better of standard of living for those in the lower social and economic strata. All this was to be achieved by a sense of justice in regulations and those in need given the bare necessities.

The 1962 Constitution endured until 1969, when Ayub Khan abdicated his power to another military regime. This regime also imposed martial law and the legality of this new administration was probed by a constitutional petition, and was declared illegal. General elections were held in 1970 and the National Assembly was elected

on the foundation of those in power. In 1971, soon after this election, serious political differences arose. East Pakistan seceded from West Pakistan and emerged as the independent country of Bangladesh.

An interim constitution was adopted in 1972. However, by 1973, the third constitution was passed by the National Assembly, which now included a parliamentary form of government and an independent judiciary (Iqbal 148-149).

It is now 1977, and political differences between parties initiated a *coup d'etat* by Army Chief General Zia ul Haq and the removal of Prime Minister Zulfikar Ali Bhutto. The Supreme Court upheld this decision, allowing for numerous new amendments to be added to the Constitution of 1973. Especially Article 8, which comprised the list of fundamental rights (Iqbal 150).

The Objectives Resolution became a substantive part of the constitution, granting the president a discretionary power to dissolve the National Assembly and establish a Federal Shariat Court (FSC). Haq then unveiled an immense Islamization of Laws Program in 1987. Haq then dismissed the government that was elected in 1985.

The Constitution of Pakistan refers to Islam for procedures on Islamic concepts of social justice. Although what are the principles of Islamic social justice? All previous constitutions do not define this theory. What are relevant in the injunctions and commentaries of the Qur'an, it confers that justice is a divine command:

and

“ Allah commands justice, doing of good” (THQ An Nahl 16:90).

or “We sent aforetime Qur'an messengers with clear Signs and sent down

with them the Book and the Balance (of Right and Wrong) that men may stand forth in justice” (THQ al Hadid 57:25).

The Qur’an also refers to justice as trust (amanah).

and “Allah does command you to render back your trusts to whom they are due; and when you judge between man and man, that you judge with justice” (THQ al Nisa 4:58) (Iqbal 190).

These statements were created to address the audience of community leaders, accordingly, so they would become a symbol of well intentioned and objective administrators while governing. The realization of social justice necessitates a government and institutional framework, which is illustrated by the Muslim community through *itihad*,, and assigning the germane rules of Islamic law.

The government of a Muslim state may devise and enact at its discretion any suitable policies in different realms, ranging from domestic: foreign, fiscal, constitutional, administrative and judicial, so they do not conflict with Shari’a Law. Shari’a policy extends to all government policies, which are in the public interest and intend to prevent harm. *Maslahah* mean harmony, which is the objective of Islamic law.

Social justice, referred to in the Pakistani Constitution, is recognized as a basic concept of Islamic law. Since the implementation of Islamic law, there have been challenges to the succeeding governments of Pakistan. With spread Islamization, which was supported by General Haq’s government, post Haq administrations have also taken legislative measures to the application of Islam’s ideals.

Therefore, is Pakistan practicing good governance relating to gender equality? Despite all the political wrangling since Pakistan's early beginnings, how have these Islamic laws affected the women of Pakistan? Specifically those laws invoked by General Haq from 1977-1988?

Since the first constitution, promulgated in 1956, which also included a provision called the Repugnancy Clause. This clause reaffirms that no law repugnant to the injunctions of Islam would be enacted and that all existing laws would be considered and amended to be in sync with the rulings of Islam.

The Pakistani legal system is based on both English Common Law and Islamic Law. The majority of Pakistani law is still Anglo-Indian (Muir 452). Pakistan's Constitution can be thorny and problematic, since it extends to a litany of fundamental rights issues, positioning Pakistan in tune with some Western minded systems, while simultaneously the country is not committed to separate church and state. Although, Pakistan is constitutionally designed to integrate the secular and the religious, it protects the ideal of fundamental rights, it also elevates Islamic law, laws that usually are linked to the loss of civil liberties.

Therefore, how can a legal system be able to function when its central document appears to be inherently flawed? How do judges execute conflicting mandates with impartiality and objectivity? Pakistan's legal system and particularly how these laws affect the status of women is well documented, and virtually all accounts stress the callousness in which their rights are violated.

They are represented by a legal system that allows them to be veiled, secluded, silenced, harassed, mutilated, forced into prostitution, beaten, raped, murdered and humiliated.

There is a tension between Islamic governance and the jurisprudence of the Pakistani Constitution. This conflict results from trying to harmonize the constitutional framework when defending women's rights. The relationship between Pakistan and Islamic law is inimitable. Subsequently, Pakistan was envisioned and established in the name of Islam, as a home for the Muslims of India. It was the first country in recent history to introduce the concept of a Islamic Republic.

From 1973 to present day, it is obvious that most features of the Pakistani Constitution is a conscientious commitment to Islamic law. Although, in 1985 the prevailing Islamic quality of the constitution was strengthened in a revolutionary step, in which Article 2-A was incorporated into the constitution to require all laws be consistent with the injunctions of Islam, as inscribed in the *Qur'an* and the *Sunnah*. Also, the establishment of special tribunals called the Shariat Courts (Federal Shariat Court, FSC) and its Appellate branch, the Shariat Appellate Bench of the Supreme Court (SAB).

It was not until a decade later that any interest in women's rights by the Pakistani government disclosed. Maintaining a status quo agenda toward women by the suggestion of implementing new laws or repealing corrupt, self serving and dissolute decrees with regulations that violate women's rights, never materialize by reason of one alibi or another.

In the next chapter, the Pakistani Constitutional framework will be discussed.

## **CHAPTER 8**

### **THE GOVERNMENT OF PAKISTAN'S INFLUENCE ON WOMEN**

The government of Pakistan is considered a constitutionally based parliamentary democracy since its independence in 1947, and Urdu is the official language. Pakistan's name in Urdu is Islam-i-Jamhuriya-e-Pakistan meaning, the Islamic Republic of Pakistan. The Pakistani Constitution states that the president is the head of state and the prime minister are the heads of the government. Both must be Muslim. There is a bilateral Parliament termed *Majlis-e-Shoora*, which consists of the senate, whose 100 members are indirectly elected by Provincial Assemblies for a 6 year term and the National Assembly. Sixty of the 342 members of the National Assembly must be women, and 10 must be minorities. All members serve a 5-year term (Kluwer 151).

The Supreme Court, Provincial High Courts and Federal Islamic, or Shari'a Court is the framework for the judicial system. The Supreme Court is Pakistan's highest court. The President appoints the chief justice, and they jointly determine the other judicial appointments. The Supreme Court if necessary, after the filing of a proper petition, determine whether a law or provision is repugnant to Islam based on the teachings of the *Qur'an*, *Sunnah*, and *Hadith*.

Contrary to the country's common law roots, both pre and post independence legislation has been codified and compiled into the Pakistani Code. Under the constitution, the government of Pakistan is compelled to bring all laws into

conformity with Islam. To accomplish this desired effect, many statutes based on Islamic injunctions have been enacted (Kluwer 151).

Every province is headed by a governor and provincial cabinet, who are appointed by the president. Kyber Pahtunkhwa and the FATA (Federally Administered Tribal Areas) are administered by the federal government and has been given an extensive autonomy, since the Constitution of 1973 was amended in 1985. And then was suspended in 1999, which is has now been reinstated (Kluwer 153).

There are political problems, which can cause an unstable and infective democratic establishment. The closed nature of Pakistan's elite, the armed forces, and security agencies, which have an excessive influence on the political development. Pakistan's national identity has reached a stalemate, in which the religious factor has played a central role. The religious and ethnic minorities express criticism of the concept of an Islamic state that reflect two predominate issues: its compatibility principles of democracy and the possible division of society into Muslim and non Muslim. The status of non-Muslim communities could be lower than that of Muslim societies and raises the question of who is a Pakistani citizen, are you first a Pakistani and then a Muslim, or vice versa?

The Shari'a Law provoked conflict, not just between the religious communities, but between representatives of different factions within the Muslim community. The Shi'a did not agree with what they saw as the Sunni nature of Islam, being put into effect. While the Sunni's saw the Shi'a's attitude as opposition to Islam and the Pakistani nation. The confrontations between 1990 and 1997, 580 people were killed and

1,600 injured in various conflicts (Kluwer 154).

This should bring to mind when discussing traditional Muslim law, that non-Muslims, if they are accomplices in a crime can also be judged under Islamic laws where the degree of punishment varies depending on one's religious affiliation.

When Pervez Musharraf, Army Chief of Staff at the time and Chairman of the Joint Chiefs of Staff committee made an attempt to revise the Islamization policy after the military coup of 1999, tried also to revise the Shari'a system of punishments introduced under General Haq for crimes related to theft, sexual relations, gambling and alcohol. Under General Haq cases related to violations of morality and decency were removed from civil court jurisdiction and placed under the umbrella of the Muslim courts.

The Musharraf government decided to repeal these laws. A bill on women's protection was drafted, abolishing Islamic punishments for women. With this bill, adultery ceased to be a matter for legal regulation, and rape was shifted from Shari'a Law to an ordinary criminal law, which completely changed the judicial procedures, which shifted responsibility for these crimes.

Among the new changes the victim no longer had to present four male witness (without them she could be accused herself of having an unlawful sexual relationship), which Shari'a Law punished by death (Iqbal 192-93). Now the number of witnesses would be defined by the ordinary procedural regulations.

The creators of this bill thought that the bill's limited nature would not raise any real objections or oppositions from the Islamist parties. Although,

after a debate in parliament showed the writers had overstepped their line.

The bill's authors were forced to agree to have it examined by a commission of Islamic Jurists. These theologians affirmed that traditional rules should have priority over criminal law and stipulated that rape should be dealt with using both Shari'a and criminal law. This bill was passed on December 1, 2006.

Confirming a denial of rights for women once again.

If one was to contrast the difference between Shari'a law and Constitutional law they would see how distinctly different they are. A.Q. Oudah Shaheed in his book, *Criminal Law of Islam, Volume 1*, tries to make the argument there is only one law and that is Shari'a Law. There is no need for any governmental, or institutional law. Shaheed's reason indicating it was man made. Where as Shari'a was established 1,300 years ago with a complete doctrine on how to live, work, and manage one's life, as it was given by God to the Prophet Muhammad.

Shaheed believes the principles of Islam that were presented during the time of the Prophet Muhammad only became accessible to the modern law as late the late 18<sup>th</sup> and beginning of the 19<sup>th</sup> centuries. In other words, Shari'a law preceded any modern law by eleven centuries. And these policies show no limit to its scope. While modern law and its application is limited. Mr. Shaheed says, "Two logical conditions are involved in the distinct aspect of Islamic Law:

- a) The provisions and rules contained therein must be universal and so flexible that they could be applicable to all the problems arising in every age, in every phase of social development and in the ever-changing conditions of society and could fulfill the multifarious social needs of the times.
- b) These provisions and rules must be so sublime and so highly developed that they never fall below the social standard at any time" (Shaheed 19).

However, with that said, Mr. Shaheed then asserts, “the Shari’a, which was revealed fourteen hundred years ago and is not amenable to change. Shari’a, is a masterpiece of divine creation and does not need any type of improvement.”(Shaheed 4).

Therefore, there has been a power conferred upon man to take responsibility to make accountable all laws of Shari’a, so the doctrine of equality is achieved. Yet, this equation of being equal between men and women has not progressed to the stage for women to claim their rights, not only as women, but as human beings. The Qur’an states, “And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree over them” (THQ, The Cow, al Baqara, 2:228).

Although the development of the Preamble of the Constitution of The Islamic Republic of Pakistan it is stated, “Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic, reason and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law an public morality.” “Wherein, the Muslim shall be enabled to order their lives in the individual and collective spheres in accordance with the teaching and requirements of Islam as set out in the Holy *Qur’an* and *Sunnah*; wherein adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures.” (Pakistan Constitution 1973 2). The Preamble continues to state, “ that it is dedicated to the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny” (Pakistan Constitution 1973 3).

The Preamble is a brief introduction attached to a statute relating the principles and guidelines by its authors. The Preamble is a key to

the ideas set in the Constitution (PC 1973 3).

The laws preserved in the Pakistani Constitution express three interconnecting parts where judges are the guardians of the constitution and are under legal and constitutional obligation to be vigilante in its execution. The Preamble of the Constitution of 1973, when read in Articles: 1,5, 8, 40, 227 and 231 would show that it contains an arrangement and procedure for Islamizing the laws and guiding principles and methods to be adopted into the Constitution. (PC 4 1973).

Subsequently, there requires a discussion of fundamental rights guaranteed by the Pakistani Constitution. Fundamental rights are natural rights, which are personal to the individual as a citizens of a free community and belong to every man, woman and child. These are basic rights of a human beings irrespective of their color, race, caste or creed.

The Constitution envisioned that the fundamental rights guaranteed a system of judicial review of legislative measures. It is stated, “Efficient and independent Judiciary can foster an appropriate, legal and judicial environment where there is peace and security in the society, safety of life, protection of property and guarantee of essential human rights and fundamental freedoms for all individuals and groups, irrespective of any distinction or discrimination on the basis of caste, creed, color, culture, gender or place of origin, etc.” (PC 11).

The First Constituent Assembly passed the Objectives Resolution, a section of the Preamble, in March 1949, under leadership of Liaquat Ali Khan. It was comprised of various objectives, which the future constitution was to be based upon, as stated by the

founder of the nation, Quaid-e-Azam Muhammad Jinnah in February 1948. And I quote, "The constitution of Pakistan will be democratic and based on the fundamental laws of Islam. Islam and its ideology have taught us the lesson of democracy."

The Objectives Resolution was a resolution adopted on March 12, 1949 by the Constituent Assembly of Pakistan. The Resolution, proposed by the Prime Minister, Liaquat Ali Khan, proclaimed that the future Constitution of Pakistan would not be modeled entirely on a European pattern, but on the ideology and democratic faith of Islam.

The Objectives Resolution is the framework, which stipulates how to achieve the goals and enhance life for the people of Pakistan. It comprises the essential beliefs of Islam, yet, allows for a reorganization of the government to pursue democratic values. The AIML or All-Indian Muslim League, to protect interest of Muslims, founded in 1906 (<http://www.publishhoursrticles.net/knowledge-hub/history/all-india-muslim>). They were contemporary Muslims who were not in favor of an orthodox religious state. Instead, they opted for an intermediate position, abiding by Islamic Laws and universal democratic customs. The Resolution remained in the Preamble of all the Constitutions by reason of its vital significance. It has remained as a predominant feature in all Pakistan's Constitution, not changing even with the Constitution of 1973, which has endured till present day.

Liaquat Ali Khan, who implemented the Objectives Resolution, when he visited New Orleans, he said in his speech, "We believe in God and his Supreme sovereignty because we believe that civic life must have an ethical content and a higher purpose. But democracy, social justice, equality of opportunity, and equality before the law of all

citizens irrespective of their race and creed are also aspects of faith with us” (Choudary 37).

The Objectives Resolution laid the emphasis on democracy, freedom, equality, tolerance and social justice, although these terms were qualified by saying that these principles should be discerned in the constitution as they had been inscribed by Islam (Choudary 37).

Although, the Objectives Resolution envisioned a positive and progressive country for its citizens. It is difficult to meet the requirements of a complex society under religious ideology. The citizens of Pakistan were to be guaranteed basic human rights, including equality of status, opportunity, freedom of thought, expression, faith, justice and freedom.

Islam like other religions is divine in philosophy and inexpressible as to interpretation, and how to determine its obligations to society. Those who advocate political and social change often have ulterior motives and their analysis of religious documents will not have the capacity to define accurately the significance, and veracity required.

One of the difficulties of a country that is based on a spiritual and devout path is for example, the Pakistani’s believe that the constitution of their country must reflect the ideals on which its people want to have as a baseline for their political life, and have decided for themselves the ideal of Islam is the main objective to be accomplished.

Subsequently, they have applied a narrow and restrictive interpretation of Islam, allowing for an idyllic version of Islam and repudiating the assessments

of those citizens who do not believe in practicing customs of the early days of Islam, when conditions were entirely different.

The principle laid down in the *Qur'an* is a code of ethics and morals to be applied and interpreted in harmony with the needs of the people. All Muslims trust in God and should adhere to the models of justice, morality and examples of the Prophet Muhammad (Choudary 53). What is not understood is that the purpose of these laws is not to maintain old customs, beliefs or rituals, but to reassure the economic and social progress of the country.

Since the emergence of the feminist movement of the 1960s, which has coincided with international human rights, in which women have benefited immensely, but their advancement has been hindered by the pervasiveness of governments and institutions that have kept women subordinate through the centuries. Many of the abuses that occur in Pakistan are a result of a combination of myths and misrepresentations perpetuated by men for the presumed benefit of men (Drinan 135).

The Principle of Equality, as contained in Article 25, of the Pakistani Constitution, in 1973 were protected with the 'golden rule' of Islam, which mandates every citizen, no matter who so ever he, must be accorded equal treatment with similarly situated person, which means that similarly situated people should be treated equally (2000 PC CS 874). Yes, you read this correctly, "For equality before the law in its most obvious sense means an equality of rights and duties. In this sense there is no equality, Pawnbrokers, moneylenders, landlords, infants and married women, and most other classes, have been given

special rights and duties. Therefore, the constitution has defined equality by stating it is impossible to affirm that equality even exists because any person can join any other class. Which makes no sense, can a man become a married women or an infant? (PC 222).

It appears to be an over simplification of the word equality. Therefore, the conception of equality before the law does not involve the idea of absolute equality among human beings without physical impossibility The protection of equal laws does not mean all laws are uniform. The fundamental right guarantees similar treatment, but not identical treatment.

Consequently, the impression exemplified by Article 25 of the Pakistani Constitution (1973) is analogous to Article 7 of the Universal Declaration of Human Rights which stipulates “that all persons are equal before the law and entitled without any discrimination to the equal protection of law.” (PC 223).

Article 25 prohibits distinction on the basis of sex alone. However, the very next clause (3) controls the rest of Article 25 by providing that “nothing in this Article shall prevent the state from enacting any special provision for the protection of women and children” (PC 223).

This rationale, which acts as a protective measure for and not against women and children is set as a distinction, which is a fine line between discrimination. Especially based on prohibition of any sexual or moral controversies. So this becomes unpredictable in the interpretation of what is abuse of discretionary decision or blatant discrimination. Laws enacted on the basis of gender is not equal, rather there is no universal application of said law.

Labor laws have so far ignored more than 70% of the rural population. It consists of the poor, self-employed and the small peasant farmer. Especially women who are living a life of poverty, and social injustice.

The social problems of Pakistan are deep rooted. They stem from old patriarchal traditions and customs, which are difficult to change. Social indicators of literacy and health are one of the lowest in the world. Women, who form half the nation's population have regressed to 34% of the female population in urban areas are educated. While 21% of females are schooled in rural areas. These traditions and customs dominate women's lives and have deprived them of so many different freedoms. (Rehmattulah 177).

While Pakistani society has a feudal society, it has been dominated by powerful landowners and bureaucrats, the people have been helpless in their requests to make a more modern Pakistan. This backwardness has impeded the growth of a country, especially for its women (Rehmattualah 178).

Training programs are not addressed or social welfare, and education is impeded by the regressive attitudes of a patriarchal society. With its outdated cultural and social environment.

As a result social welfare and social policy are a national ideology, which is clearly defined in the *Qur'an* and *Sunnah*. The laws and governing approach relate to man's conduct to man, as well as women. The United Nations and other Human Right Institutions recognize Islamic values and injunctions affecting social welfare in the lifestyle of the people, particularly women. Although none of these concepts are translated into public policy with the development of new

and progressive programs.

These social policies cannot be changed in the future with segregation between men and women. One would contemplate through all the political upheavals and dogmas following the 1955 Constitution, that change would be the option of choice. Consistent with tradition and obsolete ideas, the constitutional change of 1962 continued to retain a planning and coordination role in advancing social welfare for women.

As early as 1954, the United Nations advisers had recommended a Ministry of Social Welfare, which would comprise three high power boards: the National Social Welfare Board, the Housing Board and the Division of Labor. All would operate under the umbrella of Social Welfare Board.

The foresight for this project was to establish a well coordinated and integrated administrative structure, which would ensure the participation of the Pakistani people. Thus, the populace would have a relationship with governmental departments, which were there to help and aid in their difficulties. Although, future developments did not allow these ideas to materialize, much to the chagrin of those who introduced these strategies.

Begum Raana Liaquat Ali Khan in who was linked with The All-Pakistan Women's Association (APWA) as early as 1949 promoted establishment of health education and relief services for women. As a result, sixty two schools and maternity and child health centers were started. It extended its activities to human rights status of women, and training. The APWA began cottage industry programs for providing income and generating skills for marketing products, which women produced. They held

conferences, meetings, and seminars highlighting women's issues and how to resolve them. On September 7, 1956, APWA's governing body determined 'full fledged' Ministry of Social Welfare should be initiated in the central government as soon as possible (Rehmatullah 319).

When the first Pakistani Constitution was promulgated, it contained a provision 'that within one year of declaration of the constitution, a commission would be set up to look into the laws of the country, with a view to bring them into conformity with Islam and its express precise dogmas.' This did not transpire, the agitation lead by the AWP, mandated immediate action to entreaty this clause (Rehmatullah 319).

Consequently, a commission was created which carried on deliberations, and distributed questionnaires to sections of the population to elicit their views on "Muslim marriage contract, (*nikah*) child marriage, divorce (*talaq*), registration of marriage and divorce, polygamy, (*mehr*) alimony, maintenance of wife and children, etc." (Rehmatullah 320). After one year, the commission announced its findings in a report dated June, 11, 1956. The outcome of this information shaped the document known as the Muslim Family Laws Ordinance of 1961.

The APWA report, 1962-64 was not pleased with these conclusions. Although, they believed it was going in the right direction, by restricting polygamy, divorce and provided minimum age for marriage, between the ages of 16-18. This was the impetus for the feminist movement in Pakistan to agitate for the equal status of women and legal rights and many other discriminatory practices that have kept women

in the Dark Ages for so long (Rehmatullah 320). While Article 34 in the Pakistani Constitution asserts that steps shall be taken to ensure full participation of women in all spheres of national life (PC Art.34).

Subsequently, in January, 1976, the Prime Minister, Yahya Bakhtiar, with the help of women lawyers and the Women's Rights Committee emanated a report on various recommendations affecting women. The Women's Rights Committee claimed that even though the Constitution gave equal rights to women, there was the lack of any visible resources (Rehmatullah 338).

The Women's Rights Committee expressed women still suffer from the accumulation of centuries of bias, and discrimination. They made comprehensive recommendations on all issues which affect women such as, equal pay, education, women's centers, and help with the destitute women and minority groups.

When there was finally an expansion for women's development the progress came to a standstill in 1977. At this time, Zulfikar Ali Bhutto, who was succeeded by General Haq, in which, he imposed martial law. Haq immediately 'Islamized' the laws pertaining to women. (Rehmatullah 339).

What is regrettable, not only were women's issues put on the back burner, women once again had to endure dogmatic laws which would affect them adversely. The hard work done by the Women's Right's Committee was forgotten and not published until after Haq's death in 1989.

In 1983 the Pakistan Commission on the Status of Women was established under the guidance of Begum Zari Sarfaraz. The Commission took the assignment to elicit the views of people of different views and backgrounds interested in

the status of women. The main of repository of personal views were women themselves who told of the countless problems and inequities.

The President of Pakistan in 1985 reviewed the report, and because of some disconcerting conclusions in the document it was never permitted to be published. It remained confidential and classified until 1989, after Pakistan became a democracy.

For the most part, Pakistan is regarded as having one of the worlds lowest literacy rates. Due to traditional social stigmas and traditions, which discriminate against girls and women acquiring an education, due to the marriage of young girls, large families, lack of female educators, and an antiquated method of teaching.

Ignored, but not forgotten is the health care for women in Pakistan. A new report sponsored by the World Health Organization and several child-welfare charities say Pakistan has one of the world's highest rates of preterm birth, with nearly 16 for every 100 babies born. The report, which features the first-ever estimates of preterm birth rates by country, says nearly 750,000 babies were born prematurely in Pakistan in 2010. Only India and China had a greater number (The Nation, July 13, 2013). (<http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online>).

Violence against women is rooted in the patriarchal society of Pakistan. The domination by males and the subordination of women is evident through subtle forms of violence as domestic aggression, mental torment, denial of rights, etc. Or the outright brutality as rape, mutilation, acid throwing, and honor killings. To complicate the situations further there are the issues of abuse, destitute women, senior, and disabled women. Investigation of women prisoners is well documented on how they

are detained for long periods of time without a trial, raped by male guards, the dearth of money to pay an attorney, and lengthy prison sentences.

The Shariat Act of 1991, resurrected an ordinance originally introduced in 1985, by General Haq. The purpose was to establish Shari'a as the supreme law in Pakistan. This Act is essentially a statement on principles. The essence of the Act is as follows:

“The Shariat shall be the supreme law of Pakistan, provided that the political system and present form of government shall not be affected. The State shall enact laws to protect ideology, solidarity, and integrity of Pakistan as an Islamic state” ( <http://www.wrp.org> 110).

Social order shall be established insuring inexpensive and speedy justice through an independent Islamic system of justice ( <http://www.wrp.org> ). Pakistani law is more inadequate in protecting women victims of domestic violence than penalizing the batterers. The government categorically does nothing to aid the woman. For example, if a domestic violence case does come before a criminal court, it may be punished by either *qisas* (retribution), or *diyat* (compensation) for the benefit of the victim or her legal heirs. When a victim chooses to waive *qisas*, or *diyat*, because is judicially held to be unsuitable, an offender is held to the desecration of the court, therefore the judge as the option of not punishing the wrongdoer ( <http://www.hrw.org> 41).

Observers have noted that the *qisas* and *diyat* laws have in many respects been adapted for serious crimes, including murder and aggravated assault into crimes against the individual, rather than the state. An unpublished paper in Human Rights Watch, Trend of Superior Courts, pg. 10, states,

“By vesting the primary of right of forgiveness in the individual for a such a

serious crime as murder, rape or bodily injury, the state has exposed the most susceptible sections of society to pressure from the powerful.”

Most of these crimes do pose a threat to the female population and therefore, the state’s response in one of apathy and neglect, which will be examined further in the next chapter.

## **CHAPTER 9**

### **THE 1973 CONSTITUTION AND ARTICLE 8 WITH SUPPLEMENTARY ARTICLES**

Visibly the roots of the problem are not religious, but are found in the behavior of the society, and the erroneous application of the Shari'a principles. The evidence and burden of proof is on the women who have been victimized. With Pakistan committing a serious conceptual error by conflating various crimes into one large cluster of principles and degrees, which have not been sanctioned by all jurists. Having surveyed the legal conditions that have set the stage for future legislative progressions let us look at the Pakistani legal system under examination and analysis. A pressing need to discuss the problem on how women are treated in Pakistan and the relationship between the religious texts of Islam and the Pakistani Constitution.

In a wider political area, Islam appears like a recurring theme. For over a half century since 1947, Islam has played a central role in the political thought of Pakistan. Since its independence, those in power have used it, but inevitably its use has been in a bid for political power, consolidating support, and legitimizing force. Specifically regarding women in the fifty years preceding independence, progressive Muslim groups justified women's education, emancipation, and rights from within the Islamic framework. As of 1947, having been monopolized by reactionary elements, Islam has been the medium used by those wanting to curb or deny women their rights. Certainly since the turn of the

century, women have found themselves confronting the conservative religious elements in their struggle for their rights (Muntaz Shaheed, 1).

Preservation of the integrity of the faith has been an ever-present problem in Islam because of its egalitarian and non-hierarchic character. The teachings of Islam are simple: there is but one God, and the Prophet Muhammad, to whom God's word was given, and his Companions and followers of these principles enunciated in revelation. And from the interpretations of the former two sources of the *ulama*, or learned to apply their principles to the changing needs of the community (Wheeler 3-4).

As differing interpretations were made, a variety of sects and schools of law arose. All those who accept the *Sunnah* of the Prophet Muhammad and the first four elected Khalifas are regarded as orthodox, or Sunni. A major cleavage exists between them and the smaller of two sects, the Shi'a, who regards the Prophet's son-in-law and cousin Ali (the forth Khalifa) as his successor by divine right and therefore accept a different *Sunnah* as the basis of their law (Wheeler 4).

Islam has not been immune to these developments, and accordingly there has been a realization among Muslim theorists that the *Qur'an* and the *Sunnah* are determinate sources of law and cannot suffice the needs of infinite events. The Islamic world has been rapidly expanding to encompass diverse races, cultures and environments of various kinds. Consequently, problems have arisen for which there is no clear precedent or reference from the *Quran* or *Sunnah*. This has caused a great need among Islamic youth, women, and scholars for the rereading the sources of Islamic law to understand the message of the *Qur'an*, in a way that is meaningful for the contemporary world.

Muslims have historically referred matters of everyday life, worship, and reflection to the *Qur'an*. Traditionally, this reference developed in the form of legal discourse in the principles of Islam, called *fiqh*. The system with its vitality of the traditional Shari'a has not been sustained into contemporary society. The result is Shari'a, is not remembered for purpose or function, but for the legal decisions, which pertain to another time and place. The original vitality of spirit of the law is ignored, as are the origins of the words.

The creative tension Muslims have always believed is the divine revelation preserved in the *Qur'an* and *Sunnah*, which are considered perfect and complete. Since no further revelation is possible, or even conceivable. Therefore, Muslims understand the law is immutable. On the other hand, Muslims have believed Islam is applicable to all places and times, and therefore must admit to some flexibility.

Constitutionalism in Islamic history, certainly after the death of the last Caliph, empires were based on dynastic and hereditary rules and political models were not bound by written constitutional limits and practice. In theory the ruler would claim to be applying Shari'a, by paying others to enforce and uphold Islamic practices. The only exception is in Medina of the 9<sup>th</sup> century, in which the Prophet Muhammad founded in 620 C. E. The Constitution of Medina is the closest viable model we have for an Islamic constitution that recognizes and preserves the importance of the rule of law and religious freedom, plurality, and equality for all members of the community. While it upholds the separation of religious authority from political matters, the issue of popular sovereignty serve as key points in the theoretical framework (Wheeler 5-6).

What is in the Islamic constitutional framework? The foundation and principles of the constitution can easily be drawn from the *Qur'an* with supplementary support from

historical practice. The full text of the Constitution of Medina is an analysis of the contents by investigating the details in the gap between Islamic political theory and history. The political community in Medina did not have a far-reaching impact on the evolution of Islamic political theory and history in particular. What seems to have been lost in practice is the notion of a government limited by the rule of law and one that is not subject to manipulation by absolute executive power.

The question remains as to who will interpret the principles and constitutional framework and who will apply them. Is it the responsibility of the judiciary to interpret and apply the constitution or by Islamic scholars?

To define the term constitutionalism refers to the concept of a state that includes limited government adherence to the rule of law and the protection of fundamental rights. These ideas may be codified in the single written document or implicitly identified in the collection of official papers, both of which serve the same purpose of identifying the guiding principles of the state, in this case Pakistan.

A more formal definition describes the constitution as the organic and fundamental law of the nation or state. It establishes the character and conception of its government, organizing such government, and regulating, distributing and limiting the functions of its different departments. Prescribing extent and manner of the exercise of sovereign powers it sets out a framework based on a government of law and not of men. In other words the Constitution transcends the authority of rulers and holds them accountable to a fixed standard rendered in law (Hauthout 29).

However, the constitution is more than just a collection of laws and institutions, it is an expression of fundamental values, and principles where the constituent community has

collected and agreed-upon standards by which they shall be governed. It provides to the framework the political order in which ideas have been articulated. For example, the Bill of Rights in the United States is an expression of an American political values and a constitutional model, which has a striking similarity to a liberal democratic system, particularly with regard to three characteristics, noted above, limited government, adherence to the rule of law and protection of individual rights. The two are not necessarily synonymous, since the constitution may lay the framework for any type of political system. There are over 150 countries in the world today that have constitutions, and not all of them are liberal democracies (Hathout 30-31).

The concept of sovereign nation-state is tied intricately to a constitutional model, but both are products of fairly recent historical developments. It is only by the end of the eighteenth century that the principle of national sovereignty was firmly established in Europe and deemed to be a legitimate source of political power. In the following century the state developed into a service rendering organization independent of dynastic kinship, one that promoted the economic and social rights of its citizens. But the parameters of this sovereign state were not codified. The stage was set then for a written constitution as a way to fill this gap, to limit state authority by insisting on its adherence to certain standards (Hathout, 31).

How does the development of the nation-state and a written constitution relate to Islamic theories of constitutionalism? The political units that dominated Islamic history with the Caliphates and empires were based on dynastic hereditary rule. Neither of these political models was bound by written constitutional limits in practice, although in theory many may be applying Shari'a and upholding Islamic practices.

The nation-state is a relative newcomer to the Islamic political history. Most have been created only within the last century and in many cases, in the aftermath of colonialism. Among Muslim states that have written constitutions there is no evidence that they are particularly Islamic and substance meaning drawn from the *Qur'an* or other sources, beyond the fact that they pay lip service adherence to Islam and Shari'a this leaves us with a relatively clean slate for developing an Islamic constitutional model today. The prevalence of the nation-state means that the only template upon a framework can be fashioned. We have assumed existence of the nation-state as the context within which the Islamic constitutional model is developed. (Hathout 32).

There are certain similarities between the purpose of the *Qur'an* and the constitution. Both refer to the individual as the intended subject. Both seek to institute order with in a pluralistic society. The *Qur'an* establishes equity and justice as the guiding principle free relations between social groups, and names to protect the rights of the weaker segments of society against the power of the stronger. We see this in the concern for the poor; orphans, refugees, slaves, and women all of whom were historically disadvantaged members of the Arabian society in, which the Prophet Mohammed lived.

But, there are also key differences, while the *Qur'an* offers a moral and ethical blueprint for accomplishing this task; the constitution provides a uniquely political one. A constitution is only concerned when achieving order in this world. The *Qur'an's* mandate in contrast covers both the temporal world and the afterlife. Although both are concerned with the individual they are addressed to vastly different types of communities. The *Qur'an* is a message to the *ummah* made up of Muslims, the constitution is addressed to all those with loyalty to the state regardless of religious belief, and does not draw a

religious distinctions. These differences point to a vital distinction between a religious community privileging Muslims and a political community making up of various faiths and in general, to a religious/moral framework for organizing human affairs versus a political one.

“Nevertheless, the *Qur'an* is still useful for giving us basic values within which to shape the constitutional model for an Islamic state. It serves as a divine source, out of which the guiding principles and the law of the state can be fashioned. This is in contrast to man-made natural law that came to be the basis of Western political thought. In addition to the *Qur'an*, there are also other Islamic sources, such as the *Sunnah* and *fiqh*, as complementary sources for developing the Constitution of an Islamic state. (Hathout 3).

Since the writing of the Pakistani Constitution has been an arduous task, from its independence in 1949, Pakistan has produced 3 constitutions; 1956, 1962 and 1973. There have been seven provisional and interim constitutions; including all has defined ‘right’ as a legally recognized and protected interest. Any interest, which law recognizes or enforces whatever be the nature or extent of that recognition or enforcement is a legal right. It is not necessary that a legal right has been created by the state but it should be such that law courts would recognize it and would protect it in their decisions and state would employ its machinery to enforce it.

The term ‘right’ in civil society is defined to mean that which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law. In its legal sense a right is an interest, which is created and enforced either by the constitution or by ordinary law. In the former case, it is a constitutional right, which can only be taken away

by an amendment of the constitution; in the latter, it is an ordinary right, which may be enlarged, abridged, or destroyed by ordinary law. Remarking that no right can be properly described as fundamental if the legislator can take it away by a law not involving an amendment of the constitution, or unless its suspension or surrender in a nation emergency is specifically provided by the constitution itself (Hauthout 35).

For a right to be fundamental, it must be enforceable by a judicial or some other process. Any action taken by the legislature or the executive branch is in violation of a fundamental right and is void. In law and in the courts, which are bound to make a declaration accordingly and to give suitable relief to the aggrieved party. This duty is the very essence of what is called judicial review of legislation (*Abul ala Maududi v. Govt. of West Pakistan - PLD 1964 SC 673*). The very essence of fundamental right is that if it is enforceable either through the court system or other tribunal, they are still against public authority contravening it.

Article 8 of the Pakistani Constitution is the most important in its relationship to human rights, this is a brief summary of said article.

#### **ARTICLE 8 OF THE 1973 CONSTITUTION:**

Laws inconsistent with or in derogation of Fundamental rights to be void (1) An law, or any custom or usage having the force of law, in so far as it is inconsistency with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law, which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply –

(a) Any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

(b) Any of the

(i) Laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

(ii) Other laws specified in Part I of the First Schedule.

and neither such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter.

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the appropriate Legislature shall bring laws specified in Part II of the First Schedule into conformity with the rights conferred by this Chapter.

Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months.

Explanation – If in respect of any law *Majlis-e-Shoora* (Parliament) is the appropriate Legislature, such resolution shall be a resolution of the National Assembly.

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

The classification of fundamental rights under the constitution of 1962 was more logical than under the present constitution. Under the former constitution, they were 19 fundamental rights divided into 10 categories. Under the present constitution, they are 20 fundamental rights and their arrangement is different from previous constitutions. These fundamental rights could be divided into six major categories:

- i) Personal Rights
- ii) Civil Liberties (Social Rights)
- iii) Religious/Educational Rights
- iv) Economic/ Financial Rights
- v) Equality Rights
- vi) Cultural/ Language Rights

As they are available to an individual against state hence, they could only be enforced against state or its functionaries. Article 8 is the most important of all and is the blanketing Article to the Articles relating to Fundamental Rights. Whereas Article 4 is separate therefrom in that sense that where there is no fundamental right and remedy available to a person under any law or there is no law providing remedy then it comes into play by giving such person the right to be treated in accordance with law.

Presumption in favor of constitutionality: The presumption is always in favor of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the fundamental rights or constitutional principles whether it is a pre-constitution or a post-constitution law. Power of legislature when statute declared unconstitutional: When a statute is declared unconstitutional by a court, the legislature cannot directly override that decision and pronounce the statute to have

been valid or anything done under that statute to be valid on the date of decision. Legislature, however, can make fresh law free from unconstitutionality and then provide that anything done under the offending law shall be deemed to have been done under the new law and subject to its provisions. No writ of mandamus against Legislature (PC 1973).

Despite the fact Article 8 contains an express prohibition directed against the State including Parliament and Provincial Assemblies not to make any law which takes away or abridges the fundamental rights, there is no known method provided in the Constitution whereby the legislature can be prevented from enacting a law which is inconsistent with the rights guaranteed in the Constitution (AIR 1951 All 228).

“It is necessary to understand exactly how and in what circumstances courts declare laws invalid or unconstitutional. Until a bill has become law, the legislative process not being complete, courts do not come into picture at all. It is not the function of any Court or judge to declare void or directly annul a law the moment it has been promulgated. Courts are not supervisory body over the Legislature. Their approval or disapproval is not needed for an Act passed by the Legislature to have the force of law. Their function is interpretative. In other words, upon any particular case coming before them in which right of any party is involved, they decide whether the Act or any part of it, is to be disregarded on the ground of its incompatibility with the Constitution.”

The Constitution of Pakistan, (1973) have countless provisions, which contradict each other when applied to the rights of women. An assessment of various fundamental issues should be specified, therefore a written litany of articles in the constitution need to be clarified. Many case notes

on the previous page suggest this problematic state of affairs.

It would be difficult to indicate all the circumstances and interesting issues, which result from discussion and examination on this topic. Although awareness for the reader is best countered by exposing this data. The fundamental rights are explicated in Article 8 of the Constitution, yet supplementary Articles will be quoted at present, which are representative of the laws, which relate to women and children.

**Article 25, 43- Protection of Women and Children:**

“Special provisions for protection of women and children contemplated by Arts. 25 and 26 are meant to be additional advantages for women and children in certain respects. Such special provisions cannot be allowed to have the effect of denying other citizens their own rights under said or other provision of the Constitution” ( PKC 218).

**Article 25, 47-25- Applicability of Article 25 of the Constitution:**

“Article 25 of the Constitution guarantees a similarity of treatment and not identical treatment. Protection of equal laws does not mean that all laws must be uniform, it means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reason of birth, creed, or the like and also equal subjection of all individuals and classes to the ordinary law of the land” (PKC 219).

**Article 25, 48-Equality**

“Similarity of treatment has been guaranteed by the Constitution

and not identical treatment. Protection of equal laws does not mean that all laws must be uniform. It means that among equals the law should be equal and should be equally administered and that the like should be treated alike” (PKC 221).

Article 31, 4- Principles of Policy-Social Justice and Women-There are over two dozen composite Principles on Policy, foremost is the Islamic way of life, to live according to the *Qur'an* and *Sunnah*.

While the 2 statements below reflect the ambiguity that is rampant in the 1973 Constitution. Whereas the second declaration perceives the only place that there are absolute rights are on the moon or in utopia.

Article 8 -1- “Fundamental rights, though are basic feature of the Constitution, but provisions contained in Chapter 1, Part II have not been given primacy or precedence over any other provision of the Constitution.”

“Fundamental Rights under Arts.8-28 are not absolute rights. Absolute rights may be possible perhaps on the moon or in utopia” (PKC 79-80).

What is the difference between a ‘fundamental rights’ and ‘human rights’? In essence freedom is the ability to have a right with no constraints except those of moral obligations. Therefore a ‘fundamental right’ is a selected right given by a government extended to its citizens. Here the implication does not necessarily mean ‘human right’.

Consequently, the term expressed as ‘human rights’ refers to those rights that is considered universal to humanity, regardless of residency status, citizenship, ethnicity, gender, or religious beliefs, or sexual orientation.

This is the contradiction between secular and religious law. Can either co-exist with one another. If Muslim law and the jurisdiction of a Muslim judge were applicable to both Muslims and non-Muslims living in Muslim countries; then would all matters relating to laws and penalties, be impartial and objective in their treatment of everyone under the dome of law. Nonetheless, do non-Muslims, and minorities want to be judged by Shari'a law? This is a situation that the government and the people of Pakistan need to grapple with. Most people want to be judged by an impartial system where civil or criminal crimes are adjudicated by a unbiased system of law.

The purpose of this composition was to compare, not only the Pakistani Constitution in its relation to jurisprudence, but to the unequal treatment of the women of Pakistan. The laws in Pakistan are stated as equal among equals, however, not as a human being with universal and God given rights.

## CHAPTER 10

### CASE NARRATIVES OF CUSTOMS AND SOCIETAL NORMS

According to The Human Rights Commission of Pakistan, every 2 hours a woman is raped in Pakistan, and every 8 hours a woman is subjected to gang rape. In 2002, the frequency of rape is in reality much higher. The combination of social taboos, discriminatory laws, and victimization at the hands of the police are key reasons why many rapes remain unreported. These are true stories of women in Pakistan that have been taken from newspapers and police files. The names and the locations have been changed to protect the victims.

This is one of the many cases in Pakistan, which goes unnoticed everyday. This particular case is concerning a girl named Priya and her sister Leila. It is recounted here as it actually happened. Women, girls, and men in Pakistan have narratives, which combines many incidents. This will help to elucidate the plight of Pakistani women and girls in cities, towns and villages across the country. These women live under a daily threat from moral crimes that may happen, although judged under the Hudood Ordinances. Readers can decide for themselves.

This is an account is from Amnesty International/Asia Watch. Amnesty no longer works or aids in Pakistan.

Priya is a 13-year old girl who lives in Roshan Colony in Karachi. She has grown up in a small 1 bedroom shack with her five brothers and sisters while her eldest sister is married and lives in the neighboring colony. Priya is fortunate that

she is able to attend the girl's government schools and does not have to work like her older sisters and brothers do. With the exception of her younger brother Suhail, who attends a nearby boy's government school. The home is empty when Priya returns from school. Both parents and her older siblings are away at work until 5 or 6 P. M.

One day, Priya was on her way home to meet her brother after school. Priya's neighbor then abducted her and dragged her indoors to rape her. She struggled to fight back, but she became unconscious. Suhail, who is waiting for her to come home begins to worry. He wanders around the neighborhoods hoping to find her. He then stumbles across her bruised and unconscious body in an alley behind the house.

Later that evening Priy's father and brother go to the police station to file what is called a First Information Report (which is required for a criminal investigation to begin) on the rape of Priya. Meanwhile, Priy's mother and older sister take her to a hospital to be examined by a doctor. The medical reports confirmed that she had been sexually assaulted and the case was brought in front of a magistrate.

While Priya was able to fully describe her attacker and could give details of his name and where he lived, she had no other proof of rape other than the medical examination and her own testimony. Since *zina-bil-jabr* in her case was liable to Hadd punishment, her own testimony was not admissible as evidence under Section 8 of the Zina Ordinance, proof o *zina-bil-jabr* liable to Hadd is only attained wither by

the perpetrator's confession or by testimony of 4 men. The testimony of her brother appeared to have been changed from what he originally accounted to the police.

Priya's neighbor, Aslam denied the charges of rape or having any sexual interaction with her, and twisted the story saying that he often caught her staring at him, but he never was inclined to act indecently. He portrayed himself as a respectable, pious man and the young girl as having an unsound character. Without his confession of 4 male eyewitnesses, Priya was unable to prove that the act of penetration had been non-consensual.

Priya attained puberty a few months earlier, and for legal purposes (under Section 2 (a) of the Zina Ordinance) considered to be an adult despite the fact that she was only 13 years old. Since the medical examination was proof that penetration did occur and according to the judge's ruling did not see any clear evidence proving the perpetrator was Aslam.

Under Section 10 of the Zina Ordinance, if the judge felt there was proof, which linked Aslam to the crime, he could have been convicted of *zina-bil-jabr*. Then he would be liable for *Tazir*, which is a lesser punishment and is applied to cases where the evidence falls short of *Hadd* requirements, but still proves the accused committed the crime. This only applies if the court does not believe the complainant was filing a false accusation.

The legal table then turned against Priya, because any sexual relationship by a sane 'adult' out of wedlock is considered a crime under the Zina Ordinance, she was now charged with zina under that ordinance and put in detention to await her

trial.

Priya's father who had filed the rape complaint with the police was also facing charges for *Qazf* (the wrongful accusation of rape), and was detained while Aslam, the offender, was allowed to go free, because there was not enough sufficient evidence to prove that he had been a party to the sexual offense concerning Priya.

In the interim Priya's mother tried to find a way of appealing the detention of her daughter and husband. The eldest daughter, Leila went with one of her brothers to the police station to ensure the case was kept open, and to obtain a copy of the testimony submitted by the police officer to the court.

At the police station, Leila was asked to enter a separate room to discuss her sister's case and the testimony that had been recorded by the police. She came out of the room 30 minutes later. She was shaking and had tears in her eyes, and begged her brother to leave the police station immediately. While she was in the room, she had been raped by 2 police officers and threatened not pry any further into her sister's case or else they would bring charges of *zina* against her. She was happily married, and the charges of *zina* had immense consequences, the maximum punishment for adultery is death by stoning.

Desperate to get home, Leila ran through the streets offering her brother no explanation for her behavior. Her brother returned to his house to find his mother crying with despair over the detention of her daughter and husband. In addition to an emotional burden, she faced an underdetermined time without her husband,

the main bread winner for the family.

The next morning Leila came to the house in tears saying her husband had divorced her after she told him of the incident at the police station. He said, “he did not want to be with a woman who had been ‘spoilt’ by others and pronounced the divorce out loud 3 times and swore to file the papers quickly for the divorce.

Over a year later, Priya still remained in prison awaiting her trial for *zina*. While her father also remained in detention and had not been seen by a magistrate. Leila had been approached by a family for her hand in marriage and had hope she would remarry in the future.

With the heavy financial burden on her mother, she urged Leila to remarry as soon as possible, then the family will be provided for. Since Leila had not received any written decree that her divorce had been finalized, she still decides to marry again.

Two months after the new marriage Leila and her husband found themselves being arrested for *zina*. Since her ex-husband claimed he never divorced her. The divorce declaration had been verbal. Other than Leila and her ex-husband, no one else had heard this decree. He had neglected to file the divorce papers, as he said he was going to do. Therefore, in the eyes of the state they were still married. The repercussion on her new marriage became void and sexual relations with her new husband were considered illicit.

While it is legal for a husband to divorce his wife by pronouncing it out loud, he is then required to file the papers, which can take up to 3 months to process

to make the divorce legal. As there is no provision for a maximum period in which the husband must file the papers, many divorces remain legally unrecognized. And with the lack of due process and an attorney to help the woman, it is not guaranteed that these papers are filed. Now they are left to the mercy of their ex-husband, and may face charges of *zina* when attempting to remarry.

As illustrated in this account, the Zina Ordinance places a heavy almost impossible burden of proof on the women and girls who fall victim to rape. Once they file a complaint these women and girls are then exposed to the charges of *zina*. In essence they have admitted to the act of penetration outside wedlock, which is a crime under this ordinance. In such a situation the victims are in fact more likely to be convicted than the perpetrator (AI, Asia).

Remember in the Constitution of Pakistan, which clearly states in Article 25: “All citizens are equal before the law and are entitle to equal protection of the law,” And “there shall be no discrimination on the basis of sex alone.” The discriminatory laws like *zina* remain in place and women continue to hesitate reporting incidents of sexual violence out of fear of possible repercussions.

According to the National Commission on the Status of Women, an independent statutory body, states that 88% of women currently jailed in Pakistan have either been convicted or are awaiting trial for *zina*. An added note, while the death penalty does exist for adultery, this sentence is rarely carried out.

Another case which involved 13 year-old Safi Bibi, a blind girl who was raped by her employer and his son. She did not report the crime. Later she showed

signs of pregnancy and was unmarried. It was assumed she had premarital sex. Her failure to report that she was raped prompted the judge to sentence her under the Hudood Ordinance to 3 years imprisonment and 15 lashes. The judge's ruling cast her as the criminal and not the victim. While her rapists were never prosecuted.

In March 2004, another case was brought before a judge in Dadu, Sindh Province, regarding the sale of Akthiar who was 7 years-old. She was about to be sold to a 35 year-old man, Ali Hassan for marriage. The girl's mother appeared with Akthiar in court to protest the sale of her daughter by her husband for the amount of Rs. 18,000 or \$300.00 in American dollars. Akthiar managed to escape. Since then Ali Hassan has attempted many times to kidnap the girl, but with her mother's help and protection, Akthiar as remained out of his clutches.

This is a customary practice in Pakistan and is used as a method of resolving disputes and settling debts between families and tribes. According to this custom female members from the offending male's family are married or given to the victim's family as reparation or penance. These decisions are often made by a *jirga* or *panchayat* who are a council of elders from the community who convene an informal court to decide the approach for resolving disputes.

The next couple of narratives exemplify these customs. The first story tells of 2 sisters, Ms. Sumera, 11, and Ms. Bushra, 13 who were allegedly taken away from their home at gunpoint and forcibly married to 2 brothers, on the pretext of settling a dispute, which originated over illicit relations of their father

with the mother of the 2 brothers. The 2 young girls are residing with their paternal grandfather, Nadan Khan.

This alleged incident took place on the night between April 19 and 20<sup>th</sup> in 2008 at Dag Besud village in the District Nowshera. The case was registered on July 7, 2008 after an inquiry. The case was registered against 15 persons, including the 2 boys, Rehman and Usman, a few *jirga* leaders and a cleric who had performed the *nikkah* of the 2 sisters. The accusation was that Suleman; the father of the 2 victims had illicit relations with the mother of the 2 boys, who was a widow. Even though the mother was a widow and had the right to remarry, she did not have the right to have unlawful sex with a man she was not wed to.

This is a story about Qasira, who was forced to squat on the ground in her home in Karachi, while kerosene was poured over and around her by Qasira's husband. The kerosene was then set ablaze as her 2 children, aged 1 and 3 were watching. Qasira was warned that her sons would be killed if she screamed, so she suffered in near silence, 80% of her body was burnt.

Another problem in Pakistan is acid burning, which has become prevalent. The Punjab Assembly has banned the sale of acid and other corrosive substances, making acid throwing a criminal offense, although it is sad to say the law as of yet has been enacted. In 2004, according to the Human Rights Commission of Pakistan at least 42 cases of acid attacks had been reported, in only 4 of the cases had the perpetrator been arrested and charged with the crime. Other charitable organizations working to help the victims of acid attacks indicate that up to 400

women fall victim to acid attacks perpetrated by their husbands, or in laws each year. In the past 10 years over 1,500 cases are known. A young mother of 4, lost her eyesight and suffered 60% burns after her husband threw acid on her (Human Rights Commission of Pakistan).

Mutilations and the use of electric shocks are also reported as methods of torture enacted by family members on women. Most cases of mutilation are perpetrated by the husband and take the form of cutting off a part of a woman's body, such as the nose, ear, or breast. There are also cases of applying live wires to the bodies of women.

In 2003, NGOs in Rawalpindi found that in five years nearly 5,000 cases of women being burnt alive had been reported in the Rawalpindi area alone. In 2004, the Human Rights Commission of Pakistan stated that 91 women were reported to have been victims of burning, 43 of these were reported as stove accidents and 48 stated openly that they had purposefully been set on fire. In the past NGOs and the Human Rights groups have observed that reports of accidental stove burnings are a cover up for deliberate acts of abuse.

While visiting a new crisis center in Islamabad, Amnesty International met a woman who was recovering from plastic surgery after her husband had cut off their nose. The future of women who have been subjected to such terrible abuse remains uncertain as they contemplate who will support them, what their place is in society and whether they will ever be safe from their violators who usually do not face any criminal charges for these heinous crimes.

Psychological abuse by means of custody of the children as blackmail or threatening children with violence is common tactics used by some of the family to pressure a woman into staying in violent relationships. Other female members of the family such as the mothers-in-law or sisters-in-law also reportedly use verbal abuse and physical violence. Many women who find themselves in these situations may try to return to their parents home.

Parents, however often do not take their daughters back or ask them to return to their husbands in order of avoiding any dishonor on the family. In the face of strict codes of 'honor' and under threats that their children may be taken away by their husbands, many women do not seek the justice they deserve. Often after having suffered violence in the family, many women who have undergone this type of trauma do not always have the resilience or resources to take any course of action. Those women who do try to pursue help and redress have to travel long distances, incur considerable costs, and risk their well-being.

Here are a few other cases taken from the daily newspapers in Pakistan:

“A woman was forced to put her legs in boiled oil, by her brother-in-law and mother-in-law, before amputating her legs over suspicion of her having loose morals” (Dawn News 3/12/004).

We've fled Hujra, because I believe my family will kill us” A 26-year-old woman who married the man of her choice (Daily Times 05/24/04). □ □

“A man killed his 16-year-old daughter and her 17-year-old cousin on the pretext of preserving the family’s honor. The father of the deceased boy endorsed the son’s murder and asked the police not to file an FIR” (Dawn Newspaper 02/13/04).

“In the case of a 17-year-old girl and a 20-year-old boy who were not allowed to marry, inquiries showed that they were strangled. □

“*Jirga* declared 7-year-old girl and 8-year-old boy *karo & kari*.” (Dawn News 6/24/04). ([http:// www.bbc.co.uk/news/world-south-asia-13158001](http://www.bbc.co.uk/news/world-south-asia-13158001)).

This is a very famous case in Pakistan; it is the story of Mukhtar Mai. When Mukhtar Mai was 30 years old, the local *Jirga* in Meerwala Jatoi, Southern Punjab, Pakistan resolved a dispute by including Mukhtar Mai in the settlement process.

Mukhtar Mai’s 12 year old brother, Shakur, a member of the poorer Gujjar community had been accused of sexual misconduct with a women from the more influential Matsoi tribe. His family adamantly denied this claim and believed this was a false accusation and a form of harassment.

The guilt or innocence of the Matsoi woman or Shakur remained unclear however, the decision of the tribal *jirga* made Mukhtar take responsibility for her brother’s deeds and was ordered to be gang raped by four men from the Matsoi tribe, and one of those men was from the *jirga*. When she protested, reports indicate that her pleas were ignored and she was told that all the women of the family would be considered ‘spoilt’ if she resisted the *jirga*’s decision.

On June 22, 2002 Mukhtar Mai, despite her cries for help, she was taken in front of all the townspeople by 4 men into the room of Abdul Khaliq and was raped consecutively by each of them. She screamed for help, but no one came to help her.

The verdict of the *jirga* was the word of justice and no one dare come to Mukhtar's aid. After 90 minutes, Mukhtar was thrown outside with little clothing left on her body, other than a torn shirt. In her state of undress she was made to walk home while the villagers stared. As she made her way through the crowd, she knew her father was also present, but she dare not look up in shame.

Mukhtar was able to find justice when her story leaked out to the media. The uproar across Pakistan came with an intensity that made her case impossible for officials to overlook. Although, as of April, 2011, 5 of the 6 men charged with this *jirga* sanctioned gang rape, have been acquitted by the Pakistani Supreme Court. While the court upheld the decision of a lower court, which included commuting the death penalty of the sixth man to life imprisonment.

After hearing this decision Mukhtar Mai said, "I don't have any more faith in the courts. I have put my faith in God's judgment now. I don't know what the legal procedure is, but my faith [in the system] is gone. And Ali Dayan Hasan of the US-based Human Rights Watch said the verdict sent a "very bad signal" across Pakistani society ([http:// www.bbc.co.uk/news/world-south-asia-13158001](http://www.bbc.co.uk/news/world-south-asia-13158001)).

In the locality of Danga Naich, a suburb of Kabeerwala, Punjab, Pakistan

a jirga wielded his power over the fate of 2 girls in a verdict that mirrored what had happened to Mukhtar Mai, 2 years earlier. Mumtaz and Mudasan, sister and her brother's wife, Mohommed Riaz, respectively found themselves paying a heavy price for the alleged crime of their brother.

Mohommed Riaz was accused of having illicit relations with Shahina, daughter of Ghaffar. According to the news reports of April 30, 2004, Ghaffar allegedly sent Shahina to Mumtaz's house while her brother Mohommed Riaz was inside. Ghaffar reportedly then locked the front door of the house and called the villagers to come, accusing Riaz of having an affair with Shahina.

Ghaffar then arranged for a *jirga* to come to his house and make a decision on the punishment for Mohommed Riaz for allegedly violating his daughter. The so called jury was headed by Haji Muhammad Sultan, Haji Afzal Jeer and Ahmad Nawaz who announced Mumtaz and Mudasan order Shahina's father Ghaffar to rape them. Ghaffar allegedly took them to an outhouse and raped each one. The family of Mohommed Riaz was also asked to leave the village. Again, this story made media headlines and a public outcry.

According to press reports, at the time Ex President Musharraf had asked the Interior Minister, the Punjab Governor, (Khalid Maqbooland), and the Punjab

Chief Minister (Chaudry Pervaiz Elahi) to investigate this incident. President Musharraf then said, “When a proper legal system exists in the country who allows such decisions that not only destroyed the live of 2 girls, but ruined an entire family.”

Amnesty International is calling on legislators in Pakistan to ban the practice of trial by *jirga* for the practice of law. And for the government to ensure the strict implementation prohibiting this practice. In the past local officials are known to have encouraged and participated in *jirgas*. The belief is widespread that with *jirgas*, resolutions are quicker, less expensive and more reliable than conventional courts and trials. A ban on trial by *jirga* must therefore be accompanied by a strengthening of the criminal justice system so that the resort to the use of *jirgas* to settle disputes ceases to be seen as a viable alternative.

## CHAPTER 11

### CONCLUSION AND RECOMENDATIONS

Until 2001, there was no reserved seat for women under the Constitution of Pakistan for local elections. In a few villages female voters are allowed to cast their vote, while in most villages the men of the family cast a vote by proxy for women. Thus, there was no female representation at the local level. But, in some areas the mullahs elected their wives and then used them as puppets for their own political gain.

The failure of the government and the necessary structures to redress gender disparities with productive resources and adequate provision of social services for men, instead have led them down a road of deprivation, exclusion and abuse. Violence against women is a powerful mechanism used by society and the state to silence the voices of resistance among those who wish to help. It is a woman's human right to live a free and unencumbered life, without the unequal division of self-respect and dignity allowed only for the patriarchal hierarchy that establishes authority and power over women. Laws, which are so gender biased is a crime by itself.

A society where violence against women is endemic can never fully develop either socially or economically. Such violence in the private domain undermines women's confidence and self esteem. It destroys their health and does not permit women to fully participate in building a safe and fruitful society.

Even though Pakistan is a country that is open to discourse on the subject of gender and it has reflected that in some of its national policies and programs. However,

the gap between commitment and reality is too wide. Islam gives a very balanced code of life, yet, fundamentalists have converted the teaching of Islam to read in the best interests of men and highly unjust to that of women.

The Constitution of Pakistan has stated in Articles 25 and 34, that it guarantees equality between the two sexes as a right for all Pakistanis. Pakistan also signed the Convention for the Elimination of All Kinds of Discrimination Against Women (CEDAW 156). To achieve these objectives Pakistan has also launched a Gender Reform Action Plan. One would conclude that the Pakistani Constitution and policy framework in Pakistan is pro-women, but inwardly it has no shame and is not embarrassed when its own laws are violated, there is a hidden contradiction here that needs resolution by all parties involved.

As previously stated there many issues that need to be addressed, for example; healthcare, lack of medical facilities and staff, early marriages, preference for sons, violence, illiteracy, poverty, access to education, job training, and discriminatory legislation.

Recommendations for resolving these problems are: giving women full equality under the law, fair and equitable treatment by the police and prison facilities, resources to receive legal counsel, the abolishment of the Hudood Ordinances and punishments, political freedom, establishment of more shelters, the sale of women for debt or honor.

These are critical issues faced by the women of Pakistan today, especially in the Khyber Pakhtunkhwa areas. Without serious commitment on the part of the government and its leaders these injustices will continue. They are confronted with the challenge of how to ensure that the state will fulfill its commitment to gender equality. It is also

important, an initiative be taken at an international level and that the community of nations assumes a stronger and a more positive role in this unsettled question.

The gender specific issues of governance, violence against women and poverty are not just Pakistan's problem; they are the world's problems. Poverty and ignorance breed dissension, apathy, and anger. Giving women an education can only help the status of everyone but, fear and irrational behavior has surfaced and condemned what should be an everyday normal occurrence. The oppression of women is effortless on the part of the both the government and the *jirgas*. Can the secular government and the religious right mesh to form an affirmative and confident fashion to sustain peace and equality for all its citizens?

How does the trafficking of women, kidnapping, forced prostitution, and sexual violence promote gender equality and human rights? Customary practice that include exchange of women between families, selling and buying women as a commodity, using women to barter and settle family disputes, marriage to the Qur'an and killing them in the name of honor be condoned in the name of tradition, culture and humanity?

If the Prophet Muhammad were alive today, would he be proud of how these women are treated? There are numerous *Surah's* that have complimented women in the highest degree. Reading the Hadith one day, I remember a comment made by the Prophet Muhammad that has remained with me. One day a man asked the Prophet, "Whom should I honor the most, and the Prophet replied, "your mother, and again the man asked the same question and the Prophet replied, "your mother" and the man asked a third time and once again the Prophet answered, "your mother", it was only after the man asked the Prophet for the 4<sup>th</sup> time, did he answer, "your father". This statement by the Prophet

Muhammad exhibited that he held women in the highest esteem and to show humanity, kindness, and equality should always be conferred upon women (Bukhari Vol 8, 2).

There is no Hudood Ordinance in the Qur'an, there are no honor killings in the Qur'an, and there is no violence against women in the Qur'an. Violence is man-made. Hate is man-made and oppression is man-made. Pakistan needs to review and revamp their ideas and treatment of women. It would serve in the public interest to include women in economics, society and politics, yet, this is easier said than done. The government has an obligation to all its citizens to strive for equality allowing Pakistan to grow to its fullest potential. And to fight those who block the cause of freedom and democracy in the Khyber Pakhtunkhwa region. There are a few women's groups and government agencies that are trying to accomplish this deed, but it is not without problems, hopefully these obstacles will be overcome and all of Pakistan will continue to prosper.

Recommendations-Amnesty International:

□ Amnesty International urges the Government of Pakistan to: □ Pass legislation which makes it a criminal offence to instigate or partake in trial by a *jirga* □ Ensure strict implementation of such legislation and bring to justice those who breach these laws □ Strengthen the criminal justice system to make recourse to *jirgas* unnecessary (AI Asia Pacific Regional Office) (Violenceagainstwomenpakistan).

Pakistan has ratified a key UN Human Rights Treaty and signed two others. "Becoming a state party to UN Human Rights conventions is a key step to ensuring human rights are respected, protected and realized for all in Pakistan are in line with international standards," said Amnesty International. The organization has called on the

Pakistani authorities to grasp this opportunity and address the pressing human rights problems in the country. When presenting its candidature for the elections of the Human Rights Council in April 2006, Pakistan committed itself to early ratification of core human rights treaties. On 17 April 2008, Pakistan moved to uphold this pledge, ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR), and signing both the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

Amnesty International has repeatedly, over many years, urged Pakistan to ratify these and other UN human rights treaties. Amnesty International has called upon the government of Pakistan to promptly ratify the ICCPR and the UNCAT and enact implementing legislation to ensure that the three treaties become part of Pakistan's domestic law. It should also ratify all other human rights treaties and their optional protocols, as well as the Rome Statute of the International Criminal Court, and give full effect to international human rights treaties in policy and practice.

Amnesty International has also urged the new Pakistan authorities to release, or else disclose, the fate, and whereabouts of all victims of that disappeared; to end all secret, incommunicado and administrative detentions; to end all torture and other ill-treatment and repeal all laws which carry cruel, inhuman or degrading punishments; and to declare a moratorium on all death sentences and commute the death sentences of the over 7000 people currently on death row (AI Asia Pacific Regional Office). Until legislative changes are brought about and fully implemented the women of Pakistan will remain

crippled by “honor” (AI Asia Pacific Regional Office Violence Against Women (VAW). is the greatest human rights scandal of our times. It is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race, and culture.

From birth to death, in times of peace as well as war, women face discrimination and violence at the hands of the state, the community, and the family: the female infanticide, rape, sexual abuse by relatives, other men, security officials or armed combatants; forced pregnancies; bride burning; domestic violence. In sum, the experience or threat of violence inhibits women everywhere from fully exercising and enjoying her human rights.

In Pakistan alone, at least 631 women and 6 girls died in so called "honor killings" (killing of people, in the majority women, perceived to have transgressed the social morals of their community) in the first eight months of 2003 according to lawyers for Human Rights and Legal Aid. In Pakistan and Afghanistan, tribal councils arrogate unlawful powers to themselves. In one case a girl was sentenced to be raped as punishment for her brothers' alleged illicit affair with a higher caste girl. Exchange of women and forced marriage continues to be a common mechanism for addressing community disputes. (Excerpt from Amnesty International survivor of domestic violence in Karachi).

Violence against women is widespread in most parts of Pakistani society. Within the community and within the household targeted violence against women is prevalent and in

many cases goes unaddressed as it occurs behind closed doors and is suffered in silence. The Human Rights Commission of Pakistan, a non-governmental organization (NGO), has stated that according to studies 80% of the women suffer from some form of violence or abuse in the family. Most cases reported take the form of beatings, marital rape, mutilations, as well as psychological and verbal abuse. Laws that criminalize these violations have not been passed despite ongoing campaigning by human rights groups in the country.

NGOs, Human Resource agencies, social programs, and welfare systems need to be addressed, not just by political motivation, but also for the sake of human beings. Women are an undeveloped population that has the potential to shatter all stereotypes and accomplish and achieve any goal they chose. Given the lack of opportunity historically, their contributing powers will help Pakistan achieve a prodigious supply of resources.

The military of Pakistan is being strengthened while other societal necessities are being abandoned. For example: clean water, medical care, and housing, ample food supply. The Pakistani society is caught in a vicious circle where the weakness of its institutions and governments result in a particular form of development, which in turn produces weak institutions and the absence to act collectively to help those in need, expressly women.

It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from values (of the [Convention for the Protection of Human Rights and Fundamental Freedoms](#)),

particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts....

"In the Court's view, a political party whose actions seem to be aimed at introducing Shari'a in a State party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention."

There is a process for empowerment for the women of Pakistan, which will enable these women to gain authority and become independent individuals. Yes, old customs, and habits die-hard, changes take time to evolve. But given an ordered series of transformations, which need to occur before any reformation or improvement will happen. Here are a few points to help solve these circumstances:

Being able to make one's own decisions

Access to information and resources to be able to make proper choices

A range of options to make those choices

To be able to exercise assertiveness in those decisions

A positive attitude to think you can and will make changes

Education to learn skills and be able to improve one's life

Overcoming stigma's that have been assigned to women, as kari, chaste, etc.,

and having a positive self image

To weigh each decision, not by listening to everyone else, but what is good  
for you as a human being by knowing the difference between right and wrong  
And to understand growth, progress, and advancement take time

My message to the women of Pakistan, gender equality is a God given  
right and is recognized globally. The issues that have burdened you all for  
such a long time must now have a positive intervention, which is empowerment  
by having faith, trust, and the belief in yourselves.

## APPENDIX A

### WOMEN'S ORGANIZATIONS IN PAKISTAN

Listed below are Women's organizations that help and aid those in need.

All Pakistan Women's Association

67-B Garden Road, Karachi

Pakistan

Tel: 92-021-712991

Promote socio-economic uplift and constitutional rights of women of Pakistan, and their participation in development. Encouragement of good will, understanding, and spirit of cooperation. One of the largest national organizations with branches all over the country.

Applied Socio-Economic Research (ASR)

Flat No. 8, 2nd Floor, Sheraz Plaza

Gulberg Main Market-P.O. Box 3154-Gulberg 2

Lahore II

Pakistan

Aurat Foundation

Misbah Tahir

4-A, LDA Flats, Garden View Apart, Lawrence  
Road, Lahore, Pakistan

Tel: 92-042-306534; 6360352

Fax: 92-042-6278817

To promote awareness among women of all socio-economic levels of their rights and status in society (information dissemination. Extensive training courses conducted at grass-roots level for the empowerment of women.

Aurat Foundation

(Information for Women's Empowerment)

House 14, Street 41

Sector F 6/1

Islamabad,

Pakistan

Tel: 815414

Bedari

House 8, Street 32, F-7/1, Islamabad, Pakistan  
Tel: 92-051-824327

An NGO based in Islamabad. Conducts activities intended to improve conditions of women in the community through training, research, and advocacy.

Centre of Excellence for Women's Studies  
University of Karachi  
Karachi-75270  
Pakistan

Department of Women 's Studies  
Allama Iqbal Open University Islamabad  
E-mail: qudsiarifat@yahoo.com  
Tel: 9257051 or 9257028

Ministry Of Women Development  
Islamabad  
Pakistan

The objectives are to formulate public policies and laws to meet the special needs of women; to register and assist women's organizations, to undertake and promote projects for providing special facilities for women, to undertake and promote research on their conditions and problem, to represent the country in international organizations dealing with problems of women in bilateral contacts with other countries, to ensure that women's interests and needs are adequately represented in public policy formulation by various organs of government, and to ensure equality of opportunity in education and employment and active participation of women in different spheres of national life.

Pakistan Association for Women's Studies  
C-12 Karachi University  
Karachi-PAKISTAN  
#92-21 4981929  
E-mail: paws@research.khi.undp.org

Pakistan Federation Of Business And Professional Women  
Street 7, Boulevard 4 Clifton  
Karachi, Pakistan  
Tel: 92-021-536576

An advocacy and pressure group with a social welfare and development orientation. Concerned to raise status (including economic status) of women by ensuring equal opportunities in education, training, and employment.

Professional Agricultural Women  
272/4 Britto Road  
Karachi 74800  
Pakistan

Revolutionary Association of the Women of Afghanistan (RAWA)  
PO Box 374, Quetta, Pakistan.  
Tel: 0092 300 551638  
Fax: 0092 91 263124  
E-mail: rawa@geocities.com  
URL: <http://www.geocities.com/Wellesley/3340>

SOUL Welfare Organisation  
GPO Box 602  
Faisalabad 38000, Pakistan.  
Fax: 92 41 635093  
Email: naeemf@paknetl.ptc.pk  
URL: <http://www.ptf.hro.nl/~s0470481/insex.html>

War Against Rape (WAR)  
c/o Dr. Pervaiz Hoodbhoy  
Quaid-i-Azam University, Islamabad  
Tel: 92-051213429,213481  
Active lobbying, advocacy on women's issues, particularly on rape and violence against women.

Women-alert  
e-mail: [women\\_alert@hotmail.com](mailto:women_alert@hotmail.com)  
An on-line pressure group of individuals in Pakistan. Women alert deals with the complexities and issues involving sexual harassment and discrimination against women in all forms, especially at workplace. Women alert is committed to create awareness and bring a behavioral change in the working environment and other places where interaction of the genders is frequent or on regular basis. Women-alert is committed to advocate for the victims and affected individuals against the offences of sexual harassment and

discrimination and take effective action against the alleged offender. Women-alert intends to lobby at the policy making level for providing effective measures to protect and remedies to women. Although women-alert is in nascent stages of developing as an effective forum for voicing concerns regarding discrimination and harassment issues, however, women-alert is the only on-line pressure group in Pakistan of its nature.

#### WOMEN IN DEVELOPMENT-WID

P-16 St.3/1 Dawood Nagar(Warispur)

Faisalabad-38090 Pakistan

Tel 9241-729728

Fax:9241-738859

WID is by and for women awareness,education and training for their rights and recognitions.WID is educating women for their social and economic independence at the grassroots level.

#### Women Empowerment, Literacy & Development Organization

39c St 22 Chaklala Scheme III

Rawalpindi 46000

Pakistan

Phone/Fax : 92 51 5509826

URL: <http://www.weldo.org>

A non profit registered NGO working for women in Pakistan.

#### Women's Action Forum (WAF)

c/o Samina Rauf

No. 44, St. 12, F(c)6/3, Islamabad

Pakistan

Tel: 92-051-814966; 92-051-827790

Active lobbying, advocacy on behalf of women. Holds demonstrations and public-awareness campaigns.

#### Women's Division "Research Wing"

Secretariat Of The Government Of Pakistan

44 West, Aaly Plaza, F-6/1

Islamabad

Pakistan

#### Women's Studies Centre

Quaid-E-Azam University  
Islamabad  
Pakistan  
Tel: 281344/291547  
Fax: 281344

Courtesy of:

Denise Osted  
Box 435  
East Selkirk, Manitoba Canada R0E 0M0  
E-mail: [thistle gnome@yahoo.ca](mailto:thistle gnome@yahoo.ca)

## APPENDIX B

### TIMELINE

#### Pakistan Timeline: BCE

**(3000-1500 BC)** Indus Valley civilization of modern-day Pakistan

**(1700s BC)** Start of the Aryan civilization

**(1500s BC)** Aryans came into the Punjab region, followed a strict caste system

**(600 BC)** People became frustrated by caste system

**(516 BC)** Persians conquered north Pakistan and made it part of Achaemenid Empire of Persia

**(327-325 BC)** Alexander the Great invaded India and captured Taxila, Pakistan

**(185 BC)** Bactrian Greeks seize northwest Pakistan

**(75 BC)** Scythians from central Asia arrived

#### 20 CE- 711 CE

**(20)** Parthians conquered northern India (present day Pakistan)

**(60)** Parthians overthrown by Kushans

**(300)** Kushans declined, Sassanian Empire prevail

**(400)** Kidar Kushans came into power

**(445)** White Huns invaded Gandhara

**(565)** Sassanians and Turks overthrew Huns

**(600 - 700)** Turki Shahi controlled the west of Indus, included Gandhara

**(711)** Muhammad bin Qasim conquered Sindh, and Southern Punjab

**(1000)** Turkish Muslims invaded northern Pakistan

**(1206)** Most of present-day Pakistan became part of the Delhi Sultanate

**(1526)** Babar, a Muslim ruler

From Afghanistan, invaded

India, established the Mogul Empire

**(1740)** East India Company gained political control over most of India

**(1858)** British took control of East India Company, the territory became known as British India

**(1893)** Durand Line Agreement established international border between Pakistan and Afghanistan

#### 1900's

**(1906)** Muslim League founded as a forum for Indian Muslim separatism

**(1940)** Muslim League demanded partition of separate nation for India's Muslims

**(1947)** British and Indian leaders divide country into two sovereign states: India and Pakistan

**(1947)** Pakistan became independent

**(1948)** War with India over disputed territory of Kashmir

**(1948)** Urdu declared national language

**(1948)** Khwaja Nazimuddin became governor-general upon death of Jinnah

**(1949)** War over Kashmir ended

**(1951)** Prime Minister Liaquat assassinated; Nazimuddin became prime minister

**(1955)** Governor-General Ghulam Mohammad resigned, succeeded by Iskander Mirza

**(1956)** Constitution adopted proclaiming Pakistan as an Islamic Republic, Mirza became president

**(1958)** Mirza suspended the constitution, declared martial law, cancelled elections

**(1958)** Mirza sent into exile

**(1958)** General Mohammad Ayub Khan assumed office of president

**(1965)** Second war between India and Pakistan over Kashmir began

**(1969)** Martial law declared

**(1969)** Ayub Khan resigned, General Agha Mohammad Yahya Khan assumed presidency

**(1970)** East Pakistan struck by cyclone and tidal wave, killed over 200,000

**(1970)** First general elections were held, Awami League secured majority in New National Assembly

**(1971)** Civil war began after East Pakistan attempted to secede

**(1971)** Bangladesh declared itself independent

**(1971)** Pakistani military surrendered to Indian armed forces

**(1971)** Yahya Khan resigned, Zulfikar Ali Bhutto became president

**(1972)** Bhutto and Indira Gandhi, India's prime minister, signed Simla agreement which adjusted case-fire line and created new Line of Control between the two countries

**(1973)** New constitution went into effect; Bhutto became prime minister

**(1976)** Pakistan and **(1977)** Riots erupt due to allegations of vote-rigging

**(1977)** Bhutto loses power, arrested by military

**(1977)** General Mohammad Zia ul-Haq took control of government, proclaimed martial law and suspended part of 1973 Constitution

**(1978)** Zia became president of Pakistan

**(1979)** Islamic penal code introduced

**(1979)** Zulfikar Ali Bhutto hanged

**(1980)** US pledged military assistance to Pakistan, followed Soviet intervention in Afghanistan

**(1983)** Martial law lifted

**(1985)** General elections were held

**(1988)** Government of Prime Minister Mohammad Khan Junejo dismissed by President Zia and new elections ordered

**(1988)** President Zia dies in mysterious plane crash

**(1988)** Elections held, Benazir Bhutto became first woman prime minister of a Muslim nation

**(1990)** Benazir Bhutto dismissed as prime minister, Nawaz Sharif elected prime minister

**(1991)** Islamic Shariah law added into legal code

**(1993)** President Ishaq Khan, Prime Minister Sharif resigned under pressure from military

**(1993)** Benazir Bhutto named prime minister

**(1996)** Bhutto's government dismissed by President Farooq Leghari

**(1997)** Sharif regained power following elections

**(1997)** Constitution amended by National Assembly, stripped president's power to dismiss government

**(1997)** President Leghari resigned, replaced by Rafiq Tarar

**(1998)** Pakistan tested its first nuclear device

**(1999)** Benazir Bhutto and husband convicted of corruption, issued jail sentences

**(1999)** Pakistani forces battled with Indian military around Kargil in Kashmir, more than 1,000 killed

**(1999)** Army deposed Sharif; General Pervez Musharraf became chief executive

**(2000)** Nawaz Sharif sentenced to life imprisonment for hijacking and terrorism charges, went into exile in Saudi Arabia

**(2001)** Musharraf named himself president

**(2001)** Pakistan supported US in fight against terrorism, supported attacks on Afghanistan

**(2002)** President Musharraf won five-year term

**(2002)** President Musharraf granted himself new powers, included right to

**(2003)** Ceasefire over Kashmir declared by Pakistan, India followed suit

**(2004)** Pakistan began military offensive against suspected Al-Qaeda militants near Afghan border

**(2004)** Pakistan re-admitted to the Commonwealth

**(2005)** First nuclear-capable cruise missile tested

**(2005)** Earthquake killed 80,000 people in Kashmir

**(2006)** Peace accords signed to end fighting with pro-Al-Qaeda militants near Afghan border

**(2007)** Bomb blasts and fire on a train traveling between New Delhi, India and Lahore, Pakistan killed 68 passengers

**(2007)** Pakistan and India signed an agreement to reduce the risk of accidental nuclear war

**(2007)** Protests begin after President Musharraf suspends Chief Justice Iftikhar Mohammed Chaudhry

**(2007)** Red Mosque complex in Islamabad stormed by security forces following week-long siege

**(2007)** Chief Justice Chaudhry reinstated by Supreme Court

**(2007)** Former Prime Minister, Benazir Bhutto, returned from exile; during her homecoming parade in Karachi, dozens were killed by suicide bomb

**(2007)** Over 200 killed in fighting during offensive launched by the Army against militants in North Waziristan

**(2007)** Musharraf won presidential election, but was challenged by Supreme Court

**(2007)** President Musharraf declared emergency rule, dismissed Chief Justice Chaudhry, appointed new Supreme Court

**(2007)** New Supreme Court confirmed Musharraf's re-election

**(2007)** Former Prime Minister Nawaz Sharif returned from exile

**(2007)** Musharraf lifted emergency rule

**(2007)** During political rally in Rawalpindi, Benazir Bhutto was assassinated

**(2008)** Yusuf Raza Gilani

elected prime minister

**(2008)** President

Musharraf resigned

**(2008)** Asif Ali Zardari, widower of Benazir Bhutto, elected president

**(2008)** Suicide bombing at Marriott Hotel in Islamabad killed 53

**(2008)** Over 1,000 militants killed during government-launched offensive in Bajaur tribal area

**(2009)** Government agreed to implement Sharia law in northwestern Swat Valley

**(2009)** Government yielded to demands to reinstate judges dismissed by former President Musharraf

**(2009)** Baitullah Mehsud, leader of Pakistan's Taliban, killed in US drone attack in south Waziristan, Hakimullah Mehsud assumed leadership

**(2009)** Suicide bomb in Peshawar killed 120 people

**(2010)** Suicide attack during volleyball match killed over 100

**(2010)** Parliament approved constitutional reforms included transferring key powers from president to prime minister

**(2010)** Flooding killed at least 1,600

**(2011)** Osama bin Laden, founder of Al-Qaeda, assassinated in Abbottabad by U.S. Special Forces

**(2011)** NATO supply routes shut down following attack on military outposts that killed 25 Pakistani soldiers

**(2011)** US troops left Shamshi Air Base following November border attack, Pakistan blocked US convoys entering Afghanistan

**(2012)** Bomb exploded near gas pump in Jamrud, killed at least 30, injured 78

**(2012)** Remote-

controlled bomb exploded during Shi'a Muslim processing in Punjab province, killed 18, injured dozens

**(2012)** Over 100 heart patients died at Punjab Institute of Cardiology following fake medicine crisis

**(2012)** Militants ambushed bus carrying Shi'a Muslims, killed all 18

### World Atlas

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## APPENDIX C-1

### STATISTICS OF VIOLENCE AGAINST WOMEN IN PAKISTAN IN 2009

In Islamabad: A total of 8548 incidents of violence against women were reported in the four provinces of Pakistan and in the capital territory of Islamabad during the year 2009. Of these, 5722 cases of violence were recorded in Punjab, 1762 in Sindh, 655 in the NWFP, 237 in Balochistan, and 172 in Islamabad. Almost all of these cases are reported cases.

#### The Statistics are as follows:

##### **1384 cases of murder:**

752 in Punjab, 288 in Sindh, 266 in NWFP, 39 in Balochistan and 39 in Islamabad

##### **604 cases of 'honor' killing:**

245 in Punjab, 284 in Sindh, 14 in NWFP, 59 in Balochistan and 2 in Islamabad

##### **1987 cases of abduction/kidnapping:**

1698 in Punjab, 160 in Sindh, 64 in NWFP, 13 in Balochistan, and 52 in Islamabad

##### **608 cases of domestic violence:**

271 in Punjab, 123 in Sindh, 163 in NWFP, 22 in Balochistan, and 18 in Islamabad

##### **683 cases of suicide:**

448 in Punjab, 176 in Sindh, 43 in NWFP, 10 in Balochistan, and 6 in Islamabad

##### **928 cases of rape/gang-rape:**

786 in Punjab, 122 in Sindh, 7 in NWFP, 4 in Balochistan, and 9 in Islamabad

##### **274 cases of sexual assault:**

227 in Punjab, 44 in Sindh, 0 in NWFP, 2 in Balochistan, and 1 in Islamabad

**50 cases of stove burning:**

33 in Punjab, 10 in Sindh, 4 in NWFP, 1 in Balochistan, and 2 in Islamabad

**53 cases of acid throwing:**

42 in Punjab, 9 in Sindh, 1 NWFP, 0 in Balochistan, and 1 in Islamabad

**1977 cases of violence were of miscellaneous nature:**

(vanni/swara, custodial violence, torture, trafficking, child marriages, incest, threat of violence, sexual harassment, attempted murder, suicide and rape) in the four provinces and Islamabad.

These statistics are provided by the Violence against Women Watch Group, Islamabad-Aurat Foundation

(<http://www.af.org.pk/Eng%20ver20%Report%202009.pdf>).

The acquittal ratio for people accused in ‘honor’ killing cases, according to an article published on April 1, 2004 in the Daily Times Pakistan, written by Waqar Gillani is: 43.13 percent in Balochistan, 71.97 percent in Punjab, 91.4 percent in Sindh and 92.9 percent in the North West Frontier Province.

## APPENDIX C-2

## VIOLENCE AGAINST WOMEN IN THE TRIBAL AREAS-2006

TYPE OF CONVENTIONAL PRACTICE	PERCENTAGE
AAF AND AAS-CROSSING FIRE BAREFOOT	3%
MARRIAGE TO THE QUR'AN	27%
PUNCHAIYAT	40%
DIVORCE	3%
DOMESTICE VIOLENCE	27%
EARLY AGE MARRIAGES	10%
HONOR KILLINGS	27%
KARO -KARI	73%
RAPE	3%
SALE AND PURCHASE OF WOMEN	23%
SHARE TO WOMEN IN INHERITED PROPERTY	7%
VANI	30%
WATTA & TAKKA (NUMRAD)	7%
WATTA-SATTA	67%
DOWRY	0%

Source: DAL Study on Situation of Tribal Areas' Women of Sulaiman Range-2006

**APPENDIX D****IMAGES****FIGURE 1**

The Aurat Foundation (AF)

The Aurat Foundation (AF) said 4,448 cases of violence against women were reported from different parts of the country in the first six months of this year. That compared with the first six months of 2010, when 4,061 cases were registered. AF Chairman Naeem Mirza told Radio Mashaal the report was prepared on the basis of information collected from all four Pakistani provinces. He said 3,035 cases of violence were reported from Punjab, 819 from Sindh, 389 from Khyber Pakhtunkhwa, 133 from Baluchistan, and 72 from the capital, Islamabad.

Mirza said those cases include 1,100 kidnappings and 799 murders. The rest were beatings, harassment, and other lesser crimes. He added that 402 women reportedly committed suicide during the first six months of the year.



**FIGURE 2**  
Somi Khalid, 26, Acid attack survivor in Pakistan, January, 2010



**FIGURE 3**  
17-year-old girl being flogged in Swat valley

The Acid Survivors Foundation (ASF) Pakistan recorded 48 cases of acid attacks in 2009. This is up from about 33 cases in 2007. 2010 does not seem to be any better.



**FIGURE 4**



**FIGURE 5**

APPENDIX E

MAP OF PAKISTAN



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