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# DOMESTIC VIOLENCE IN PAKISTAN: THE TENSION BETWEEN INTERVENTION & SOVEREIGN AUTONOMY IN HUMAN RIGHTS LAW

## I. INTRODUCTION

In international human rights jurisprudence, the tension between intervention and autonomous statehood is both endemic and intractable.<sup>1</sup> One defining attribute of human rights is that they are the rights of all, without regard to such particularities as nationality, culture, or religious affiliation.<sup>2</sup> At a minimum, this universality claim holds that the manner in which a state treats its own people is no longer its internal business since all states owe an obligation to the entire interna-

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1. The U.N. Charter itself embodies this tension by recognizing the universality of human rights and the notion of sovereign autonomy. Regarding the universality of human rights, the Charter promotes “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” and indicates that “[a]ll members pledge themselves to take joint and separate action in co-operation with the organization for the achievement” of that goal. U.N. CHARTER, arts. 55, 56. However, these clauses directly conflict with Article 2(7) of the U.N. Charter, which states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

U.N. CHARTER, art. 2(7).

2. LOUIS HENKIN, *THE AGE OF RIGHTS* 3 (1990) (stating that labeling rights as human “implies that all human beings have them, equally and in equal measure, by virtue of their humanity — regardless of sex, race, age; regardless of high or low ‘birth’, social class, national origin, ethnic or tribal affiliation; regardless of wealth or poverty, occupation, talent, merit, religion, ideology, or other commitment.”). *See also generally* Universal Declaration on Human Rights, U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1948); International Covenant on Civil & Political Rights, Dec. 16, 1966, art. 2, 999 U.N.T.S. 171; Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, UN GAOR, Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984).

tional community to respect human rights.<sup>3</sup> Yet, the reality is that the world is still divided into sovereign states, representing diverse cultures and religions, which not only claim autonomy and deference, but often do so in the name of one or another human right.<sup>4</sup> This tension between intervention and autonomy has often been cast in terms of universalism and cultural relativism,<sup>5</sup> but that characterization is flawed in that it is both unhelpfully simplistic and unable to settle ideological battles. This Note focuses, instead, on an emerging curiosity regarding the tension between intervention and autonomy as played out in women's human rights jurisprudence.

This conflict between intervention and autonomy is brought to a pitch by the intrusive nature of the conception and implementation of human rights, which seems to be widely (though sometimes grudgingly) tolerated with regard to genocide, war crimes, imprisonment, and torture.<sup>6</sup> Why, then, is the same intrusion adamantly resisted with regard to women's rights violations, such as domestic violence, rape, denial of sexual auton-

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3. Louis Henkin, *The Age of Rights*, in HUMAN RIGHTS 276–81 (1999) (describing the evolution of human rights from its roots of sovereignty to international obligations). These international obligations are frequently called obligations *erga omnes*. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702, cmt. (1987).

4. One example of these claims to autonomy as a human right is self-determination. The concept of “third generation” human rights proposes the use of self-determination to allow all groups to pursue “human rights more effectively at a global level.” Sara E. Allgood, *United Nations Human Rights “Entitlements”: The Right to Development Analyzed within the Application of the Right of Self-Determination*, 31 GA. J. INT'L & COMP. L. 321, 334 (2003).

5. Geoffrey A. Hoffman, *In Search of an International Human Right to Receive Information*, 25 LOY. L.A. INT'L & COMP. L. REV. 165, 197–99 (2003).

6. *See, e.g.*, *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (holding that genocide, war crimes, and other torture were actionable as violations of international law). *See also* Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951); Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., U.N. Doc. A/39/51 (1985); Statute of the International Tribunal for the Former Yugoslavia, May 25, 1993, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mt., Annex, U.N. Doc. S/RES/827 (1993); Statute of the International Tribunal for Rwanda, Nov. 8, 1994, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453th mtg., U.N. Doc. S/RES/955 (1994); Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 183/9 (1998), *reprinted in* 37 I.L.M. 999.

omy, reproductive rights, and a myriad of other “cultural practices” that are anathema to women’s fundamental dignity? Contemporary feminist legal scholars view this discrepancy in terms of gender bias, as a reflection of the “gendered” nature of international human rights law.<sup>7</sup> Through insights such as the public-private distinction forged in domestic battles for women’s liberation, these scholars explain the silences of international human rights law in terms of patriarchy.<sup>8</sup> Challenges to the public-private dichotomy can be further enhanced by globalization,<sup>9</sup> expanding awareness and invoking change from the international community. Like that between society and the home, the public-private barrier of the international community and the states must also be broken; the veil of state sovereignty must be pierced.<sup>10</sup>

With a specific focus on Pakistan as a prototypical case, this Note argues that while liberation from within one’s culture, religion, history, and state may be ultimately essential for the full realization of human rights in general, this method is insufficient for women’s human rights because women’s rights *are* different. Unlike imprisonment, torture, or even execution, women’s rights speak to a whole normative ecology of abuse that is systemic, endemic, pervasive, and deeply embedded in every nerve and sinew of the state, culture, or religion that circumscribes their lives. Endemic system-wide violations cannot be repaired internally by recourse to other aspects of the value system. Repairing women’s rights from the inside is like trying to lift oneself up by the bootstraps. Change “from within” for the human rights movement in Pakistan and around the globe would entail so radical an overhaul of internal particularities

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7. See generally Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT’L L. 613, 613–14 (1991); Symposium, *Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women’s Rights*, 24 MICH. J. INT’L L. 347, 354 (2002) (transcript); HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 43 (3d ed. 1993) (discussing the public and private dichotomy regarding the international “public” and the state “private”).

8. See generally Charlesworth, *supra* note 7, at 613–14. See also HENKIN, *supra* note 7, at 45.

9. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 54 (2000).

10. See HENKIN, *supra* note 7, at 45 (discussing the public and private dichotomy regarding the international “public” and the state “private”).

that it would render them unrecognizable. Leaders of state governments, cultural traditions, and religions do not have the will or capacity to bring about so unpopular a change anymore than their counterparts in the states of America's "Deep South" did to end racism. For this reason, women's human rights require that the international community "pierce the veil" of the sovereign, cultural or religious autonomy, the way the U.S. federal government intervened in southern states to end racial segregation.

In arguing that women's rights uniquely require international intervention around the globe, this Note will discuss the persistent patterns of women's rights violations in Pakistan. Part II will explore the severity of the beatings, mutilations, and honor killings that these women survivors in Pakistan experience. Part III will discuss the relation of these violations to international human rights obligations through sources of international law which make Pakistan responsible for protecting human rights violations within its borders. Part IV will reveal the scourge of impunity — endemic violations without remedy — in Pakistan's creation of protective measures which, in fact, do not protect women. Law enforcement officials impede women from asserting their rights by discouraging complaints,<sup>11</sup> failing to file complaints,<sup>12</sup> and frequently sexually assaulting individuals who come in to make these complaints.<sup>13</sup> Women whose cases survive the apathy, and indeed antipathy, of police agents are represented by attorneys who endure intimidation and violence and confront judicial bias and misinformation concerning the role of wives and the discretion of husbands to abuse their wives in Islam.<sup>14</sup> Part V will present the case for intervention, making suggestions for reform and emphasizing the need for both state and international accountability. Finally, Part VI will conclude that Pakistan's inadequate protection of fundamental human rights makes a mockery of women's

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11. HUMAN RIGHTS WATCH, CRIME OR CUSTOM? VIOLENCE AGAINST WOMEN IN PAKISTAN 45 (1999) [hereinafter CRIME OR CUSTOM].

12. *Id.* at 51–52.

13. HINA JILANI, HUMAN RIGHTS & DEMOCRATIC DEVELOPMENTS IN PAKISTAN 142 (Human Rights Commission of Pakistan 1998) [hereinafter JILANI, HUMAN RIGHTS].

14. *See infra* Parts IV.C & D.

rights and is a prototypical case where intervention is appropriate.

## II. PAKISTAN: A MICROCOSM OF WOMEN'S RIGHTS VIOLATIONS

Fakhra Yunas was one Pakistani woman who endured severe domestic violence over an extended period of time. One day in particular was worse than all the rest. As Fakhra Yunas awoke from her nap, she noticed that her husband was running from the room.<sup>15</sup> Fakhra then stood to see that her clothes were slowly dissolving and her body was beginning to burn.<sup>16</sup> Suddenly, she was unclothed and in immense amounts of pain. She was the survivor of yet another form of abuse by her husband: an acid attack.<sup>17</sup> This attack "burned the hair off Fakhra's head, fused her lips, blinded one eye, obliterated her left ear, and melted her breasts."<sup>18</sup> Even after this torture, Fakhra had inconceivable difficulty escaping her abuser. No arrest was made even after her family filed a complaint for this acid attack.<sup>19</sup> Her husband continuously threatened her and attempted to force her to return to him.<sup>20</sup> Leaving the country to receive treatment for her wounds also proved difficult because Pakistan's Interior Minister, retired Lieutenant General Moinuddin Haider, was afraid of the effect such negative publicity might have on the country's international relations.<sup>21</sup> Thus, no arrest was made and Fakhra's husband continued to stalk and threaten both her and her family.<sup>22</sup> Pakistan effectively deprived Fakhra of any means of recourse and the international community did nothing to assist her.

Unfortunately, Fakhra is only one of the many women in the Islamic Republic of Pakistan who experience such forms of

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15. Hanna Bloch, *The Evil that Men Do*, TIME ASIA, Vol. 158, No. 7/8, Aug. 13, 2001, available at <http://www.time.com/time/asia/news/magazine/0,9754,170879,00.html>.

16. *Id.*

17. *Pakistani Woman Goes Public with Acid Attack Allegations*, AGENCE FRANCE-PRESSE, June 14, 2001, at 2001 WL 2428764.

18. Bloch, *supra* note 15.

19. *Id.*

20. *Id.*

21. *Id.*; AGENCE FRANCE-PRESSE, *supra* note 17.

22. See Bloch, *supra* note 15 (discussing the delay of Fakhra's visa to undergo reconstructive surgery in Italy based on the fear that media attention would "sully" Pakistan's reputation).

abuse at the hands of both their husbands and the state. Forms of domestic violence vary across societies, cultures, and religions.<sup>23</sup> Abuse is a social problem which is “sanctioned and controlled through culture, religious beliefs, law, and the norms of friendship, kinship, and neighborhood groups.”<sup>24</sup> To the majority of Muslims, Islam is both a religion and a culture; it is a way of life and an everyday practice, one that does not permit violence toward one’s spouse.<sup>25</sup> Pakistan claims to be an Islamic nation, invoking Islamic laws, and adhering to international custom and treaties. Yet, in Pakistan, the perpetrators of domestic violence go virtually unpunished.<sup>26</sup>

According to the Pakistan Institute of Medical Sciences, over 90% of married women report being physically or sexually abused by their spouses.<sup>27</sup> In addition, women who attempt to file complaints or leave their husbands are subject to further abuse.<sup>28</sup> These women are trapped by the laws of the Islamic Republic of Pakistan and the state agents who enforce them.<sup>29</sup> The failure of state institutions leaves these survivors without any source of domestic recourse. Pakistan’s inadequate response, and often complete inaction, is a blatant human rights violation in international law. In order to restore rights and protect women, the international community must take action and pierce the sovereign veil.

#### A. *Stove Burnings, Acid Attacks, & Mutilation*

Despite international human rights law, substantial amounts of violence against women continue to occur with virtually no

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23. See MARY JOE FRUG, *WOMEN AND THE LAW* 151 (Foundation Press 1992).

24. *Id.*

25. SISTERS IN ISLAM, *ARE MUSLIM MEN ALLOWED TO BEAT THEIR WIVES* (United Selangor Press 1991).

26. Nuzhat Ara, *Pakistan: Has the Suffering of Pakistani Women Touched the General’s Heart*, LOTUS SOCIAL WELFARE TRUST INT’L, at <http://www.lswti.itgo.com/women%20rights.htm>; CRIME OR CUSTOM, *supra* note 11, at 52.

27. Carol Anne Douglas et al., *Pakistan: Women’s Rights Activist Falsely Accused*, OFF OUR BACKS, Vol. 32, Issue 5/6, May 1, 2002, at 2002 WL 14330250.

28. Prabhu Patel, *Pakistan: Killing in the Name of Honor*, Honor Killings in Pakistan (2000), at <http://www.apcjp.org/pakistan.htm> (last modified May 4, 2002).

29. JILANI, HUMAN RIGHTS, *supra* note 13, at 140–41.

action or reaction by the state of Pakistan.<sup>30</sup> In addition to being beaten, slapped, kicked, or sexually abused,<sup>31</sup> many Pakistani women are also burned, doused with acid, or physically mutilated in other ways.<sup>32</sup> According to the Progressive Women's Association, in just five years, approximately 3560 women reported being attacked with gas, fire, or acid.<sup>33</sup>

One common form of domestic violence in Pakistan is the crime of stove-burning. In these situations, survivors and abusers generally claim that a woman's garments caught fire while cooking or that an explosion on the gas stove burned her.<sup>34</sup> In reality, batterers use these so-called accidents (which occur for any number of reasons, ranging from adultery to dinner being late) as a means to power and control.<sup>35</sup> The abuser usually douses the victim in kerosene oil and then sets her on fire from the gas stove.<sup>36</sup> In one case, a pregnant sixteen year old was set aflame by her husband and mother-in-law as a punishment for disobeying her husband.<sup>37</sup> Another girl, only one year older, was tied to a post and set on fire by her brothers.<sup>38</sup> One husband, a religious figure at a local mosque no less, even went so far as to tie his wife to the bed and thrust a "red-hot iron bar inside her vagina."<sup>39</sup> These situations and acid attacks, like that of Fakhra,<sup>40</sup> are all too common and, in the state of Pakistan, the perpetrators frequently go unpunished.<sup>41</sup> International media at-

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30. Douglas, *supra* note 27.

31. *Id.*

32. Carol Deckert, 'Honour killings' are plain murder; Widespread acceptance saw 1780 women die in Pakistan in 5 years, HAMILTON SPECATATOR A11, Mar. 8, 2002, at 2002 WL 21422242.

33. *Id.*

34. Anita Pratap, *Ghastly Domestic Abuse: Burning Women*, at <http://www.cnn.com/WORLD/9702/10/pakistan.women> (Feb. 10, 1997).

35. See SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING, *supra* note 9, at 21-22 (noting the use of domestic violence as a means to power and control).

36. Pratap, *supra* note 34.

37. Deckert, *supra* note 32.

38. *Id.*

39. AMNESTY INT'L, WOMEN IN PAKISTAN: DISADVANTAGED AND DENIED THEIR RIGHTS, HUMAN RIGHTS ARE WOMEN'S RIGHT 3 (1995) [hereinafter AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS].

40. See generally Bloch, *supra* note 15.

41. Ara, *supra* note 26; CRIME OR CUSTOM, *supra* note 11, at 52; Douglas, *supra* note 27.



tention may be the only means of effectively pushing the state into action,<sup>42</sup> though Pakistan takes every necessary step to prevent such attention.<sup>43</sup> Since the Pakistani government is incapable of protecting women against such atrocities, the international community has an obligation to ensure these fundamental rights.

### *B. Honor Killings*

An even more severe form of domestic violence is that of honor killings. Honor killings are just as horrific as they sound — women are murdered in the name of honor, as a way of restoring honor to her family.<sup>44</sup> In Pakistan, hundreds of women are killed every year under the pretext of honor.<sup>45</sup> Moreover, these numbers only reflect the reported incidents of this crime.<sup>46</sup> The state of Pakistan is unwilling and incapable of protecting these women against such violence or holding the perpetrators of these crimes accountable. Nevertheless, the international community condemns this violence but does nothing to restore women's fundamental rights.

The most infamous honor killing case in Pakistan is that of Samia Sarwar. After her arranged marriage at the age of 17, Samia was subjected to constant physical abuse by her husband.<sup>47</sup> Despite this abuse, she remained with her husband for nearly ten years.<sup>48</sup> The breaking point occurred when Samia became pregnant and her husband threw her down a flight of

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42. See, e.g., AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 8 ("media coverage has forced police to register a complaint brought by a woman"). See also Bloch, *supra* note 15 (where General Lieutenant General Moinuddin Haider denied Fakhra Yunus a visa to the U.S. out of fear of international media attention).

43. For example, Pakistan's Interior Minister prevented Fakhra Yunis from leaving the state based on fears of negative, international publicity. Bloch, *supra* note 15 (discussing the delay of Fakhra's visa for reconstructive surgery); AGENCE FRANCE-PRESSE, *supra* note 17.

44. Patel, *supra* note 28.

45. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, at <http://www.amnestyusa.org/countries/pakistan/reports/honour> (Sept. 22, 1999).

46. *Id.*

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

48. *Id.*

stairs.<sup>49</sup> Unfortunately, what Samia believed was the beginning of her life was actually the end. When Samia told her parents that she was getting a divorce, her parents were distraught with shame and threatened to murder her if she left her husband.<sup>50</sup> Still, Samia stood firm as her entire family turned against her. She refused to endure anymore abuse and instead, she fled to a shelter and contacted a well-known women's rights activist and lawyer.<sup>51</sup> Even when her mother requested to see her, Samia was so terrified of being harmed that she only agreed to meet her mother because it was the sole way for her to attain divorce papers.<sup>52</sup> At their meeting, Samia's mother was accompanied by her uncle and a chauffeur, whom she claimed was required to help her walk.<sup>53</sup> However, this chauffeur was not there to help her walk at all — at his first chance, the “chauffeur,” a hired gunman in disguise, shot and killed Samia and tried to kill her lawyer as well.<sup>54</sup>

Samia was one of many women killed in order to avoid shame or embarrassment to her family. But, divorce is not the only reason for these murders. Honor killings also occur “when a wife does not serve a meal quickly enough or when a man dreams that his wife betrays him.”<sup>55</sup> Realistically, domestic violence is not the product of any specific act or series of acts; women are not to blame for this violence.<sup>56</sup> Violence is a batterer's means of power and control, furthering male privilege and domination.<sup>57</sup> In addition to these norms, Pakistani society uses the excuse of culture and tradition to vindicate these

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49. *Id.*

50. *Id.*

51. Patel, *supra* note 28.

52. *Id.*; Ruane, *supra* note 47, at 1523–24.

53. Patel, *supra* note 28; Ruane, *supra* note 47, at 1524.

54. Patel, *supra* note 28; Ruane, *supra* note 47, at 1524.

55. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45.

56. See Susan Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement in BATTERED WOMEN AND THE LAW* 23–24 (2001) (denying victim provocation theories as a justification for domestic violence); Linda Gordan, *Heroes of Their Own Lives: The Politics and History of Domestic Violence, in BATTERED WOMEN AND THE LAW* 20–21 (2001) (noting that historically women were blamed for such acts and batterers were made the “aggrieved parties”).

57. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING*, *supra* note 9, at 21–22.

crimes in terms of respect and honor.<sup>58</sup> According to women's rights activist and lawyer, Hina Jilani, "the right of women in Pakistan is conditional on her obeying social norms and traditions."<sup>59</sup> If the woman does not follow social norms, such disobedience is sufficient reason to kill her.

Furthermore, the dominant group (in this case, men) interpret religion and culture in the ways most beneficial to themselves and offer these views as the only legitimate interpretation.<sup>60</sup> Due to the resulting male-biased culture and religious interpretation in Pakistan, women are treated as commodities, symbols of male ownership.<sup>61</sup> Therefore, any disobedience or even rumor of disobedience is enough to dishonor a man and killing that symbol of disobedience will restore a man's honor.<sup>62</sup> While officially condemned by Pakistan and the international community, neither do anything to ensure that women are not further subjected to honor killings or that perpetrators are punished for these acts.

### III. PROMISES UNFULFILLED: STATE RESPONSIBILITY FOR VIOLATIONS OF WOMEN'S HUMAN RIGHTS

#### A. *U.N. Convention on the Elimination of All Forms of Discrimination Against Women*

Traditionally, states were only responsible for those actions performed by state agents, and not the actions of private individuals.<sup>63</sup> However, international human rights law must protect individuals from abuses instituted by their own govern-

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58. Patel, *supra* note 28.

59. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45.

60. See Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 20 (Abdullahi Ahmed An-Na'im ed. 1992) [hereinafter An-Na'im, *Toward a Cross-Cultural Approach*].

61. *Id.*

62. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45.

63. Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119, 1124 (1995).

ments by holding such states accountable.<sup>64</sup> Pakistan deprives women survivors of violence of their “rights to life, liberty, and security of person,”<sup>65</sup> and claims to do so for the benefit of these women.<sup>66</sup> However, discrimination or selective enforcement of human rights laws (in this case, by not enforcing women’s rights specifically as human rights) is a state act in violation of international human rights law.<sup>67</sup> Based on the general acknowledgement of these human rights violations through treaties and custom, the international community is also responsible for ensuring that Pakistan fulfills this obligation.

Under the United Nations’ Convention for the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW], gender-based violence is a violation of women’s fundamental human rights.<sup>68</sup> As a party to that Convention, Pakistan is bound to “pursue all appropriate means and without delay [implement] a policy of eliminating discrimination against women,” including those forms of discrimination which impair the “enjoyment or exercise by women...of human rights and fundamental freedoms.”<sup>69</sup> Additionally, the Committee of this Convention defines domestic violence as inhibiting “women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>70</sup> CEDAW also declares that under widespread international law and human rights declarations, states are liable for failing to protect human rights by investigating or punishing perpetrators, and for these failures, states must provide just

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64. *Id.* at 38; An-Na’im, *Toward a Cross-Cultural Approach*, *supra* note 60, at 20.

65. JILANI, *HUMAN RIGHTS*, *supra* note 13, at 140.

66. The benefits referred to are those “in the name of modesty, protection, and prevention of immoral activity.” *Id.* at 143.

67. Patel, *supra* note 28.

68. Katherine M. Culliton, *Finding a Mechanism to Enforce Women’s Right to State Protection from Domestic Violence in the Americas*, 34 HARV. INT’L L.J. 507, 511 (1993) [hereinafter Culliton, *Finding a Mechanism to Enforce Women’s Right to State Protection*].

69. Convention on the Elimination of All Forms of Discrimination Against Women, arts. 1, 2, adopted by General Assembly on Dec. 18, 1979, GA Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, *entered into force* Sept. 3, 1981 [hereinafter CEDAW].

70. Committee on the Elimination of Discrimination against Women, “Violence Against Women,” General Recommendation No. 19 (11th sess., 1992) (New York: United Nations), CEDAW/C 1992/L.1/Add.15, para. 1.

compensation.<sup>71</sup> States must not only ensure that their agents do not commit violations, but must also “affirmatively protect” all individuals.<sup>72</sup> Having ratified this convention, Pakistan is thus required to protect women from domestic violence, even though such violence may be perpetrated by private individuals.<sup>73</sup> Finally, the widespread ratification of this Convention creates obligations on the part of the international community to ensure that women’s rights are protected.

Despite the fact that CEDAW is binding as an international agreement,<sup>74</sup> the Pakistani government has only made superficial attempts to comply with its obligations under CEDAW.<sup>75</sup> CEDAW specifies that Pakistan must “modify the social and cultural patterns of conduct of men and women,”<sup>76</sup> and yet, the state has only made verbal claims that domestic violence crimes must end<sup>77</sup> and has not implemented any of the suggestions made by the Pakistani Commission of Inquiry for Women.<sup>78</sup> Additionally, Pakistan has not submitted any national reports documenting its progress in this area,<sup>79</sup> as is required under the agreement.<sup>80</sup> Thus, Pakistan continues to violate CEDAW and the international community, aware of these violations, stands idly by, unwilling to take action to protect women.

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71. Culliton, *Finding a Mechanism to Enforce Women’s Right to State Protection*, *supra* note 68, at 514.

72. *Id.* at 513.

73. *Id.* at 510–13.

74. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 102, cmt. f.

75. Patel, *supra* note 28. See also CRIME OR CUSTOM, *supra* note 11, at 26–28 (discussing Pakistan’s obligations under international law); U.N. Convention on the Elimination of All Forms of Discrimination, Country Reports, at <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (noting Pakistan’s failure to submit reports regarding progress in modifying social and cultural acceptance of violence against women).

76. CEDAW, *supra* note 69, at art. 5.

77. General Musharraf Pervez, President of Pakistan, asked that law enforcement and judges take action against perpetrators of honor killings. However, this statement has not invoked any change and no further action was taken. Patel, *supra* note 28.

78. AMNESTY INT’L, TWO YEARS ON – DISCRIMINATION AGAINST WOMEN STILL STRIFE, Mar. 9, 1998, at <http://web.amnesty.org/library/Index/ENGASA330051998?open&of=ENG-PAK>.

79. U.N. Convention on the Elimination of All Forms of Discrimination, Country Reports, at <http://www.un.org/womenwatch/daw/cedaw/reports.htm>.

80. CEDAW, *supra* note 69, at art. 18.

*B. Evidence of Customary International Law*

Although Pakistan is not bound by international treaties and declarations to which they are not a party, if the standards expressed therein are widespread, these documents may constitute evidence of customary international law.<sup>81</sup> Once defined as custom, such standards are binding on all states, including Pakistan.<sup>82</sup> There are a number of international treaties and declarations asserting a state's responsibility to effectively protect the fundamental human rights of those individuals under its jurisdiction. Additionally, where the international community recognizes a state's failure to protect and ensure women's rights, the international community is obligated to act.

One example of customary law developed when the United Nations strengthened and affirmed the notion that states have obligations towards human rights violations against women in the Declaration on the Elimination of Violence Against Women.<sup>83</sup> This document defines violence against women<sup>84</sup> and establishes fundamental human rights for women.<sup>85</sup> Additionally, the declaration creates a set of standards by which states should abide in order to affirmatively prevent these violations and protect women's fundamental rights.<sup>86</sup> While not binding, the purpose of the declaration was to establish an international

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81. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 103, cmt. c.

82. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 102(1)(a).

83. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49. at 217, UN Doc. A/48/49 (1993).

84. This declaration recognizes violence against women as a "manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women." *Id.* at pmbl. This definition defines violence as "physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty," occurring in both public and private life as a "violation of the rights and fundamental freedoms of women." *Id.* at pmbl., art. 1.

85. Article 3 details the rights afforded women regarding the "equal enjoyment and protection of all human rights and other fundamental freedoms in the political, economic, social, cultural, civil or any other field." *Id.* at art. 3.

86. *Id.* at art. 4 (declaring steps which should be taken by states in their condemnation of violence against religion without consideration for "custom, tradition or religio[n]").

standard,<sup>87</sup> a form of customary international law.<sup>88</sup> Additionally, the International Covenant on Civil and Political Rights,<sup>89</sup> the Universal Declaration of Human Rights,<sup>90</sup> the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment,<sup>91</sup> and the American Convention on Human Rights,<sup>92</sup> all declare the affirmative duty of states to protect individuals against human rights violations. Therefore, even though Pakistan may not be a party to these declarations and treaties, these documents still constitute evidence of customary international law, binding on Pakistan, and acknowledging the international community's desire to enforce and protect these rights.

Similarly, in the *Velasquez-Rodriguez Case*, the Inter-American Court of Human Rights held the state of Honduras responsible for failing to adequately investigate and prevent unexplained disappearances of particular residents.<sup>93</sup> The state's tolerance of these forced disappearances was classified as a "grave violation of the victim's fundamental human rights."<sup>94</sup> Even though these disappearances could not definitively be attributed to state or private actors, Honduras was liable for failing to insure the protection of human rights.<sup>95</sup> According to this decision, states are required to sufficiently respond to conduct violating human rights and must "organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capa-

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87. See CRIME OR CUSTOM, *supra* note 11, at 29 n.32.

88. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 103, cmt. c.

89. International Covenant on Civil & Political Rights, Dec. 16, 1966, art. 2, 999 U.N.T.S. 171.

90. Universal Declaration on Human Rights, U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1948), pmbl.

91. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, U.N. GAOR, Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984).

92. American Convention on Human Rights, 1144 U.N.T.S. 123, 9 I.L.M. 673, art. 1 (entered into force Jul. 18, 1978) [hereinafter American Convention].

93. *Velasquez Rodriguez Case (Honduras)*, 4 Inter-Am. Ct. H.R. (ser. C), at 92 (1988).

94. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection*, *supra* note 68, at 549 (citing the Inter-American Court of Human Rights in the *Velasquez-Rodriguez Case*).

95. See American Convention, *supra* note 92, at 9 I.L.M. 673 (1970).

ble of juridically ensuring the free and full enjoyment of human rights.”<sup>96</sup>

Thus, states are required to respect and protect the fundamental rights of all individuals under its jurisdiction.<sup>97</sup> These international standards are founded on the notion that all human beings deserve equal protection of their rights and freedoms.<sup>98</sup> Under these standards, states are responsible for the failures of police officers and judges, as well as other state agents, which deny sufficient recourse for individual human rights violations.<sup>99</sup> Furthermore, based on the prevalent acceptance of these human rights standards, the international community is obligated to insure the protection of women’s rights.

#### IV. THE FACE OF IMPUNITY: PROTECTIVE MEASURES THAT DO NOT PROTECT

##### A. *Police Intervention or Lack Thereof*

Despite all of the abuse that they have experienced, domestic violence survivors are only subjected to more abuse throughout the Pakistani criminal justice system.<sup>100</sup> In the preliminary account of Fakhra Yunas, the survivor was so brutally abused by an acid attack that she had to undergo over 30 surgeries in order to restore her face and body to that resembling an average human being.<sup>101</sup> Yet, her husband, a prominent politician, was not prosecuted for his crime and instead continued to harass and threaten her.<sup>102</sup> Even after a police report was filed, no arrest was ever made.<sup>103</sup> Given the status of Pakistani law enforcement agencies, women survivors have no method of re-

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96. *Velasquez Rodriquez Case (Honduras)*, 4 Inter-Am. Ct. H.R. (ser. C), at 92 (1988).

97. Culliton, *Finding a Mechanism to Enforce Women’s Right to State Protection*, *supra* note 68, at 550–52.

98. Edna Boyle-Lewicki, *Need World’s Collide: The Hudaad Crimes of Islamic Law and International Human Rights*, 13 N.Y. INT’L L. REV. 43, 86 (2000).

99. Culliton, *Finding a Mechanism to Enforce Women’s Right to State Protection*, *supra* note 68, at 550–51.

100. *See* CRIME OR CUSTOM, *supra* note 11, at 45–63 (detailing the gender bias of law enforcement, attorneys, judges, and medico-legal doctors).

101. Bloch, *supra* note 15.

102. *Id.*

103. *Id.*



course and police officials lack the training to competently handle such gender-specific violence.<sup>104</sup> Rather than asserting women's fundamental human rights, the police generally look to traditional and social mores, and therefore, treat domestic violence as a private, familial issue.<sup>105</sup>

Under the Pakistani Criminal Procedure Code, when women come to the police station to file complaints against their batterers, police enforcement agencies have the responsibility of detailing the nature of the crime, requesting a medico-legal exam, escorting the survivor to that exam, and delivering all results and evidence to the prosecutor.<sup>106</sup> However, cases are rarely handled in this manner.<sup>107</sup> Instead, police officers usually advise survivors to reconcile with their batterers.<sup>108</sup> Survivors are informed that filing a complaint would bring dishonor to their family and such familial issues should be settled in the privacy of one's home, without intervention by the state.<sup>109</sup> By encouraging reconciliation or mediation, law enforcement agencies are reinforcing the batterer's power and control over the survivor.<sup>110</sup> Additionally, police officers frequently belittle and disregard survivors of domestic violence.<sup>111</sup> Even claims regarding honor killings are usually not investigated, but are instead justified based on culture and tradition.<sup>112</sup> Many police officers refuse to investigate incidents of domestic violence, deeming them private.<sup>113</sup> One police employee conducting a medico-legal exam even went so far as to opine to the lawyer of two minor rape survivors, one of which was ten years old, that the girls

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104. JILANI, HUMAN RIGHTS, *supra* note 13, at 141.

105. Patel, *supra* note 28.

106. PAK. CRIM. P. CODE, §§ 154, 155 (1898); POLICE RULES, ch. XXIV–XXV (1934).

107. CRIME OR CUSTOM, *supra* note 11, at 52 (noting that in Lahore and Karachi, none of the survivors interviewed had their cases handled according to the Pakistani Criminal Procedure Code).

108. JILANI, HUMAN RIGHTS, *supra* note 13, at 143.

109. *Id.* at 142.

110. See Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 S.M.U. L. REV. 2117, 2159 (1993).

111. CRIME OR CUSTOM, *supra* note 11, at 53.

112. Patel, *supra* note 28; JILANI, HUMAN RIGHTS, *supra* note 13, at 140.

113. Ruane, *supra* note 47, at 1539–41.

were “willing participants” in the act.<sup>114</sup> On the rare occasion that the officer actually files a report, the perpetrator often bribes a member of the law enforcement to alter or lose the report.<sup>115</sup>

Pakistan has taken no active measures with law enforcement officials to better protect women against human rights violations.<sup>116</sup> The state has not provided any training for police officers on domestic violence nor has the state taken any steps to help officers become more sensitive to the needs of domestic violence survivors.<sup>117</sup> The police response or lack thereof is effectively a refusal to acknowledge domestic violence as a criminal issue.<sup>118</sup> Instead, the outcome is the acceptance of domestic violence behind the closed doors of the family unit, as an accepted part of society.<sup>119</sup> As a result of this police apathy towards domestic violence and reluctance to investigate,<sup>120</sup> many women are deterred from contacting the police at all.<sup>121</sup> Thus, the Pakistani government allows its law enforcement to stand in the way of women survivors, while the international community does nothing to assist these women.

### *B. Sexual Assaults by State Agents*

While most law enforcement agencies do not enforce women survivors’ fundamental rights, police apathy is only the beginning of the problem. Survivors of domestic violence endure multiple violations of fundamental human rights at the hands of the authorities.<sup>122</sup> Many women who go to police stations to file complaints regarding domestic violence are “beaten, kicked,

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114. CRIME OR CUSTOM, *supra* note 11, at 48; JILANI, HUMAN RIGHTS, *supra* note 13, at 143.

115. See Ruane, *supra* note 47, at 1543 (discussing police ability to demand bribes from either party due to the difficulties of filing reports).

116. *Id.*

117. AMNESTY INT’L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45.

118. See JILANI, HUMAN RIGHTS, *supra* note 13, at 140–44.

119. *Id.* at 143.

120. *Id.*

121. CRIME OR CUSTOM, *supra* note 11, at 53.

122. See AMNESTY INT’L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 7–18; CRIME OR CUSTOM, *supra* note 11, at 45–63.

and raped in the police stations to humiliate them, to intimidate them or to extract money.”<sup>123</sup>

When asked why she does not file a complaint of domestic violence, one survivor of stove-burning stated, “What is the use? I belong to a respectable family; we don’t go to the police...If a woman goes to a police station she cannot protect her honor.”<sup>124</sup> This survivor’s comment refers to the police authority’s widespread abuse of power, entrapping and sexually assaulting women, thus leaving women defenseless and humiliated. Incidents of sexual assault by police officers are particularly appalling since rape claims are difficult enough to prove when the perpetrators are not state agents.<sup>125</sup> Furthermore, while rape is technically a crime under Pakistani law, this offense is so difficult to prove that the perpetrator is rarely punished.<sup>126</sup>

Due to the correlation created by placing rape and adultery under the same provision, the Pakistani rape statute encourages the use of an unsuccessful rape claim as an automatic conviction for adultery.<sup>127</sup> Under this statute, making a claim for rape may be seen as an admission to the act of sexual intercourse, in effect, a confession.<sup>128</sup> These convictions are based on

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123. AMNESTY INT’L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 7. See also Berta Esperanza Hernandez-Truyol, *Out of the Shadows: Traversing the Imaginary of Sameness, Difference, and Relationism A Human Rights Proposal*, 17 WIS. WOMEN’S L.J. 111, 142 n.185.

124. AMNESTY INT’L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 7–8.

125. See Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 MICH. J. INT’L L. 287, 288–90 (1997) (discussing the difficulties and injustice of rape laws in Pakistan). In 1980, the Hudood Ordinances criminalized adultery and fornication, among other “crimes against God,” and cannot be dismissed by the aggrieved party. These laws give judges the option between enforcing strict Islamic dictates and using their own discretion. Evan Gottesman, *The Reemergence of Qisas and Diyat in Pakistan*, 14 COLUM. HUM. RTS. L. REV. 433, 436, 444, 457 (1992).

126. Seth Mydans, *In Pakistan, Rape Victims are the ‘Criminals’*, N.Y. TIMES, May 17, 2002, available at <http://www.nytimes.com/2002/05/17/international/asia/17RAPE.html>. Rape laws require four witnesses to the act or a confession. Zina Ordinance § 8; see also Quraishi, *supra* note 125, at 294. Additionally, not only are women on the whole not allowed to testify, but the rape victim herself is not permitted to testify to the act. Anika Rahman, *A View Towards Women’s Reproductive Rights Perspective on Selected Laws and Policies in Pakistan*, 15 WHITTIER L. REV. 981, 999–1000 (1994).

127. Quraishi, *supra* note 125, at 303–04.

128. *Id.* at 291.

the premise that if a woman cannot prove rape, she must have been a willing participant in the sexual act and, therefore, she is a promiscuous woman and is liable for adultery.<sup>129</sup> In terms of evidentiary standards, a woman must prove rape beyond a reasonable doubt, but her alleged rapist is given the benefit of the doubt.<sup>130</sup> If she is unable to meet this burden, her insufficient rape claim constitutes *prima facie* evidence of adultery.<sup>131</sup> According to women's rights advocate Asma Jahangir, this standard implies that male perpetrators are presumed "innocent until proven guilty," while women are subjected to a presumption of guilt.<sup>132</sup> Therefore, unsuccessful rape claims are frequently used as evidence of adultery.<sup>133</sup> As a result, approximately, 90% of rape claimants end up imprisoned for adultery.<sup>134</sup> Thus, when a woman cannot prove rape, which is particularly likely when the perpetrator is a police officer, she may subsequently be charged with adultery, causing additional disgrace to her family, and often leaving her in jail for a substantial period of time.

Additionally, women assaulted by police officers do not come forward for fear of being attacked again.<sup>135</sup> In one case, a woman filing a rape claim was instead charged with adultery and held in custody, during which she was repeatedly raped by police officers.<sup>136</sup> Custodial violence and sexual assault in police custody are so widespread that the penal law was amended to

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129. *Id.* at 304.

130. WOMEN'S RIGHTS PROJECT & ASIA WATCH, DOUBLE JEOPARDY: POLICE ABUSE OF WOMEN IN PAKISTAN 47–56 (1992).

131. *Id.*

132. Mydans, *supra* note 126.

133. Jo Lynn Southard, *Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 76 (1996); Quraishi, *supra* note 125, at 303–04; Shahla Haeri, *The Politics of Dishonor: Rape & Power in Pakistan*, in FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 169–70 (1995).

134. Dana R. Gotfredsen, *Seeking Comfort in America: Why an Amendment to the Foreign Sovereign Immunities Act is the Most Effective Means of Holding Foreign Governments Accountable for Gender Based Crimes*, 15 EMORY INT'L L. REV. 647, 658 (2001).

135. AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 7–9 (detailing the violence and threats of violence endured by domestic violence survivors in police custody).

136. AMNESTY INT'L, PAKISTAN: TORTURE, DEATHS IN CUSTODY AND EXTRAJUDICIAL EXECUTIONS 11–12 (1993).

bar the remand of women to police custody.<sup>137</sup> Still, despite the numerous reports of sexual assault by police officials, virtually no action is taken against the perpetrators.<sup>138</sup> Furthermore, women who file rape complaints against officers are frequently threatened with adultery claims.<sup>139</sup> Thus, when the perpetrator is an individual in the authority position of a police officer, the crime goes unpunished even more frequently than in other cases of rape.<sup>140</sup>

According to Human Rights Watch, 70% of women in police custody are sexually or physically assaulted by officers and almost all of these officers go unpunished.<sup>141</sup> Police officers are agents of the states who beat and rape many women survivors of domestic violence. They are also state agents who go unpunished for their crimes because many police officers refuse to file complaints against each other. Amnesty International's 2002 Report verified that women who file domestic violence claims against their husbands are usually disregarded and sent home to their husbands after suffering additional abuse at the hands of police officers.<sup>142</sup> These forms of state-sanctioned violence are failures by the state of Pakistan to protect women survivors and insure fundamental human rights.<sup>143</sup> The failure of the state to exert its authority over state agents further emphasizes the need for the international community to take action.

### *C. Intimidation & Violence Towards Representing Attorneys*

On the rare occasion that a domestic violence claim makes it into the legal system, the survivor is subjected to yet more abuse. Survivors who are driven enough to pursue their claims beyond the police barrier will soon discover that their allies are

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137. PAKISTAN PENAL CODE, § 167 (1995).

138. JILANI, HUMAN RIGHTS, *supra* note 13, at 142.

139. Quraishi, *supra* note 125, at 291.

140. JILANI, HUMAN RIGHTS, *supra* note 13, at 142.

141. HUMAN RIGHTS WATCH, POLICE ABUSE OF WOMEN IN PAKISTAN, at <http://www.hrw.org/press/1992/06/pakistan-police.htm> (June 21, 1992), *citing* WOMEN'S RIGHTS PROJECT & ASIA WATCH, DOUBLE JEOPARDY: POLICE ABUSE OF WOMEN IN PAKISTAN, *supra* note 130.

142. AMNESTY INT'L, PAKISTAN: VIOLENCE ON THE INCREASE AND STILL NO PROTECTION, at [http://www.amnestyusa.org/news/2002/pakistan04172002\\_2.html](http://www.amnestyusa.org/news/2002/pakistan04172002_2.html) (Apr. 17, 2001).

143. HUMAN RIGHTS WATCH, POLICE ABUSE OF WOMEN IN PAKISTAN, *supra* note 141.

few and far between. Having already alienated their families, as did Samia Sarwar,<sup>144</sup> these women find that they are faced with many obstacles in legal representation. For claims involving criminal prosecution by the state, survivors encounter insurmountable gender bias, and when hiring counsel, they are represented by attorneys who are faced with death threats as a result of accepting their cases.<sup>145</sup> While the state is required to assist survivors in their claims, the survivor and her heirs have primary control over whether to prosecute the perpetrator.<sup>146</sup> This control is frequently used to evade the criminal justice system where the family asks the abuser or hires someone to kill the survivor who is dishonoring them.<sup>147</sup> Additionally, the women's rights organizations for which domestic violence attorneys often work are frequently denounced by government officials.<sup>148</sup> Essentially, women survivors are never afforded sufficient representation based on the circumstances.

Throughout Pakistan, prosecutors openly disclose gender bias and skepticism regarding domestic violence claims. A few prosecutors from the Lahore District Attorney's office even commented that rape claims must be entirely fabricated because a woman could simply slap a man to defend herself; thus, she must have consented.<sup>149</sup> Some prosecutors and advocates go so far as to state that rape does not occur in Pakistan, but is instead an illness invented by western culture.<sup>150</sup> These comments come from the attorneys representing the state in criminal prosecutions against domestic violence perpetrators; in theory, these individuals are on the survivor's side. However, these survivor attorneys do not believe in the existence of rape

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144. Ruane, *supra* note 47, 1523–24 (describing Samia Sanwar's parents who threatened her life and eventually killed her because she wanted to divorce her abusive husband).

145. See, e.g., AMNESTY INT'L, WOMEN'S HUMAN RIGHTS, WOMEN IN PAKISTAN: MURDERED IN THE NAME OF HONOR, at [http://www.amnestyusa.org/women/honor\\_killings/](http://www.amnestyusa.org/women/honor_killings/) (Sept. 1999) [hereinafter AMNESTY INT'L, MURDERED IN THE NAME OF HONOR].

146. Ruane, *supra* note 47, at 1539.

147. See *infra* Part III.D.1.

148. HUMAN RIGHTS WATCH, WORLD REPORT 2000: EVENTS OF 1999 438 (1999).

149. CRIME OR CUSTOM, *supra* note 11, at 49–50.

150. See, e.g., *id.* (stating that “rape in the west is a sickness” and “[Pakistan] is not a sick society”).

and do not view rape or domestic violence in general as criminal issues at all. Rather, they find these issues to be private, familial matters,<sup>151</sup> essentially placing them outside the domain of the state. These prosecutors are agents of the state who have decided rape claims are generally fictitious or inadequate before they even hear an individual's story. Such comments further emphasize the lack of understanding and competence amongst attorneys in Pakistan. With these attorneys representing the survivors, how could any claim succeed? The failure of the state to prosecute domestic violence based on systematic, discriminatory acts constitutes a violation of international human rights law,<sup>152</sup> worthy of international reform.

Unfortunately, attorneys representing survivors are faced with intimidation and threats, including death threats.<sup>153</sup> After killing Samia, her murderer shot at her attorney, attempting to kill the lawyer who aided Samia in divorcing her abusive husband.<sup>154</sup> Samia's lawyers are the two most prominent Pakistani women's rights lawyers, Asma Jahangir and Hina Jilani.<sup>155</sup> These founders of the first human rights organization and first women's law firm in Pakistan constantly face death threats triggered by social contempt for their work.<sup>156</sup> Following the murder of Samia, members of the Peshawar Chamber of Commerce, of which Samia's father was the chairman, and Islamic scholars declared Jahangir and Jilani to be non-believers of Islam, accused them of "misguiding women," and issued a religious edict on Muslims to kill them.<sup>157</sup> Furthermore, despite the fact that the accused shooter was identified by an eyewitness, the shooter was never arrested, nor was any action taken

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151. *Id.*

152. Thomas & Beasley, *supra* note 63, at 1124–25.

153. Ruane, *supra* note 47, at 1539.

154. Lawyer to Lawyer Network, Pakistan: Asma Jahangir and Hina Jilani (May 1999), at <http://www.lchr.org/121/pakistan0599.htm> (May 1999).

155. *Id.* Asma Jahangir and Hina Jilani are also representatives for the Human Rights Commission and Amnesty International. *Id.*

156. See Kerry Kennedy Cuomo, *Speak Truth to Power*, 73 PA. B.A. Q. 169, 171 (2002). See also, AMNESTY INT'L, MURDERED IN THE NAME OF HONOR, *supra* note 145.

157. AMNESTY INT'L, MURDERED IN THE NAME OF HONOR, *supra* note 145, at [http://www.amnestyusa.org/women/honor\\_killings/](http://www.amnestyusa.org/women/honor_killings/).

against these death threats.<sup>158</sup> Even after Samia's murder, the Senate of Pakistan refused to consider legally condemning honor killings.<sup>159</sup> Instead, the Government of Pakistan assured the UN Commission on Human Rights that it would take all necessary measures to ensure the safety of Jahangir, but did not publicly condemn the threats.<sup>160</sup> Jahangir made a public statement on the issue saying,

Threats to kill me are being made publicly and people are being exhorted to commit violence against me. Are we living in a lawless society, where there is no respect for human life or dignity of the person? An incident in which a client is killed in the office of her lawyer shows that sanctity of law and [C]onstitution have been completely eroded...The government has shown complete insensitivity towards this naked violation of the rule of law. Why has the government failed to take action against persons publicly announcing their intent to kill me and are blatantly publicizing this threat with their names through the press? I want to warn the government that they will be fully responsible for any harm that comes to me because of their failure to perform their legal and constitutional duty.<sup>161</sup>

Under the formidable barriers of law enforcement and attorney representation, survivors find it nearly impossible to succeed in pursuing a domestic violence claim. Having survived the gender bias and assault of the law enforcement officials, survivors are then represented less than adequately, to say the least. When state agents take on the case, the perpetrators are prosecuted by attorneys who do not believe the allegations to be true. If survivors pursue their complaints with their own private, legal representation, their attorneys are threatened by large portions of the community and so-called religious death orders are issued, which have yet to be condemned by the government. If any harm does come to Asma Jahangir, how will

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158. AMNESTY INT'L, VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45; Ruane, *supra* note 47, at 1523–24.

159. HUMAN RIGHTS WATCH, WORLD REPORT 2000: EVENTS OF 1999, *supra* note 148, at 208.

160. AMNESTY INT'L, MURDERED IN THE NAME OF HONOR, *supra* note 145.

161. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, THE FAILURE OF THE GOVERNMENT OF PAKISTAN TO ACT ON HONOR KILLINGS (1999), at <http://www.amnestyusa.org/countries/pakistan/reports/honour/honour-11.html>.



the government be held accountable? Without the international community obligation to take action, the Pakistani government will continue to deny both survivors and their attorneys the protection of the law. In essence, women survivors are not only left to fight for their basic human rights without the aid of the state, but are in fact impeded by the state as well as social institutions.

#### D. *Judicial Bias & Disregard*

##### 1. Judicial Discretion

Unfortunately, the bias of the legal system does not end with the obstacles of obtaining adequate representation. Like law enforcement agencies and state prosecutors, judges are also biased against women's claims of domestic violence. Judges review these claims in the context of tradition and culture, rather than according to the penal laws of the country<sup>162</sup> or international law. In addition to these traditions and customs, judicial decisions are also based on Islamic law, which is left at the discretion of the trial judge.<sup>163</sup> Despite the high percentages of domestic violence rates,<sup>164</sup> judges continue to reject the notion of domestic violence as a significant, criminal issue and instead claim that these acts of violence against women are superseded by social and religious norms.<sup>165</sup>

Since domestic violence is not acknowledged as a distinct crime in Pakistan, physical abuse falls under the category of person-to-person violence. In 1997, Pakistan invoked the Qisas and Diyat Ordinances, creating penal laws for crimes of violence.<sup>166</sup> Qisas crimes are those of murder, attempted murder,

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162. Patel, *supra* note 28.

163. CRIME OR CUSTOM, *supra* note 11, at 44.

164. Douglas, *supra* note 27.

165. CRIME OR CUSTOM, *supra* note 11, at 45.

166. PAK. CRIMINAL LAW (SECOND AMENDMENT) ORDINANCE, 1990 (commonly known as the Qisas and Diyat Ordinance, 1990). The doctrine of qisas is defined as "an eye for an eye" and diyat is "blood money." While physical retribution of qisas is rarely enforced, "blood money," meaning the monetary retribution to the surviving family for the loss of the victim, is often invoked in Pakistan. *Id.* at 40–41 n.92. Under Section 331 of the Diyat Ordinance, failure to pay diyat in non-capital cases can result in indefinitely extended incarceration. *See also* Pakistan Country Report for Human Rights Practices for

or any crime causing bodily hurt.<sup>167</sup> According to the Pakistani Penal Code, hurt occurs when one causes “pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof [of] any person without causing his death.”<sup>168</sup> In burning someone with kerosene oil, throwing acid on them, or thrusting a red hot iron bar in someone’s vagina, egregious “harm” occurs, pain certainly ensues, and injury is done. It would be preposterous to claim that no pain was felt by these women or no damage was done, especially in the face of the 30 surgeries that Fakhra Yunas will need to even resemble a human being again,<sup>169</sup> not to mention the mental anguish.

Qisas and Diyat refer to forms of punishment for the perpetrator for committing these crimes of violence, namely physical retribution and compensation, respectively.<sup>170</sup> The survivor or her heirs can either pardon the offender or request Qisas or Diyat.<sup>171</sup> Unfortunately, not only are many women persuaded by the police and the judges to drop their charges, but many of their family members also force them to return to their husbands in order to avoid any family dishonor.<sup>172</sup> Thus, the legal system is essential to protecting women’s fundamental rights because these rights are often disregarded by their families. However, survivors are further oppressed when judges disregard instances of violence as private, domestic disputes.<sup>173</sup> In some cases, the state may invoke taz’ir punishment, also known as imprisonment,<sup>174</sup> even after a settlement has already been reached.<sup>175</sup> However, this punishment is purely at the discretion of the judge.<sup>176</sup> Thus, again, these cases are frequently dis-

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1998, U.S. Department of State (released by the Bureau of Democracy, Human Rights, & Labor, Feb. 26, 1999).

167. CRIME OR CUSTOM, *supra* note 11, at 40.

168. PAK, PENAL CODE § 332. *See also* CRIME OR CUSTOM, *supra* note 11, at 40 n.93.

169. Bloch, *supra* note 15.

170. CRIME OR CUSTOM, *supra* note 11, at 40–41. The Ordinance also sets monetary limits for crimes of murder. *Id.* at 42.

171. *Id.* at 41.

172. *Id.* at 41–45.

173. Ruane, *supra* note 47, at 1541–42.

174. CRIME OR CUSTOM, *supra* note 11, at 42.

175. Gottesman, *supra* note 125, at 442.

176. *Id.*

missed since the male-biased judicial system does not recognize domestic violence as a crime<sup>177</sup> and the international community fails to take any action.

When a complaint finally comes before a judge, judicial discretion is all-determining in Pakistani law.<sup>178</sup> Under Pakistani Penal Code Section 302(c), punishments occur in cases where “according to the Injunction of Islam the punishment of qisas is not applicable.”<sup>179</sup> This law gives judges, who are not necessarily religious scholars, the immense task of determining the “Injunction of Islam” and wide discretion to enforce their individual interpretation of the relevant issue as they relate it to Islam.<sup>180</sup> As in many cultures, the dominant groups interpret religion and culture in the ways most beneficial to themselves and offer these views as the only legitimate interpretation.<sup>181</sup> Thus, the dominant interpretation of Islam is inherently male-biased and therefore the fate of women survivors is left to the discretion of biased judges. Furthermore, as a result of the inconsistencies of judicial discretion and the largely male-operated court system, the majority of perpetrators are not convicted<sup>182</sup> and those who are often receive reduced sentences.<sup>183</sup>

This judicial discretion is best exemplified by a case in point. After a hearing regarding one man’s violence towards his wife, the perpetrator severely beat his wife in the courthouse, while still in police custody.<sup>184</sup> Zia Anwar, advocate for the survivor, remarked, “I approached the judge and complained against the husband...[the judge] told me that as long as she was [the perpetrator’s] wife, he could treat her in whatever way he chose, and added that even the Quran gives the man this right.”<sup>185</sup> In another case, the Pakistani courts denied a writ of habeas cor-

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177. CRIME OR CUSTOM, *supra* note 11, at 42.

178. *Id.*

179. PAKISTAN PENAL CODE § 302(c). *See also* CRIME OR CUSTOM, *supra* note 11, at 42.

180. *Id.*

181. *See* An-Na'im, *Toward a Cross-Cultural Approach*, *supra* note 60, at 20.

182. Ara, *supra* note 26.

183. Country Reports on Human Rights Practices for 2001, *Woman & Human Rights*, US DEPT. OF STATE, April 1, 2002, 2002 WL 14947345.

184. Sunna Bucha & Aisha Aqeel, *Battered Lives*, at <http://www.newsline.com.pk/NewsMarch2002/newslinespecial.htm> (March 2002).

185. *Id.*

pus regarding a survivor subjected to cruel treatment and illegal confinement by her husband, indicating that in some cases a man may legitimately abuse his wife based on her “disobedience.”<sup>186</sup>

Additionally, in *Younis v. State*, the Appeals Court reduced the sentence of a man charged with murdering his wife with multiple stab wounds throughout the body based on the theory that she must have provoked such anger.<sup>187</sup> The court stated that the survivor must have done something to “enrage him to that extent,”<sup>188</sup> further symbolizing the judiciary’s insensitivity and lack of understanding regarding domestic violence. In Pakistan, women’s rights are based on social norms and thus the failure or potential failure to meet social “standards of morality” prevents women from receiving equity in the legal system.<sup>189</sup> Furthermore, the excuse of culture or religion as a means to allowing discrimination is flawed,<sup>190</sup> as human rights are fundamentally recognized by the international community through declarations and treaties.<sup>191</sup> Pakistan’s acknowledgment of these rights through various treaties, such as CEDAW or the Declaration on the Elimination of Violence Against Women, makes any claims to culture and religion invalid.<sup>192</sup> Thus, Pakistan’s judicial disregard for women’s human rights under the false pretense of religion or social norms constitutes blatant human rights violations, worthy of international action.

Even in cases of honor killings, families who pursue claims are often dissuaded or ignored by the judicial system.<sup>193</sup> The

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186. Hina Jilani, *Whose Laws?: Human Rights and Violence Against Women in Pakistan*, in FREEDOM FROM VIOLENCE: WOMEN’S STRATEGIES FROM AROUND THE WORLD 67 (Margaret Schuler ed. 1992) (citing Pakistani Legal Decisions Booklet) [hereinafter Jilani, *Whose Laws?*].

187. *Younis v. State*, Pakistan Crim. L.J. 1747 (1989).

188. Thomas & Beasley, *supra* note 63, at 1119–20.

189. JILANI, HUMAN RIGHTS, *supra* note 13, at 143–44.

190. Gila Stopler, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154, 221 (2003). See also Samuel K. Murumba, *Cross-Cultural Dimensions of Human Rights in the Twenty-First Century in LEGAL VISIONS OF THE 21<sup>ST</sup> CENTURY: ESSAYS IN HONOUR OF JUDGE CHRISTOPHER WEERAMANTRY* 207, 231 (A. Anghie & G. Sturgess, eds., 1998) (emphasizing that where human rights and culture conflict, “human rights must prevail”).

191. See *supra* Part II.

192. See *supra* Part II.B.

193. Ruane, *supra* note 47, at 1539–41.

Pakistani court system allows the victim *or his heirs* to absolve the perpetrator of any prosecution, so that any crime against a victim can be completely pardoned by the family members of the victim.<sup>194</sup> A family member can forgive the perpetrator for murder at any stage in the process, thus, the perpetrator may never be arrested or prosecuted.<sup>195</sup> Thus, a man can kill his wife and then go free after being pardoned by the victim's family.<sup>196</sup> In situations of public slander, regardless of its truthfulness, the woman's family is often so consumed with restoring honor to the family name that they ask the husband to kill their daughter under an agreement to pardon him.<sup>197</sup> While this scenario seems extreme, a woman's honor is said to symbolize the honor of her family,<sup>198</sup> supposedly justifying such retribution. Still, the Pakistani government makes no efforts to educate the judges and the international community currently claims that it is under no obligation to take action.

## 2. Judicial Misinterpretation of Islam

Due to the wide-ranged discretion of judges, judicial opinions often reflect socially cultivated gender discrimination under the guise of Islam.<sup>199</sup> To the contrary, under no condition is violence against women permitted in Islam.<sup>200</sup> Yet, judges and religious scholars naturally interpret religion and cultures in ways most beneficial to themselves.<sup>201</sup> Thus, as men are interpreting the religion, the dominant interpretation of Islam is inherently male-biased. This internal struggle between the dominant group and the subordinate group is sometimes called a struggle for control over the "symbols of power" in that society.<sup>202</sup> Thus,

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194. AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45; CRIME OR CUSTOM, *supra* note 11, at 41.

195. Interview with Hina Jilani, Pakistani Lawyer & Human Rights Activist, available at <http://www.abc.net.au/foreign/s221207.htm> (Feb. 5, 2000).

196. *Id.*

197. See Ruane, *supra* note 47, at 1531.

198. *Id.*

199. CRIME OR CUSTOM, *supra* note 11, at 50–51.

200. See generally SISTERS IN ISLAM, *supra* note 25.

201. See An-Na'im, *Toward a Cross-Cultural Approach*, *supra* note 60, at 20 (explaining that dominant groups interpret religion and culture to their advantage and frequently offer these views as the only legitimate interpretation).

202. *Id.*

judges are imposing Islamic viewpoints and interpretations, which are inconsistent and arguably inaccurate.<sup>203</sup> Their interpretations of Islam are based on interpretations by male Islamic scholars, including Quranic verses often taken out of context and used to impose a male-dominated familial situation.<sup>204</sup> As Pakistani women have no means to participate in the interpretation of Islam and, therefore, the creation of the laws, they are left to struggle against a discriminatory legal system.<sup>205</sup>

The most often cited Quranic verse interpreted to permit violence towards women is that of Sura Nuza which provides guidance during times of marital conflict.<sup>206</sup> Taken out of context, this verse can be interpreted as allowing men to beat their wives in times of disobedience. However, in interpreting the religion of Islam, one must take into account three sources of the religion: the Quran, hadith, and sunnah.<sup>207</sup> Furthermore,

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203. See, e.g., Quraishi, *supra* note 125, at 287 (detailing an alternate interpretation of rape in Islam).

204. An-Na'im, *Toward a Cross-Cultural Approach*, *supra* note 60, at 34.

205. See, e.g., ZINA ORDINANCE § 8 (requiring that victims bring four male eye-witnesses to the crime or that rapists confess in order to substantiate rape claims); Anika Rahman, *A View Towards Women's Reproductive Rights Perspective on Selected Laws and Policies in Pakistan*, 15 WHITTIER L. REV. 981, 999-1000 (1994) (discussing the impermissibility of female testimony in court proceedings even regarding acts committed against her, such as rape). Additionally, unsuccessful rape claims are frequently used as evidence of adultery, and the victim's claim may be converted into an adultery charge against her. See CRIME OR CUSTOM, *supra* note 11, at 26-27; Jo Lynn Southard, *Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 76 (1996); Quraishi, *supra* note 125, at 303-04; Shahla Haeri, *The Politics of Dishonor: Rape & Power in Pakistan*, in FAITH AND FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 169-70 (1995).

206. Quran 4:34 states,

Men are the protectors and maintainers of women because Allah (SWA) has given one more than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah (SWA) would have them guard. As to those women on whose part you fear disloyalty or ill conduct, admonish them, do not share their beds, and *beat* them; but if they return to obedience, seek not against them means: Allah (SWA) is most High, Great [above you all].

*Id.*

207. The Quran is the holy book, the word of God, as revealed to Prophet Muhammad; hadith includes the sayings and teachings of Prophet Muhammad; and, sunnah refers to the practices and actions of Prophet Muhammad.

Quranic verses must be interpreted based on the motive, intent, and the purpose behind the passages.<sup>208</sup> At the time this particular verse was revealed, physical and emotional violence against women was rampant and practices such as female infanticide and the inheritance of widows by other family members were prevalent,<sup>209</sup> signifying the role of women as property. Sura Nuza was written to provide a restriction on the abuse of women, not the permission to assault one's wife.<sup>210</sup> Additionally, this "beating" was determined to be the symbolic gesture of a very light tap which leaves no mark, not as a punitive measure.<sup>211</sup> The Quran also states of men in relation to their wives, "nor should you treat them with harshness...on the contrary, like with them on a footing of kindness and equity."<sup>212</sup> The Quran thus admonishes any sort of brutality, whether physical or verbal and in fact, invokes the very equity denied by the state of Pakistan.

Second, with reference to hadith, Prophet Muhammad (PBUH) viewed the institution of marriage as a determinative part of religion.<sup>213</sup> In fact, he often referred to marriage as half of the perfection of religion.<sup>214</sup> By these terms, marriage in itself accomplishes half of the requirements of Islam, representing half of one's faith. In continuing with this perfection of marriage, each individual is to follow the Islamic terms of marriage, each expecting certain requirements of the other and fulfilling obligations to them as well. Specifically, the Prophet (PBUH) strongly opposed any violence towards women. Regarding domestic violence, he asked some of his followers, "how can one of you hit his wife like an animal, [and] then...embrace her?" and "how can one of you whip his wife like a slave...[when] he is

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It is through the combination of these sources that Muslims attempt to interpret the true meaning of the religion. See JAMAL BADAWI, GENDER EQUITY IN ISLAM 1-3 (American Trust Publications 1995).

208. See *id.* at 49.

209. SISTERS IN ISLAM, *supra* note 25, at 7.

210. *Id.*

211. BADAWI, *supra* note 207, at n.14.

212. QURAN 4:19.

213. Each reference to Prophet Muhammed will be followed by the phrase "Peace Be Upon Him," abbreviated as PBUH.

214. CYRIACK K. PULLAPILLY, ISLAM IN THE CONTEMPORARY WORLD 379 (Crossroads Books 1980).

likely to sleep with her at the end of the day?”<sup>215</sup> He also attempted to end these forms of cruelty towards women by instructing Muslims to “[f]ear Allah in respect of women...[because] the best of you are they who behave best towards their wives.”<sup>216</sup> Finally, with reference to the Quranic verse restricting physical acts to those that are purely symbolic, the Prophet (PBUH) stated that it is “not permissible to strike anyone’s face, cause any bodily harm or even be harsh.”<sup>217</sup> In these hadith, the Prophet (PBUH) stressed the importance of kindness and respect towards women and condemned any form of marital abuse or violence.

In fact, Prophet Muhammad (PBUH) never abused his wives in any way, physical or emotional.<sup>218</sup> Instead, the Prophet (PBUH) was known to be very kind and helpful to his wives and even when unhappy with them, he was never known to lose his temper with them.<sup>219</sup> Thus, in following the practices of the Prophet, as Muslims are required to do, no abuse is allowed or should be permitted against women based on his disapproval of violence. By allowing this violence, the Pakistani government is allowing judicial bodies to discriminatorily enforce laws based on inaccurate interpretations of Islam and in violation of international law.

Unfortunately, culture and custom often cloud the judicial interpretations of religion. While many Islamic scholars have promoted the adoption of custom into their legal system in an attempt to maintain cultural identity, cultural customs must be disregarded when in conflict with the basic doctrine of Islam.<sup>220</sup> However, Muslims are often unable to distinguish laws based on religion from those rooted in historical custom.<sup>221</sup> Instead, the Pakistani community is forced to rely on judicial application

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215. Azizah Yahia al-Hibri, *Muslim Women’s Rights in the Global Village: Challenges and Opportunities*, 15 *HAMLIN J.L. & RELIGION* 37, 61 (2000-2001).

216. Abdul Rahman Doi, *Women in the Quran and Sunnah*, at <http://www.usc.edu/dept/MSA/humanrelations/womeninislam/womenquransunnah.html> (last visited Mar. 8, 2004); Al-Hibri, *supra* note 215.

217. Al-Hibri, *supra* note 215, at 61.

218. *SISTERS IN ISLAM*, *supra* note 25, at 8.

219. *Id.*

220. Al-Hibri, *supra* note 215, at 40–43. See also Declaration on the Elimination of Violence Against Women, *supra* note 83, at art. 4.

221. *Id.*



of the religion to each set of facts. The problem is that these judges are not necessarily trained or well-educated on the religion of Islam. Judges are essentially imposing their interpretation of Islam on women survivors, violating the theories of the religion and the fundamental human rights of these women. Judges insist on reinforcing these discriminatory customs in order to maintain Pakistan's traditional patriarchal society.<sup>222</sup> Additionally, these decisions violate the Constitution of Pakistan's guarantee for gender equality.<sup>223</sup>

Yet, judges continue to make discriminatory statements in their decisions, invoking gender inequality in the home and in society. As state agents, judges must enforce the law of the state and protect women's rights; any failure on their part is a failure by the state. The combination of Pakistan's verbal acknowledgment that violence against women must end<sup>224</sup> and judicial justification of that violence<sup>225</sup> exemplifies the Pakistani government's refusal to ensure the fundamental rights of women on a substantive level and the necessity of the international community's action in order to enforce these rights.

### 3. International Media Attention as a Means to Enforcement

Despite the societal acceptance of domestic violence, all judicial decisions regarding domestic violence do not result in total victory for the perpetrator. While most judges treat women as their husbands' property, in the last couple of years, a few judges have also convicted male perpetrators of violence.<sup>226</sup> These convictions are usually the result of intense international media attention.<sup>227</sup> One prevalent example of such a case is that

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222. AMNESTY INT'L, PAKISTAN: HONOR KILLINGS OF GIRLS AND WOMEN, Jan. 9, 1999, at <http://web.amnesty.org/library/Index/engASA330181999>.

223. PAK. CONSTIT. art. 25(2).

224. Patel, *supra* note 28.

225. CRIME OR CUSTOM, *supra* note 11, at 45.

226. AMNESTY INT'L, MEDIA BRIEFING: VIOLENCE AGAINST WOMEN IN PAKISTAN, April 17, 2002.

227. See, e.g., AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 8 (where a woman's complaint was finally registered after sufficient media attention). See also Bloch, *supra* note 15 (where General Lieutenant General Moinuddin Haider denied Fakra Yunas a visa to Italy out of fear of international media attention).

of Zahida Perveen.<sup>228</sup> When Zahida's husband suspected her of adultery, he tied up his pregnant wife's hands and feet, blinded her in one eye by shoving it in with a rod, and then cut off her nose and her ears.<sup>229</sup> In an attempt to restore her sight and escape her abuser, Zahida came to the United States, but only after the brutality of her husband's crime received U.S. media attention was her husband prosecuted for this torture and abuse.<sup>230</sup> Unfortunately, with the exception of those situations receiving international media attention, virtually all perpetrators of domestic violence in Pakistan go unpunished.<sup>231</sup> The impact of international media attention further emphasizes the significance of action by the international community on every level.

## V. THE CASE FOR INTERVENTION

### A. *Legal Reformation*

Historically, culture and tradition in Pakistan permit male violence against women.<sup>232</sup> Based on this so-called culture and tradition, police, lawyers, and judges discriminate against women. Pakistan's failure to adequately protect abused women and punish batterers only perpetuates this cycle of violence.<sup>233</sup> Whether based in custom, tradition, or religion, survivors of

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228. Amir Zia, *Abused Pakistani Women Seek Treatment in the U.S.*, COLUMBIAN A6, Jan. 9, 2001, at 2001 WL 6276791.

229. *Id.*

230. Her husband was convicted and sentenced to 14 years in jail. *Id.*

231. Ara, *supra* note 26; Douglas, *supra* note 27. Additionally, recall the Pakistani government's initial denial of a visa to Fakhra Yunas to receive medical treatment overseas in an attempt to avoid negative international media attention. See Bloch, *supra* note 15; AGENCE FRANCE-PRESSE, *supra* note 17.

232. See generally CRIME OR CUSTOM, *supra* note 11; AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72; AMNESTY INT'L, PAKISTAN: VIOLENCE AGAINST WOMEN IN THE NAME OF HONOR, *supra* note 45; AMNESTY INT'L, PAKISTAN: VIOLENCE ON THE INCREASE AND STILL NO PROTECTION, *supra* note 142; AMNESTY INT'L, MURDERED IN THE NAME OF HONOR, *supra* note 145.

233. Katherine M. Culliton, *Legal Remedies for Domestic Violence in Chile and the United States: Cultural Relativism, Myths, & Realities*, 26 CASE W. RES. J. INT'L L. 183, 201-02 (1994) [hereinafter Culliton, *Legal Remedies*]; Jilani, *Whose Laws?*, *supra* note 186, at 73.

domestic violence are denied their fundamental human rights by the state of Pakistan and change must occur immediately.

As a state subject to international treaties and customary law, Pakistan is required to take affirmative action to protect the fundamental rights of individuals, including women. At a minimum, this protection and enforcement of women's rights is achieved by effective investigation and protection by police officers, adequate prosecution by attorneys, and punitive measures in the legal system.<sup>234</sup> Scholars have recommended restructuring the legal system in other countries by (1) identifying domestic violence as a crime, (2) creating a punishment which deters perpetrators from committing crime, and (3) providing survivors with immediate protection from the perpetrators.<sup>235</sup>

Despite the international recognition of violence against women as a customary human rights violation<sup>236</sup> and the condemnation of such acts by the Pakistani government,<sup>237</sup> domestic violence is still dominantly perceived in the Pakistani legal system as a private, familial issue. By identifying domestic violence as a crime in itself, Pakistan would be acknowledging to state agents and the public that domestic violence is not simply a private matter and women's rights must be enforced by state agents. Punitive action against the perpetrator would also deter further crimes. As long as domestic violence is condoned by state officials, and perpetrators of assault, mutilation, and murder are validated by judicial decisions as being within a husband's Islamic rights, domestic violence will continue and worsen as a legitimized action. Finally, no action taken by a survivor can succeed if they are not provided with social and legal protections. Women attempting to file a complaint against or divorce their batterers are subjected to threats of violence as well as physical and sexual violence.<sup>238</sup> Additionally, attorneys

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234. See generally Culliton, *Legal Remedies*, *supra* note 233, at 258.

235. Katherine M. Culliton recommends these changes to the legal systems in Chile and the United States to protect the rights of women survivors. *Id.* Additionally, the Inter-American Human Rights Commission recommends similar measures regarding domestic violence. See Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection*, *supra* note 68, at 547-48.

236. See *supra* Part II.B.

237. Patel, *supra* note 28.

238. Honor killings often take place as the result of the dishonor the victim brings upon the husband and his family by leaving her husband. See

attempting to aid these survivors are subjected to similar threats, edicts, and violence.<sup>239</sup> Without the state's condemnation of such threats and the provision of safe havens and legal protection for survivors, no action can be taken to adequately protect women's human rights.

However, the official acknowledgment of these changes will not be effective so long as gender discrimination exists in the law enforcement and judicial arena. Legislation should be created requiring police officers, attorneys, and judges to be educated on issues of domestic violence. Police officers and attorneys must be trained on matters of domestic violence so as to be more sensitive and take more seriously the crimes, rather than ignoring them as familial matters. Additionally, law enforcement officers must be held liable for the harm they commit in failing to protect survivors who request help as well as their additional crimes of violence against these women. Perhaps, such liability can be enforced through the employment of more female police officers and education regarding violence in Islam. Finally, judges must be educated on domestic violence, the law surrounding it, and the religion they claim to invoke. Based on their large discretionary power, judges must be educated on the religious, national and international legal condemnation of domestic violence. Since General Musharraf Pervez's request that judges take action against perpetrators of violence did not result in any changes,<sup>240</sup> perhaps judges need also to be evaluated and held accountable for their denial of women's human rights.

As symbolized by Pakistan's historical verbal acceptance of women's rights as equal and protected human rights and the government's consistent inability to invoke change,<sup>241</sup> these internal legal changes will be difficult. Another way must be found to enforce women's fundamental rights. Domestic violence is a form of female oppression so atrocious and systemic that governmental inadequacies cannot be lightly brushed aside. Having acknowledged and declared violence against women as a fundamental human rights violation in treaties and

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AMNESTY INT'L, PAKISTAN: HONOR KILLINGS OF GIRLS AND WOMEN, *supra* note 222, at <http://web.amnesty.org/library/Index/engASA330181999>; CRIME OR CUSTOM, *supra* note 11, at 43–45.

239. AMNESTY INT'L, MURDERED IN THE NAME OF HONOR, *supra* note 145.

240. Patel, *supra* note 28.

241. See *supra* Part II.A.

declarations,<sup>242</sup> the international community must take action to enforce these rights. Human rights must be redefined to consist of normative obligations on the international community with respect to women's rights.

### *B. Grass Roots*

As legal reform will not create immediate modifications, in the meantime social and cultural reform must commence. This change must come from those oppressed and subordinated by the system, the women. Over the years, women have become increasingly more aware of the injustice that the Pakistani legal system affords them.<sup>243</sup> However, women must be educated on a larger scale to include all classes.

Female education is essential across all lines regarding the denial of women's fundamental human rights. Many women may not embrace this so-called "feminist" movement for women's rights because they have been taught that feminism essentially conflicts with Islam.<sup>244</sup> The education and enforcement of women's rights must embrace and invoke Islam in order to be effective, especially when submersed in the Islamic nation and culture of Pakistan.<sup>245</sup> Since many women in Pakistan are not aware of their Islamic rights and are ensconced in the custom and tradition in which they have been raised, education is essential regarding women's rights and protections under Islam. Women must be aware that domestic violence is not permitted in Islam in order to actively pursue their rights.

Additionally, since perpetrators of violence are usually punished under the pressure and shame of international media attention,<sup>246</sup> a media campaign should also be launched. This campaign should draw attention to the lack of legal action

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242. See *supra* Part II.

243. Jilani, *Whose Laws?*, *supra* note 186, at 74.

244. See Angela L. Padilla & Jennifer J. Winrich, *Christianity, Feminism, and the Law*, 1 COLUM. J. GENDER & L. 67, 69-70 (1991).

245. See *id.* See also An-Na'im, *Toward a Cross-Cultural Approach*, *supra* note 60, at 25.

246. AMNESTY INT'L, DISADVANTAGED AND DENIED THEIR RIGHTS, *supra* note 72, at 8 ("media coverage has forced police to register a complaint brought by a woman"). See also Bloch, *supra* note 15 (where General Lieutenant General Moinuddin Haider denied Fakhra Yunas a visa to the U.S. out of fear of international media attention).

against domestic violence perpetrators. Beginning with the inadequate documentation of domestic violence incidents, through the law enforcement's dismissals and abuses, and finally through the judicial system's legitimization, these cases should be brought to the general public's attention as well as that of the international community. With the benefit of the Internet, information can be spread across the world within a matter of seconds. These incidents of violence must be documented, acknowledged, and condemned by the international community. In the face of the international community's condemnation of Pakistan's violations of fundamental human rights, some action or enforcement will be taken by the Pakistani government, even if initially only on a case-by-case basis. Furthermore, the international community must take action against the blatant violations of women's rights where the government of Pakistan fails; they are obligated to protect women from these endemic, egregious harms. Enforcement by means of moral and political pressure can often bring about substantial long term changes.<sup>247</sup>

#### VI. CONCLUSION: PAKISTAN AS A PROTOTYPE CASE

Pakistan's consistent failure to take action against domestic violence constitutes a gross violation of women's human rights. Women in Pakistan are subjected to disturbing acts of violence and are offered no redress by the state. From the law enforcement agencies to the court system, women are invariably discriminated against and ignored, as domestic violence is consistently concealed as a private, familial issue. Additionally, the authorization of violence against women under the guise of Islam is a gross manipulation of the religion. Police officers, attorneys, and judges deny women their fundamental human rights as protected under customary international law. As these individuals are agents of the state, Pakistan is responsible for violating international law by preventing women from enjoying their fundamental human rights. The state of Pakistan is obligated to reform its legal and social system to allow women the rights afforded to them under international law.

If Pakistan fails to protect these women's rights, as has been the historical case, the issue then becomes one for the interna-

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247. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection*, *supra* note 68, at 549.

tional community. Much discourse occurs in international law regarding the question of normative obligations.<sup>248</sup> These obligations are based in ethical responsibilities<sup>249</sup> and in creating treaties and declarations which condemn domestic violence and ensure the protection of women against discrimination, the international community is essentially recognizing an ethical obligation towards women rights.

Historically, men defined international human rights, and therefore women's rights, protections, or perspectives were not considered in this definition.<sup>250</sup> Thus, the current definition of human rights revolves around the needs of the male elite.<sup>251</sup> International human rights law must be redefined to make the international community responsible for the enforcement and protection of women's rights. Just as the U.S. government prohibited racial discrimination and began to enforce racial equity amongst its states, so too must the international community prohibit violence against women and enforce gender equity around the globe. Hate crimes against minorities rightfully invoked large scale intervention, and likewise, violence against women is worthy of such intervention and protection. Similarly, the death of 3030 people on September 11, 2001<sup>252</sup> warranted international action in order to enhance safety around the world. In Pakistan, approximately 3560 women reported being attacked with gas, fire, or acid in the short time span of five years.<sup>253</sup> If this statistic was to include women around the world abused, raped, and murdered, the numbers would be overwhelming, and would still not include those who do not report such acts. Should these hate crimes also not warrant some international concern and action? If the international community chooses to invade Afghanistan and Iraq for various safety reasons, isn't the safety of women just as important where in-

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248. Eduardo Moises Penalver, *The Persistent Problem of Obligation in International Law*, 36 STAN. J. INT'L L. 271, 272 (2000).

249. *Id.* at 275.

250. See Symposium, *Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women's Rights*, 24 MICH. J. INT'L L. 347 (2002) (transcript).

251. HENKIN, *supra* note 7, at 43.

252. Remembering the Victims and Heroes of September 11, Statistics from Sept. 2002, CNN & REUTERS, at <http://www.september11news.com/911Art.htm>.

253. Deckert, *supra* note 32.

ternal governments fail year after year? When women continue to die and governments are incapable of protecting them, who will help them?

The international community can condemn Pakistan through economic action,<sup>254</sup> attempt to take action in the International Criminal Court of Justice,<sup>255</sup> or allow for women survivors of Pakistan to bring their international human rights claims in a domestic arena. Regardless of the means, the time has come for the international community to take responsibility for basic, fundamental human rights violations. The systemic and pervasive abuse of women is inherently different from human rights violations that can be repaired from within culture and religion. As demonstrated through this case study of Pakistan, violence against women represents endemic, system-wide violations of human rights which governments, cultures, and religions do not have the will or capacity to change. The international community must pierce the veil of sovereignty in order to protect women from the violence justified and tolerated by their governments. Without the redefinition of human rights to impose obligations on the international community, violence against women will continue to occur around the world, denying women their fundamental human rights and empowering perpetrators to continue violating these rights.

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254. See, e.g., U.N. CHARTER, art. 41 (authorizing Members of the United Nations to withdraw "economic relations and of rail, sea, air, postal telegraphic, radio, and other means of communication, and the severance of diplomatic relations). While this article refers to measures taken with respect to international peace and security, similar measures could be applied to force the protection of women's human rights.

255. See generally AMNESTY INT'L, THE INTERNATIONAL CRIMINAL COURT: ENSURING JUSTICE FOR WOMEN (Jan. 1, 1998), at <http://www.amnesty.it/campaign/icc/library/aids/I4000698.pdf>.

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