

WOMEN AS AGENTS OF CHANGE: CASE STUDY OF PAKISTAN

by

Musarrat Kazepis
A Thesis
Submitted to the
Graduate Faculty
of
George Mason University
in Partial Fulfillment of
The Requirements for the Degree
of
Master of Science
Conflict Analysis and Resolution
Master of Arts
Conflict Resolution and Mediterranean Security

Committee:

John D. ... for Susan Brown
Lucie ...

Chair of Committee

John ... for Omar ...
David ...

Graduate Program Director

Thomas ...

Dean, School for Conflict
Analysis and Resolution

Date: 12/5/13

Fall Semester 2013
George Mason University
Fairfax, VA
University of Malta
Valletta, Malta

Women as Agents of Change: Case Study of Pakistan

A thesis submitted in partial fulfillment of the requirements for the degree of
Master of Science at George Mason University, and the degree of Master of
Arts at the University of Malta

by

Musarrat Kazepis
Bachelor of Arts
George Mason University, 2010

Director: Susan F. Hirsch, Professor
School for Conflict Analysis and Resolution

Fall Semester 2013
George Mason University
Fairfax, Virginia
University of Malta
Valletta, Malta

Copyright: 2013 Musarrat Kazepis
All Rights Reserved

Dedication

This work is dedicated to my loving husband Christopher, whose presence brings light into my life. His kindness, support, and wisdom are humbling. In this journey of life, he is my well-wisher. As a woman, this is not just dedicated to the women of Pakistan, but to all the women and girls of the world. As a Pakistani, I also dedicate this work to the nation of Pakistan, and to all my ancestors who once walked those lands.

Table of Contents

	Page
List of Abbreviations	vi
Abstract	vii
Chapter 1: Introduction	1
Chapter 2: Research Methodology	5
Chapter 3: Literature Review	7
Feminism in the Legal Context.....	8
Gender and Islam.....	10
Islamic Feminism.....	13
Gender and Culture.....	18
Kinship.....	21
Structural Violence : A cultural case study of Pakistan.....	22
A Socio-legal Approach to Human Rights.....	24
Chapter 4: Pakistan : Context and History	28
Structuring the State.....	28
Developing the Constitution.....	30
Politics of Pakistan.....	33
Chapter 5: Pakistan’s Legal System	38
Formal Justice System.....	40
Informal Justice System.....	40
Self-redress.....	43
Council of Islamic Ideology and Federal Shariat Court.....	45
Implementing International Law and CEDAW in Pakistan.....	46
Chapter 6: Pakistan and Islam	53
Religion and Conflict.....	54
Religion and Identity.....	59
Islamization.....	62
Politicization of Islam.....	66
Chapter 7: Honor Crimes in Pakistan	71
Noor Basra and Noor Sheza.....	76
Honor Crimes and Law.....	77
The Case of Samia Sarwar.....	79
Chapter 8: Women as Agents of Change in Pakistan	84
Historical Background of the Women’s Movement in Pakistan.....	84
Asma Jahangir and Hina Jilani.....	88

<i>Dastak</i>	90
Mst. Humaira Mehmood vs the State.....	94
<i>Sughar</i> : a social venture.....	97
All-female Jirga.....	100
Chapter 9: Legal Reform	103
Gendered Laws and Policies.....	105
<i>The Zina Hudood Ordinance</i>	105
<i>Qisas and Diyat Ordinance</i>	108
Gender-Responsive Policies.....	111
<i>Protection of Women (Criminal Laws Amendment) Act, 2006</i>	111
<i>The Acid Control and Acid Crime Prevention Bill 2010 and The Prevention of</i> <i>Anti-Women Practices (Criminal Law Amendment) Bill 2008</i>	112
Chapter 10: Conclusion	116
Appendix	120
List of References	122

List of Abbreviations

CEDAW: Convention on the Elimination of all forms of Discrimination against Women

CIMEL: Center of Islamic and Middle Eastern Laws

HRW: Human Rights Watch

INTERIGHTS: International Center for the Legal Protection of Human Rights

NCSW: National Commission on the Status of Women

NWFP: North West Frontier Province

PPC: Pakistan's Penal Code

PPP: Pakistani People's Party

Abstract

WOMEN AS AGENTS OF CHANGE: CASE STUDY OF PAKISTAN

Musarrat Kazepis, M.S., M.A.

George Mason University, 2013

University of Malta, 2013

Thesis Director: Dr. Susan F. Hirsch

There exists a conflict between the constitutional commitment to equality and the politicization of Islam in both the official law and the traditional law. Although the fundamental rights chapter of the Constitution guarantees equality before the law, the pursuit of gender equality has often been sacrificed to religious-cultural assertions that define and often limit women's status. Culturally, women are viewed inferior to men, due to deep-rooted mores and customs. These sentiments mirror into the reality of daily life where women seem to be bound by a different set of social and legal rules. In Pakistan, as elsewhere, there exists a gendered division between the public and private spheres, which has greatly assisted to shield and protect abusive, violent practices. The local context is therefore a motivating factor for the women's movement in Pakistan. The pursuit of gender equality can thrive

best if women are guaranteed of an equal right to participate in the definition of fundamental rights and freedoms implemented into the legal processes, and are also actively in the process of the renegotiation of religious and cultural norms. This study seeks to contextualize and analyze the various representative discourses in order to come to an understanding of the possible cultural, religious, and historical reasons that create the circumstances for a family member to kill or hurt a female member, often in the name and sake of family honor. Honor crimes and the laws and procedures around honor killings will serve as a central study for this thesis, but the related violent act of acid throwing will also be considered in the scope of physical violence. Pakistan is in a state of flux, and women are playing an increasingly active role in the country's social, political, and legal transformation. The judiciary could perform an important role in bringing justice to the victims of gender violence such as honor crimes, and in curbing crimes of physical violence against women. Within Pakistan's civil society, women activists are advocating the implementation of strategies to limit gender violence, actively engaging in a process to build a judicial framework that eliminates the inequality and discrimination against women based on religious and cultural norms that contribute to the perpetuation of gender violence.

Chapter 1: Introduction

According to the 2005 United Nations Population Fund, gender-based violence is the most widespread and socially accepted of human rights violations (Critelli, 2010, p. 407). Violence against women is a deep-rooted conflict that erodes women's fundamental rights to life, health, security, and shelter, creating profound impacts on women, girls, and entire societies. Through the persistent efforts of feminists, and human right advocating movements, the issue of gender-based violence has been transformed from a private issue into a prominent social issue (Critelli, 2010).

In Pakistan, violence against women is widely perceived as an acceptable norm by much of society. Culturally, women are viewed inferior to men, due to deep-rooted mores and customs. These sentiments mirror into the reality of daily life where women seem to be bound by a different set of social and legal rules. In Pakistan, as elsewhere, there exists a gendered division between the public and private spheres, which has greatly assisted to shield and protect abusive, violent practices (Mullally, 2005, p. 355). Although not speaking for all families, women cannot raise their voice without consequence, against violence by men, such as fathers, brothers, and then after marriage, husbands and their male relatives,

because males are often granted control of their physical being. The most common form of violence against women is domestic. However, barring certain exceptions of high-profile incidents, domestic violence cases are practically never reported and therefore, never investigated or prosecuted (Ibrahim, 2007). The Pakistani legal system, for example, fails to criminalize a quite common but highly serious form of domestic violence: marital rape. Even complaints against acts of domestic violence that come under the criminal law, such as assault, battery, acid throwing, or attempted murder, are routinely ignored and often go unreported by police.

Pakistani women were among the first articulating public opposition to the martial law regime and civil society activism regarding human rights in the early to mid-1980s, with women activists driving the path to the foundation of the Human Rights Commission of Pakistan (Critelli, 2012). The weight of long-standing relationships and customs is often still heavier than law (Constable, 2011, p. 71), Pakistan, however, is in a state of flux, and women are playing an increasingly active role in the country's social, political, and legal transformation. Within Pakistan's civil society, women activists are advocating the implementation of strategies to limit gender violence as well as a greater endowment of care for survivors. The women's movement in Pakistan continues to negotiate women's interests with the state and society, and has become increasingly effective over time, further strengthened by regional and international recognition of its process and progress (Critelli, 2012, p. 202).

Women are playing a larger role in shaping the politics of Islamist political movements around the world, as evidence suggests that women activists have created strong women's branches and push for broader political participation and representation in their state (Abdellatif, 2007). As women's contributions toward a strong and vibrant society are increasingly documented around the world, there is also a growing understanding of the critical nature of women's participation to building and sustaining a just society. Women's political participation results in tangible gains for gender equality, including greater responsiveness to citizen needs, increased cooperation across party and ethnic lines, and more sustainable peace.

This study will be examining the legal system of Pakistan, with particular emphasis on the legal processes concerning physical violence and the role of women in bringing justice into the state. For the purpose of this study, the notion of agency is operationalized as a modality of action. Women have always been active agents of awareness, and therefore it is important for the study of gender politics to examine the nature and scope of how women have pushed back against inequalities and discrimination. What have women been able to do and achieve considering the circumstances of Pakistan's fluctuating and fragmented political sphere?

Studying Pakistan, this thesis also seeks to contextualize and analyze the various representative discourses in order to come to an understanding of the possible cultural, religious, and historical reasons that create the circumstances for a family member to kill or hurt a female member, often in the name and sake of family honor. Honor crimes and the laws and procedures around honor killings will

serve as a central study for this thesis, but the related violent act of acid throwing will also be considered in the scope of physical violence. It is important to note that honor related violence goes beyond honor killings, as honor crimes do not always result in murder but can take various manifestations and should be recognized as such.

Within this thesis, the political course of Pakistan, and the affect the unresolved tensions in the political sphere have on the social and legal spheres will be examined in the context of the women's movement. Pakistan's formal and informal justice systems will be assessed utilizing case studies of honor crimes. Furthermore, the role of religion in the social, political, and legal context will be discussed in order to provide background and perspective for the platform in which the women's movement functions. The role of international law in the state will also serve as an important study in the thesis due to Pakistan's obligations to human rights and international law.

The study examines the Pakistani women's movements regardless of their ideological location on the political spectrum, but instead, with an emphasis on the particular efforts and results of the movements around responding to physical violence against women in Pakistan. The central research question of this thesis is, what is the role of women as agents of change in the shaping and transformation of legal processes related to physical violence in Pakistan?

Chapter 2: Research Methodology

Particular focus has been placed on the *Zina* Hudood Ordinance and the Acid Control and Acid Crime Prevention (Amendment) Bill and Prevention of Anti-Women Practices (Criminal Law Amendment) Bill, in order to study gender inequalities and implementation of laws around physical violence to assess the changes that have been introduced in Pakistan relating to gender. For the research study I have utilized secondary sources through archival and documentary research, case studies, and evaluated data from quantitative studies on the topic. National court cases, feminist and human rights discourses have served as focal points of the research study. I read transcripts of interviews with human rights advocates in Pakistan in order to gain insight on perspectives from active agents. Reviewing newspaper articles and editorials, especially from Pakistan, enabled evaluation of the most current situation. I also read several blogs written by Pakistani women from around the world. Narratives recounting experiences of physical violence at the personal level, served this study by contributing to an understanding of moral choices and actions as embedded in lived experiences.

I have also sought to interpret the relationship between religion and law through discourse analysis. Religion serves an important role in Pakistani society and law, and therefore offers insight into the study of Pakistan. The converging

influences of customs, culture, and law most clearly come together in the family, but even to a certain extent the community, where religious leaders have great influence. Therefore I also seek to assess whether religious leaders have the ability to undermine the legal process through the informal justice system. Case studies of honor crimes will serve as reference to examine the formal and informal justice systems.

I also considered the historical time frame for my research. Pakistan is a relatively new nation, so I examined the changes throughout the country's history, but specifically examining politics and its influence on the legal context from the dictatorship of General Zia ul-Haq to the present day. This will also allow the study to demonstrate any possible shifts or movements occurring at different periods of time, within a narrowed scope of time.

Chapter 3: Literature Review

The Literature Review chapter will explore the critical discussions that provide context and background to the women's movement seeking fair legal processes in Pakistan. The review of literatures includes discussing feminism in the legal context to understand the women's movement engaging with law. Literature on Islamic feminism explores the notion of utilizing the framework of religion for the purpose of peacebuilding, while also recognizing the value of private spaces and sanctuaries that women have created to fulfill their spiritual needs, providing the study with an important frame of reference and background on the specific characteristics prevalent in the context of Pakistan. This chapter also entails literature examining the relationship of gender and culture, for it offers valuable insight into concepts such as kinship and honor, demonstrating the affect of collective solidarity in the context of Pakistani culture and society. Literature discussing a social-legal approach to human rights examines that although there is widespread agreement that religious and cultural norms can no longer serve as justifications for discrimination against racial, ethnic, or religious groups, religious and cultural norms have nevertheless continued to be the most prevailing and widely accepted justifications for discrimination on the basis of sex. A greater

understanding of the background and direction of the women's movement in Pakistan can be established by studying a review of several literatures central to this topic.

Feminism in the Legal Context

The journey of the women's movement's engagement with the law involves a history of making the state realize, acknowledge, and address the different aspects of gender-specific violence that women face (Sen, 2010, p. 381). Feminist movements in Pakistan have drawn on a wide range of strategies in seeking legislative and policy reforms for women. One common thread tying all feminist literature together is recognition of a general and undesirable male hegemony that disadvantages women. This creates a need for commitment to the equality of women and their perspectives as an empirical or normative matter, and concentration on the methods of bringing about *de facto* as well as *de jure* gender equality (Fellmeth, 2000). The individual characteristics of what defines equality and the methods needed to attain that equality vary from region to region. Feminism does not necessarily hypothesize the superiority, or, for that matter, the existence of an alternative "voice" shared by most or all women. It does, however, suggest the existence of a nearly universal oppression or subordination of women (Fellmeth, 2000, p. 664).

Susan Moller Okin (1999) argued that patriarchal religious traditions that often confine women to strict gender roles within the family are responsible for what she understood to be the inhumane treatment of women in many parts of the

world. Okin's critique was not the first of its kind, as other scholars have also criticized traditional religious beliefs and practices for keeping women from realizing their full potential as citizens. She followed the work of liberal theorists such as John Stuart Mill and John Rawls, who in their idealistic theories about social cooperation envisioned a restricted role for religion in the public sphere, and even to a certain degree, the private sphere (Grech, 2013). Some scholars contend that law is meant to provide protection to individuals from one another. While some theorists argued for protection from a tyrannical government, Okin and other feminist theorists argued to also extend this protection to persons in the private sphere (Dunn, 2012).

According to Okin, feminism is the belief that women should not be disadvantaged by their sex, and that they should be recognized as having human dignity that is equal to men. Furthermore, women should have the opportunity to live a life that grants freedoms that are equally to men (1999).

Feminist researchers have also posited that hostile attitudes and reactions toward women's emerging distinguishability and participation in new roles, particularly in the context of increasing male socioeconomic disempowerment for example, can often manifest in male-initiated abuses against women, which include physical violence, and degradation of women (Chowdhury, 2005). There is a continually changing social landscape in which the women's movements function.

Controversy over secularism, human rights, and feminism tie the complex relationship of local women's movements to larger forces such as Pakistan's colonial

past, in addition to current pressures arising from globalization and other geopolitical tensions (Critelli, 2012). Attempts to delegitimize feminism and women's activism are made through claims that these secular feminist movements seek to erode local culture through the promotion of western individualism and anti-Islamic values. In the study of Pakistan however, the movements are witnessed to be diverse along both an ideological and political spectrum. Uncensored interpretations of Islam put forward by feminist scholars such as Fatima Mernissi, Shaheen Sardar Ali, Asma Jehangir, and Hina Jilani attest the active pursuit for gender equality by women through the use of secular and religious discourses (Mullally, 2005).

Feminist theories and political agendas need to be responsive to the diversity of women's lives, both within and across national contexts, while also being careful of portraying a picture of cultural differences among women, which might constitute cultural essentialism (Agarwal, 2008). In response, many scholars have suggested internal critique of religious jurisprudence and development of a feminist Islamic jurisprudence that would lead to change from within as a more culturally sensitive solution.

Gender and Islam

Muslim jurists claim that justice and equality are intrinsic values and cardinal principles in Islam and the Shari'a (Mir-Hosseini, 2006). Feminist scholars such as Ziba Mir-Hosseini (2006) question that if this is the case, that in a state that claims

to be guided by Islamic principles, why are justice and equality not consistently reflected in the laws that regulate gender relations and the rights of men and women? Historically, ideas about sexuality and marriage in Islam have found practically application in law. Surveying the historical evolution of *fiqh* (Islamic jurisprudence) and *Shari'a* (divine law) and how conceptions about gender and the family are translated from classical sources into modern ethics and law are an important component to examine when studying gender in Pakistan.

The legal apparatus that developed around Islam, as well as various customary practices, reflected a patriarchal bias in which there were distinct gender roles and rights (Dunn, 2012). Scholar Abdullahi An Na'im identifies a particular problem for feminist theorists and activists by assessing that pre-modern traditions relating to family law, when interpreted literally and translated into modern legal codes, are often oppressive toward women (2002). An Na'im, who is also a lawyer-activist, is concerned with the human rights abuses that often occur if preference is given to local practices of *Shari'a* (Dunn, 2012).

There is great diversity to Islamic practices of *Shari'a*, which scholars are finding to vary throughout the world. There is much that is still unknown about the way Muslims practice and interpret Islamic discourses (Dunn, 2012). Shannon Dunn (2012) in her study of gender politics in Islam discusses a story about an early Muslim historian Al-Tabari who relayed an Islamic story about Islamic ethics and domestic violence. The story is about a man named Ansar who slapped his wife. Ansar's wife then went to the Prophet Muhammed for advice. The Prophet, listening

to her story, thought this abuse against her was an injustice and that she should be permitted to seek retribution. According to Dunn's narration of Al-Tabari's story, as the Prophet was relaying his advice to the woman, he simultaneously received a revelation that the wife should actually not seek retaliation against her husband. The revelation the Prophet received was written as Qur'an 4:34, or as some Muslim scholars refer to as the "beating" verse (p. 18). According to one interpretation, the Qur'anic verse grants husbands permission to discipline their wives. Upon receiving the divine revelation, the Prophet revealed his unease with the divine message, but mentioned that what God wants is best (Dunn, 2012). This story represents the fundamental moral unease of the Prophet with the content of the verse, but his submission to the will of God nevertheless. Dunn goes on to note that this story illustrates the critical tension within the revealed tradition of Islam that utilizes both the Qur'an and the Prophet's *Sunnah* (words and deeds), which have the natural ability to dictate different messages. This is then further complicated when different communities interpret and use the traditions of Islam differently, but find solace in their translation of the written text or *Sunnah*. This is not unique only to Islam, but is particularly important when studying gender politics in the context of Pakistan since both the Qur'an and *Sunnah* are central to Pakistani life and society.

Holy texts, and the laws derived from the Qur'an and *Sunnah*, are matters of human interpretation (Mir-Hosseini, 2006). This in turn creates a struggle between interpretations, and often results in creating gendered policies relating to gender

relations. This dichotomy will be further explored in the chapter discussing Pakistan and Islam.

Islamic Feminism

The predominant use of a secular rather than Islamic framework is a critical way in which the movement in Pakistan has differed from other women's movements in the Muslim world. However, as will be discussed in greater detail later, due to the history and background of Pakistan, religion is still a vital component for the women active in movements for social and political change. The importance of Islam or the context of religion in the women's movement has varied with time and stability of the regime (Pande, 2002). Maintaining a secular framework has become increasingly difficult in the current environment of a shrinking liberal, secular space, and rising fundamentalism. The women's movement is continuously conscious of this reality as they continue their work, and therefore utilize regional and local customary practices of religion to build the most successful movement. Islamic feminism, as with other feminists, adhere to local, diverse, and evolving positions dealing with gender justice and equality for women (Mir-Hosseini, 2006).

Prevailing views of women in Islam are largely marked by stereotypes rather than objectivity. Although this is not predominately the case, generally, Western analysts have projected a negative view of the relationship of women under Islam as a political ideology, as well as Islam as a religion. This view of Islamic women

depicts women living in oppressive patriarchal societies, shackled by oppressive cultural and religious codes of conduct. Muslim women, like other women in the world, have always been aware of and resisted gender inequality. When examining feminist movements, especially in Islamic nations, this stereotype does not account for the physical and emotional hurdles women have overcome in political, social, and economical arenas. Ayse Kadayifci-Orellana (2010) raises a vital question by examining that if Muslim women are continuously regarded as being oppressed by their religious culture and therefore in the need of being saved by paradigms and practices of secularization or modernization, “how can one imagine anything more than a passive role for women in a peacebuilding process?” (p. 181) Traditional social structures can impede progress, but women are increasingly utilizing Islam to achieve gender equality, particularly to be legitimized through the legal system.

Some of the oppressive restrictions against women were lifted in many countries and governments that promoted a secular outlook, greatly with the help of the female citizens of those nations. Furthermore, analyses of gender politics in Pakistan are usually framed within the context of Islam, portraying women’s oppression as based solely on religion. This in turn ignores the intricate role of state institutions and historical, social, political, and regional factors, all of which also have a direct influence on gender relations (Critelli, 2010).

Some scholars have argued that at the beginning of the 20th century, the boundary between Islam and feminism was not clearly marked. There emerged a movement where women often tried to change traditional laws by invoking and

relying on Islam's sacred texts (Mir-Hosseini, 2006). But it was also in this period that women became symbols of cultural authenticity and the bearers of a religious tradition and way of life. Mir-Hosseini (2006) hypothesizes that this meant that any opposition on their part could be interpreted as a kind of betrayal to their religion (p. 639).

As the 20th century drew to a close, however, this dilemma was overturned. The one often overlooked consequence of the rise of political Islam was that it facilitated to create a space within which Muslim women could reconcile their faith and identity with a greater struggle for gender equality. Fundamental Islamists did not offer an egalitarian vision of gender relations, but instead pushed an agenda upholding the principles of a Shari'a interpreted through a patriarchal lens. Their attempt to translate the patriarchal gender notions inherent in Shari'a law into policy provoked many women to increasing criticism of these notions and encouraged them into greater activism (Mir-Hosseini, 2006).

Religion has taken on a new force since 9/11, with women seeking political expression within male-defined religious resistance to western Islamophobia (Zia, 2009). Many women, particularly from the lower-middle classes, have found sanctuary in religion in an otherwise disempowering society, where they were losing rights and representation. One example is found among those who took on the *hijab* (veil) as a religious symbol, finding it a useful refuge against male harassment. Furthermore, in addition to as simply an act of faith, wearing the hijab

could also be regarded as a way of negotiating for more space in the public sphere, representing empowerment.

When studying Islamic feminism, some scholars hypothesize that women's activism will, in all likelihood, focus on women's political participation, but not necessarily on empowerment. Future movements may focus on violence against women with an emphasis on victims rather than on the immediate effort on prevention of the violence. Furthermore, the debate in gender politics discusses how women's movements may fail to challenge networks of informal negotiation between men or misogynistic cultural practices (Zia, 2009). Most of all, scholars predict that there is a possibility of witnessing a growing polarization between "good Muslim" and "bad Muslim" women, such that women who abide by the liberal interpretation of theology will be pitted against those women who follow a strict, literal interpretist mode of Islam and may also associate themselves with male religio-political discourse (Zia, 2009).

Female religio-political leaders in Pakistan earned some form of power, even if it is really an illusion of power, by compromising with a militarized, dictatorial state that assumed a moderate religious and liberal rhetoric (Zia, 2009, p. 41). Religion has in many ways become privatized and women home-based preachers found power in their small followings, which compensated for the absence of democratic or domestic importance. Women preachers now give short sermons at funerals to women mourners of the community, with their own translations and interpretations of Qur'anic verses. The *dars* phenomenon, or a gathering of people

or followers in an informal religious study group, is increasingly substituting individual mourning and reading of the Qur'an (Zia, 2009).

On one level, Pakistani feminists have been concerned with disentangling the state policies of General Zia ul-Haq that created limitations on women and relegated women's primary roles as domestic. On the other hand, some feminists equally recognize, emphasize, and value the private spaces and sanctuaries that women have created to fulfill their spiritual needs. This has meant that practices such as *dars* are assessed as empowering strategies in an environment where they lack democratic or domestic relevance (Critelli, 2010). Feminist movements in Pakistan have long sought to endorse an expanded moral-political dialogue on the requirements of *Shari'a* (Islamic law) and the role of Islam within the constitutional framework of Pakistan (Mullally, 2005).

Referred to as New Religious Thinking, it is a discourse whose advocates display a pragmatic willingness to engage with nonreligious perspectives, attempting to demonstrate Islam's compatibility with modernity (Mir-Hosseini, 2006). New Religious Thinking's discourse does not reject an idea simply because it is "Western", and nor does it view Islam and Islamic doctrine as a rigid blueprint for solving social, economic, and political issues. Instead, the human understand of Islam is perceived as flexible, with the ability to change in the face of time, space, and experience.

Gender and Culture

Culture and religion are inextricably intertwined in many ways in Pakistan, and there is a great deal of confusion over where the lines can be drawn between them. Women have always played a great role in nation-building, but the patriarchal nature of the culture has ignored much of women's contribution. Gender hierarchies are pervasive, but not all societies are patriarchal (Moghadam, 1992, p. 35).

Patriarchy is imposed in different ways, and varies in degrees of severity, but a common characteristic of patriarchal control is viewing women as property of the family, and by extension, the community (Wilson, 2006, p. 9). A woman belongs first to the men in her family, and then once married, to the men in her husband's family. Her identity is greatly contingent on the role she is playing. Theories of culture's interaction with law are an important contribution of socio legal theory (Hirsch, 2006).

Pakistan is a strongly patriarchal society where the power of men manifests itself in a high occurrence of domestic violence. Human Rights Watch has found that gender violence is estimated to take place in as many as 80 to 90 percent of the households in Pakistan (Critelli, 2012, p. 207). Honor crimes are still widely committed in Pakistan. Even though most associate honor crimes with only an act that ends in murder, honor crimes also include, but are not limited to, a range of other violent acts against women such as attempted murder, acid attacks, dowry deaths, rape, and female infanticide (Agarwal, 2008). Honor killings are the most overt form of an honor crime, aimed at restoring the honor that has been taken

away by another's behavior or actions. Scholars have studied that rape and acid attacks, on the other hand, are less about restoring one's own honor and more about divesting the other of their honor. "An acid attack is both about restoring the honor that was allegedly lost and stripping the honor of the woman because of whose action it was lost" (Agarwal, 2008, p. 52).

Pakistan is also a diverse country with disparities in social and economic development. The nature and degree of women's oppression widely varies throughout the country, and is dependent on the intersections of social class, region, and rural/urban location (Moghadam, 1992). In the rural and tribal areas, local customs often prevail over national law, and patriarchal structures are much stronger. Patriarchal social norms are embodied in strict codes of behavior, rigid gender separation, family and kinship patterns, and a strong ideology linking family honor to female virtue. This enables the sustainability of maintaining control over women (Moghadam, 1992).

Islam and Pakistani culture both play a central role in creating the Pakistani identity and its traditions. Men have invoked the support of Islamic law to justify their views and actions against women. They assert that if women were permitted to exercise choice in matters of marriage it would lead to the breaking down of the family unit and eventual mixing of sexes to find a potential mate; an act that is un-Islamic. Fundamentally, religious nationalists turn politics into a religious obligation (Friedland, 2001). In this context, there is a clear marginalization of women and their agency, thus an active representation of gender-inequality.

According to Susan Okin's (1999) feminist theory, most cultures have practices and ideologies that concern gender, but endorse a situation where men have control over women in various ways. With a disparity of power between the sexes, Okin contends that male members are generally in a position to determine and articulate the group's beliefs, practices, as well as interests. With these conditions, group rights become anti-feminist. When these power disparities reflect into the private sphere, it leads to gendered practices, with substantial differences in power and advantage.

Gender violence in Pakistan takes a variety of forms such as, domestic violence, which includes verbal abuse, physical abuse, rape, murder, and economic and emotional abuse. Other forms of violence are culturally specific and are rooted in traditional practices that continue utilizing the excuse of tradition and religious principles such as honor killings, forced marriage, child marriage, exchange marriage, acid attacks, and other physical mutilations (Critelli, 2012). Women have also been raped, abused, and assaulted while in police custody, further deterring women from reporting crimes against them. The power disparities between men and women exist in both the public and private spheres.

Some Pakistani women accept their condition as their fate, and have chosen to bear the burden of violence because they fear losing the support of their family and community, and ultimately, for the sake of family honor (Mahapatra, 2008). Women are encouraged to internalize the perception of their sexuality, through the notion of shame. The effects of *sharam*, or shame, are meant to discourage women

from crossing patriarchal boundaries and breaking out of a prescribed role. *Sharam* entails being cautious of behavior, actions, and response to others. In this sense, women are constrained within a dictated role, and often live in fear of tarnishing their family's honor. A clear distinction is created between a "good woman" and a "bad woman." A "good woman" has *sharam* and is quiet in nature, without speaking up or against her culture, religion, or family. Transgression of community boundaries by females is perceived by the older generation as a much greater threat to the survival of the group and its values, than male transgression (Moghadam, 1992).

Kinship

Kinships, and kinship groups are also a critical component of Pakistan and the study of legal processes. Kinship is central to the weak coherence and stability of the Pakistani state. "The importance of kinship is rooted in a sense of collective solidarity for interest and defense" (Lieven, 2011, p. 14). Pakistani culture is rooted in the collective interests over the interests of the individual. The interest of the *baradari*, or kinship group, involves not just the pursuit of advantage, but is also attached to powerful feelings of collective *izzat* (honor) and shame. Consequently, a *baradari* that is seen as dishonored, will find its interests and prestige decline. Defense of the honor and the interests of the kinship group can outweigh loyalty to a party, to a state, or to any code of professional ethics (Lieven, 2011). Kinship remains of immense importance even among educated people in Pakistan's cities,

many of who are migrants, because the ties to ancestral villages remain firm (Lieven, 2011, p. 222).

Structural Violence: A cultural study of Pakistan

Johan Galtung's (1969) research into conflict theory yields extensive insight into the causes of conflict. Galtung links the terms peace and violence, by defining peace as the absence of violence (p. 168). Galtung further suggests that violence exists when an individual's realization, or the extent of their progress in life, is significantly lower than that of their potential. Additionally, according to Galtung, violence is an avoidable impairment of fundamental human needs. This theory can than be expanded to entail how one can be harmed not because of what they have done, but who they are. Due to something that is not of their own merit, one is limited of their potential. This phenomenon can be witnessed in the gendered legal policies in Pakistan. Limitations and biases have been held against women in Pakistan simply for being women born and raised in a patriarchal society and family structure. Violence has been exerted on women throughout history for a notion that was not in their control, being born female.

Galtung developed a theoretical model referred to as the "Galtung Conflict Triangle" or "the violence triangle," which demonstrates the causes of violence in three phases: before, during, and after violence. He then goes on to distinguish three categories of violence; namely, direct violence, structural violence, and cultural

violence. The three axes of direct violence, structural violence, and cultural violence correlate directly with behavior, contradiction, and attitude.

Direct violence, whether physical or verbal, is noted as behavioral. In essence, direct violence can be the most overt form of violence, for there is a clear subject, object, and action, with the intent to harm. Thereby, rape, abuse to children, gang fights, and bullying, are all examples of direct violence. Effectively, the violence is visible. Structural violence on the other hand, is a socially constructed concept, with such a natural tendency, it may not be perceived by members of that society (Galtung, 1969, p. 173). It is a form of violence in which a social institution exerts certain restrictions on human needs and desires. Structural violence can be indirect in nature, and functions as an oppressive charter through which powerful organizations and leaders enforce ideologies that create a disparity in society. An imbalance can then result in exclusion and exploitation of fundamental human needs. An imbalance is evident in Pakistan, where women in the middle or poor financial classes are not guaranteed education in order to preserve gender roles in society.

Cultural violence is a development of thinking systems that excuse structural violence. An example of this development of mind-set is during the dictatorship of Zia ul-Haq and the creation of the Islamization program. The treatment of women was excused by the greater part of society and legal entities because women were viewed as humans not deserving of equal rights that were guaranteed to the rest of the population. Women required extra protection and encouragement to be pious,

being given the responsibility to uphold family honor. Discrimination and exclusion took form and was supported. There existed gendered laws and policies throughout society in order to support this mentality. Galtung asserts that although the cultural and structural aspects of conflict are invisible, there is an inter-relational aspect to all three axes, often perpetuated into a constant cycle. Although violence against women is rarely acknowledged and punished as a crime, numerous reports reflect that women in Pakistan face extraordinarily high levels of violence and abuse at the hands of men, family members, and leadership of the country.

A Socio-Legal Approach to Human Rights

A socio-legal approach to human rights addresses questions of individual and social emancipation from a historical view, recognizing that a link exists between the interaction of individual and collective rights and the demand for law (Klug, 2005, p. 86). The Universal Declaration of Human Rights is an exemplary representation of international human rights, serving as a comprehensive list of rights to be held up as a standard of civilized behavior (Klug, 2005). Yet at the same time, scholars have repeatedly found that the international apparatus for human rights reflects the popular experience of human rights, where on the one hand results in repeated violation and, on the other hand, exists as a weak form of customary international law, with a set of aspirations toward which states must constantly strive. Although international human rights law is grounded most directly in the notion of “hard law” of binding international treaties, the most

effective implementation of human rights has been achieved either through domestic law or more recently through the exercise of humanitarian intervention and the enforcement of international criminal law (Klug, 2005, p. 93).

Although there is widespread agreement that religious and cultural norms can no longer serve as justifications for discrimination against racial, ethnic, or religious groups, religious and cultural norms have nevertheless continued to be the most prevailing and widely accepted justifications for discrimination on the basis of sex. Although most countries around the world have supported equality between the sexes, incorporated both in national and international laws, there is still pervasive acceptance of the notion that communities have the right to maintain religious and cultural norms that may discriminate against women. Even though modern liberal theory is commonly understood as guaranteeing similar rights to both men and women, a tremendous gap continues to exist between the reality and practice in relation to discrimination against women. The controversies surrounding violence against women, such as honor killings and acid attacks, are manifestations of this tension (Agarwal, 2008). These violent practices are defended as a necessary aspect of religious or cultural traditions, and states are often reluctant to acknowledge that these practices are linked to the control of female sexuality and movement.

The debate relating to human rights has often become a conversation about colonialism and allegedly imposing Western values. Journalistic accounts and scholarship have variously labeled practices such as wearing the veil a symbol of

subordination to men. As a result, many Arab and African women for example, even those who were originally against the practice, voiced concerns about the portrayal of underdeveloped countries and their cultural practices as a validation of the view of the “primitiveness” of Arabs, Muslims, and Africans (Agarwal, 2008). Scholars studying international norms relating to human rights have found that an attack on cultural practices can often elicit deep-rooted sentiments of colonial domination. Violence does not have geographical boundaries. Crime of honor in one region of the world becomes a crime of passion in another, for example. It is essential, especially for nations a part of the international community, to acknowledge that human rights abuses do not occur solely in “other” countries, but that their own nations also are guilty of similar indignities.

For this reason, while feminist theories and political agendas need to be responsive to the diversity of women’s lives, both within and across national contexts, they have to be careful of painting a picture of cultural differences among women that might constitute cultural essentialism (Agarwal, 2008). In response, many scholars have suggested internal critique of religious jurisprudence and development of a feminist Islamic jurisprudence that would lead to change from within as a more culturally sensitive solution.

Constructing the Self and the Other is a complex social negotiation which takes place upon a fractured terrain of social power, creating a possibility for unpredictable, contradictory, and unstable outcomes. These boundaries of Self and the Other are often defended and regulated through demonstrations of violence,

which, while not legitimated by all state fractions, is tolerated and even participated in by others. Crimes of honor have become more than just crimes, because they demonstrate violence that regulates sexuality within communities. This regulation is often regarded as legitimate within the community, as a means of securing its cultural borders and insuring against transgression of norms (Baxi, 2006, p. 1250).

Despite legal limitations and failures, human rights have transformed the global order, assisting human rights movements around the world with a legitimate platform with which to function.

Chapter 4: Pakistan- Context and History

Structuring the State

*“A Constitution is not the cause but a consequence of personal and political freedom.”
-Justice Muhammad Munir*

Viewed symbolically, the political course of Pakistan since its independence provides an important reflection of the current structuring of the country and its people. Over the course of Pakistan’s 66-year history, there have been different attempts to radically change Pakistan. From the beginning, Pakistan has struggled with constitutions, governments, and how to structure the state. Although the country was established with a parliamentary system of government, the military has seized power, ruling directly and indirectly for more than half the lifespan of the country. Intervening periods of elected, civilian government have responded to prevalent fears of renewed military rule by accommodating the army in order to prevent its reemergence in politics (Newberg, 1995). Each variation of power has therefore embodied deep general concerns and ambivalences about the government, its patrons, and its beneficiaries.

General Ayub Khan and Pervez Musharraf, military rulers in 1958-1969 and 1999-2008 respectively, both took Mustafa Kemal ‘Atatürk’, the greater secular modernizing nationalist and founder of the Turkish Republic, as their model for

fundamentally reforming the state and the Pakistani society. Zulfikar Ali Bhutto, founder of the Pakistani People's Party (PPP) and civilian ruler in the 1970s, attempted to rally the Pakistani masses with a program of anti-elitist economic populism mixed with Pakistani nationalism. General Zia ul-Haq, a military dictator from 1977 to 1988, took a different route, and aimed to unite and develop Pakistan through an enforced adherence to a stricter and more austere form of Islam mixed with Pakistani nationalism; Islamization (Lieven, 2011).

Many of the same problems of ideology, sovereignty, and voice that were present at independence continue to concern Pakistan and Pakistanis today. The country has fought wars over its boundaries, and continues to experience constant domestic battles over conflicting ideas of citizenship, equality, and representation (Newberg, 1995). Many of the internal structures and external pressures that have come to typify state and society were present at the time of Pakistan's establishment. The uncertainties of its relationship with India are bound intimately in its history, profoundly impacting Pakistan's need to continually practice autonomy in the country's political attitude and politics. Unstable regional relations influenced the way Pakistan organized its resources, foreign alliances, and domestic politics. Furthermore, the predominance of the military, even during civilian rule, colored the development of the country's laws and political institutions, and equally, the ways Pakistani citizens reacted to the proclaimed imperatives of the state (Newberg, 1995). As reflected in Picture 1 in the Appendix, the country's geographic and economic maps were asymmetric and unbalanced at the time of independence

with an East and West Pakistan. Natural resources, capital and infrastructure were organized to fit unpartitioned colonial India, rather than the new state of Pakistan. Politics were therefore over an awkward overlay and multiple peripheries. In her study of Pakistan, Paula Newburg (1995) finds that “Pakistan was truly a product of many imaginations, each with their own visions of political community and state structure” (p. 35).

Developing the Constitution

In Pakistan, more than 95 percent of the population is Muslim, with the country founded in the name of Islam. Effectively, without Islam, there would be no Pakistan (Hoebel, 1965). In contrast to Western constitutional doctrines that seek to separate church and state, Pakistan’s constitution aims to integrate the two. Pakistan separated from India to become a Muslim state practicing an Islamic ideology with Islamic-based expectations of patriarchy, gender roles, and sexuality (Yefet, 2009). Pakistan is still in the process of building a balance between the different schools of Islamic law and the judicial constitution of the nation. Presently, no law can be enacted that contradicts any basic teaching of Islam.

The constitutional history of Pakistan is a reflection of all the peculiarities of the country’s social, economic, and political development since independence. At the time of independence, Pakistan, adopted the Government of India Act 1935 with minor changes to serve as the country’s first interim constitution. As opposed to the classical approach to the constitution being a reflection of the nation’s will and the

power structure of a society, scholars have argued that the constitutional tradition inherited by Pakistan did not necessarily correspond to the reality of the distribution of power on the ground (Waseem, 2006, p. 104). The inherent institutional imbalance between bureaucracy and politicians in Pakistan made a mockery of such constitutional provisions as parliamentary sovereignty, procedural, and substantive aspects of the legislative process at the federal and provincial levels, and the principle of the government's accountability to public representatives. The India Act 1935 as amended by the Independence of India Act 1947, remained in operation for more than a decade after partition. Unable to frame a constitution, the inherited vice-regal system continued to act as the governance document for the state. During the period from 1947 to 1956, attempts were made to fit the parliamentary system within the confines of a regal order (Naseer, 2007). The structural tensions led to the tripping of the parliamentary democracy, which is inherently a contradiction. Parliamentary working could not co-exist within the vice-regal system. Inevitably, the civil and military bureaucracy became dominant players in the body-politics of Pakistan.

The first constitution was finally adopted in February of 1956. It was a written constitution divided into 13 parts, six schedules, and 234 Articles. The Constitution of 1956 sought to incorporate the principles of Islam, by opting to name the country the Islamic Republic of Pakistan, and mentioned the sovereignty of God in the preamble. It held that no law would be passed that went against the teachings of Islam. It also described the state as a federation, signifying an elaborate

relationship between the center and the provinces, while also giving an important place to the fundamental rights of the citizens (Naseer, 2007). The constitution, similar to the interim constitution, divided powers into three categories: Central, Provincial and Concurrent. Furthermore, the judiciary was to remain autonomous, with the Supreme Court given the authority to interpret the constitution and advising the state when necessary. Urdu and Bengali were both accepted as state languages, building cooperation and cohesion between East and West Pakistan. However, before the constitution could be implemented by holding a general election, Ayub Khan imposed Martial Law in October 1958 (Naseer, 2007).

Pakistan moved from a vice-regal system into a martial law setting, where all powers were concentrated in one individual and the institution of the military. Ayub Khan framed the 1962 Constitution. The constitution articulated a presidential form of government, as opposed to the previous constitution's parliamentary form. For the first time in Pakistan's short history, this guaranteed extensive powers for the President. The 1962 Constitution initially excluded any reference to the need for legislation to conform to Islamic law, however, following protests from the National Assembly, the Islamic provisions of the 1956 Constitution were reinserted (Mullally, 2005). The constitution also promised an Islamic way of life for Pakistanis, eliminating activities deemed un-Islamic, such as gambling and intoxication. Through the constitution's Islamic Ideology Council, religious scholars and the council's members would be responsible for identifying non-Islamic laws and bring them to accordance with Islam (Naseer, 2007). Ayub Khan began a positive move

towards gender issues, however, by widening the scope of women's rights in marriage, divorce, and inheritance (Pande, 2002, p. 75). The minimum age for girls for marriage was raised to sixteen.

After taking over the government from Ayub Khan in 1971, Zulfikar Ali Bhutto began work on a democratic constitution for Pakistan (Naseer, 2007). Bhutto held a modern outlook for Pakistan, with broad support and legitimacy. The 1973 Constitution provided for a federal system to function like the British Parliament. The constitution compromised on three issues: the role of Islam, the sharing of powers between the federal government and the provincial governments, and the division of responsibilities between the President and the Prime Minister. Islam was declared the state religion, with an assertion that no law contrary to Islam could be created or enacted. One of the major achievements of the constitution was guaranteeing basic fundamental rights, indiscriminate of the person. His Islamic Socialism was progressive in content, as evident in the constitution's guarantees that no discrimination shall be made on the basis of sex alone, while also promising complete participation of women in all spheres of life (Pande, 2002).

Politics of Pakistan

The politics of the country have often had an intertwined relationship with the legal system of the country, determining the extent to which the politics of the state and leadership affects practical changes in the country. The judiciary and the executive participate in a dialogue that corresponds to one between jurisprudence

and politics (Newberg, 1995). Pakistan reflects an interesting case for the state as a functioning body, because it is often not the dominant cause of injustice, but instead, the autonomous actors in the legal system, courts, police, and distinctive state individuals are responsible for creating various hindrances to the pursuit of gender equality (Critelli, 2010).

Pakistan's politics reflect a case of unresolved tensions between two contending models of government (Newberg, 1995, p. 10). The vice-regal tradition of colonial India was originally embedded in the plan for Pakistan's governance, and was adopted by the state's founders who used it to establish the outline for the state's constitutions and agendas for the post-colonial rulers, thereby perpetuating the tradition into the new state. On the other hand, the liberal, representative tradition that best characterized the rhetoric of political opposition in India and anti-colonial behaviors facilitated the establishment of the language and agenda of anti-government politics in Pakistan (Newberg, 1995). Conflicts between vice-regal and liberal views have been expressed regularly, as disputes between executive and parliamentary power, and between central authority and local self-rule (Newberg, 1995, p. 10).

As previously discussed, over its history, Pakistan has experienced multiple changes in its governance. Pakistan has changed governance from a vice-regal system to a Presidential, into a Parliamentary state, to Martial Laws, and then finally into a hybrid structure splitting the system between Presidential and Parliamentary, most currently leaning the balance of power in favor of the President (Naseer,

2007). The vast conceptual and practical divide between these concepts of politics and power has continuously called into question the validity of particular governments and the sources of legitimacy for the state (Newberg, 1995).

During the military dictatorship of General Zia ul-Haq, from 1979 to 1988, the government injected Islam into the laws through a process called “Islamization.” Haq interpreted the Qur’an through the lens of patriarchal beliefs and fundamentalist tendencies, creating gender inequalities and gendered legal policies (Bubb, 2007, p. 69). The period of politics during General Haq’s time in office and his Islamization program will be discussed in further detail in a later section, but it is important to note that he ushered in an era initiating discriminatory legislation for women. With the imposition of marital law, he suspended all fundamental rights that were guaranteed in the Constitution of 1973 (Pande, 2002). Military intervention into politics greatly influences the path of gender politics. The feminists of the 1980s in Pakistan, particularly the Islamic feminists, sought to filter out the patriarchy from a predominately male-defined Islam, and saw religion as a pawn abused by an oppressive state leadership.

During the successive decades, sequential Pakistani government leaders have publicly condemned honor crimes and violence against women, yet the rapid turnover in governments, with three different governments and a three-month caretaker government during the five-year review period of 1995–2000, interrupted the continuity of policy directions and implementation of initiatives for women.

Pakistan was the first Muslim country to elect a woman, Benazir Bhutto, as a leader in 1988, and she eventually served two non-consecutive terms as prime minister. However, the promotion of women to the helm of national affairs has not translated steadily into the greater participation of women in national political positions or other avenues of decision-making. According to Gender Empowerment Measure released in 2008 analyzing the participation of women in economic and political life, Pakistan ranked 82nd of the 93 countries, below Bangladesh and above Cambodia (Critelli, 2010). Bhutto ushered in a decade of alternation between the elected governments of Bhutto's Pakistani People's Party and Nawaz Sharif's Pakistan Muslim League. Although the military interfered in politics throughout the decade, it was not until 1999, when Pakistan faced another military takeover of power by General Pervez Musharraf.

Unlike the previous dictator, General Zia ul-Haq, who carried out an Islamization program, General Musharraf envisioned a new-age military ruler ship with modern, secular, and liberal tendencies. Thereafter started an era that has been dominated by several sociological changes in the country, with legal reform of the discriminatory legislation from the era of Islamization. Pakistan, like elsewhere, is in a constant cycle of change, which enables the women's movement to participate in contributing ideas for reform. A fragmented political field that involves a heterogeneous political culture and dispersed distribution of power best categorizes the Pakistani women's movement in Pakistan. This fragmentation enables a greater political autonomy to women's organizations.

Generally however, the failure of the state's leadership and governing entities to assume ownership of its human rights commitments and to enforce the rule of law is seen as a significant obstacle to women's progress. Recently passed legislations criminalizing honor killing and outlawing harmful traditional practices such as *vani* and *watta satta* a practice where families trade young women in order to resolve disputes with other parties have limited effectiveness and have been perceived as "good only on paper" (Critelli, 2010, p. 212). There is still great impunity for crimes against women because just passing the bills does not guarantee implementation. Subsequent chapters will discuss Pakistan's legal system and legal reform of gendered legal processes, but current findings reveal that the Women's Protection Bill of 2006 failed to fully repeal the Hudood Ordinances, continuing to leave women vulnerable to continued legal injustices. Furthermore, the failure to enact the 2009 Domestic Violence Bill was another hindrance for the women's movement for change. The politicization of Islam impacted the bill, with the Council of Islamic Ideology strongly opposing the bill on the basis that the bill had the potential to promote women seeking divorce, thereby raising the divorce rate in the country (Critelli, 2012).

Chapter 5: Pakistan's Legal System

The purpose of a legal system is to provide a system for interpreting and enforcing laws through an efficient, systematic mechanism. Pakistan's judicial system stems directly from the system that was adopted in British India. The Government of India Act 1935 was retained as a provisional Constitution. After the partition of the subcontinent in 1947, Pakistan adopted almost all the laws of the British India. Therefore, the Indian Penal Code in Pakistan became the Pakistan Penal Code.

The powers, authority and jurisdiction of the Federal Court and High Courts, as prescribed in the Government of India Act 1935 was amended in 1954 with a view to empower the High Courts to issue the entitlement writs. The subsequent constitutions of 1956, 1962, and 1973 did not drastically change the judicial structure or powers of the courts. A new special court named the Federal Shariat Court was introduced under General Haq's program of Islamization in 1979.

The Pakistani judiciary's relationship to the written constitutions, civil law, and military regulations has practiced a process of give and take among those holding power, rather than firmly a process of enforcing rules (Newberg, 1995, p. 13). Pakistan's legal system consists of parallel judicial systems continually in

operation. In addition to the secular constitution, there are religious laws dealing with personal issues, and customary laws of the tribal areas (Critelli, 2010).

Official law is also known as national law or state law. It consists of all the codified state laws with the entire state implementing apparatus such as the police and courts (Hoebel, 1965). The formal legal system encompasses a body of law that combines influences of the English common law, fundamental customary law, and Islamic law. It has a hierarchical court system established by the Constitution. Traditional law on the other hand, also known as customary law or folk law, is predominately based on unwritten local customs and traditions and is implemented informally through village elders and councils of elders. The informal legal system is based on tribal rules, commonly called the “honor code”, and is administered by quasi-judicial tribunals, generally called “jirgas” (Ibrahim, 2007, p. 3).

Though both the official and the traditional system share a complementary relationship, there exist conflicts and controversies between them. Regarding women rights and issues for example, the official law is much more progressive than the traditional practices, as can be seen in the practices of marriage and family inheritance practices (Chaudhary, 2009). Moreover, the traditional, informal legal system and customary practices enjoy significant roles in deciding a major portion of the total legal cases, especially in rural areas of Pakistan, where about 70% of the population resides.

Formal Justice System

The formal justice system relates directly to the Pakistani Constitution. The courts functioning under the formal justice system depend in and utilize the laws written in the constitution for proceedings. The formal justice system functions as the official law, also known as national law or state law.

The formal justice system of Pakistan recognizes that socially validated norms will be reflected into the textual provisions of the law, and therefore sudden provocation translates itself into the legal system (Wasti, 2007, p. 5). Under the formal legal system, honor killing is defined as a murder committed in the name or with the pretext of honor (Ibrahim, 2007). Murder is arbitrated according to the criminal law of *Qisas* (retribution) and *Diyat* (compensation), giving the victim or the victim's legal heirs control over the crime and the criminal as later case studies will discuss in greater detail. Honor crimes are thereby considered a private affair, and dealt as such, with the victim or legal heirs given the choice whether to report the crime or prosecute the criminal. Some scholars have argued that mechanisms of the formal justice system of Pakistan continue to justify and uphold practices relating to honor crimes in order to accommodate tribal practices, or the informal justice system (Wasti, 2007).

Informal Justice System

The tribal law of Pakistan is grounded in the ancient culture of the desert tribes (Bubb, 2007, p. 77). The protection and equality enshrined in Pakistani

constitutional law are often negated by customary practices and rules that seek to place precedence on traditions. The British portioned the area in 1947 without accounting for ethnic, religious, or other boundaries, resulting in various groups relying on the already existent tribal law (Bubb, 2007). According to some scholars, although tribal law is often considered “backwards,” the lack of central authority created a necessity to instill laws and punishments that were already practiced. As Tanja Chopra (2010) examines, most communities do not consider approaching a court system, or utilizing the framework of official law, in order to resolve certain disputes (p. 190.)

Initially, the jirga system aimed to develop and retain social harmony. British rulers under the Frontier Crimes Regulations of 1901, originally legally introduced the jirga system in order to try criminal or civil case in tribal areas by government tribunals (Ibrahim, 2007). These tribunals were comprised of elders of the tribe appointed by the magistrate and political agent of the tribe. These jirgas were given power to settle disputes concerning women, money, and land among the tribes. Eventually, when Pakistan came into existence, jirga was legalized under Article 247(7) 285 of the Constitution in tribal areas (Ibrahim, 2007). There is a wide gap between equality of gender in formal laws and the reality of a woman’s life. The informal justice system, comprising of the jirga system, customary law, and the honor code, is generally biased against women due to deeply embedded cultural practices that define gender roles. Over the years, there have been cases where male members of the family have been allowed to sell, buy, and exchange women as

commodities, and can even be permitted to murder women in the name of honor (Ibrahim, 2007).

The forum of the jirga council is used for arbitration, dispute resolution, and in many cases, murder trials and honor killings. The ultimate authority in the tribal or clan systems is a man known as the *sardar*, or sometimes a *nawab*. The title is hereditary, and carries enormous responsibilities (Constable, 2011, p. 66). A jirga usually comprises of five to seven members, tribal chieftains, or local men who are elected by the elite class to act as judges. Many times it is a hereditary position, meriting deep respect. Often, however, they are not legally qualified for the position. There is no substantive law or procedural law to be followed, and no record or written proof of the jirga's judgments is kept. This is one of the primary reasons it is difficult to find primary evidence against these tribunals and their judgments (Ibrahim, 2007).

Jirga law, based on customary practices, is the most resilient and aggressive law affecting women's rights, where a woman is not *sui juris*, of own right, under customary law. In many regions of Pakistan, a woman's consent is not sought in marriage or any decision-making, even though it may relate to her. There are still customary practices where a woman cannot seek divorce, but a man can divorce her at his own will. Historically, there has generally been no representation of women in jirgas. Punishment for a woman who commits adultery is decreed, but her male partner in the same act is rarely held responsible. In these rural and tribal areas women are often not educated. Not many women are given the opportunity to seek

higher education, let alone leave their hometown. Women seldom know their legal rights. Tribal women also observe strict wearing of the veil. The strict dress code varies from one province to another, but in general the purpose is the same. Women are expected to cover themselves from head to toe. In some provinces, such as the area of Balochistan, or the North West Frontier Province, women are not allowed to leave their homes unescorted. In this instance, the veil not only includes covering the body, but also expands into seclusion from any male interaction except for her blood relations, including father, brothers, and sons (Ibrahim, 2007).

Self-redress

Anatol Lieven (2011) interviewed a Sardar serving as a leader of a tribe in Balochistan. The Sardar was formally educated in London, England before returning to Pakistan and serving as a leader of a tribe. In his interview, the Sardar shared a narrative about his judicial role. The Sardar shared that hundreds of people come to him or his cousins to have their problems solved. If the case is simple, the Sardar makes a decision on the case, but if the case is more difficult, he calls people from a jirga committee to look into the case. He requests people that are affluent on the logistics of the case (p. 101).

Katherine Newman's (1983) "A Typology of Legal Institutions" addresses self or kin-based redress systems that are utilized in parts of the world. In Pakistan, *biradaris* often utilize kin-based redress systems to resolve conflicts outside the formal legal system. Examining the processes of redress systems is both fascinating

and pertinent for conflict analysis and resolution. They demonstrate the influence of cultural norms and practices in the absence, or as an alternative to any institutional means of litigation. Newman finds that self-redress systems rely entirely upon the actions of the disputants and those individuals prepared to lend support (p. 59.)

Sardar's judicial duties are a part of a self-redress legal system that seeks to assist individuals in the community without involving the formal justice system. Self-redress systems utilize bottom-up approaches to assist in building trust and relationships within a community, and even between different communities. "Cultures practicing self-redress have a keen sense of balance regarding the seriousness of an offense and the appropriate degree of response. Reactions are 'tailored' to the severity with which the society in question views a transgression" (Newman, p. 60.)

Lieven asked the Sardar a question relating to honor crimes, trying to gain perspective of the informal justice systems handling of a crime of honor case. The Sardar revealed that cases and issues involving women "are never simple" (p. 101). According to the Sardar, because he is well traveled and educated, he thinks harder about issues that come to him regarding women, being very cautious about his decisions. But he acknowledges that there still exists a "backwardness" in Pakistan and its customs, and then coupled with a lack of education, creates difficult state to attain justice. The Sardar acknowledges that if an individual does not agree with his decision, then he encourages the case to be taken to State law, however he practices

this discretion sparingly, because if he does this often, according to the Sardar, no one would obey him anymore (p. 102).

The women's movements and legal reforms in Pakistan have impacted the informal justice system over time. However, the government has little to no authority over the laws and proceedings of the tribal regions (Bubb, 2007). Honor killings have been condoned in tribal councils, but issues dealing with women are still seen as difficult.

Council of Islamic Ideology and Federal Shariat Court

Under General Zia ul-Haq, a body known as the Council of Islamic Ideology took on a more enhanced role in the state. Primarily an advisory body, the Council consists of between eight to 20 members, who have abundant knowledge of the principles and philosophy of Islam as articulated in the Qur'an and Sunnah, and with understanding of the economic, political, legal, and administrative problems of Pakistan (Chaudhary, 2009). The functions of the council include compiling rulings of Islam that can be given legislative effect, advising whether a proposed law is objectionable to the injunctions of Islam, and additionally, to give recommendations for bringing existing laws into conformity with Islam (Chaudhary, 2009). It was reconstituted for the purpose of providing greater representation to conservative religious scholars.

Representing an extensive structural change to the judicial system, General Haq also established a Federal Shariat Court in 1979 to decide cases according to

the teachings of the Qur'an and Sunnah. Appeals against the Lower and High Courts were to be presented before the Shariat Court for hearing. One of the main functions of the Shariat Court is to examine and decide whether any law or provision of law goes against Islam. The decisions of the Shariat Court are binding by the judiciary (Chaudhary, 2009).

These structural changes represent the extent to which the Islamization process was implemented into the judiciary, and highlight General Haq's desire to bring Shari'a law into Pakistan. Since his death, there has not been extensive progress in implementing an entirely Islamic based legal agenda. Babar Hamid Malik, a lawyer in Pakistan, reflects that Shari'a cannot effectively be implemented in Pakistan because of the wide socio-political gap in the country. According to Malik, no two Islamic *mullahs* (scholar) agree on the contents of the Shari'a (Chaudhary, 2009). Furthermore, he is also of the opinion that the Pakistani elite and the more modern and educated populace of the country do not consider Shari'a law as an appropriate legal authority for society. Yet, with a predominately Muslim population, others are of the belief that Islam serves as a utopia, and "can only be implemented if people are ready to change their life styles" (Chaudhary, 2009, p. 190).

Implementing International Law and CEDAW in Pakistan

The practice of human rights is positioned amid the formal requirements of a highly technical legal process and the realities of power and confrontation in the

world (Klug, 2005, p. 85). Every culture has a different concept of human rights, which is the most common challenge faced by human rights and their universality. The hegemony of human rights discourse coexists with persistent violation and even impunity (Klug, 2005). Some believe in universality of human rights while others uphold culture relativism to be of extreme importance in determining rights and freedom in a society (Ibrahim, 2007). One of the major ways the international human rights system endeavors to prevent violence against women is by international law.

There have been significant developments in the international arena, while also recognizing that much is yet to be done for the advancement of women's rights. Human rights scholars and activists moved gender-based violence from the shadows to the forefront when the Commission on the Status of Women, established by the United Nations Economic and Social Council in 1946, promoted the implementation of the principle that men and women shall have equal rights, consequently deciding to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women (Agarwal, 2008). The ensuing instrument was the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), or the Women's Convention, which was adopted in 1979. It became the most comprehensive and detailed charter of equality for women under international law (Merry, 2003, p. 942). CEDAW is being implemented by nearly ninety percent of United Nations (UN) members. The Convention defines what constitutes discrimination against women and sets up an

agenda for national initiatives to end gendered policies. CEDAW has energized and empowered women worldwide (Weiss, 2003, p. 582).

CEDAW was introduced as part of the UN's global efforts to empower the world's women. It builds on former international agreements and treaties, clearly rooted in the spirit of the UN Charter. The Preamble of the Convention states a reaffirmation of faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of both men and women.

Through ratification of CEDAW on March 12, 1996, Pakistan attained the obligation to change gendered laws and policies, while also providing the creation of conditions to protect women from gender-based discrimination and violence. The state is under an obligation to provide equal protection to all its citizens under its own constitutional and international law. Attaining the government to ratify the Convention was an important victory for the Pakistan women's movement. There are critical elements within the Convention that would attest to this victory. Article 1 of CEDAW requires the state to create policies that eliminate discrimination against women. CEDAW is important to the lives of women in Pakistan because the Convention signals a powerful message that the government of Pakistan attests the importance of equal treatment of men and women under law.

During the military dictatorship of General Zia ul-Haq, from 1979 to 1988, the government injected Islam into the laws through a process called "Islamization." Since the introduction of the Islamization program to politicize and inject Islam into all spheres of Pakistan, women's rights have become a focal point in national

political discourse. This is greatly due to the consequential legal structure placing women in unequal positions to men. The laws under Haq's dictatorship made it difficult, if not dangerous, to report crimes of rape, and therefore resulted in a large increase in the number of women unjustly placed in prison.

The Fourth World Conference on Women, held in Beijing in 1995, increased the visibility of women's demands for human rights and played a key role in setting standards and formulating policies to transform many commitments into tangible actions. The growing international nature of the movement for women's rights and the official acceptance of CEDAW and the Beijing Platform for Action have made it increasingly politically uncomfortable for governments to openly defend measures that injure women, or even for a state to affirm that it believes that women are excluded from enjoying equality in rights by reason of their sex (Critelli, 2010).

Even after the adoption of CEDAW, the position of women continues to be subordinate and marginalized both under international law and many domestic legal systems, revealing an inadequacy of international law to deal with situations when women's rights are in conflict with the rights to freedom of religion and culture. However, most of the time the inadequacy of the international legal system to eliminate gendered practices occurs not because there is disagreement over the need for protection of women's rights, but because the perpetrators of violence use religious and cultural rights or customary norms as a legal defense against punishment, as evident in the case of Pakistan and honor crimes. There is a constant struggle to strike a balance between protecting the human rights of women without

simultaneously infringing upon the rights of groups to follow their religious traditions and preserve their cultural beliefs (Agarwal, 2008). Any attempt to protect women from violence can effectively be undermined by the exploitation of a cultural relativist claim that members of other cultural systems are not subject to international human rights standards. This distortion of cultural relativism is used to claim that perpetrators can avoid responsibility for private acts of violence, that universal human rights are yet another element of a Western plan to undermine non-western societies, and that outsiders must subscribe to a policy of non-interference in the domestic affairs of another nation. In Pakistan, as many other nations, a gendered division between public and private spheres has enabled the sustained exercise of shielding and protecting abusive, violent practices (Mullally, 2005). Domestic violence is still regarded as excused by social customs because it is considered a private family matter.

Human Rights Watch (HRW) has found that prejudice towards female victims of rape and domestic violence permeates all aspects of the Pakistani criminal justice system. Amnesty International states that, women continue to be subjected to subjective imprisonment and torture, including rape, which police and other security personnel commit with virtual impunity (King, 2009). Furthermore, women who report rape or sexual harassment encounter a series of obstacles. In some regions of Pakistan the strict rules and procedures of the Hudood Ordinances are still practiced, and thereby create the possibility of women being prosecuted for illicit sex if they fail to prove rape. Knowledge of legal rights is a critical goal of the

women's movement in Pakistan because it allows for a greater chance of awareness and the potential to pose legal challenges to gendered laws. Pakistani women acting as agents of change adopt an agenda that focuses on legal reforms that contest discriminatory practices and customs.

No explicit mention of acid attacks has been made in international law, but the United Nations Declaration on the Elimination of Violence Against Women and the CEDAW, apply to acid attack cases and domestic violence (Garg, 2013). In a 2003 Resolution, the United Nations General Assembly fostered a reaffirmation for "the call for the elimination of violence against women and girls, especially all forms of...crimes committed in the name of passion...dowry-related violence and deaths, [and] acid attacks" (as quoted in Human Rights Brief, 2013).

HRW states that women's low status and a long established pattern of active suppression of women's rights by successive governments have contributed to the escalation in violence in many nations, even reflected in the case of Pakistan, with the fluctuation of rights and legal reform correlating with the state's leadership (King, 2009).

Violence has escalated particularly in recent years under the current political climate, affects women profoundly. In 2007, members of a pro-Taliban group and other Islamist groups unlawfully took hostages, killed civilians, committed acts of violence against women and girls. Females have increasingly suffered targeted for violent abuses in the areas along the border with Afghanistan (King, 2009). Members of Islamist groups have carried out "execution-style" killings of dozens of

people considered to have disobeyed Islamic law, or to have sought cooperation of the government after hearings before Islamic councils.

In Bann, North West Frontier Province, a note was attached to a woman's body that stated that she had been killed in order to punish her for her immoral activities. Amnesty International also reports that custodial violence against women, including rape, has continued, and that there are many instances which prove that the state is failing to prevent and prosecute violence in the home and communities of Pakistan, including mutilation, rape, acid attacks, and honor killings (King, 2009).

Fortunately, honor killings receive increased attention from international bodies, international nongovernmental organizations, and local groups, and this, in turn, is putting increased pressure on governments to take action to stop the practice (Lesnie, 2000). However, human rights mechanisms are considered limited because the Optional Protocol and other human rights agreements are considered to be functioning "soft law". As soft law relates to guidelines of conduct, it is not binding and contains no penalties or sanctions for non-compliance by state parties. Governments continue promising to protect women's rights, but these promises remain unfulfilled. Even if their intentions are true, authorities lack the willingness to take political risks. Officials regard anything that challenges the already existing domestic laws or the underlying religious and cultural beliefs as threatening political and social stability (Agarwal, 2008, p. 24).

Chapter 6: Pakistan and Islam

Religion can be utilized to both facilitate peace and to justify violent means, as reflected in Pakistan. None of the world's religions is impervious to fomenting conflict, but Islam has often been singled out as particularly and intrinsically violent. The question of whether religion is a source of violence yields a dual framed answer. Critics of religion argue that religion is associated with intolerance, violence, and breeding radicalism, further enabling extremism and creating human rights violations. R. Scott Appleby discusses "the ambivalence of the sacred," an embedded duality within religion (2000).

Islam as a civilization and faith has not been static and intellectually latent. A brief glance at Islamic history reveals cultural and intellectual diversity, with scientific and mathematical discoveries in the 12th and 13th centuries; social and religious revivalist movements in the seventeenth century; modernist reformation movements in the nineteenth century; a substantial amount of literature in the twentieth century illuminating on political activism, peacemaking, human rights, governance, and democracy (Huda, 2010). As with other civilizations however, there are both tolerant and intolerant influences.

The Pakistani identity and Islam are inextricably linked. Religion, as a basis for identity, and organized around a common belief-system and common doctrine,

empowers the legal system of Pakistan to create policies and legal processes based on their own interpretation of the texts and traditions of Islam. This chapter examines religion's role in legal processes concerning physical violence in Pakistan, sustaining that Islam, as numerous scholars have observed, has been manipulated and used for political purposes and imposed in a selective and narrowly defined manner, further serving to bolster insecure regimes (Critelli, 2010).

Religion and Conflict

Religious faiths are comprised of a number of beliefs and canons that institute normative systems. Effectively, religion seeks to serve as a decree for how each individual believer should live their life, and often even relating individual believers to the transcendent, or the ultimate meaning of existence (Toft, 2011). Religion is a powerful principal of cultural norms and values, and because it addresses the these profound existential issues of human life, such as right and wrong, religion is deeply involved in individual and social conceptions of peace. Religious traditions and dogma define objectives and offer conceptual frameworks and narratives that often inspire action. Therefore, religion is both explanatory, explaining why things are the way they are, and normative, counseling how things should be (Toft, 2011).

Pakistan reflects a case of two distinct legal philosophies embraced into one legal entity. Pakistan separated from India in 1947 to become a Muslim state practicing an Islamic ideology with Islamic-based expectations of patriarchy, gender

roles, and sexuality (Yefet, 2009). The relationship between religion and law can be examined by focusing on the relationship between religious communities and the State, and the relationship between the State and the individual (Edge, 2000). The Pakistani state aspires to maintain its Islamic roots, and the judicial system reflects that goal, directly impacting individuals of the state. In contrast to Western constitutional doctrines that seek to separate church and state, Pakistan's constitution aims to integrate the two. The independence of religion and state evident in Western entities such as the United States (Toft, 2011, p. 33), does not exist in Pakistan, where even the political actors have an inter-dependent relationship with the religious actors. The political group Jamaat-i-Islami pressed for a strict application of Shari'a norms, and in the 1956 constitution, Pakistan formally defined itself as an Islamic Republic.

Religious norms have cognitive implications, consequently shaping how an individual understands the world. Accordingly, individuals locate themselves and their distinctive interpretations, beliefs, and actions in a larger social order, within a collective religious identity. Throughout the history of Pakistan, faith has repeatedly been used to mobilize believers to spark hostility or create inequality. Even the State itself was created in the name of Islam. Effectively, without Islam, there would be no Pakistan (Hoebel, 1965). Religious establishment of legitimacy to acts of violence is manifested through speeches, symbols, and very often, by direct acts of religious leaders (Lazarus, 2013). Although religious leaders may function as advocates for peace, in the case of Pakistan, many religious leaders, who also serve as community

leaders, utilize their power of influence to shape the individual believer's perceptions of Islam and life. These perceptions create a direct link between the State and the individual, and vice versa.

It is necessary to differentiate between culture and religion. Traditions are most often social constructions. Religion involves a combination of beliefs, behavior, and belonging in a community (Toft, 2011, p. 21). Culture and norms are highly relevant for religion, however. Cultures are constructed, deconstructed, and reconstructed as individuals pursue their identity (Sokefeld, 2001). However, there exist cultural expectations in many social contexts. For example, in Pakistan, there are cultural expectations attached to gender roles, which are by extension demonstrated in the legal system. The Pakistani culture tends to adhere, and uphold the Islamic religious traditions, yet, is also different than other Islamic nations, thereby creating their own sense of Islamic identity rooted in Islamic traditions, but evolved and peppered with the cultural nuances unique to Pakistan.

Pakistan integrates Western doctrine, such as the 1948 Universal Declaration of Human Rights, with Islamic law, trying to create a balance between the two. The Pakistani constitution extends the rights to life and liberty, privacy of home, human dignity, and equality, maintaining that all citizens are equal before the law, yet the Pakistani legal system continues to participate in the process of building a balance between the different schools of Islamic law and the judicial constitution of the nation. Presently Islamic law is regarded as "supreme law" of the land.

Historical preservation and upholding Islam in all facets of life is a critical component of the collective Pakistani identity. History cannot be disowned, but in the case of Pakistan, there is a strong practice of focusing on Pakistan's individual identity, especially separate from India, and more focused on Islam and Pakistani traditions. This is particularly important in understanding the position of Pakistan on religion.

Islam does not permit honor killings. These killings are linked with religion on the basis of moral standards upheld by the patriarchal structure in Pakistan and the state's political and legal entities own interpretation of Qur'anic text mixed with regional based customs. In the Qur'anic interpretation of sexual equality, both men and women have to be judged on the same touchstone, as they both carry the same moral responsibilities and face similar accountability. Islam holds both men and women equally responsible to guard their chastity and thereby there is no hierarchal difference between the genders (Ibrahim, 2007). Yet, in practice, Pakistani men hold themselves as sole guardians of their women to support their actions. The Qur'anic verse 4:34 is often quoted to justify male dominance: "Men are the protectors and maintainers (*qawwam*) of women, because Allah has given one more (strength) than the other, and because they support them from their means."

Due to the multiple parties involved in the legal process there exists a biased interpretation and implementation of the constitution and the laws. Cultural notions of patriarchy influence the interpretation of religious text. Appleby reflects that many religious societies have interpreted the sacred as either the conveyer of peace

or the bearer of sword. “These apparently contradictory orientations reflect a continuing struggle within religions” (Appleby, 2000, p. 27). This struggle extends into the believer of the religion, where the individual often struggles over the meaning of power and the relationship of duality embedded within religion. Pakistan is still in the process of building a balance between the different schools of Islamic law and the judicial constitution of the nation. Presently Islamic law is regarded as “supreme law” of the land. As monitored and implemented by the Council of Islamic Ideology and the Federal Shariat Court, no law can be enacted in Pakistan that contradicts any basic teaching of Islam.

Bearing further complications, Pakistan embodies both official law and traditional law. There exists a conflict between the constitutional commitment to equality and the politicization of Islam in both the official law and the traditional law. Although the fundamental rights chapter of the Constitution guarantees equality before the law, the pursuit of gender equality has often been sacrificed to religious-cultural assertions that define and often limit women’s status (Mullally, 2005). Many of these conflicts have arisen within the field of personal law, or laws governing family relations, framed within the context of religious beliefs and practices. Shari'a law designates the rules and regulations governing the lives of Muslims. Likewise, according to many scholars, in Pakistan, cultural constraints on women’s rights are grounded more in region-based customs and unique interpretations of Islamic law. Even though Pakistan does not practice Shari’a law,

the socio-legal entities seek to create a country that does not contradict Islamic morals and ethics, as they are seen to provide guidance for living a just and good life.

Pakistan's legal system, interwoven with democratic and Islamic doctrine, creates gendered roles with the biased, cultural lens of interpretation. With a focus on the sphere of physical violence against women, policy-making more often than not, marginalizes women and is justified through religion. Men have invoked the support of Islamic law to justify their views and actions against women. They assert that if women were permitted to exercise choice in matters of marriage, for example, it would lead to the breaking down of the family unit and eventual mixing of sexes to find a potential mate; an act that, according to their perception, is un-Islamic. Fundamentally, religious nationalists turn politics into a religious obligation (Friedland, 2001). By extension, the legal framework of Pakistan embodies practices of inequalities through the aid of religious assertions. In this context, there is a clear marginalization of women and their agency, thus an active representation of gender-inequality. Both Islam and Pakistani culture play a central role in creating the Pakistani identity and its traditions, and likewise, that power is used to perpetuate inequality in the socio-legal sphere.

Religion and Identity

The original image of Pakistan was that of a forward-thinking, modern, secular nation-state. Muhammad Ali Jinnah, the founder of Pakistan stated that individuals were free to go to their mosques or belong to any religion or caste or

creed of their choosing because “that has nothing to do with the business of the state” (Critelli, 2010, p. 237). Jinnah spoke of a secular Pakistan, however, the people of Pakistan chanted their profession of faith.

Pakistan ka naaraah kya hai?

La illaha illallah

What is the slogan of Pakistan?

There is no God but God (as quoted in Lieven, 2011, p. 57).

Embracing history is a paramount practice in Pakistan, deeply influencing the Pakistani identity and the need to preserve its characteristics. An example of this occurred recently over renaming a roundabout in Lahore. Lahore has always been known for its historical traditions and diverse heritage. Parts of the city were once named after Hindus, Christians, and Sikh communities, but this is now beginning to change, with many areas in Lahore being renamed in order to be associated with Muslim heroes and personalities. In September, the district government of Lahore declared it would rename a roundabout in the city's Shadman area after the revolutionary Indian freedom fighter Bhagat Singh, in order to acknowledge his sacrifice for freedom. Bhagat Singh is still one of the most revered idols of the Indian movement for freedom. The British colonial police hung him in Shadman Square eighty years ago, when Shadman Square was still under colonial British rule. For years, Indian admirers of Bhagat Singh have crossed the border to Pakistan and have been imploring authorities to rename the square after him.

Bhagat Singh was born into a Sikh family, and therefore his Sikh identity has become a point of contention in the conflict. “The controversy is between Islam and

non-Islam, and we believe that Islamic names, personalities and ideology should be promoted in Pakistan,” asserted a charity named Jamaat-ud-Dawa (bbc.co.uk, 2013). Another Pakistani proclaimed, “How can we tell our children such names, names that are associated with Sikhs?” (bbc.co.uk, 2013). The individual goes on to explain that Pakistan does not have good relations with India, so it does not make sense to embrace Indian personalities within Pakistan. But there is a salient religious dimension to the conflict. The collective Pakistani identity is deeply rooted in Islam, and therefore seeks to preserve that aspect.

Islam is a critical component of the Pakistani identity. In Pakistan, more than 95% of the population is Muslim, with the country founded in the name of Islam. There is a body known as the Council of Islamic Ideology, consisting of between eight and 20 members, who have “knowledge of the principles and philosophy of Islam as enunciated in the Holy Qur’an and Sunnah” and with understanding of the economic, political, legal, or administrative problems of Pakistan (Chaudhary, 2009). The functions of the council include compiling rulings of Islam that can be given legislative effect, advising whether a proposed law is or is not objectionable to the injunctions of Islam, and recommendations for bringing existing laws into conformity with Islam (Chaudhary, 2009). Islam is a paramount aspect of the daily life for Pakistanis.

Islamization

The process of incorporating Islam within the political system to strengthen a political position reached a peak during the period of General Zia-ul-Haq's dictatorship. A major challenge facing the Haq government was that of legitimacy, since after having held control of the state, the military was hesitant to relinquish it (Mukherjee, 2010). From General Haq's position, injecting Islam through the process of Islamization provided the legitimation for his military dictatorship to deny the demands for a return to democracy. General Haq overthrew the democratic regime of Zulfikar Ali Bhutto. Bhutto held liberal positions towards women, and therefore all government services that had been denied to women earlier were opened to them under his regime from 1970 to 1977. Gender equality was specifically guaranteed in the Constitution of Pakistan adopted in 1973, asserting and encouraging the full participation of women in all spheres of national life.

During the military dictatorship of General Zia ul-Haq, from 1979 to 1988, the government injected Islam into the laws through a process called "Islamization." Haq interpreted the Qur'an through the lens of patriarchal beliefs and fundamentalist tendencies, creating gender inequalities and gendered legal policies (Bubb, 2007, p. 69). The *Zina* Hudood Ordinance is one such case of creating a contradiction between justice and faith. The Ordinance was passed in 1979, and established a two-fold legal process. *Zina* is defined as a sin in Islam and therefore by extension a crime in Pakistan that occurs when a man and woman willfully have

sexual intercourse without being validly married to each other. *Zina* comprises the first aspect of the Hudood Ordinance. The other aspect of the law is being forced into a sexual encounter, or being raped.

Considering Appleby's framework of pluralism in religion, the problem occurs with diverse interpretations of religious texts and traditions (2000). The Qur'an continually emphasizes equality between men and women and suggests that men and women compliment one another, without superior and inferior roles. But then there are sections that suggest women are inferior to men. For example, Verse 4:34 acknowledges a man's right, as a head of the household, to discipline his wife. As Appleby maintains, there exist multiple, diverse plausible interpretations of the experience, with no exclusive truth (2000).

The key question then is, which interpretation trumps when establishing laws that must be in line with the holy text? Appleby examines that religion holds a dual power dynamic, with both the ability to be used for peace, or for the perpetuation of conflict (2000). This power is often left at the disposal of religious actors and leaders.

Through Islamization, General Haq initiated discriminatory legislation against women, suspending all fundamental rights guaranteed in the Constitution. He declared that Islamic laws would be enforced, and greater attention would be devoted towards establishing the Islamic society for which Pakistan had been created in the first place. The prevailing goal was to bring the legal, social, economic, and political institutions of the country in conformity with the Islamic principles,

values, and traditions as decreed in the Qur'an and Sunnah, sayings of the Prophet Muhammad. By effectively implementing this goal, Haq believed to be providing the people of Pakistan an opportunity to better and more efficiently lead their lives in accordance to Islam.

In the case of passing the *Zina* Hudood Ordinance, in order to create judicial and social justice, Haq maintained that the Qur'an created women as lesser beings than men, and require law that will protect women and create a discipline for their lives, and thereby by extension, the society. Essentially, the punishments for violating the Ordinance vary depending on the evidence provided to the judicial system, but basically, the perpetrator must either confess in court to the crime, or the victim must produce four male witnesses. Furthermore, these four male witnesses must also have the legal capacity to serve as a witness, including the characteristics of sanity, maturity, and be of "good character," without having committed grave sins themselves (Bubb, 2007, p. 72).

By employing Islamization, Haq created alliances with Sunni clerics and fundamentalists. From the standpoint of the Sunni fundamentalists who shared a common cause with Haq, one goal was to use their alliance with the State's leader in order to expand opportunities for increasing their own participation in important institutions such as the government, courts, the educational sector, and the media (Haqqani, 2005). This goal was easily achieved as General Haq generously apportioned the Sunni fundamentalists significant roles for their endorsement of his program. Religious parties fervently supported the Islamization initiative,

particularly the Jamaat-i-Islami (JI), which developed as one of the regimes key coalition partners. JI's founder, Maulana Abul Ala Maududi, wholly endorsed the Islamization efforts and described them "as the renewal of the covenant between the government of Pakistan and Islam" (Haqqani, 2005, p. 139).

This legal process demonstrates the marginalization and unjust circumstances created for women in Pakistan. Firstly, not very many rapes occur openly in front of multiple people, let alone four men that will be willing to testify against the attacker. The law goes on to assert that the victim has another option, but this instance would allow the attacker to get away with a less severe punishment. In this case, the victim will only have to provide female witnesses. Under Haq's rule, according to Pakistani law that attempts to directly mirror Islamic traditions, a woman counts as only half a witness, so the victim would therefore have to provide eight female witnesses. If the victim cannot prove the rape, she is liable for punishment for crimes of adultery. Many women are still in jail because they were unable to prove their innocence and vulnerability in an instance of the physical violence of rape. The Hudood Ordinance's discriminatory nature towards women was seen to be consistent with the teaching of the Qur'an, when interpreted in a fundamentalist manner (Bubb, 2007, p. 69).

Islamization included phases such as compulsory prayers in government offices during working hours, the review of textbooks for accurate conformity to Islamic teachings, emphasizing Pakistan's national Islamic ideology, instilling Urdu as the official language of instruction, and the compulsory wearing of the national

attire at government events and institutions. Women in particular, were required to completely cover themselves in order to practice modesty.

This process not only introduced religious and gender biases in Pakistan's laws but also brought about widespread institutional changes in the country's judicial system. Significant and systematic changes aimed at Islamizing the legal system were initiated under Haq's dictatorship with the aim of providing a greater moral compass for the country, and responsibility of the patriarchal society to protect their women. Islamization, however, has not given women greater security. Monitoring by Human Rights Watch, Amnesty International, women's organizations, and various Non-governmental organizations have reported the failure of Pakistani law to protect women from violence (King, 2009).

Politicization of Islam

There exists a conflict between the constitutional commitment to gender equality and the politicization of Islam. The fundamental rights chapter of the Constitution guarantees equality before the law, yet the pursuit of gender equality has often been sacrificed to religious-cultural assertions that define and often limit women's status (Mullally, 2005). Since the formation of Pakistan, the society has been ideologically divided into two loosely defined political groups: the Islamists and the Modernists (Mukherjee, 2010, p. 330). Pakistan was established as a homeland for Muslims, and therefore according to scholars, establishing Islam as the

state ideology can be regarded as a device aimed at defining a Pakistani identity during the country's formative years (Haqqanni, 2005).

The ideological rift over the role of Islam in national life poses a significant societal cleavage that has had consequences for the women's movement. Although the predominant vision for Pakistan was that of a modern liberal secular nation-state that embraced Islamic universal principles, ideological battles over the role of Islam have ensued since the creation of the country. Pakistani leaders often play on religious sentiment as a means of strengthening the country's national identity, while also rallying national unity against both perceived and real external threats such as India or the West (Haqqanni, 2005). Political Islamists mount persistent and growing challenges for women.

After debates between the liberal parliamentarians and the more conservative religious leaders, a compromise in the form of the Women's Protection Act 2006 was reached, replacing the Hudood Ordinance. This moved the Islamic Hudood Ordinances into a secular penal code, for both the better protection of women, and also to adhere to the international obligations of human rights. Four male witnesses are no longer necessary to prove an instance of sexual violence, instead four credible adult witnesses of either gender. Furthermore, sex outside of marriage is no longer punishable by death, but fines and possible jail time instead.

The change of the Bill faced great resistance, and successive Pakistani governments have unsuccessfully carried out their responsibilities to protect the rights of women. Additionally, it is harder to accuse a man of committing adultery

than it is a woman, which consequently places a larger burden on female victims to prove their innocence. Pakistan has committed to several international agreements to prevent violence against women without proper implementation. This is in part due to the schism of commitment to Islam and modernization. Many Islamic scholars in Pakistan believe that through participating in the process of modernization, Pakistan cannot properly engage in its duties and responsibilities to Islam.

Pakistan continues to try to balance Islam and a more modernly engaged vision of Islamic traditions, but there are still resistances. A number of Islamic religious leaders in support of the current implementation and practice of Shari'a law are the main source of contention to transforming gendered policies of the Pakistani legal system. With the culture of Pakistan being patriarchal in nature, much of the male citizens find support and comfort with the current implementation of gendered roles and policies. Islam and Islamic law are often utilized as justification for behavior. Pakistani women are not encouraged to pursue a certain sense of individuality and autonomy compared to Pakistani men. The key point of strife lays in the notion that modernization or encouragement of individualization in gender roles contradicts the traditional ideology of Pakistan, and therefore is directly conflicting with the foundation of Pakistani identity that stems heavily from Islamic traditions and practices. According to the majority of Islamic religious leaders in Pakistan, there exist specific gender roles that, if altered, conflict with the nature of Pakistan, and therefore by extension, Islam.

Qur'anic discourse on peace refers to peace as "the greeting, language, and condition of paradise." These uses suggest that peace is a positive state of safety or security, which includes being at peace with oneself as well as with fellow human beings, nature, and God (Kadayifci-Orellana, 2010, p. 190). The duality that exists in Islamic interpretations does not have to yield violence against women, masked in the need to protect women. There exists, as Appleby asserts, a social force within religion, with a power to bind people through generations. This force then extends into other spheres of life. Islam is a powerful force in Pakistan, influencing both the public and private spheres, having a greater capacity to successfully be utilized for peace and justice.

The challenge, as Appleby finds, is to overcome one-sided perspectives on religion (2000). Acknowledging religion has not only its darker sides, but also potential for contributing positively to peacemaking is an effective framework to balance the legal inequalities and contradictions in Pakistan. The Acid Control and Acid Crime Prevention Bill 2010 and The Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2008 seek to protect women against acid attacks and prevent other practices that discriminate against women, including forced marriages. As argued in the following chapter, implementation and interpretation of these amendments will serve as an important component in studying the transformation of gendered policy-making in Pakistan.

Religion is not static, and therefore religious traditions continue to evolve. Due to the variations of religious practices to make sense of community, beliefs,

understandings, and conditions of life, religion embodies unique characteristics for each individual believer. Furthermore, mixed contradictory messages within religious texts and traditions, allow for a continuing engagement with the same texts, but with varying arguments through the lens of individual believers (Lazarus, 2013). “Religious traditions can adapt to their environments without eroding continuity with the sacred past because the past is capacious” (Appleby, 2000, p. 33). Considering reform and transformation is particularly important in examining the case of Pakistan and legal processes related to gender, because the country is currently in a state of political and social flux. The intersection of religion and law involves creating a balance with the aims of justice, not just of the faith, but also for the individuals that will be affected by the legal process; a balance Pakistan is still searching to create.

Chapter 7: Honor Crimes in Pakistan

Honor killing is one form of extreme violence perpetrated on women. Honor killing typically occurs when a male family member premeditatedly kills the believed to be “deviant female” in an attempt to restore the family’s honor. It is an act of violence committed against a female by one or more of her family members predominately due to her alleged participation in unacceptable sexual behavior that results in the loss of the female’s virginity, a consequent pregnancy, or even in some cases, her participation in unacceptable social behavior, such as socializing with males outside her immediate family. Even though honor crimes are often associated with only an act that ends in murder, honor crimes also include, but are not limited to, a range of other violent acts against women such as attempted murder, acid attacks, dowry deaths, rape, and female infanticide (Agarwal, 2008).

The Center of Islamic and Middle Eastern Laws (CIMEL) and The International Center for the Legal Protection of Human Rights (INTERIGHTS) defines crimes of honor to encompass a multiplicity of manifestations of violence against women, that includes honor killings, assault, confinement or imprisonment, and interference with choice in marriage, where the publicly articulated justification is credited to a social order claimed to require the preservation of a concept of

honor vested in male and family control over women. Honor crimes often deal specifically women's sexual conduct; actual, suspected, or potential (Agarwal, 2008).

Some scholars have even argued that the processes of naming specific forms of violence against women as "honor crimes" entail the shift of this violence from juridical discourse and the laws meant to address the crime (Agarwal, 2008).

Utilizing an expansive definition of "crimes of honor" and honor killings allows for a greater analysis of the widespread use of violence not amounting to murder but which still utilizes honor as a motivating dynamic, and therefore can act as a mitigating factor in a court of law.

Women are considered bearers of tradition and honor, and it is often on their bodies that contestations over gender, ownership, and power are played out (Chowdhury, 2005). In addition to honor killings, acid attacks are another prevalent form of honor crime. Acid violence describes any attack against an individual in which sulfuric, hydrochloric, or nitric acid is employed as a weapon, causing severe burns. Research has shown that male victims of acid violence have increased dramatically over the years; however, perpetrators continue to remain overwhelmingly male, while victims are female (Chowdhury, 2005). Most women are attacked in the face, whereas men's injuries include other parts of the body. This may represent the notion that by attacking a woman on her face, it permanently scars and disfigures her, but does not result in a murder. The assumption behind the attack is that in some cultures and societies, a woman's most valuable asset is her appearance. Symbolically, women represent the honor and possession of the

patriarchal family and community, and when attacked by acid on the face, are marked as “spoiled goods” (Chowdhury, 2005). This is an attempt by rejected male suitors to ruin the woman's future marriage prospects, which consequently impacts her financial security and social status.

Theories about the historical origins of the honor system and honor killing usually indicate that the tradition originated in societies where there was no strong central state with a monopoly on the use of violence. Therefore the control of women rather than men’s sexuality became instrumental to the group’s survival because it is through women that the biological and cultural reproduction of the group occurs (Ibrahim, 2007). Women’s reproductive biology was a fundamental survival instrument. Women, in a way, were sacrificed. However, some scholars contend that if this were true, then the practice should have become obsolete once the groups migrated to western developed countries with a strong constitutional state.

As briefly addressed earlier, it is useful to employ Johan Galtung’s tripartite model of violence in order to better conceptualize domestic violence within patriarchal cultures. According to Galtung, there are three forms of violence. The first form is direct violence, which may include physical, emotional, or sexual acts of aggression. The second form is indirect, or structural violence, which includes institutionalized oppression and exploitation. The third form of violence is cultural violence, which Galtung hypothesizes as relatively permanent aspects of a culture that tend to support, encourage, generate, or even legitimize either direct or indirect

violence (Ibrahim, 2007). Drawing from Galtung's view, the Pakistani culture is used to legitimizing violence against women in its direct or structural form. Cultural violence can be expressed through unequal power structures that subordinate women to their male family members.

It is valuable to include the larger structural and socio-cultural aspects of a society, because it provides the framework for various forms of violence against women. The underlying notions in honor crimes about proper gender relations severely limit women's autonomy. In a sense, by committing an honor crime, it represents the idea that a women's right to life is subordinated to male honor (Ibrahim, 2007).

Some scholars have found that in collectivistic societies the sentiment of honor is generally lived out openly before other people (Jafri, 2003). Honor crimes can be considered to serve as a communicative function, as reflected in Pakistan. One scholar believes that in Pakistan, men who are arrested after a crime, often proudly display their handcuffs declaring them to be *mard kaa zaiwar* (man's jewelry), and typically do not try to create alibis to deny the act because they feel vindicated in living up to what was expected from their "manliness", as perceived for the male members of the family and community (Jafri, 2003, p. 15). An honor crime institutionalizes the values that are held at the core of the group (Jafri, 2003).

Pakistan is one of the countries where the cases of honor killings are among the highest in the contemporary world (Jafri, 2003). In 2006, under President Musharraf, the Pakistan's Penal Code began to recognize honor killings as

premeditated murder (Critelli, 2012, p. 205). Honor killings were criminalized in Pakistan through the formal legal system, but continue to occur frequently in many communities, particularly in four tribal regions of the country: Punjab, North West Frontier Province, Balochistan, and Sindh (Patel, 2008). The Pakistani cultural system is so strong that it can persuade a father to kill a beloved daughter, not even for having an affair, but for marrying outside his kinship group without permission (Lieven, 2011). In some communities of Pakistan, women are considered to have monetary value, further exemplifying the belief that women are the property of their male relatives. "It is believed that the preservation of a woman's chastity and fidelity, through segregation and control, is the responsibility of the men to whom she belongs" (Patel, 2008, p. 689). By engaging in an illicit affair, for example, a woman comes into direct conflict with the socio-cultural framework of meanings established in much of Pakistan. Her actions are interpreted as having seriously violated the honor of her family. Some believe that in such cases, it is a man's duty to restore his family's honor by killing those who damaged it. The centuries-old tradition of killing women in the name of honor has not been eliminated because penal provisions have been legislated, in both common law tradition and Islamic law, which have considered transgression of social norms by women as a legitimate mitigating factor for the act of premeditated murder (Rashid, 2013).

In addition to bearing the shame and fear of being victimized, Pakistani women who are raped, for example, must also cope with the fact that they are considered to have compromised their family's honor. Fathers, brothers, and sons

see it as their personal duty to avenge the offense, not by harming the perpetrators but by murdering the victims; their own daughters, sisters, and mothers (Cuomo, 2000). Both notion of honor and the concept of women as property are essentially deeply woven into the socio-cultural fabric of Pakistan, leading individuals to support the practice of honor killing, and legal authorities, to turn the other way (Patel, 2008). Such widely held values tend to grant perpetrators a reliable legal defense when committing such acts.

It is important to note that honor crimes cannot simply be explained in purely cultural terms. Indeed, there are various factors such as the perpetrator's socio-economic status, family network, and social consequences of the loss of family honor that also encourage committing act of violence against a woman in the pursuit to protect honor.

Noor Basra and Noor Sheza

The story of Noor Basra and Noor Sheza demonstrates the present day reality in Pakistan. The two girls were two teenage sisters, aged 15 and 16, who were murdered along with their mother in June 2013. A video captured the two sisters dancing in the rain outside their home in Chilas, in the northern region of Gilgit. According to reports, the video was taken six months before their murder. The video circulated in the area after a relative sent it to friends via a mobile phone, and the video eventually went viral. To an outside observer, the short film seems to capture a moment of innocence and joy for the girls, but when the video was

circulated on mobile phones in a conservative Pakistani town with strictly held rules on female modesty, a relative of the girls was infuriated (Williams, 2013).

The girls' step-brother and accomplices carried out the honor killing. The alleged killer, named as Khutore, reportedly carried out the attack after local men had seen the video of the girls. The murders were an act of honor killing in order to defend and restore the family's honor.

The murder of the two young girls and their mother is a recent example of the reality in Pakistan. According to the Human Rights Commission of Pakistan, at least 943 women and girls were murdered in 2011 in honor killings, and around 1,000 such killings take place every year according to Aurat Foundation, a women's rights group (Williams, 2013).

Honor Crimes & Law

Honor crimes evoke competing spheres of legal subjection in customary laws, family law, criminal law, and international law. A range of laws, such as Islamic criminal laws in the form of Hudood Ordinances, normalize violence against women and men who transgress familial, religious, racial, and class based normativity (Baxi, 2006, p. 1240).

In Pakistan, two legal forums rule on honor killings: formal institutions and the informal, or tribal justice system. Under the formal legal system, honor killing is defined as a murder committed in the name or on the pretext of honor. Murder is arbitrated according to the criminal law of *Qisas* and *Diyat*, which holds that the

offence against a person, including bodily injury and murder, gives complete right of conviction to the victim and his/her legal heirs. This means that the victim or his/her legal heirs retain control over the matter including the crime and the criminal. They may choose not to report the crime or not to prosecute the criminal. This law provides the legal heirs with the right to agree to a compromise according to the law (Ibrahim, 2007). Certain other provisions of criminal law used in an honor killing result in lenient punishments.

This discrimination amounts to infringement of constitutional rights of women under which the state is obliged to protect all its citizens equally without sex discrimination. Pakistan also has to respect international treaties it is a party to and customary international law to ensure respect for women's human rights and fundamental freedoms. Pakistan, being a state party to the Convention on the Elimination of All Forms of Discrimination against Women, is required to take positive steps towards eliminating discrimination and violence against women. State officials, rather than actively responding to the violations of women's right to life, security, and freedom from discrimination, act through the police and judicial system to block access to redress and justice for women victims of violence (Ibrahim, 2007).

Aurat Foundation conducted a research revealing that in the first 10 months of 2007 in Sindh alone, 183 women and 104 men were murdered for allegedly harming family honor (King, 2009). Despite a ban on jirgas by the Sindh High Court in 2004, official support for the informal councils continued. The higher judiciary on

several occasions ordered the prosecution for swara, the handing over of a girl or woman for marriage to opponents to settle a dispute. The practice was made punishable with up to 10 years imprisonment by a 2005 law, but continues to be widespread in the region (King, 2009).

Legal and government authorities often contribute to covering up deaths in honor killing simply by avoiding any involvement in the cases. Without getting involved or becoming active in the prosecution of the case, gender discrimination continues to create support for the perpetrator (Patel, 2008).

The Case of Samia Sarwar

On April 6, 1999, a 29-year-old woman named Samia Sarwar, a mother of two young sons, was murdered at her lawyer's office in Lahore by an assassin hired by her family. Her mother, father, and paternal uncle were all accomplices to her murder. Samia was killed because she had allegedly brought shame to her family and was contradicting the traditions of Pakistan. Years later, Samia's story still holds relevance in the nation's dialogue of honor killings.

Samia's fate quickly became a part of Pakistan's national discourse with rippling impacts carried on to the global media. In spite of the relentless press attention, however, nobody was arrested. At the time of the murder, Samia's father was the president of his hometown Chamber of Commerce and considered a model citizen. Both of Samia's parents were educated and respected in society.

Samia, originally from the area of North West Frontier Province, was married at the age of 19 to her cousin at the behest of her family's arrangement of the marriage. At the time of her murder, she had been seeking a divorce from her husband Imran, a medical doctor, on grounds of claimed domestic violence and his habitual drug abuse. Having failed to attain a divorce through family negotiations, she had sought help from lawyers Hina Jilani and Asma Jahangir, sisters and well-known human rights advocates, who also ran a shelter for battered women (Jafri, 2003).

For 10 years of her marriage, Samia suffered both physical and psychological violence at the hands of her husband. She finally decided to separate from him and to live with her parents. Her parents, however, never agreed to her seeking a divorce, because according to them it was directly against the family honor, and would also bring great shame to the family. For Samia's family, it was not her beating by her husband, but her act of filing for divorce to get out of a violent relationship that her family deemed to be dishonorable, and hence, warranting ultimately in her death (Ibrahim, 2007).

Samia was murdered in the name of a tradition under which a woman is not allowed to use her constitutional and Islamic right to seek a divorce (Ibrahim, 2007). The act of her seeking a divorce was deemed as defiling family honor and tribal traditions.

Samia's lawyers filed a charge of murder in the Court, whereas the defendants filed an application to make a compromise according to the provisions

laid down in the law of *Qisas* and *Diyat* Ordinance, the provisions of criminal law based on the Islamic principle of retribution and compensation applicable in cases of murder and bodily harm. The Ordinance embodies a gendered nature, as will be discussed further in Legal Reform. The judge, who had the liberty to reject this application, agreed to the compromise between the parties, concerning the accused and Samia's legal heirs, including her husband and two children. An agreed fixed amount was to be paid to the legal heirs, and the murder was thereby settled between the parties. Representing adjudication under the formal legal system of Pakistan, this case demonstrates an example of where the violence against a woman in the name of customs and traditions can also be upheld in the formal court in some instances.

Even though a number of public opinion leaders and politicians articulated their disdain for the actions of Samia's parents, the perpetrators were not apprehended. Instead, many social commentators argued in the national media that since the killing was in accordance with Pakistani traditions, it could not be considered a crime. Some even suggested that the parents should have obtained a jirga verdict before undertaking Samia's killing, in order to have gained a communal nod. There is no evidence to support that a jirga council would indeed grant permission to carry out the honor killing, but the grander message is that the act was in the natural order of things, and a jirga verdict would have sorted bureaucratic hurdles (Jafri, 2003).

The criminal case brought against the perpetrators of the killing triggered bitter religio-tribal agitation that was mostly organized by representatives of certain groups against Samia's lawyers Hina Jilani and Asha Jahangir. The protesters called for the death of the two advocates, because according to them, the advocates were responsible for corrupting "their women by encouraging them to rebel against tribal customs" (Jafri, 2003, p. 3). The crime, in their view, was actually committed by Samia for seeking a divorce, and the parents were only trying to fix a wrong. In their opinion, the parents had simply committed an act of re-ordination of customs and traditions, because they were forced to address the dissonance created by the dishonorable act committed by their daughter.

When a resolution against honor killing was brought before the Pakistani senate soon after Samia's murder, some senators denounced the two activist lawyers for what they considered to be their "modern concepts" of women's rights. Senator Ilyas Bilour, a senator from Samia's home province, asserted that the proposed resolution went against the holy customs and traditions of Pakistan that related to the place of women and their limits. As documented in the record of the Senate proceedings he stated, "We have fought for human rights and civil liberties all our lives but wonder what sort of human rights are being claimed by these girls in jeans" (as quoted in Jafri, 2003, p. 3). The notion of tradition versus modernism gave him support from many senators. All senators did not share Senator Bilour's sentiments. Senator Iqbal Haider considered Samia's murder as a symbol for the brutalities made against women (Jafri, 2003).

Although this was a murder, Pakistani law allowed Samia's mother and uncle, the most apparent accomplices in her murder, to remain free. As expected, under the Qisas and Diyat Ordinance, Samia's parents forgave the murderer they hired to kill their daughter. Since 1999, several amendments to Pakistan's Penal Code (PPC), particularly the 2004 amendment and the Protection of Women (Criminal Laws Amendment) Act of 2006, and the Acid Prevention Act, introduced legislative action to end honor killings and gender discriminatory legal practices in Pakistan. Until the Qisas and Diyat Ordinance is removed from the PPC, however, perpetrators of honor killings may not face retribution because many individuals commit the crimes with the consent of family members. According to many scholars, Pakistan should revoke its Qisas and Diyat Ordinance in order to stop honor crimes and murders from going unpunished, and to further prevent discrimination against women within Pakistan to be in better accordance with international human rights law (Palo, 2009).

Chapter 8: Women as Agents of Change in Pakistan

Gender violence serves as a powerful mechanism to maintain the existing gender-related social order, which has served as a catalyst to the Pakistani women's movement seeking social and legal change. Women's organizations and certain individual women are actively contributing to an effort to change discriminatory legal processes and cultural practices, while also promoting sustainable change through empowerment, support, and education. This chapter examines women as agents of change in Pakistan through history. By reviewing the history of the Pakistani women's movement, the chapter will then illustrate various agents of change dynamically pursuing fair and balanced legal processes relating to gender violence.

Historical Background of the Women's Movement in Pakistan

Pakistani women played an active role in the movement for independence, even having the right to vote since the country was founded (Critelli, 2010). The first women's organization, the All Pakistani Women's Association, lobbied for increased access to education for women. Jinnah himself spoke out against the perpetration of female seclusion, encouraging society to celebrate women being a part of every sphere in life. In the early 1950s, the Pakistani Women's Association

began to address the issue of the unequal status of spouses under the family laws and demanded a ban on polygamy. It succeeded in winning some changes in family laws in 1961, which discouraged polygamy by placing constraints on the practice and providing other safeguards for women in marriage, such as ordinances to regulate verbal divorce and protocols for the registration of marriages (Critelli, 2010).

The government of Zulfikar Ali Bhutto enabled women many liberties and progression in the social and political sphere in Pakistan, but the rise of Islamization under the dictatorship of Zia ul-Haq is considered to be responsible for the process of impeding much of the sociopolitical gains for women in Pakistan. Yet, even so, the process has not halted. The strict, discriminatory laws and events under Zia ul-Haq's military rule served as a catalyst for women's activism and organizations such as the Women's Action Forum that commenced in 1980 (Critelli, 2012). The strict laws provoked a catalyst to protest for change amongst the women's movement.

Media coverage of acts of violence against women often fails to equally acknowledge the committed work of women in Pakistan who are consistently responding to violence and gender discrimination (Critelli, 2012). The women's movement in Pakistan shares many features with other regional movements in South Asia, but Pakistani feminists assert that theirs is distinguished by 60 years of military rule that criminalized dissent, and over time legitimized state authoritarianism while simultaneously reinforcing patriarchal hierarchies which impacted multiple levels of social and political life (Critelli, 2010, p. 410). Therefore

key distinguishing features of the context for women's activism in Pakistan has been the continual crises of state and society, and the breakdown in the democratic process which includes frequent periods of political turmoil, martial law regimes, and internal strife over ethnic, linguistic, provincial autonomy issues, and economic instability (Critelli, 2012). Compared to other countries in the region such as India, these factors have impacted on the development of civil society and have weakened civilian organizations and political parties.

Diverse approaches to challenging gender violence have originated in Pakistan. For example, Muslim feminist paradigms have emerged that aim to establish women's rights within the Islamic framework, while other women's groups prefer a human rights approach due to its universality and emphasis on equality (Critelli, 2010). Women have formed non-governmental organizations that, through their research and data collection, advocacy for legal reform, and development of valuable programs that provide services to women, have performed a vital role in the struggle for women's human rights.

Threats, both ideological and physical, have been routine and a constant ground reality confronted by women's activists in Pakistan. Their efforts to shift gender power imbalances and combat gendered laws and policies have the tendency to enrage many people among a number of societal sectors, however Pakistani women's rights activists have never had to convince the human rights movement of the need for the inclusion of women's concerns in the agenda of all human rights organizations in the country.

Women were among the first articulating public opposition to the martial law regime, and civil society activism regarding human rights in the early to mid-1980s during General Haq's military regime was driven by women activists who were among the first founders of the Human Rights Commission of Pakistan. The use of a secular rather than Islamic framework of these particular activists is another critical way in which the movement in Pakistan has differed from other women's movements in the Muslim world. This provokes many consequences for their work because maintaining a secular framework has become increasingly difficult in the current environment of the withdrawal of liberal, secular space, with fundamentalism gradually becoming a reality on the ground that women's activists in Pakistan have had to negotiate.

Non-governmental organizations, Lawyers for Human Rights and Legal Aid, the legal aid of AGHS connected to the private watchdog organization the Human Rights Commission of Pakistan, narratives of individual Pakistani women, and many other human right's activists and organizations are a testimony to the changes made to legal processes around physical violence in Pakistan, and the continuing care and attention given to victims of physical violence. These entities have successfully posed legal challenges to gendered laws, with legal reforms that contest discriminatory practices and customs (Khan, 2003).

Asma Jahangir and Hina Jilani

Asma Jahangir and Hina Jilani, are two sisters working as lawyers in Pakistan. They have stood at the forefront of human rights, with a specific interest in women's rights. Asma and Hina launched a campaign to stop honor killings and hold the state responsible for failing to protect the innocent victims. Together they founded the Pakistani Human Rights Commission, and the first all-women's law practice in the country, AGHS (Cuomo, 2000). Their efforts are devoted to children's rights, prisoners' rights, women's rights, as well as judicial and constitutional reform.

On April 6, 1999, Samia Sarwar was shot dead at the legal offices of Asma and Hina. Already allegedly responsible for his daughter's death, Samia's father also called for Asma to be hanged for giving his daughter legal advice. Both sisters have faced grave threats since they began their advocacy efforts.

In an interview with Michele Stephenson in 1999, Hina shared her experience and thoughts about the women's movement in Pakistan. She discussed her long involvement in political movements in Pakistan, with both sisters participating in the political events around the country since they were young. According to the transcript of the interview, Hina shares that the political demonstrations were not a foreign concept for her, being active from a young age. But her profession as a lawyer has shown her a reality she has to deal with at a personal level daily, dealing with victims directly.

As quoted in the interview's transcript, Hina shares,

There were women coming to us who had become victims of a very discriminatory, very unjust law. As a lawyer, you can't just sit back and listen to people and think of it at a very theoretical level. You have to come out with solutions...in a very practical manner. There is a lot of frustration. The kinds of judges and the kind of judicial system that we work with are not the best environment to give you encouragement in the kind of work that we do (1999).

Hina's narrative describes a complex, uncertain political field within which the women's movement is shaped by situational and historically specific processes. Asma also shares her story of being a human rights activist. A lawyer and United Nations special rapporteur on freedom of religion, she has led numerous campaigns against various injustices (Lamb, 2008). In an interview with Christina Lamb, Asma shares a story of a 22-year-old Saima Waheed who wanted to stay with the husband she had married for love, but had to flee to her women's shelter in Lahore after Saima's parents tried to declare her marriage invalid and had her husband locked up. Asma recalls the year and a half battle where she received threats at her office. A group of Islamic preachers led out a procession of what was supposed to be Asma's dead body, and symbolically burying it (Lamb, 2008). "I thought this is 1997...a woman of 22 should be able to marry who she likes. Why should that throw up accusations that I'm destroying the moral fabric of society?" says Asma (as quoted in Lamb, 2008).

These battles are a part of their everyday life since the sisters set up their law firm. In 1986, the sisters helped establish the Human Rights Commission of Pakistan, which also took on blasphemy cases filed against Ahmadis, a heterodox

Muslim sect, and Christians. A single accusation of blasphemy could result in execution (Lamb, 2008).

What particularly angers Asma is what she sees as the excuse of religion for criminal acts or political ends. Honor killings are not specifically an Islamic tradition. She argues, it is “just a bad tradition that must be stopped” (as quoted in Lamb, 2008).

The two sisters are on a mission to bring gendered legislation to an end, protect the rights of women and religious minorities, and make Pakistan a freer nation. Their role as agents of change in the legal processes relating to physical violence has not gone unnoticed, as their skills as lawyers, and passion of activism have been a vital component to attaining legal reform in Pakistan. They are continuing their work as lawyers, at their shelter *Dastak*, and as activists in women’s and human rights movements.

Dastak

Dastak, translated as knock on the door, was established in 1990 as a shelter by the AGHS Legal Group, a legal firm founded by four women in 1986 (Critelli, 2010, p. 413). The shelter started on an ad hoc basis when the lawyers at AGHS encountered various women with a serious need for services beyond the legal assistance that was being provided. Leaving an abusive home and seeking divorce is highly stigmatized, leaving many women estranged from their families and even threatened with violence. This isolates many women without community support,

requiring a more systematic arrangement for women's protection. *Dastak's* shelter model is unique in its application of a human rights framework that advocates for women in the belief that all humans are entitled to basic rights such as freedom from violence and political, economic, and social freedom.

After preliminary debates, *Dastak*, as well as other women's activists in the Women's Action Forum, chose a secular, rights-based approach rather than one of Islamic feminism that has been embraced by other feminists in the region. The founders of *Dastak* perceive no contradiction between their mission and philosophy and that of feminism, since these involve both challenging and changing women's subordinate status to men. However, *Dastak* seeks to focus on inclusive human rights, and not solely women's rights, because according to their mission, oppressive laws and conditions that affect women also affect many other marginalized groups (Critelli, 2010). Honor crimes have affected both males and females, for instance.

The shelter adopts a capacity building framework that reflects on the intrinsic value of people's abilities and knowledge, while simultaneously recognizing that growth is necessary and possible (Lederach, 1997, p. 108). The concept of empowerment is central to the mission of *Dastak*. The shelter also seeks to create a relationship building agenda that aspires to redefine and rebuild relationships, which considers and responds to longer-term goals for sustainable change.

Cultural norms and patriarchal ideologies are contested daily at the shelter. *Dastak* seeks to alter the common terminology that defines women who escape from violence in a defaming manner, obscuring the violence that drives women from

home. *Dastak* reframes terms such as “runaways” and “inmates”, replacing them with “women who leave home” and “survivors.” Even male friends who assist the women are reframed into “well-wishers” (Critelli, 2010, p. 414).

Promoting individual empowerment is constantly emphasized as a guiding principle and desired outcome for all shelter residents. This process of empowerment begins with trying to have someone support the decision to escape the violence. Without using specific terminology, a strengths-based perspective that highlights, for example, support of the women’s capabilities and builds her confidence is employed. The objective is to acknowledge the possibility to triumph into a better, more emancipated future. The goal is to harness potentials and tap into unknown talents. As per international declarations and human rights missions, the process entails helping women achieve their self-potential without any hindrances.

It has been found that shelter and safety are the initial focuses of *Dastak*. Once the women are settled, the focus shifts to building skills for the future. With a broad view of knowledge as empowerment, staff at the shelter has initiated a variety of programs that promote legal literacy and support women’s access to education and skill-building, with strong efforts to challenge patriarchal ideologies. Counseling and therapy are not common practices in Pakistan, and therefore the shelter is unique for providing services by a part-time psychologist that include relaxation techniques, story telling, and personality tests to individuals staying at *Dastak*. Most of the services of the shelter focus on women’s capacity development. The staff

applies social work techniques, by aiming to build trust, provide relief, and engage in crisis counseling.

Because the shelter challenges the status quo, the organization and individual staff members have been subjected to violence, hostility and campaigns to discredit them, as revealed earlier by Asma and Hina. The organization has withstood threats of closure by religious leaders and some government officials since it started. Staff and clients have been labeled as loose women, with accusations that they are encouraging rebellious behavior. There were even rumors that the shelter is a brothel, which initially frightened and deterred women from seeking their services. Threats have been made against staff members and false charges filed by families who accuse them of kidnapping and coercion, leading *Dastak* to adopt more security precautions and strict documenting for legal precautions.

Yet, regardless of the challenges, *Dastak* enjoys a number of successes that maintains hope for their purpose and the women's movement of change in Pakistan. Staff of the shelter have reported that women are coming forward in greater numbers, being better informed and aware of the services of *Dastak*, partly because of its advocacy work and media coverage. Over time, Pakistan has been witnessing a growing acceptance of the option of divorce for women when there is marital discord. *Dastak's* success is measured by the goals set by the shelter's residents. Goals could include obtaining a divorce, gaining custody of children, acquiring an inheritance, reconciliation, and even support after a physical attack. Women's

greater awareness of their rights and capacities is also viewed as a significant benchmark of success and progress.

The human rights approach adopted by *Dastak* incorporates direct services, advocacy work, and social change efforts. Their work has contributed to a slow, but sustained cultural shift, and has unveiled the culture of silence and denial about violence against women. This model underscores the necessity of social change efforts. The human rights and women's movement practice of attaining social justice is based on a continuing obligation to challenge gender oppression, with a goal to enhance the well-being of women and girls. The women's shelter has served as an agent of change, by helping to establish the legitimacy of women's claims for safe space, services, and laws that uphold the human right to live a life free from violence. (Critelli, 2010, p. 419).

Mst Humaira Mehmood vs the State

The importance of women's and human rights activist movements that continue to strive to protect the rights of women persecuted by their family should not be undervalued. This case study narrates the story of Humaira, a 30-year-old woman who married Mehmood Butt against the desires of her parents. Her father was a member of the Provincial Legislature at the time of her marriage. Her father filed a case of alleged *zina* and abduction against Mehmood Butt. Even though Humaira's father knew that at the time of his complaint Humaira and Mehmood were lawfully married, he still proceeded to file a case of *zina*, implicating his

daughter and her husband of adultery (Baxi, 2006). Because of the legal complaint against the couple, and apprehensive of their lives and safety, Humaira and Mehmood had to flee their home in order to avoid arrest. They fled to Karachi to find refuge at a shelter.

Humaira's brother filed a report with the police to the effect that his sister had left home after a fight with her mother, and that he should be given her over when found. The police, contrary to procedural laws, illegally detained Humaira in order to return her to her natal family, from whom she had fled, according to their discretion. After she was returned to the family, Humaira was forced to stage a false marriage ceremony, which was documented on video and then later produced in a court as proof of a prior marriage to a groom of the family's choice. The staging of the marriage indicates the technologies of power of forging documentary and visual evidence and used to imitate elopement as abduction, and translate marriage as bigamy, a *zina* offense. Humaira's custody and wrongful confinement was challenged by the AGHS legal aid cell pioneered by Asma Jehangir and Hina Jilani. Shahtaj Qazilbash, the coordinator from AGHS who filed the petition, invoked the writ jurisdiction of the High Court of Lahore under the Constitution of Pakistan (Article 199), imploring that the court would decree directions to produce Humaira in court (Baxi, 2006).

In a landmark decision, the judge, Justice Jilani asserted that the police officers in charge of the case did not act in accordance to the law, and mandate of their duty. He went on to deliver and remind the court and parties involved, that

Articles 4 and 25 of the Pakistani Constitution guarantee that everybody shall be treated strictly in accordance with law, and that Article 35 of the Constitution “provides that the State shall protect the marriage, the family, the mother, and the child” (as quoted in Baxi, 2006, p. 1248). The judge also affirmed that as Pakistan is a member of the international Comity of Nations, it is responsible for upholding the ideals of international human rights norms, and must respect the International Instruments of Human Rights to which it is a party.

The judge reminded the parties that Pakistan is an active member of the United Nations, and is also a signatory to the Convention on the Elimination of all Forms of Discrimination against Women. He especially brought attention to Article 16, which enjoins all member states to respect the rights of women to family life on a basis of equality with men. Justice Jilani referred to Article 5 of the Cairo Declaration on Human Rights in Islam to reinforce his argument of women's human rights within an Islamic framework (Baxi, 2006). In clear language he denounced the practices of the policing by the state as well as the family by asserting that, if the working apparatuses of official law become poachers, then society nor the state can have “even a semblance of human rights and rule of law” (as quoted in Baxi, 2006, p. 1248). In his decision, the judge declared that common law is aligned with Islamic law in order to better regulate the family as an institution that does not mimic the state by taking legitimacy to impede and take custody of women in the domestic realm.

With the litigating of AGHS, the case of *Mst Humaira Mehmood vs the State* represents a critical achievement in the legal realm of Pakistan for women. The court challenged tolerance of honor crimes by reminding the Pakistani public that Islam does not preach violent customary practices, and nor shall the formal justice system of Pakistan. This case also made available the opportunity to address the international obligation of Pakistan as a signatory to various United Nations conventions to uphold the equal rights of women.

***Sughar*: A social venture**

At the age of 24, Khalida Brohi has already experienced much to grieve and much where she has triumphed. Khalida has been shot at, targeted by Taliban militants, stalked, threatened, and both praised and insulted for her work to end honor killings in the tribal villages of Pakistan. Khalida has been a human rights activist since her early teen years, crusading for justice and equality, especially for women. In 2004, a close friend of Khalida wanted to marry a boy whom she liked, but was murdered by her family for disgracing the family's *izzat* (honor). Her death initiated Khalida to take an active step towards openly condemning honor killings and gender inequality. Most recently, Khalida has created a social venture to bring greater attention to women and human rights.

Sughar, meaning skilled, confident woman in Urdu, is a social venture created by Khalida Brohi. She has created a high fashion line consisting of handbags, dresses, shoes, and pillows. Khalida's *Sughar* uses Pakistani tribal embroidery

stitched by the hands of women who have never seen or dreamed of the freedom of high fashion (Londergan, 2013). *Sughar* has turned the women's village embroidery groups into a revolution. The social venture provides women with valuable income, granting women economic power, while also challenging negative cultural beliefs with education and information about women's rights. This is an endeavor to protect and empower women in Khalida's home province of Balochistan, a tribal province near the borders of Afghanistan.

Khalida was educated in the city of Karachi and has the encouragement of her father to speak her mind. Khalida was the first girl in her village to go away to pursue education, but after her friend's murder, she decided to come back to Balochistan and seek to lift the lives of those village women who did not have the same educational and social opportunities as Khalida. She began to protest openly against honor killings and gender inequality, but quickly saw that this only intensified the resistance of men to her cause. In 2008, the tribal leaders of her province rose up against her in fierce opposition, causing her to flee back to Karachi (Londergan, 2013).

Once realizing that tribal elders and leaders would not allow her to directly contradict the tribal traditions of arranged marriages, child marriages, and discriminatory practices, Khalida began to gingerly work on changing perceptions from within. She met with village elders to gain their support before opening a women's center, prepared with a thoroughly developed curriculum of feminine arts of music, singing, and embroidery. She also promised and delivered on a pledge to

create income for the women, paying them forty-five rupees an hour for their handiwork. And finally, she began to sponsor village cricket matches, an intensely popular sport with even the most fundamental elders and leaders (Londergan, 2013).

Khalida's determination and strategy has proved successful. Today, there are twenty-three women's centers serving over eight hundred women in provinces of Balochistan and provinces of Sindh. Furthermore, and fundamentally, while the women are stitching and being a part of these women's centers, they are also being educated about gender equality, preventing domestic violence, importance of education and women's rights (Londergan, 2013). Khalida is intent upon building *Sughar* into a powerful initiative, and ultimately dreams of including one million Pakistani women in her centers. She hopes to continue her advocacy with government policy-makers to change laws and customs regarding honor killing.

Khalida demonstrates the evolving role of women in Pakistani society. She represents an agent of change in the provinces that were once greatly resistant to progression or modernization of the role of women. Through her determination and initiative of empowering women with knowledge and skills, Khalida has built a bridge between the community and human rights. By utilizing dialogue, Khalida has initiated a conversation of justice.

All-female Jirga

The prevalent dissatisfaction with the formal justice system is common in Pakistan, due to the fact that it can often take years to process a case through the courts. According to the Pakistani news outlet Dawn, insurgency has found encouragement by the complaints that the formal courts are too corrupt and slow. The tribal jirgas present the most viable legal alternative.

Swat, situated in the Northwest of Pakistan, is an area where Islamic traditions and customs are still strictly implemented. Men are still considered in control of women's lives in many spheres of life. For example, men are responsible for deciding whether a girl goes to school and at what age she gets married, in addition to whom. Conservatism is still prevalent in this region.

Swat has recently experienced an innovative change to the tribal jirga system, with a formulation of an all-women jirga council consisting of a 25-member council. Its founder, Tabassum Adnan, is also a social activist and mother of four, who is determined to see the council succeed. "Our society is a male-dominated society, and our men treat our women like slaves. Maybe I could be killed. Anything could happen. But I have to fight. I am not going to stop" Tabassum stated. (as quoted in Caspani, 2013). The women's jirga discusses a multitude of issues including land disputes, salaries, and even water supply matters. The council also addresses murders and honor crimes. The council seeks to bring justice and fight gender discrimination.

The council recently took on a case dealing with the killing of Tahira, a 16 year old Pakistani girl. She was married at 12, and died last year after her husband, Subha Khan, mother-in-law, and father-in-law allegedly attacked her with acid (Caspani, 2013). The acid burned 35 percent of the flesh on her body, but as she lay dying in pain, she recorded a video message naming her attackers. Her mother, Jan Bano, had encouraged her to speak out. After 14 days of pain, Tahira passed away (Dawn, 2013). Jan Bano and her eldest son approached government official and the police, to file a complaint against Khan and his parents, but according to media reports, the police refused (Dawn, 2013). Furthermore, Khan and his father threatened Tahira's brother with dire consequences if he continued to go to officials. The perpetrators were recently acquitted, but Jan Bano plans to appeal the verdict with the help of the all-female jirga.

The jirga system is controversial as it functions as a parallel justice system to the official one and its rulings have often discriminated against women due to seeking to uphold patriarchal interpreted customs. Nevertheless, the all-female jirga serves as a source of hope in a changing Pakistan. It is meant to serve as a forum where legal support can be provided to women, by also involving government authorities and the police force (Dawn, 2013). The jirga serves as a voice for women. In addition to women, some local men have also offered their support for the jirga, by stating that women should know about their rights and be given the same rights as men.

Local male jirga members were dismissive of the all-female council, reiterating their belief that women still have no power to enforce the decisions that come out of the council (Caspani, 2013). The council is likely to face hostility in a territory that has been a stronghold of the Pakistani Taliban for years. The Taliban in Swat attacked Malala Yousafzai for campaigning for girls' education in 2012 (Dawn, 2013). The council is defying tradition by creating and sitting on an all-female council, as men have historically operated the practice of serving on the councils.

The all-female jirga council demonstrates women as agents of bringing gender equality and representation in the informal legal system. According to Tabassum, the jirga is like a sister's group, born out of a women's empowerment initiative (Dawn, 2013). The jirga provides women a platform to help women and seek justice without the fear of judgment from men. Women are just as capable to run a council, further encouraging women to seek higher education and also contribute to the system. Traditional social structures can impede progress, but as reflected in this case study, women are increasingly utilizing the local context to achieve gender equality, particularly to be legitimized through the legal system. Women are actively empowering their lives and providing support to each other.

Chapter 9: Legal Reform

Any ideological revolution has to be followed up by an effective organization to implement these values. Although custom and tradition are considered to be the living law, if the majority of people are willing to undermine the practice, it no longer has the status of living law and therefore cannot be considered an approved custom (Ibrahim, 2007, p. 33). While challenging in practice, culture is flexible enough to garner a change that legitimizes the value of gender equality through internal dialogue, not only within the community but also between the community and the state (Hirsch, 2013).

Any laws discriminating against women must be repealed and amended in order to adhere to international norms and obligations. Laws restricting the liberties and freedoms of women should not be executed in any part of the state. Many laws and judicial practices in tribal areas discriminate against women and are directly conflicting with the constitutional protections of equality and impartiality guaranteed to all citizens.

New laws and initiatives have been enacted in recent years, many of which have the goal of counteracting discrimination and violence against women. Pakistan's Penal Code now recognizes honor killings as premeditated murder, and

official statements on honor crimes have been made by the government and religious bodies declaring that the practices of honor crimes such as honor killing and acid attacks are not only against the law, but also un-Islamic (Critelli, 2010).

In November 2006, after more than 20 years of protest by women's organizations, the Pakistani parliament passed the Protection of Women's (Criminal Laws Amendment) Act, 2006. The Bill amended the Hudood Ordinance laws promulgated as part of General Haq's Islamization of the country's social, political, and legal system. The Bill's legal reforms have removed some of the most harmful aspects of the Hudood Ordinance, moving the crime of rape from Islamic law into a more secular Pakistani Penal Code. The Bill put forth calls for the abolition of customary practices such as giving women away to settle disputes, forced marriages, and the practice of marrying the Qur'an through which families prevent a woman from marrying in fear of property being passed to outsiders and to deny women their inheritance rights (Critelli, 2010, p. 244). The law has served as a positive step for gender equality, yet is still viewed as an incomplete reform by advocates for women's human rights due to the continuing practice of violence against women by legal institutions (Critelli, 2010).

The National Policy for Development and Empowerment of Women was created to better promote women's participation while declaring a zero tolerance for violence against women and girls. To address the issue of sexual harassment, a Code of Conduct for Gender Justice at the Workplace was proposed in 2002, and the National Gender Reform Action Plan of 2005–2009 was approved in May 2005

(Critelli). Legal reforms in Pakistan demonstrate the changes in the political, social, and legal spheres of the country.

Gendered Laws and Policies

The Zina Hudood Ordinance

The Hudood Ordinance is applicable to the entire population of Pakistan, irrespective of religion, sect, or creed (Baxi, p. 1245). One of the first major legal reforms under General Haq was the passage of the Hudood Ordinances, a collection of five criminal laws added to the Pakistani Penal Code in 1979. The ordinances included the prohibition of the sale and consumption of alcohol and drugs, the Offenses Against Property Ordinance that related to theft and armed robbery, the Offense of *Zina* Ordinance that dealt with rape, abduction, adultery, and fornication, the Offense of *Qazf* Ordinance that prohibited false accusation of *zina*, and lastly the Execution of the Punishment of Whipping Ordinance that prescribed whipping for those convicted under the Hudood Ordinances (Khan, 2003). The punishments for each of the Hudood Ordinances were divided into *Hadd*, or limit punishments, punishments with clear evidentiary requirements and specified penalties such as for example, the amputation of limbs in the case of theft, flogging and stoning to death for adultery, and other forms of capital punishment. The second form of punishment was *Tazir*, or those with flexible penalties for lesser offenses, including imprisonment.

Particularly controversial was the *Zina* Ordinance, as it created serious social and legal repercussions for women. The law is grounded in legal principles, but is also instilled with religious values, creating a dichotomy between justice and faith (Bubb, 2007, p. 70). The law criminalized sex outside of marriage, or *zina*, defined as a sin that involves sex outside of marriage in the form of both adultery and fornication. In Pakistan, the *Zina* Ordinance suggests and regulates what constitutes ethical behavior in sex, but more generally, within the family and the social institution of marriage in ways in which women's fundamental rights under the constitution, and some argue in Islam, are violated (Khan, 2003).

As one of the first steps of General Haq's Islamization process, the *Zina* laws seek to define and reinforce the notion of a chaste and modest Pakistani citizen (Khan, 2003). Men could also be convicted under the law. Critics of the law assert that the ordinance lacks to create a distinction between the level of proof required to sentence someone for rape or for adultery. Under the terms of the law, victims of rape have been convicted of adultery, because they acknowledge the act of intercourse, and the accused, who denied that act of intercourse, is released for lack of evidence of rape (Khan, 2003). For the first time in Pakistan's history non-martial sex became illegal. The punishment for illicit sex, be it adultery or rape, depends on both the evidence on which the conviction rests and the marital status of the offender. To determine whether the case before the court is fornication or rape the court requires either the confession of the rapist or the presence of four morally righteous and trustworthy Muslim men (King, 2009).

Research demonstrates that thousands of women have been charged and jailed under the *Zina* Ordinance, and that the interpretations and repercussions of the laws are class based (Khan, 2003). Although meant to apply to all Pakistani citizens, *zina* laws are unevenly implemented, with the most vulnerable members of society, impoverished and illiterate women, being the highest affected (Khan, 2003). Women who cannot afford lawyers are most likely to be charged and jailed. Shahnaz Khan conducted a study of *Zina* laws in Pakistan, and found data that supports the view that many of the women imprisoned under *zina*-related charges are not incarcerated because of sex crimes, but instead, because their families or former husbands utilized the *zina* laws to jail the women when they went against their families' wishes (2003). Although the *zina* laws were promulgated to help create a more moral society in Pakistan, critics of the ordinance argue that these laws allow families to appeal to the power of the state to assist regulating the morality and sexuality of women and reclaim family honor (Khan, 2003).

Narratives identify instances of conflict with the nature of legal processes, and can serve as a channel of grievance. In a 1998 interview conducted by Khan at a prison in Lahore, Pakistan, a 25-year woman shared her experience with the *zina* laws.

I married my neighbor. My parents were against the marriage although my husband had come with a formal proposal and asked for my hand. My parents said they wanted one lakh before they gave him permission to marry me. Then my husband sold his land and was willing to give them the one lakh they had asked for. But they still said no. This time they said that he is Punjabi and we are Sindhis and we are of a different *baradari* (community). So I ran away with him and

we got married anyway. My parents found us eventually and charged us with *zina* and both of us are in jail. Now they say give us the one lakh we asked for and then we will withdraw the charges. But the money has been spent on hiding from my parents and on lawyers. Now we have no more money. I am afraid that when we are released, that is my son, my husband and I, my parents will find us and kill us (as quoted in Khan, 2003, p. 76).

Although the law is meant to protect women, in practice, it further victimizes the victim with hurdles and humiliation (Bubb, 2007, p. 73). Women activists had pursued the repeal of the *Zina* Ordinance since its introduction under General Haq's regime. Women's rights groups and international human rights groups have sought to ease the harshness of the law and make it fair and just for women to achieve rape convictions (Bubb, 2007).

In August 2006, President General Musharraf announced he would enact a change to the *Zina* Ordinance, attempting to move rape and adultery cases away from the Islamic Hudood Ordinance and into the secular penal code, placing the crime of rape back under the Pakistani Penal Code (Bubb, 2007). The new bill, called "The Protection of Women Bill" was to provide more protection to women, while also aligning Pakistani law with international law, obligations, and norms.

Qisas and Diyat Ordinance

The *Qisas* and *Diyat* Ordinance is meant to serve as post-conflict justice. The 1860 British penal code introduced concepts of chastity, modesty, and the penal provision of grave and sudden provocation, which reduced a charge of murder to one of manslaughter. This established penal provision has been applied to honor

killings in Pakistan. After independence from India, debate initiated in order to frame laws of Pakistan according to the principles of Islam, but the laws framed by the British colonial rulers were adopted under the Adoption of Laws Act 1949 (Rashid, 2013). When the Federal Shariat court was established in 1980 under General Zia ul-Haq, laws were challenged for being repugnant to Qur'an and Sunnah. In the case of the *Federation of Pakistan vs Gul Hassan*, the Supreme Court Shariat Appellate Bench directed that penal sections of Pakistan Penal Code and Criminal Procedure Code that dealt with murder and bodily harm must be brought into conformity with Islam. The instituting of *Qisas* (retribution) and *Diyat* (compensation) were introduced in 1990.

Through employing *Qisas* and *Diyat*, murder is treated as a private affair of the family, and furthermore, it establishes that the crime is not against the state but the individual victims (Pande, 2002). The *Qisas* and *Diyat* Ordinance essentially places the choice of prosecution entirely in the hands of the victim or the victim's heirs, rather than the government (Palo, 2009), as based on the Islamic principles of equal retribution and compensation. Similar to secular laws, the basic principle of justice in Islamic laws is proportionality and equal treatment, with balanced scales of justice. Islamic discourses, in conjunction with many Islamic jurists, preach that the rationale behind making *Qisas* and *Diyat* part of Islamic model of justice is to provide an end to the cycle of violence and vendetta that could be perpetuated by the retributive model of justice (Rashid, 2013). Therefore, to establish reconciliation between the families of the victim and the offender, the practice of compensatory

payment was enshrined in Islamic laws, and reflected into the laws of Pakistan as a way of creating restorative justice.

When serving as a tool for attaining post-conflict justice in instances of honor killings, however, there are ways that law affects women adversely. As the lawyer and women's activist Hina Jilani discusses, in cases of honor killings there is often no aggrieved party to pursue the case, and usually there are no prosecution witnesses because rarely will an individual testify against a family member. Furthermore, since the killing often takes place in a family context, with for example, a brother killing his sister on grounds of honor, her guardian or her father can forgive his son (as quoted in Pande, 2002, p. 78).

Claims of provocation used to justify honor killings are considered mitigating factors that allow for monetary *diyat* compensation. Furthermore, with an honor killing, the perpetrator can avoid *qisas* or corporal punishment, because the heirs of the deceased often choose to receive monetary compensation. Many Pakistanis are impoverished, and regardless of whether or not the family consented to the murder, for the sake of living family members, the prospect of financial benefit outweighs any desire for legal justice (Palo, 2009). In 2002, National Geographic released a documentary depicting this circumstance. A woman's son-in-law killed her daughter in an alleged honor killing, and despite her anger and remorse, the woman accepted compensation of 200 dollars in order to better provide support to her other children (Palo, 2009).

Pakistani courts have expressed on several occasions that in accordance with Islam, the victim's conduct is directly linked to the possible sentence (Palo, 2009). Therefore, under the Ordinance, the perpetrator of an honor crime can claim an honor motive. Furthermore, under these legal claims, a male guardian may sentence a woman to death for a *zina* crime. Combined with the *Zina* Ordinance, the Qisas and Diyat Ordinance can reinforce male control over women, and subordinate the status of women within the familial context (Palo, 2009).

Gender-Responsive Policies

Protection of Women (Criminal Laws Amendment) Act, 2006

In 2006, the Hudood laws were revised and replaced by a new Women's Protection Bill (Constable, 2011, p. 63). Women's and human rights groups viewed the reform as a leap forward for Pakistani women's rights. The new Bill allowed rape to be prosecuted under civil instead of Islamic law, and reduced the penalty for adultery from death to a five-year maximum imprisonment sentence. The reform faced great difficulties, with the Islamic parties in the government failing to compromise with the more modern and moderate leaders (Bubb, 2007).

In December 2006, the National Assembly passed the Protection of Women (Criminal Laws Amendment) Act, 2006, with the ultimate goal of bringing laws in conformity with the stated objectives of the constitution, and the injunctions of Islam (Bari). A report conducted by the National Commission on the Status of Women (NCSW) affirms that the Bill dealt with provisions such as rape, marital

rape, kidnapping a woman to compel her for marriage, prostitution, and other practices that put women at risk of being a victim of criminal intent (Bari). The aim of the Bill was to protect women, and bring relief to women who were subjected to the misuse of the *Zina* Ordinance, while also setting legal parameters to create gender equality and justice.

Yet, despite the efforts from Pakistani and international rights groups, the Islamic Hudood laws were never fully revoked because of the strong opposition by Islamic groups who called the Bill un-Islamic (Bubb, 2007), consequently sustaining the practice of implementing the Islamic Hudood laws in discretionary customary practices in certain regions. Although the NCSW report on the Bill reveals a positive stride, there are continuing issues in effective implementation of the Bill due to the parallel judicial systems incorporated in the constitution (Bari). With overlapping jurisdiction, and the prevalent cultural gender biases, fair and consistent implementation of the amendment is a continuing issue.

The Acid Control and Acid Crime Prevention Bill 2010 and The Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2008

In 2011, the Pakistani Senate unanimously passed the two historical bills, The Acid Control and Acid Crime Prevention Bill 2010 and The Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2008, upholding the rights of women, while further indicating the changing status of the Pakistani women.

Acid violence describes any attack against an individual in which sulfuric, hydrochloric, or nitric acid is employed as a weapon, causing severe burns. The

results are permanent disfigurement for the victim, in addition to often implicating blindness and hearing loss, depending on where the acid falls on the victim. Acid continues to burn the victim after the attack is over, because unlike other burn injuries, it continues to penetrate and eat into the skin and tissue, often down to the bone (Agarwal, 2008, p. 120). Acid violence is often perpetrated with the motive of protecting honor due to a perceived violation of honor through a women's behavior or conduct. It is important to note that although not all victims of acid attacks are women, they constitute the majority of acid victims (Agarwal, 2008).

By explicitly outlawing acid attacks and punishing perpetrators of acid violence, the Bill made significant changes to the Pakistani Penal Code. The bill on Acid control and Acid Crime recommends a 14-year to lifetime imprisonment sentence and charges fines up to one million rupees for the perpetrators of the crime. Furthermore, the bill tackled the issue of obtaining acid, by calling for acid to only be allowed for licensed individuals to manufacture and sell acid. With this bill, parliament outlawed domestic violence. Although the Bill faced some resistance, the ultimate passage is a great achievement towards upholding human rights in Pakistan.

The legal reform adds two new sections into the Pakistani Penal Code relating to voluntarily causing hurt by dangerous means or substances, stating, "Whoever voluntarily causes hurt by means of...corrosive substance or acid...shall be called to have caused hurt by dangerous means or substances" (as quoted in Human Rights Brief by Garg, 2013). The other section relates to the punishment for

causing hurt by dangerous means or substances to whomever intends to hurt or likely hurt any person “by dangerous means or substances...with imprisonment for a term which may extend to the whole of life, or with fine which may not be less than five hundred thousand rupees, or with both” (as quoted in Human Rights Brief by Garg, 2013). The Act also demands for the perpetrator to pay for the loss of earning and medical expenses of the victim.

Despite a steadily growing conviction rate of acid attackers, the Bill has not successfully deterred acid throwing, as the crime of acid attacks is on the rise (Garg 2013). According to a Human Rights Brief, since many cases of acid attacks go unreported, a true estimate of the attacks is difficult to determine. However, Pakistani non-governmental organizations, such as the Aurat Foundation, estimate the number to be 150-200 cases per year (Garg, 2013). An annual report published by the Aurat Foundation reported a 37.5% increase in acid attacks since 2011 (Garg, 2013).

According to the Human Rights Brief, one reason for the continued acid violence, is although there is a growing rate of convictions, the rate is still very low because of the existing “discriminatory societal attitudes” (Garg, 2013). However, under CEDAW, Pakistan is obligated to eliminate these cultural notions that preserve violence toward women and conform domestic laws to international laws. The Progressive Women’s Association investigated 600 cases out the 9,000 reports of acid violence from 1994 to 2011. Of the 600 cases, only two percent of the perpetrators were convicted. A low conviction rate suggests that the majority of acid

attackers have been immune from any punishment, and therefore do not feel impacted from the consequences of acid throwing, illustrating the imperative need for justly implementing legal reforms.

Chapter 10: Conclusion

The women's rights movement triggered the human rights movement in Pakistan. Because of this, women's human rights issues have always been a priority on the human rights agenda, creating a sensitive and cohesive movement. Social change is a product of a number of factors, including external and internal influences (Hasan, 1981). By the late 1970s, with the emergence of General Haq's Islamization injection into the social and political spheres, there were strong signs of the emergence of a new consciousness in the women's movement in Pakistan. Religion has a significant social impact in Pakistan, and likewise the women's movement is using it as a positive agent in order to lead to a purposeful and desirable change, particularly relating to gendered legal processes. Women as agents of change for the gendered legal processes relating to physical violence have utilized an innovative way of thinking that embodies a stronger feminist discourse seeking gender equality through a dialogue that is Islamic in its language and sources of legality. Pakistani women, like many other women around the world, contend that the human understanding of Islam is flexible, with the innate ability to change over the course of time and experience.

Although there is widespread agreement that religious and cultural norms can no longer serve as justifications for discrimination against racial, ethnic, or religious groups, these norms have nevertheless continued to be the most prevailing and widely accepted justifications for discrimination on the basis of sex. The women's movement in Pakistan is actively contesting discriminatory cultural practices. The Pakistani women's movement combats utilizing religion and culture are justifications for gender violence. The shelter *Dastak* demonstrates utilizing a socio-legal human rights approach that empowers the individual. The women's movement is instilling active measures within society to provide for victims while also creating capacity building measures to enable victims with greater social, economic, and political opportunities free of gendered hindrances.

Pakistan, like elsewhere, is in a constant cycle of change, which enables the women's movement to participate in contributing ideas for reform. Evidence suggests that a fragmented political field that involves a heterogeneous political culture and dispersed distribution of power best categorizes the Pakistani women's movement in Pakistan. This fragmentation enables a greater political autonomy to women's organizations. Politically autonomous women's groups are able to set more explicitly feminist agendas and are not pressured to subordinate women's interests to other issues as they might in a hegemonic field dominated by strong political parties or organizations that leave little political space (Critelli, 2012, p. 215). Pakistani women and women's rights organizations have achieved paramount strides in their agenda to end gender violence. Women activists repealed the

Hudood Ordinances in order to adhere to CEDAW obligations. Additionally, President Musharraf publicly declared his support for women and passed laws such as the Women's Protection Bill, to address violence against women as illegal and unjust. In 2006, Pakistan's Penal Code began to recognize honor killings as premeditated murder, dramatically contesting a cultural practice in the legal system (Critelli, 2012, p. 205).

Pakistan operates with a parallel judicial legal system. There is a secular constitution, religious Islamic laws, especially pertaining to personal issues, and customary laws of the tribal areas. Meanwhile, Pakistan has also ratified CEDAW, one of the most important women's rights documents and, through ratification has attained the responsibility to eliminate discrimination against women in employment, education, and politics (Critelli, 2010, p. 240). However, discriminatory legal processes have not entirely ceased due to contradictory and inconsistent policies and implementation. There is a persistence of social attitudes, cultural practices, and religious dictums contributing to a failure of the state to enforce laws and promote societal attitudes that are favorable to the exercise of fundamental rights of women. Gender violence serves as a powerful mechanism to maintain the existing gender-related social order, which serves as a catalyst to the Pakistani women's movement seeking social and legal change.

Women as agents of change are continuingly challenging the hegemony of patriarchal interpretations of Islam and Pakistani culture. The all-female jirga in Swat is another example of how Pakistani women are actively contesting cultural

norms, and building a platform for change to gender violence and discrimination. Extreme cases of violence against women are an important reminder of the variance in circumstances among women in Pakistan, especially in rural areas, and the scale of what still needs to be accomplished. Although there are resistances to continuing change of the status quo stemming from the ground level, the women's movement of Pakistan demonstrates that women also have a voice to contribute to the structuring and growth of the country. The local context is a motivating factor for the movement. The pursuit of gender equality can thrive best if women are guaranteed of an equal right to participate in the definition of fundamental rights and freedoms implemented into the legal processes, and are also actively in the process of the renegotiation of religious and cultural norms. Women such as Asma Jahingir and Hina Jilani, in spite of threats and resistances, maintain their mission for gender equality and a freer and more harmonious Pakistan that upholds its domestic and international obligations.

Appendix



Picture 1: Map of Pakistan at the time of partition, with East and West Pakistan.

(http://files.myopera.com/shuzauddin/albums/10084552/thumbs/East-and-West-Pakistan.jpg_thumb.jpg)



Picture 2: Current map of Pakistan.

(http://mapsof.net/uploads/static-maps/map_of_pakistan.png)

References

- Abdellatif, O., Ottaway, M. (2007). *Women in Islamist Movements: Towards an Islamist Model of Women's Activism*. Carnegie Papers. Carnegie Endowment for International Peace. (2)
- Agarwal, A. (2008). Crimes of Honor: An International Human Rights Perspective on Violence Against Women in South Asia.
- Ahmed, F. E. (2013). The Compassionate Courtroom: Feminist Governance, Discourse, and Islam in a Bangladesh; *Feminist Formations*, 25(1), 157–183.
- Al-Ali, N. (2000). *Secularism, Gender and the State in the Middle East*. Cambridge: Cambridge University Press.
- An-Na'im, A. (2002). *Islamic Family Law in a Changing World: A Global Resource Book*. New York: Zed Books.
- Anonymous. (1994). Women and violence: Double jeopardy- Police abuse of women in Pakistan. *WIN News*, 20(2), 53.
- Anonymous. (2010). "State enemies and anti Islam": Violence against Women Rights Defenders in Pakistan. *Women's World*, (45), 1–3.
- Anonymous. (2011, July 11). Global: Balancing The Scales: Groundbreaking Legal Cases That Have Changed Women's Lives. *Women's Feature Service*. New Delhi, India.
- Ansari, S. (2008). Polygamy, Purdah and Political Representation: Engendering citizenship in 1950s Pakistan. *Modern Asian Studies*, 43(06), 1421.
- Appleby, S. R. (2000.) *The ambivalence of the sacred: religion, violence, and reconciliation*.
- Asquith, C. (2010). Agents for Change. *The Wilson Quarterly (1976-)*, 34(2), 95–96.

- Baker, N. V., Gregware, P. R., & Cassidy, M. A. (1999). Family Killing Fields: Honor Rationales in the Murder of Women. *Violence Against Women*, 5(2), 164–184.
- Bari, F. *Study to Assess Implementation Status of Women Protection Act 2006*. National Commission on the Status of Women. Islamabad.
- Basu, S. (2005). Violence, Law and Women's Rights in South Asia. *NWSA Journal*, 17(3), 198–200.
- Baxi, P., Rai, S. M., & Ali, S. S. (2006). Legacies of Common Law: "Crimes of Honour" in India and Pakistan. *Third World Quarterly*, 27(7), 1239–1253.
- Bokhari, S., Mantilla, K., & Osborn, C. (2004). An Interview With: Shahnaz Bokhari Pakistani Activist Against Violence Against Women. *Off Our Backs*, 34(3/4), 31–35.
- Bovarnick, S. (2007). Universal human rights and non-Western normative systems: a comparative analysis of violence against women in Mexico and Pakistan. *Review of International Studies*, 33(01), 59–74.
- Bubb, R. (2007). Reform of the Pakistani Rape Law: A Move Forward or Backward? *The Journal of Gender, Race, and Justice*, 11(1), 67–92.
- Caspani, M. (2013, July 26). All-female jirga council defies tradition in Pakistan's Swat – report. Retrieved July 28, 2013, from <http://www.trust.org/item/20130726135304-jgqa2/?source=shem>
- Chaudhary, A. (2009). The Shari'a and the Pakistan Judicial System. *Journal of Asian Civilizations*, 32(1), 186–192,198.
- Chopra, T. (2010). "Peace versus Justice in Northern Kenya: Dialectics of State and Community Law." In: *Marginalized Communities and Access to Justice*. Y. Chai and J Cottrell (ed.). New York: Routledge.
- Chowdhury, E. H. (2005). Feminist Negotiations: Contesting Narratives of the Campaign against Acid Violence in Bangladesh. *Meridians*, 6(1), 163–192.
- Clark, J. N. (2008). The three Rs: retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*, 11(4), 331–350.

- Concern About Extremist Threat Slips in Pakistan*. Chapter 4. Religion, Law and Society. (2010). *Pew Global Attitudes Project*. Retrieved May 7, 2013, from <http://www.pewglobal.org/2010/07/29/chapter-4-religion-law-and-society/>
- Constable, P. (2011). *Playing with fire: Pakistan at war with itself*. New York: Random House.
- Convictions for acid attacks triple in Pakistan under tough new laws*. (2013). *TheJournal.ie*. Retrieved August 1, 2013, from <http://www.thejournal.ie/acid-attacks-pakistan-819403-Mar2013/>
- Coomaraswamy, R. (1995). Some reflections on violence against women. *Canadian Woman Studies*, 15(2/3), 19–23.
- Coward-Yaskiw, S. (2002, Spring). Restorative justice: what is it, can it work, what do women think? *Herizons*, 15(4), 22–23.
- Critelli, F. M. (2010). Beyond the Veil in Pakistan. *Affilia*, 25(3), 236–249.
- Critelli, F. M., & Willett, J. (2010). Creating a safe haven in Pakistan. *International Social Work*, 53(3), 407–422.
- Critelli, F. M., & Willett, J. (2012). Struggle and Hope: Challenging Gender Violence in Pakistan. *Critical Sociology*, 39(2), 201–221.
- Cuomo, K. K. (2000). Pakistani Sisters' Bravery Inspires Human Rights Advocates. *Human Rights*, 27(3), 13–13.
- Cusack, S., & Cook, R. J. (2007). "Honour": Crimes, Paradigms, and Violence against Women (review). *Human Rights Quarterly*, 29(2), 524–533.
- Dash, S., & Sewak, M. (2005). *Global: Another Kind of Justice. Women's Feature Service*. New Delhi, India.
- DeLaet, D. L. (2013). The Limitations of Law as a Tool for Responding to Violence Against Women. *Politics & Gender*, 9(01), 115–119.
- Dunn, S. (2012). *Gender justice in a post-secular age? Domestic violence, Islamic sharia, and the liberal legal paradigm* (Ph.D.). The Florida State University, United States.

- Ebrahim, Z. T. (2007, May 14). Pakistan: Home is Where the Heart Isn't. *Women's Feature Service*. New Delhi, India.
- Ebrahim, Z. T. (2010, February 15). Pakistan: Pakistan's Domestic Violence Survivors In A Blind Alley. *Women's Feature Service*. New Delhi, India.
- Edge, P. W., & Harvey, G. (2000). *Law and Religion in Contemporary Society: Communities, Individualism and the State*. (P. W. Edge & G. Harvey, Eds.). Aldershot: Ashgate.
- Eijaz, A., & Ahmed, R. E. (2011). Discourses of Feminism in the Perspective of Allama Iqbal and the West. *Canadian Social Science*, 7(5), 190–197.
- Engaging Religious Laws, Players, and Communities. (2010). *Proceedings of the Annual Meeting (American Society of International Law)*, 104, 58–61.
- Ertürk, Y. (2004). Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues. *Feminist Review*, (78), 3–21.
- Fazi-e-Haider, S. (2013). Pakistan's women are at the forefront of social change. *The National*. Retrieved July 1, 2013, from <http://www.thenational.ae/thenationalconversation/comment/pakistans-women-are-at-the-forefront-of-social-change>
- Fellmeth, A. X. (2000). Feminism and International Law: Theory, Methodology, and Substantive Reform. *Human Rights Quarterly*, 22(3), 658–733.
- "Female jirga set up to win justice for women in Swat." (2013, July 11). *Dawn.com*. <http://dawn.com/news/1024391>
- Friedland, R. (2001). *Religious Nationalism and the Problem of Collective Representation*. *Annual Review of Sociology* 27, 125-152.
- Galtung, J. (1969). "Violence, Peace, and Peace Research." *Journal of Peace Research* 6.3: 167-91.
- Garg, A. (2013). *Anti-Acid Violence Legislation in Pakistan not Mitigating Growing Occurrence of Acid Attacks on Women*. Human Rights Brief. Retrieved from <http://hrbrief.org/2013/04/anti-acid-violence-legislation-in-pakistan-not-mitigating-growing-occurrence-of-acid-attacks-on-women/>

- Ghazi, S. R., Shahzad, S., Shahzada, G., Gillani, U. S., & Khan, M. R. (2011). Family Structural Norms Leading to Gender Disparity in Pakistan. *Asian Social Science*, 7(3), 101–107.
- Goelman, D. M. (2004). Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000. *Columbia Journal of Gender and the Law*, 13(1), 101.
- Grech, O. (2013). *Human Rights Lecture*. University of Malta.
- Griffiths, A. (2001). Remaking Law: Gender, Ethnography, and Legal Discourse. *Law & Society Review*, 35(2), 495–509.
- Haqqani, H. (2005). *Pakistan*. Washington, D.C.: Carnegie Endowment for International Peace.
- Hasan, R. (1981). The Role of Woman as Agents of Change and Development in Pakistan. *Human Rights Quarterly*, 3(3), 68–75.
- Hassan, Y. (1996, Winter). A Study of Domestic Violence in Pakistan: The Haven Becomes Hell. *WIN News*, 22(1), 30.
- Henderson, C. W. (2004). The Political Repression of Women. *Human Rights Quarterly*, 26(4), 1028–1049.
- Hewitt, F. (1989). Woman's Work, Woman's Place: The Gendered Life-World of a High Mountain Community in Northern Pakistan. *Mountain Research and Development*, 9(4), 335–352.
- Hirsch, S. F. (2013.) *Law and Justice Lecture*. University of Malta.
- Hirsch, S. F. (2006). Islamic Law and Society Post-9/11. *Annual Review of Law and Social Science*, 165-186.
- Hirsch, S. F. *Chapter 10: State Intervention in Islamic Law in Kenya and Tanzania: Applications of the Gender Concept*.
- Hoddbhoy, N. (1984, October 31). Pakistan: Law devalues women's testimony. *Off Our Backs*, 14(9), 8.
- Huang, R. (2005). *Securing the Rule of Law: Assessing International Strategies for Post-Conflict Criminal Justice*. International Peace Academy.

- Huda, Q. (2010). *Crescent and dove: peace and conflict resolution in Islam*. United States Institute of Peace Press.
- Hudson, V. M., Bowen, D. L., & Nielsen, P. L. (2011). What Is the Relationship between Inequity in Family Law and Violence against Women? Approaching the Issue of Legal Enclaves. *Politics & Gender*, 7(4), 453–492.
- Ibrahim, F. (2007). *Honour killings under the rule of law in Pakistan (Ph.D)*. Library and Archives Canada. McGill University. Canada.
- Imran, R. (2008). Deconstructing Islamization in Pakistan: Sabiha Sumar Wages Feminist Cinematic Jihad through a Documentary Lens. *Journal of International Women's Studies*, 9(3), 117–154.
- Imran, R. (2013). Legal Injustices: The Zina Hudood Ordinance of Pakistan and Its Implications for Women. *Journal of International Women's Studies*, 7(2), 78–100.
- Iqbal, H., Afzal, S., & Inayat, M. (2012). Gender Discrimination: Implications for Pakistan Security. *Journal of Humanities and Social Science*.
- Ismail, Z. H. (1999). Impediments to Social Development in Pakistan. *The Pakistan Development Review*, 38(4), 717–738.
- Jamal, A. (2005). Transnational Feminism as Critical Practice: A Reading of Feminist Discourses in Pakistan. *Meridians: feminism, race, transnationalism*, 5(2), 57–82.
- Jamal, A. (2009). Gendered Islam and modernity in the nation-space: women's modernism in the Jamaat-e-Islami of Pakistan. *Feminist Review*, (91), 9–28.
- Jafri, A. (2003). *Karo Kari in Pakistan: A Hermeneutic Study of Various Discourses (Ph.D)*. University of Oklahoma, United States.
- Kadayifci-Orellana, A., & Meena Sharify-Funk (2010.) *Crescent and Dove Peace and Conflict Resolution in Islam*. "Muslim Women Peacemakers as Agents of Change." (179-203.)
- Khan, S. (2003). "Zina" and the Moral Regulation of Pakistani Women. *Feminist Review*, (75), 75–100.
- King, A. (2009). Islam, Women and Violence. *Feminist Theology*, 17(3), 292–328.

- Klug, H. (2005). Transnational Human Rights: Exploring the Persistence and Globalization of Human Rights. *Annual Review of Law and Social Science*, 1(1), 85–103.
- “Lahore roundabout sparks battle of identity in Pakistan.” (2013.) <http://www.bbc.co.uk/news/world-asia-20762866>
- Lamb, C., & Jahangir, A. (2008). Fighting for human rights. *RSA Journal*, 154(5533), 44–47.
- Lazarus, N. (2013.) *Religion and Conflict Lecture*. University of Malta.
- Lederach, P. (1997.) *Building Peace: Sustainable Reconciliation in Divided Societies*. United States Institute of Peace.
- Lesnie, V. (2000). Dying for the Family Honor. *Human Rights*, 27(3), 12–14.
- Lieven, A. (2011). *Pakistan: a hard country*. New York: PublicAffairs.
- Londergan, B. (2013). Fighting Honor Killings in Pakistan with Fashion. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/betty-londergan/honor-killings-pakistan_b_2619597.html
- Mack, B. B. (2000). Review of: Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court by Susan F. Hirsch. *African Studies Review*, 43(2), 198–199.
- Mayer, A. E. (2009). Women, the Koran and International Human Rights Law: The Experience of Pakistan. *Human Rights Quarterly*, 31(4), 1155–1158.
- McAlpin, F. (2012, June 27). Restorative justice: A more human approach. *Windy City Times*, p. 18. Chicago, Ill., United States.
- Merry, S. E. (2003). Constructing a Global Law-Violence against Women and the Human Rights System. *Law & Social Inquiry*, 28(4), 941–977.
- Merry, S. E. (2006). *Human Rights & Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.
- Mir-Hosseini, Z. (2006). Muslim Women’s Quest for Equality: Between Islamic Law and Feminism. *Critical Inquiry*, 32(4), 629–645.

- Mohammad-Arif, A. (2000). "A Masala Identity: Young South Asian Muslims in the US." *Comparative Studies of South Asia, Africa and the Middle East*: 67-87.
- Monshipouri, M., & Welch, C. E. (2001). The Search for International Human Rights and Justice: Coming to Terms with the New Global Realities. *Human Rights Quarterly*, 23(2), 370-401.
- Mukherjee, K. (2010). Islamic Revivalism and Politics in Contemporary Pakistan. *Journal of Developing Societies*, 26(3), 329-353.
- Mullally, S. (2005). "As Nearly as May Be': Debating Women's Human Rights in Pakistan." *Social & Legal Studies* 14 (3): 341-358.
- Naseer, S. (2007). Federalism and Constitutional Development in Pakistan. *Lahore School of Economics, Pakistan*.
- Newberg, P. R. (1995). *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge University Press.
- Newman, K. (1983). "A Typology of Legal Institutions." In: *Law and Economic Organization: A Comparative Study of Preindustrial Societies*. Cambridge: Cambridge.
- Okin, S. M. (1999). *Is multiculturalism bad for women?* Princeton University Press.
- Palo, S. (2008). Charade of Change: Qisas and Diyat Ordinance Allows Honor Killings to Go Unpunished in Pakistan. *UC Davis J. Int'l L. & Pol'y*, 15, 93.
- Pande, S. (2002). Violence Against Women in Pakistan: Rape and "Honour Killings." *Himalayan and Central Asian Studies*, 6(3/4)
- Patel, S., & Gadit, A. M. (2008). Karo-Kari: A Form of Honour Killing in Pakistan. *Transcultural Psychiatry*, 45(4), 683-694.
- Philipose, P. (2012, September 17). Pakistan: "We Want Change": Pakistan Women MPs Speak Out. *Women's Feature Service*, p. N_A. New Delhi, India.
- Pirkle, H. (2013). "Islamic Feminism: Combating Gender Inequality with Islam". Retrieved from <http://www.quilliamfoundation.org/blog/islamic-feminism-combating-gender-inequality-with-islam/>

- Qadeer, M. A., & Afzal, M. (1999). "Urbanisation of Everybody", Institutional Imperatives, and Social Transformation in Pakistan [with Comments]. *The Pakistan Development Review*, 38(4), 1193–1210.
- Quraishi, A. (2011). What If Sharia Weren't the Enemy?: Rethinking International Women's Rights Advocacy on Islamic Law. *Columbia Journal of Gender and the Law*, 22(1), 173–249.
- Rashid, S. (2013). "Qisas and Diyat laws: a haven for honor killings". *Daily Times. Reforming the Judiciary in Pakistan*. (2008). International Crisis Group. Asia Report (160)
- Review of Formal and Parallel Legal and Illegal Systems Report. (2010). National Commission on the Status of Women.
- Sanasarian, E. (1993). Leila Ahmed, Women and Gender in Islam: Historical Roots of a Modern Debate *International Journal of Middle East Studies*, 25(04), 678–679.
- Sarwar, B. (1999, July). Women pay as fundamentalism grips Pakistan. *Ms*, 9(4), 14–17.
- Sen, R. (2010). Women's Subjectivities of Suffering and Legal Rhetoric on Domestic Violence: Fissures in the Two Discourses. *Indian Journal of Gender Studies*, 17(3), 375–401.
- Shaikh, K. (2009). Contesting Justice: Women, Islam, Law and Society. *Journal of Middle East Women's Studies*, 5(2), 104–106.
- Shaiq, S. (2007). *Domestic violence: A curriculum for Muslim community leaders and religious leaders* (M.S.W.). California State University, Long Beach, United States.
- Sheikh, N. S. (2008). *A matter of faith: Muslim women's perception of their faith community's response to Intimate Partner Violence* (Psy.D.). The Wright Institute, United States.
- Simmons, B. A. (2009). Equality for Women: Education, Work, and Reproductive Rights. In *Mobilizing for Human Rights*. Cambridge University Press.
- Simmons, S. (2013). *Identity and Conflict Lecture*. University of Malta.

- Sobel-Read, K. B. (2012). *Sovereignty, Law, and Capital in the Age of Globalization* (Ph.D.). Duke University, United States.
- Sökefeld, M. (2001). Reconsidering Identity. *Anthropos*, 96(2), 527–544.
- Solanki, G. (2011). *Adjudication in Religious Family Laws*. Cambridge: Cambridge University Press.
- Solanki, G. (2013). The Retelling of Tales: Disentangling the Feminist Evolutionary Analytic Approach, Legal Pluralism, and Gender Justice. *Politics & Gender*, 9(01), 105–110.
- Toft, M., Daniel Philpott, Timothy Samuel (2011.) *God's Century: resurgent religion and global politics*. New York: W.W. Norton & Co.
- Violence Against Women: Still Searching for Ways to Curb it. (1998, Autumn). *WIN News*, 24(4), 41.
- Waseem, M. (2006). Constitutionalism in Pakistan: The Changing Patterns of Dyarchy. *Diogenes*, 53(4), 102–115.
- Waseem, Mohammad, & Hayat, S. (1997). Political Development and Conflict Resolution in Pakistan [with Comments]. *The Pakistan Development Review*, 36(4), 715–742.
- Weiss, A. M. (2003). Interpreting Islam and Women's Rights: Implementing CEDAW in Pakistan. *International Sociology*, 18(3), 581–601.
- Weiss, A. M. (2012). *Moving Forward with the Legal Empowerment of Women in Pakistan*. United States Institute of Peace.
- Williams, R. (2013, June 30). Teenage girls shot in Pakistan. *The Independent UK*.
- Wilson, A. (2006). *Dreams, Questions, Struggles: South Asian Women in Britain*. Pluto Press.
- Women and Violence: How Organized Religions Support Violence Against Women. (1998, Winter). *WIN News*, 24(1), 45.
- Women and Violence: Crime or Custom? Violence Against Women in Pakistan. (2000, Winter). *WIN News*, 26(1), 38.

- Worden, S., Ross, S., Parker, W., Azar, S. (2011). *Analyzing Post-Conflict Justice and Islamic Law*. United States Institute of Peace Brief. (87)
- Yefet, K. C. (2009, August). What's the Constitution Got to Do with It? Regulating Marriage in Pakistan. *Duke Journal of Gender Law & Policy*, 16(2), 347–377.
- Zakar, R., Zakar, M. Z., & Kramer, A. (2012). Voices of Strength and Struggle: Women's Coping Strategies Against Spousal Violence in Pakistan. *Journal of Interpersonal Violence*, 27(16), 3268–3298.
- Zakaria, R. (2012). Pakistani Conundrum: Public, Private, and Female. *Dissent*, 59(3), 4–10.
- Zaman, M. Q. (2012). Denouncing Violence: The Ambiguities of a Discourse. *Modern Islamic Thought in a Radical Age*. Cambridge University Press.
- Zaman, M. Q. (2012). Women, Law, and Society. *Modern Islamic Thought in a Radical Age*. Cambridge University Press.
- Zartner, D. (2012). The Culture of Law: Understanding the Influence of Legal Tradition on Transitional Justice in Post-Conflict Societies. *Indiana International & Comparative Law Review*, 22(2), 297–315.
- Zia, A. S. (2009). Faith-based Politics, Enlightened Moderation and the Pakistani Women's Movement. *Journal of International Women's Studies*, 11(1), 225–245.
- Zia, A. S. (2009). The reinvention of feminism in Pakistan. *Feminist Review*, (91), 29–46.
- Zia, A. S. (1994). *Women, Islamisation and Justice*. Quezon City, Philippines: Isis International.

Biography

Musarrat Kazepis was born in Damascus, Syria, but is of Pakistani heritage. She was raised in Washington, D.C. in the United States. Her interest in Conflict Analysis and Resolution stems from her extensive exposure to a multitude of cultures and traditions. Much like many South Asian families, she grew up in a joint-family system, growing up in the same household with many of her cousins, and their families. However, being a first-generation American, she also had to walk the line between two cultures, and was inevitably pulled one way or the other. This led her into a journey of learning how to negotiate her decisions; often between herself and the desires of her family. The journey of identity negotiation sparked her interest in Identity, Culture, and Conflict, with a focus on notions such as kinship and family honor. Musarrat graduated with a Bachelor of Arts degree in Global Affairs from George Mason University in 2010.