

REFUGEE WOMEN AND DOMESTIC VIOLENCE: COUNTRY STUDIES

A report by

Refugee Women's Resource Project

Asylum Aid

**September 2001
Updated March 2002**

Acknowledgements

The March 2002 edition of the report was written by Clare Palmer and Kathryn Ramsay, researchers at Asylum Aid's Refugee Women's Resource Project (RWRP), with the assistance of other Asylum Aid staff and members of the RWRP Advisory Committee. It is an extension of the previous report of September 2001, written by Helen Smith and Clare Palmer.

We would particularly like to thank Elizabeth Dubicka, Christina Gordon, Nyawo Jones, Alasdair Mackenzie, Monireh Moftizadeh and Carmen Rojas-Jaimes for their support and assistance. We also gratefully acknowledge the help of Vanessa Melendez-Lucas, Hayley Cooper and Lita Blechman.

We are very grateful to the following for providing detailed information and commentary on the reports: Cassandra Balchin (Women Living Under Muslim Laws); Sara Hossain (Interights); Professor Haideh Moghissi; Sophia Woodman (Human Rights in China); Sohail Warraich; Danish Zuberi, Alexis Takizala, Viviane Rumbu Mayand, Erik Kennes (Researcher, Africa Institute-ASDOC, Belgium), and Tzili Mor (Fellowship Attorney, International Program, Center for Reproductive Law & Policy).

The RWRP is funded by the Community Fund, the Joseph Rowntree Charitable Trust, Oxfam, Womankind Worldwide and Servite Sisters Charitable Trust Fund. We gratefully acknowledge the support of them all.

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Please note: we have highlighted in bold sections of the text which we consider may be particularly relevant for ease of reference.

Refugee Women's Resource Project March 2002

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Refugee Women's Resource Project
Asylum Aid, 28 Commercial Street, London E1 6LS

Tel: 020 7377 5123 Fax: 020 7247 7789
Email: rwrp@asylumaid.org.uk

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ISLAMIC REPUBLIC OF PAKISTAN

1. Introduction

1.1 Contemporary developments in women's rights

The 1973 Constitution of the Islamic Republic of Pakistan provides that all citizens are equal, and prohibits discrimination according to gender.¹

Prior to the Constitution, the first significant legislation to offer protection for women's rights in the realm of the family was the Muslim Family Laws Ordinance of 1961, which regulated marriage, divorce and polygamy, although only within Muslim marriages. During the 1970s and the rule of Zulfikar Ali Bhutto (1971-1977), apart from the Constitution, few legal advances were made for women's legal rights, although women did experience some improvement in their political, economic and social status. Weiss has argued that many current barriers to women's rights originate from the rule of General Zia ul-Haq who came to power in the 1979 military coup, yet many of the problems facing women certainly pre-existed Zia, and have also been perpetrated by successive regimes.² Zia's impact was however, significant; his intention that Pakistan's legal system should reflect the roots of Islam was the driving force behind major shifts in policy, and the groundwork for future legislative reforms that restricted and impaired women's legal and economic status, and perpetuated widespread social discrimination against them. Zia's aims essentially reflected his political motives, contradicting both Islamic requirements to protect the rights of Muslim women, as well as women's rights enshrined by the Constitution.³

"The fact that women's status became a lightning rod in Zia's political strategy came as no surprise. Women had historically been used to stabilize the unsteady balance between religion and politics in Pakistan. Within months of taking power, Zia introduced a series of legal and social changes that reversed many of the legal advances for women of the prior thirty years... Women's few hard-won legal gains were quickly curtailed".^[4]

... "Zia suspended all fundamental rights guaranteed in the Constitution that had been adopted in 1973, including the right to be free of discrimination on the basis of sex. He then introduced a series of laws that gave legal sanction to women's subordinate status, including... the

¹ See Appendix A: Country Information and Policy Unit (2001) *Pakistan Assessment*, Home Office; Weiss, A. (1994) 'The consequences of state policies for women in Pakistan' in Weiner, M & Banuazizi, A (eds.) *The Politics of Social Transformation in Afghanistan, Iran, and Pakistan*, Syracuse, Syracuse University Press

² Weiss, A. (1994), op.cit., p.416.

³ See Weiss, A. (1994) op. cit., pp.413-7; p.438

⁴ This quote is misleading: the only significant legal gain prior to this time was The Muslim Family Laws Ordinance 1961, which remained unaffected under Zia.

Qanun-e-Shahadat Order (Law of Evidence Order), which relegates women to inferior legal status and, in some circumstances, renders the testimony of a woman equal to only half the weight of a man's. Zia also proposed laws regarding Qisas and Diyat, Islamic penal laws governing compensation and retribution in crimes involving bodily injury.^[5]

*...“Zia reinforced the legal strictures he imposed on women with a series of informal regulations and unwritten policies designed to curtail women's personal liberty, visibility, and participation in public life”.*⁶

Perhaps the most significant legislative change introduced under Zia was the 1979 **Hudood Ordinances**, which replaced Pakistan's Penal Code, and aimed to reflect Islamic concerns. These Ordinances, in particular the *Zina (Enforcement of Hudood) Ordinance*, have been extremely detrimental to women's rights, particularly affecting how women, (especially married women), who have been subjected to sexual crimes, access protection and justice. This is addressed in greater depth under Section 3.2

Proposals for policies that discriminated against women were also suggested under Zia. Reiterating that Zia cannot be held solely responsible for an atmosphere in which women's human rights abuses are condoned, Hamza Alavi summarises the effects of these proposed changes, and details some of the campaigns against women that were launched in the name of religion:

“It must be said that degradation of women in Pakistan is nothing new and is not the result solely of the so-called 'Islamisation ' policies of the Zia dictatorship. But it reached abysmally low levels in the wake of its legislation and policies.

“In the name of fighting against 'obscenity' and 'pornography' the Zia government set in motion a mass campaign against women seen in public. An atmosphere was generated in the country in which attacks against women became commonplace, legitimated in the name of religion. Such campaigns against women are led by mullahs, the custodians of ignorance, and by criminals and mischief-makers in general, who all seem to derive a kind of perverted psychic pleasure from molesting women under the pretext of enforcing morality. A spate of directives were issued by the Zia regime ordering female government employees, women teachers and girls at schools and colleges to wear 'Islamic' dress and the chaddar or burqa. As a direct result of such campaigns against women who are depicted as a threat

⁵ The Qisas (retribution) and Diyat (compensation) Ordinance was actually not ordered by the Supreme Court to become an Ordinance until 1989 under Benazir Bhutto. See Shah, H. (1998) 'Reflections on the Law of Qisas and Diyat' in Shaheed, F., Warraich, S., Balchin, C., Gazdar., *Shaping Women's Lives: Laws, Practices & Strategies in Pakistan*, Lahore, Shirkat Gah, pp.253-267

⁶ Human Rights Watch (1999) *Crime or Custom? Violence Against Women in Pakistan*, USA, Human Rights Watch

to male virtue, the morality of Pakistani males sunk to new depths. They do not seem to be able to resist the temptation to interfere with and manhandle women, posing as guardians of public virtue. Violence against women has been on the increase behind the cloak of 'Islamisation'. The most obscene examples of such hypocrisy are numerous, widely publicised, incidents where women's noses have been cut off or they have been disrobed and paraded in the nude in public to 'teach them a lesson'. As a result of public outrage aroused by such incidents, the Zia regime announced punishments for such actions. But his so-called 'Islamic' regime did little to track down the culprits and punish them. Nor did it engage in any public campaign to denounce such actions and arouse public opinion against those who perpetrate them. Such incidents and attacks on women still continue".⁷

These policy proposals substantially shifted the nature of the debate surrounding women's rights and roles within society, which:

"effectively reduced women's power and participation in the larger society.... The Zia government idealized the image of women faithful to chador aur char diwari – remaining veiled and within the confines of the four walls of one's home – although in reality women were becoming increasingly integrated into the public realm"⁸

Hilda Saeed & Ayesha Khan add:

"The image of the self-effacing, self-sacrificing woman, an adjunct to her man and confined to her biological role, was constantly promoted in the state media during the Zia regime. Coercion and disempowerment of women spread to other institutions of society"⁹

To summarize:

"Zia's Islamization campaign had the effect not only of legitimating the existing subordination of women in the eyes of the state but also of intensifying that oppression. Women who deviated from prescribed social norms thus faced not only social censure but also criminal penalties. This development gave the more powerful and legally favored members of Pakistani society – men – a punitive sanction to hang over the heads of women and, by extension, their families. This

⁷ Alavi, Hamza (1991) 'Pakistani Women in a Changing Society' in Hastings, Donnan & Prina Werbner (eds.) *Economy and Culture in Pakistan*, London; available at:

<http://ourworld.compuserve.com/homepages/sangat/pakwomen.htm>

⁸ Weiss (1994), op. cit., p.417

⁹ Saeed, H & Khan, A (2000) 'Legalised Cruelty: Anti-women laws in Pakistan', in Mirsky, J & Radlett, M (eds.) *No Paradise Yet: The World's Women Face the New Century*, London, PANOS / Zed, p.127

situation was amply suited to the martial law government's need to exert and maintain social control".¹⁰

Benazir Bhutto's election as Prime Minister in 1988 marked the end of Zia's rule, and initially appeared a turning point for the status of Pakistani women. The Women's Division, somewhat paradoxically established under Zia in order to identify discriminatory laws, was given the status of a full Ministry, and an unprecedented number of women were appointed to cabinet and ministerial posts. By 1989, the Division had recommended laws for amendment, yet Bhutto's insufficient majority meant that repealing those laws was impossible, and no legal amendments were made to improve the position of women, either under Bhutto's first period of office until 1990, or her second, from 1993-1996.¹¹ The governments of Nawaz Sharif (1990-1993 and 1997-1999) were damaging to women's human rights. Human Rights Watch state that Sharif's

"actions during both periods at the helm indicate a political strategy of Islamization akin to his mentor's [General Zia], with detrimental consequences for women. When he first came to power in November 1990, Sharif promised to adopt Islamic law as the supreme law of Pakistan, albeit within a constitutional framework, and in April 1991 he introduced legislation to that effect. Furthermore, in 1997 Sharif and his supporters in parliament enacted the Qisas and Diyat Ordinance-which institutes shari`a-based changes in Pakistan's criminal law-into law, making it a permanent part of the Pakistan Penal Code rather than an ordinance subject to periodic renewal.

... "Nawaz Sharif's continuing Islamization efforts have not only reinforced the legitimacy of Zia ul-Haq's discriminatory Islamic laws; they have in effect also bestowed greater discretion and authority on judges to give legal weight, by invoking Islamic precedents and references at random, to biased assumptions about women in a variety of civil and criminal cases".¹²

To summarize, the impact of this long-term legal and institutional discrimination on the attitudes held by wider society should not be underestimated. Both Amnesty International and the independent Human Rights Commission of Pakistan (HRCP) have argued that discrimination was, at the end of the 1990s, on the increase:

... the human rights of women continued to be routinely ignored and violated. Discrimination against women in law and practice persisted; violence against women, in custody, in the family and in the wider community was believed to have increased; and

¹⁰ Asia Watch & the Women's Rights Project (1993) *Double Jeopardy: Police Abuse of Women in Pakistan*, New York, Human Rights Watch, p.36

¹¹ See Weiss (1994), op. cit.; Saeed & Khan (2000), op. cit.

¹² Human Rights Watch (1999), op. cit.

institutions intended to protect women, police and the judiciary, continued to fail them”¹³

The Human Rights Commission of Pakistan have attributed some of this to an increase in religious fanaticism, but summarised the 1990s as a decade which:

*“fought bitterly against any assertion of women’s rights. It sanctified women’s subordination and battled in courts and legislatures – often successfully – in support of customs like honor killing and the parents’ coercion of their daughters in the choice of their spouses. Its undermining the status of women contributed to the increase of violence against them. The incidence of rape was now in the region of one every two hours”*¹⁴

1.2 Human rights in Pakistan today

In 1999, the military seized political power in Pakistan, ousting Prime Minister Nawaz Sharif, leader of the Pakistan Muslim League. General Pervez Musharraf has since launched a Human Rights campaign. Although critics have argued that what lies behind the campaign is a desire to improve international relations rather than a genuine commitment to human rights, some positive action appears to have been taken:

“In April the Government organized a conference on human rights and pledged to take “small but meaningful steps” including: an 8-month public relations campaign on human rights themes; requiring deputy commissioners to move female burn victims to hospitals (see Section 5); banning the use of fetters in prisons and jails (see Section 1.c.); ordering deputy commissioners to review all blasphemy cases prior to the filing of a FIR (see Section 1.d.); creating a commission for police reforms; releasing 20,000 prisoners from jail; calling for a Commission on the Status of Women; and changing the law so that women married to foreign husbands can claim citizenship for their children. The Government subsequently took no apparent steps to organize the public relations campaign and backtracked on having deputy commissioners review blasphemy cases (see Sections 1.e. and 2.c.). The Government made limited progress in the following areas: the Lahore High Court ordered local jail authorities to remove all fetters (see Section 1.d.); the Government reportedly released 47,000 prisoners who were convicted of petty crimes and that already had served their prison terms; the Government inaugurated a National Commission on the Status of Women on September 1; and in late April President Tarar issued an amendment ordinance to the citizenship law

¹³ Amnesty International (1998) *Pakistan: No Progress on Women’s Rights*

¹⁴ Human Rights Commission of Pakistan (2000) ‘The Legacy of the Nineties’ in *Human Rights Commission of Pakistan Annual Report: State of Human Rights in 1999*, available at: www.hrcp.cjb.net/

*to enable women married to foreigners to claim citizenship for their children”*¹⁵

1.2.1 Women

Although Musharraf’s campaign specifically addresses women’s rights, violence, ‘honour’ crimes, and other abuses towards women remain widespread, and often condoned within a context of institutional and social discrimination.¹⁶ The most recent U.K. Home Office Country Assessment summarised that despite Constitutional clauses that ensure equality and prohibit discrimination, the daily reality is far from this.¹⁷

Human Rights abuses against women are not only perpetrated within intimate relationships, but also by members of community and wider society:

*“Significant numbers of women were subjected to violence, abuse, rape, and other forms of degradation by spouses and members of society. The Government publicly criticized the practice of "honor killings" but failed to take corrective steps, and such killings continued throughout the country. There was considerable discrimination against women, and traditional social and legal constraints kept women in a subordinate position in society. Violence against children, as well as child abuse, and prostitution, remained serious problems”.*¹⁸

1.2.2 Non-governmental organisations (NGOs)

Change in social and institutional attitudes and practice can be slow. Encouraging the work of NGOs involved in Human Rights activity should facilitate the transition towards greater rights for women. Although there is considerable evidence that some of the repression and harassment of non-governmental and women’s human rights organisations that occurred under Nawaz Sharif has continued during the current Musharraf regime, there have been *some* advances towards greater freedom of speech, and encouraging the activities of NGOs. However, caution should be exercised: Musharraf’s motives are questionable (as above), and it is evident that the oppression of political opposition has also continued. The mixed messages this sends out *might* feasibly result in human rights advocates adopting a compromised position:

“The press was able to publish relatively freely; however, several journalists practiced self-censorship, especially on sensitive issues related to the military. There was not a systematic harassment campaign against newspapers or commentators critical of the

¹⁵ U.S. Department of State (2001) *Country Reports on Human Rights Practices – 2000*, Washington, Bureau of Democracy, Human Rights, and Labor

¹⁶ Constable, P (May 8th 2000) ‘In Pakistan, Women Pay The Price of ‘Honor’; Maiming, Killing Accepted Response to Perceived Sins’, *The Washington Post*, Washington; McCarthy, R (January 29th 2001) ‘I was sold to a man... is this Islam?’, *The Guardian*, UK

¹⁷ Country Information and Policy Unit (2001), op.cit.

¹⁸ U.S. Department of State (2001), op. cit.

Government during the year; however, the broadcast media remain a closely controlled government monopoly. The Government restricted freedom of assembly. During the year, the Government sporadically permitted several large antigovernment demonstrations; however, it prevented other protests and arrested organizers, reportedly for security reasons. In March the Government instituted a country-wide ban on strikes, processions, and outdoor political demonstrations. The Government maintained some limits on freedom of association.

...“In contrast to the Sharif Government, the Musharraf Government did not attempt to exercise direct control over views expressed in the print media. Newspaper editorials and commentators are increasingly critical of the Government; however, direct criticism of the military is rare. Investigative journalism is rare; instead the press acts freely to publish charges and countercharges by named and unnamed parties and individuals representing competing political and social interests”.

Further,

“There are several domestic human rights organizations, and new human rights and legal aid groups continue to form. These groups generally are free to operate without government restriction; however, they are required to be licensed. Human rights groups report that they generally have good access to police stations and prisons. The Government has provided protection to human rights lawyers defending accused blasphemers following threats and attacks on the lawyers by religious extremists. These threats became more explicit and public in 1998, with signed graffiti calling for the killing of well-known human rights activist Asma Jahangir.

*“The Musharraf Government made some attempts to ease some of the previous government's restrictions on NGO's; the Sharif Government revoked the licenses of almost 2,000 NGO's in 1999. General Musharraf appointed several persons with prominent NGO backgrounds to his Cabinet and many NGO workers reported a smoother working relationship with the Government during the period covered by this report. The new government in Punjab under General Musharraf lifted the previous ban on NGO registration”.*¹⁹

1.3 Pakistan and international legal instruments

Pakistan ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women in 1996, although specifying reservations where The Convention may come into conflict with either Pakistan's Constitution, or Shar'ia law.²⁰ Pakistan has yet to submit a report to the CEDAW Committee.

Pakistan has also ratified the Convention of the Political Rights of Women, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and has signed the International

¹⁹ U.S. Department of State (2001), op. cit.; See also Country Information & Policy Unit (April 2001), op. cit.

²⁰ Country Information & Policy Unit (2001), op. cit.

Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC).²¹

²¹ Country Information & Policy Unit (2001), op. cit; Office of the United Nations High Commissioner for Human Rights (2001) *Status of Ratifications of the Principal International Human Rights Treaties as of 18 May 2001*, available at www.unhcr.ch

2. Domestic violence

2.1 The extent of domestic violence

In 1998, Amnesty International reported that:

“... the human rights of women continued to be routinely ignored and violated. Discrimination against women in law and practice persisted; violence against women, in custody, in the family and in the wider community was believed to have increased; and institutions intended to protect women, police and the judiciary, continued to fail them”²²

Considerable reference is made to domestic violence in the context of a society that condones both discrimination against women, and serious human rights abuses including violence and murder. The shortcomings in legislation available for the protection of women, and the realities of women's access to such protection and justice in domestic violence cases is highlighted in Section 3. These failures have led to a situation where low levels of conviction (particularly under the Qisas and Diyat law) enable violence against women to occur in an atmosphere of impunity. Furthermore, institutions and authorities that should be responsible for protecting women do not only disregard, but are frequently guilty of perpetrating these abuses. Any chance of women's human rights being protected by the State is thus gravely undermined.²³

The main Human Rights organisations and Government reports on Human Rights not only provide substantial details of the extent of the problem, but also reflect the social and institutional context.

The U.S. Department of State Report for 2000 indicates that domestic violence is prevalent and often extreme:

“Domestic violence is a widespread and serious problem. Human rights groups estimate that anywhere from 70 to 90 percent of women are victims of domestic violence at the hands of their husbands, in-laws, or other relatives... The Parliamentary Commission of Inquiry for Women reported that violence against women "has been described as the most pervasive violation of human rights" in the country, and it called for legislation clearly stating that domestic violence against women is a criminal offense. Husbands are known to kill their wives even for trivial offenses. In 1999 the Pakistan Peace Coalition surveyed 1,000 women in 10 communities in rural Punjab; 82 percent of the respondents reported that they feared violence from their husbands over trivial matters.”

²² Amnesty International (1998) *Pakistan: No Progress on Women's Rights*, Amnesty International, Report ASA 33/13/98

²³ See for example, Shaheed, F (1994) 'The Experience in Pakistan' in Davies, M (ed.) *Women & Violence: Realities and Responses Worldwide*, London, Zed Books, p. 215

“Significant numbers of women were subjected to violence, abuse, rape, and other forms of degradation by spouses and members of society. The Government publicly criticized the practice of “honor killings” but failed to take corrective steps, and such killings continued throughout the country. There was considerable discrimination against women, and traditional social and legal constraints kept women in a subordinate position in society. Violence against children, as well as child abuse, and prostitution, remained serious problems.

“The Shirkat Gah Women’s Resource Center in Karachi published a report in 1999 that summarized reports in the English language press about violence against women between 1993 and 1998. Even though it limited itself to reports of violence by close male relatives, Shirkat Gah documented 535 women who were killed or who committed suicide during the period; 95 of these women were killed or committed suicide after they expressed interest in marrying a man of their own choice.

“During the year, the press reported on hundreds of incidents of violence against women, and drew attention to the killings of married women by relatives over dowry or other family-related disputes. Most of the victims were burned to death, allegedly in kitchen stove accidents; some women reportedly were burned with acid. During the year, 593 burn cases were recorded in Lahore newspapers; cases were registered in 74 percent but suspects were arrested in only 10 percent”²⁴

The U.S. report for 1999 referred to a Human Rights Commission of Pakistan (HRCP) study documenting serious incidences of violence against women:

“In a survey of newspaper reports in Lahore from January to November, the Human Rights Commission of Pakistan (HRCP) found a total of 675 killings of women and 272 burn cases involving women reported”²⁵

The Human Rights Watch Report on violence against women in Pakistan makes particular reference to domestic violence:

“The most endemic form of violence faced by women is violence in the home. For 1997, HRCP [Human Rights Commission of Pakistan] reported that ‘[d]omestic violence remained a pervasive phenomenon. The supremacy of the male and subordination of the female assumed to be part of the culture and even to have sanction of the religion made violence by one against the other in a variety of its forms an accepted and pervasive feature of domestic life’.

²⁴ U.S. Department of State (2001), op. cit. It should be noted that dowry is not common practice in Pakistan, and that stove burnings are essentially limited to one part of Punjab

²⁵ United States Department of State (2000) “1999 Country Reports on Human Rights Practices”, Bureau of Democracy, Human Rights, and Labor

...“According to HRCP, [T]he extreme forms it [domestic violence] took included driving a woman to suicide or engineering an ‘accident’ (frequently the bursting of a kitchen stove) to cause her death . . . usually . . . when the husband, often in collaboration with his side of the family, felt that the dower or other gifts he had expected from his in-laws in consequence of the marriage were not forthcoming, or/and he wanted to marry again, or he expected an inheritance from the death of his wife.’ During 1997, the Lahore press reported an average of more than four local cases of women being burnt weekly, three of the four fatally. Police follow-up on these cases was negligible, with only six suspects taken into custody out of the 215 cases reported in Lahore newspapers during the year. In 1997, there was not a single conviction in a “stove-death” case in the country. The Lahore press also reported 265 homicides against women in the local area resulting from other forms of intrafamily violence. In the majority of cases, husbands and in-laws were responsible for the murders, while in other cases the perpetrators were brothers and fathers”.²⁶

The Human Rights Commission of Pakistan also stated that the deterioration in the position of women in Pakistan throughout the 1990s resulted in an increase of violence against them.²⁷ Their most recent report stated that “Five women were killed every day of the year. In addition, more than two were burnt every three days in domestic violence”.²⁸

2.2 Rape and sexual violence

Several of the above extracts highlight the problem of sexual violence against women, yet the legal framework means that it needs to be considered separately since recent amendments to Pakistan’s legislation (see below), which deal with rape mean that in effect it is interpreted by both perpetrators and victims as a crime that goes unpunished:

*“Sexual assault is also alarmingly common in Pakistan. HRCP estimated that in 1997 at least eight women, more than half of them minors, were raped every twenty-four hours nationwide. The high incidence of sexual assault in the country is partly fostered by the societal subordination of women to men, by the custom of avenging oneself upon one’s enemies by raping their women, who are seen as repositories of family honor, and by the impunity with which these crimes are carried out”.*²⁹

²⁶ Human Rights Watch (1999), op. cit. “Dower” should in fact read “dowry”; The Home Office noted in 2000 that “The most common form of intra-family murder is the killing of a female member by the male head of the family”: Country Information and Policy Unit (2000) *Pakistan Assessment*, London, Home Office

²⁷ Human Rights Commission of Pakistan (2000), op. cit.

²⁸ Human Rights Commission of Pakistan (2001) *State of Human Rights in 2000: Report Highlights*, available at <http://www.dchd.org/h-r-hl.htm>

²⁹ Human Rights Watch (1999), op. cit.

Further evidence from the U.S. Department of State:

*“Rape is an extensive problem. The HRCP estimates that at least eight women, five of them minors, are raped every day, and more than two-thirds of those are gang-raped. In 1997 the National Assembly passed a law that provided for the death penalty for persons convicted of gang rape. No executions have been carried out under this law and conviction rates remain low because rape, and gang rape in particular, is commonly used by landlords and criminal bosses to humiliate and terrorize local residents. It is estimated that less than one-third of all rapes are reported to the police.”*³⁰

The Human Rights Commission of Pakistan state that in 2000 “a rape occurred every two hours. One per every 12,500 women suffered rape”.³¹

2.3 Emotional and psychological violence

No evidence was found specifically relating to the extent of emotional and psychological violence perpetrated independently of other forms of domestic violence.

2.4 “Honour” crimes

An extreme abuse of women’s rights is ‘honour killing’ which, according to the Human Rights Commission of Pakistan, was on the increase in 2000.³² This is summarised by Saeed & Khan:

*“A woman is considered the symbol of her family’s honour. Any deviation from social norms or tribal laws can result in her death. Karo kari (not an Islamic practice) is a frightening form of such killing, which takes the life of one woman a month in the provinces of Sindh and Balochistan. The expression refers to the ‘blackening’ of one person by another: a man who has been dishonoured – whose name has been ‘blackened’ – has the right to kill both his wife and her suspected paramour”*³³

The prevalence of honour killing has been reported extensively, for instance by The U.S. Department of State:

“There are numerous reports of women killed or mutilated by male relatives who suspect them of adultery. Few such cases are investigated seriously and those who are arrested often are acquitted

³⁰ U.S. Department of State (2001), op. cit.

³¹ Human Rights Commission of Pakistan (2001), op. cit.

³² Human Rights Commission of Pakistan (2001), op. cit. Although statistics quoted in various sources appear contradictory, its occurrence and prevalence is undisputed; Honour Killing is perpetrated throughout Pakistan regardless of religion and ethnicity.

³³ Saeed & Khan (2000), op. cit., p.128. Honour Killing is only referred to as *karo kari* in specific areas

on the grounds that they were "provoked," or for a lack of witnesses. While the tradition of killing those suspected of illicit sexual relations in so-called "honor killings", in order to restore tribal or family honor, applies equally to offending men and women, women are far more likely to be killed than men. The Progressive Women's Organization, a human rights NGO, estimated that as many as 300 women are killed each year by their husbands or family, mostly as a result of "honor killings," known as "karo/kari" in Sindh. The problem is believed to be even more extensive in rural Sindh. "Karo/kari" (or adulterer/ adulteress) killings are common in rural Sindh and Baluchistan. The HRCP reported an average of 30 killings per month for the first half of the year. Tribal custom among the Baluch and the Pathans also sanctions such killings. The Commission of Inquiry for Women has rejected the concept of "honor" as a mitigating circumstance in a murder case and recommended that such killings be treated as simple murder. Women who are the victims of rape may become the victims of their families' vengeance against the victims' "defilement.""³⁴

Although the issue of Honour Killing is not the focus of this study, it requires mention since both its practice and the failure of successive Governments and societies to prevent and it and bring perpetrators to justice represents perhaps the most extreme outcome of a tolerated hatred towards women, where the value of women's lives is effectively subjugated to male pride. It thus enables further understanding of the context within which violence against women occurs.

It should be noted that most perpetrators of honour killing are women's **brothers**, followed by their husbands.³⁵

³⁴ U.S. Department of State (2001), op.cit. This report also gives evidence that honour crimes are not properly investigated, and further that perpetrators are not brought to justice. See also U.K. Home Office Assessment (2001) in Appendix A of this report.

³⁵ Human Rights Commission of Pakistan (2001), op. cit.

3.Domestic violence and the law

Two aspects of the law in Pakistan need to be considered for the purposes of this research, the first concerning domestic violence, and the second regarding sexual assault and rape.

3.1 The law and physical violence

There is no specific domestic violence legislation, rather it is generally dealt with by The *Qisas* (retribution) and *Diyat* (compensation) law which governs bodily harm and murder: ³⁶

“most acts of domestic violence are encompassed by the Qisas and Diyat Ordinance of 1990, a body of Islamic criminal laws dealing with murder, attempted murder, and the crime of causing bodily "hurt" (both intentional and unintentional)”. ³⁷

However, this law is highly problematic in that it privatises these crimes by giving either the ‘victim’ or her ‘*wali*’ (either her heir or her guardian, who is in most cases her father), the option of pardoning the perpetrator:

*“If a domestic violence case does come before a criminal court, it may be punished either by qisas (retribution) or diyat (compensation) for the benefit of the victim or his or her legal heirs. In qisas and diyat crimes, **the victim or heir has the right to determine whether to exact retribution or compensation or to pardon the accused**...If the victim or heir chooses to waive qisas, or qisas is judicially held to be inapplicable, an offender is subject to tazir or discretionary punishment in the form of imprisonment... In these instances, judges not only have the power to determine the extent of punishment but also to decide whether to punish the offender at all.*

“Commentators have noted that the qisas and diyat laws have, in many respects, converted serious crimes, including murder and aggravated assault, into crimes against the individual rather than the state” ³⁸

The Qisas and Diyat Law is inapplicable where women have children by the perpetrator, as is true of many domestic violence cases. It is then the responsibility of the judge to decide what punishment, if any, is delivered i.e. the *tazir* or discretionary sentencing cited above:

³⁶ Coomaraswamy, Radhika (1999) *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/1999/68, Geneva, Switzerland, Office of the United Nations High Commissioner for Human Rights; Human Rights Watch (1999) op. cit.; U.S. Department of State (2001) op. cit.

³⁷ Human Rights Watch (1999), op. cit., p.7

³⁸ Human Rights Watch (1999), op. cit

*“Qisas and Diyat cannot be invoked where the victim's heir is a direct lineal descendant of the perpetrator, such as when a woman is killed by her husband”.*³⁹

Human Rights Watch:

*“Furthermore, murder (Qatl-e-Amd) is not liable to qisas "when any wali [heir] of the victim is a direct descendant, how low-so-ever, of the offender." Thus, cases in which a woman has been murdered by her husband would be exempt from the qisas or maximum (i.e., capital) punishment for the murder if the couple in question have children, since in that case, a child or heir of the victim would also be a direct descendant of the offender”*⁴⁰

Whereas this might initially be expected to offer some protection to a women by removing from her the option of taking responsibility for pardoning the perpetrator, **until recently** the law stated that *tazir* could not be such a ‘maximum’ punishment.

3.2 The law and sexual violence

The second aspect of legislation concerns rape. In 1979, Pakistan's Penal Code was replaced by the *Hudood Ordinances*, as part of General Zia's drive to make the legal and penal system reflect Islamic stricture. As discussed in the introduction to this report, Zia's campaign represented essentially a political means by which to maintain power, rather than any real concern that legislation reflected Islamic principles.

*“The Hudood Ordinances, promulgated by the central martial law government in 1979, aimed to make the Penal Code more Islamic. These ordinances provide for harsh punishments for violations of Shari'a (Islamic law), including death by stoning for unlawful sexual relations and amputation for other crimes (see Section 1.c.). These so-called Hadd punishments require a high standard of evidence. In effect, four adult Muslim men of good character must witness an act for a Hadd punishment to apply. In 20 years, not a single Hadd punishment has been carried out. However, on the basis of lesser evidence, ordinary punishments such as jail terms or fines are imposed. From 1979 to 1995, over 1 million Hudood cases were filed, and 300,000 were heard by the courts. More recent statistics are unavailable. The laws are applied to Muslims and non-Muslims alike.”*⁴¹

The law dealing with rape was modified as part of this revision, and rape is now addressed by the **Zina (Enforcement of Hudood) Ordinance** of 1979,

³⁹ U.S. Department of State (2000) op. cit.

⁴⁰ Human Rights Watch (1999), op. cit.

⁴¹ U.S. Department of State (2001) op. cit.

which punishes all forms of sex outside of marriage, including adultery, fornication and rape, making such actions crimes against the state. Human Rights Watch notes the impact of the Zina Ordinance on women who have suffered sexual crimes:

“The Zina Ordinance has had a profound effect on the rights of women, as it broadens the category of criminal sexual activity and redefines how such crimes will be handled by the legal system. The prohibited sexual activities, including rape (zina bil jabr), became religious offenses, subject to different standards of evidence and punishment and the appellate jurisdiction of Islamic higher courts.

*“Pakistan's previous rape laws, repealed by the Zina Ordinance, had defined rape as compulsory sexual intercourse. The new law added to this definition that **both a man and a woman may be guilty of rape** and narrowed the circumstances in which rape can be said to have occurred”.*⁴²

The *Zina Ordinance* also ruled that rape can **only** occur outside of matrimony, i.e. there is **no** recognition of marital rape. This, together with the fact that the Ordinance addresses sexual assault and rape under the same law as adultery and fornication, has led to a situation where these acts are often confused by police and the legal system, and women reporting rape or sexual assault have found themselves charged with *zina* offences such as adultery and fornication. This is detailed under Section 4 of this report.

Furthermore, there are strict evidence criteria that must be fulfilled to ensure punishment under this Ordinance i.e. either that the person accused confesses **or** that four adult Muslim males are willing to testify that rape occurred. These criteria have resulted in little protection for women, and little justice, as is again addressed by part 4.⁴³

3.3 Emotional and psychological violence

This is not recognised explicitly by legislation. Cassandra Balchin notes that although the Penal Code does provide punishment for acts such as

“wrongful constraint, wrongful confinement... criminal intimidation... [and] to act in such a way as to invoke ‘divine displeasure’... getting relief under these provisions in matters of domestic violence is extremely difficult”.

This is particularly true when such violence is perpetrated within marriage or the family:

⁴² Human Rights Watch (1999), op. cit., p.4; this is misleading because it states these offences are religious rather than criminal. They are criminal offences, but the way in which the law was changed was supposed to reflect religious concerns.

⁴³ Weiss (1994), op. cit., p.418; See also Saeed & Khan (2000), op. cit.

*“By virtue of marriage, confinement of a woman by her husband is not considered illegal. Similarly, fathers and brothers are taken to be their daughters’ and sisters’ guardians and not liable to be prosecuted for illegal confinement”.*⁴⁴

⁴⁴ Balchin, C (1998) ‘The Great Obstacle Race: Seeking justice for victims of domestic violence’, in *SHE*, Karachi, Zuhra Karim, pp.80-81; Balchin refers however to a Lahore High Court ruling that such confinement or restraint is clearly illegal

4. The reality of seeking protection

4.1 Introduction

Even when women do either manage to escape from the violent situation or overcome their fears to seek support from external agencies, it is evident that they face serious problems securing the protection that should be available.

*“Police and judges tend to see domestic violence as a family problem, and are reluctant to take action in such cases. Thus, it is difficult for women to obtain relief from the justice system in cases of domestic violence.”*⁴⁵

There is extensive evidence that women are unable to gain protection from a wide range of authorities when they suffer domestic violence, and in many cases may suffer further abuse at the hands of these authorities. Human Rights Watch summarise some of the State agents' responses to violence that they encountered throughout the course of their research:

*“Through interviews with human rights lawyers and activists, women victims of violence, police officials, prosecutors, judges, and medicolegal doctors, Human Rights Watch found that bias against female victims of rape and domestic violence is not confined to the letter and interpretation of the law. Rather, it pervades all facets of the Pakistani criminal justice system. From the initial lodging of complaints until the final resolution of cases, women seeking redress for sexual and other assault regularly confront law enforcement institutions and officials with hostile, or at best indifferent, attitudes to their complaints. Police, prosecutors, judges, and doctors denied that sexual and domestic violence were critical problems for women and asserted that the occurrence of such crimes was precluded by Pakistani social and religious norms. Officials even failed consistently to acknowledge the criminal status of domestic violence, instead dismissing it as a “family matter” not serious enough to be handled by the criminal justice system. Officials frequently justified their cynical attitude toward women’s complaints of sexual and other assaults by attacking their veracity. Rather than addressing any inadequacies of the system with respect to prosecuting rape or domestic violence, officials were more interested in pointing out how frequently women fabricate these charges in order to frame men”.*⁴⁶

Amnesty International reported in 1998 that:

“Abuses of women’s rights ... are also under prosecuted and under punished, due to connivance or indifference by police and judiciary and inadequacies in the law. Describing the high level of violence against women in Pakistan, the non-governmental Human Rights Commission of Pakistan (HRCP) in its report “State of Human Rights in 1997”

⁴⁵ U.S. Department of State (2001) op. cit.

⁴⁶ Human Rights Watch (1999) op. cit.

concluded, 'worst of all was an attitude, largely, of resignation, of an unspoken social acceptance of the routineness of the condition'"

Further:

"Both the police and the judiciary as institutions tasked to uphold fundamental rights and ensure redress have failed women subjected to abuse... Amnesty International is aware of dozens of cases of police refusing to register complaints of rape, domestic violence and honour killings".⁴⁷

The following evidence points to the failings of specific systems by which women should gain protection and legal redress.

4.2 The police

4.2.1 Reporting domestic violence to the police

Substantial evidence portrays a Police system in Pakistan that is corrupt, fails to act appropriately in dealing with reported crime, and perpetrates abuses against those in custody. These issues are exacerbated for women, reflecting overall social discrimination. Women's complaints are often not taken seriously:

"While abusers may be charged with assault, cases rarely are filed. Police usually return battered women to their abusive family".⁴⁸

"Even when police take note of a reported abuse of women they sometimes only initiate disciplinary measures instead of criminal prosecution... Police connivance in criminal offences against women sometimes takes the form of concealing evidence; this rarely comes to light".⁴⁹

Amnesty International again highlighted in 2000 the unequal protection that women receive from police:

"Persistent bias against the rights of women on the part of the government, police and judiciary meant that abuses by private individuals, including the honour killings of hundreds of girls and women, were not investigated or punished".

With regard to domestic violence, *"Police and judicial officers continued to treat such abuses leniently, contributing to a cycle of impunity and continued abuse".⁵⁰*

⁴⁷ Amnesty International (1998), op. cit.

⁴⁸ U.S. Department of State (2001), op. cit.

⁴⁹ Amnesty International (1998) op. cit.

⁵⁰ Amnesty International (2000) 'Pakistan', in *Amnesty International Report 2000*, Amnesty International

In addition, many citizens do not realise the difference between making a police statement and registering a case with the police, of which the latter is an essential prerequisite for legal action. There have also been reports of police keeping an unofficial register which has no legal value, for recording *“complaints and verbal statements which they have no intention of pursuing, and simply want to satisfy the complainant that something has been written down in an official looking register”*.⁵¹

This might particularly be the case with domestic violence, where police often refuse to register it as a complaint, viewing such violence as a private matter rather than a recognizable offence.⁵² In the course of their research into violence against women, Human Rights Watch found that attitudes of many police officers corroborated these reports:

“...Police officials in Karachi and Lahore also dismissed domestic violence as a non-issue. The director of the police training center in Lahore, for example, told Human Rights Watch, “The social set-up does not allow that women should be abused” and that, on the contrary, women are respected in Pakistani society”.⁵³

Women’s police stations, set up recently not only to deal with women accused of criminal offences, but also to ensure that *“women complainants would feel more confident to lodge complaints related to gender”* have been *“extensively criticized as under equipped, ineffective and virtually inoperative”*.⁵⁴ Furthermore, there are very few such stations – only one in Lahore, for instance.⁵⁵

The U.K. Home Office Country Assessment also states that:

“These stations are staffed by female personnel, but receive even fewer material and human resources than regular police stations. According to the government's own Commission of Inquiry for Women the stations do not function independently or fulfill their purpose”.⁵⁶

4.2.2 Reporting rape to the police

Before considering police responses to women who report sexual crimes against them, it is essential to acknowledge the immense barriers that prevent women from disclosing rape or sexual assault, most particularly the fear, trauma and ‘shame’ they may experience. Secondly, it must be remembered that because rape within marriage is not recognised in Pakistan, **married women who are raped by their husbands have no recourse to the law.**

⁵¹ Balchin, C. (1998), op. cit. p. 77

⁵² Balchin, C. (1998), op. cit. p. 76

⁵³ Human Rights Watch (1999), op. cit.

⁵⁴ Amnesty International (1998), op. cit.

⁵⁵ Balchin, C. (1998), op. cit. p.76

⁵⁶ Country Information and Policy Unit (2001), op. cit.

For women to seek protection and justice when they have been raped or sexually assaulted (under accepted legal definitions) is extremely problematic given the legislative changes of 1979, as detailed above. It has been argued that the *Zina Ordinance*, by including rape (*zina-bil-jabr*) under the same law that deals with adultery and fornication (*zina*) has created a situation where rape may easily be confused with adultery or fornication.⁵⁷ Consequently, many women are extremely unlikely to report rape and sexual crime for fear of being charged with an offence under the *Zina Ordinance* themselves, frequently a charge of adultery:

*“With the passage of the Hudood Ordinance in 1979 legalizing punishment for adultery, theft, drinking and false accusations, the number of women in police custody has increased dramatically. Under the Hudood Ordinance the boundaries between rape [zina-bil-jabr] and adultery / fornication, zina, have become rather blurred. The women of Pakistan are thus caught in a double-bind: **if they report a rape case – assuming that they can overcome all the familial and cultural barriers that militate against disclosure – not only may they not get justice, but there is every chance that they will be accused of adultery....** Women’s predicament in such situations and their fear-inspired reluctance to pursue justice is complex and multifaceted. This is due partly to the shame many raped women feel, partly to intimidation by the agents of ‘law and order,’ and partly to **the equation of rape with adultery under the Hudood Ordinance.** This strongly discourages many women from seeking help, **rendering ‘sexual justice’ practically ineffective in Pakistan**”.*⁵⁸

The knowledge that women may be charged with *zina* has meant that this may be used as a means for further control of women:

“The Ordinance provides new weapons to men against women by virtue of making Zina i.e. adultery and fornication, crimes against the state, cognisable offences for which the police can take action. Previously that was not the case, for then adultery was a matter of personal offence against the husband by the male party to adultery and extra-marital sex was not a penal offence at all. Now where a wife leaves her husband, it has become all too easy for the husband to go to the police and file a complaint against her for committing zina whereupon the wife is arrested and jailed. Given police corruption and the interminable length of time that it takes for such cases to be adjudicated by courts of law (often years) the woman is effectively punished without even going through the due process of law. The husband can bail the wife out of jail. But when that happens, she is totally at his mercy for he would threaten to withdraw bail which would

⁵⁷ Alavi, H (1991), op. cit., p.9

⁵⁸ Shahla, Haeri (2000) ‘The Politics of Dishonor: Rape and Power in Pakistan’ in Mahnaz Afkhami (ed.) *Faith and Freedom: Women’s Human Rights in the Muslim World*, London, I.B.Tauris, pp.169-170. Note that adultery is only one of the charges included in the offence of *zina* - women might also be charged with rape, bigamy or fornication.

return her to prison. Thus the woman's position is made worse than that of a slave. According to Asma Jahangir, a distinguished Pakistani woman lawyer and Secretary of the Human Rights Commission of Pakistan: 'it has now become common for husbands to file complaints of Zina against wives wanting separation. There are hundreds of cases every year where women are arrested for Zina on complaints filed by husbands' (SHE. March 1989: 81). It is likewise in cases of elopement, where a father refuses permission to his daughter to marry the man of her choice. The father brings charges of 'abduction' in such cases and the law presumes zina unless the couple can prove lawful nikah or marriage according to Islam".⁵⁹

This is substantiated elsewhere:

"Under the Hudood Ordinances, the offence of zina (unlawful sexual relations before or outside marriage) has had the worst impact on women. False allegations of adultery or fornication have been brought against women to intimidate them. Blatant miscarriages of justice have become synonymous with zina, punishing women who are already deeply vulnerable to abuse by the criminal justice system

*"In rape cases (zina-bil-jabar), a woman, if unable to prove she has not given her consent to sexual intercourse, **may find herself convicted instead**".⁶⁰*

Furthermore, despite the fact that rape is recognised as an offence (outside of marriage), a limited understanding of rape, and discriminatory attitudes towards women often mean that women themselves are blamed or disbelieved by Police:

"comments of police officials to Human Rights Watch consistently indicated a simplistic and biased understanding of the dynamics of rape, a lack of knowledge and imagination as to the range of circumstances in which rapes of women occur, and a predisposition to disbelieve victims of rape".⁶¹

The following extract also draws attention to the fact that women are often at risk of further abuse from the Police themselves:

"rape, and gang rape in particular, is commonly used by landlords and criminal bosses to humiliate and terrorize local residents. It is estimated that less than one-third of all rapes are reported to the police. Police rarely respond to and sometimes are implicated in these attacks (see Section 1.c.). According to a police official, in most rape

⁵⁹ Alavi, Hamza (1991), op. cit., p.9

⁶⁰ Saeed & Khan (2000), op. cit., p.123; Further evidence is also given by the U.S.

Department of State (2001) op. cit., and the U.K. Home Office Assessment – see Appendix A

⁶¹ Human Rights Watch (1999), op. cit.

cases the victims are pressured to drop charges because of the threat of Hudood adultery or fornication charges against them if they cannot prove the absence of consent.

...“If they report rape to the police, women's cases often are delayed or mishandled, and women frequently are harassed by police or the alleged perpetrators to drop the case. Police sometimes accept bribes to get the complainant to drop a case, and sometimes request bribes to carry it forward. Police tend to investigate the cases poorly, and may not inform women of the need for a medical exam or may stall or block women's attempts to obtain one”.⁶²

This has had the devastating impact of allowing sexual crimes against women to be perpetrated in an atmosphere of impunity, in the knowledge that women are extremely unlikely to report them.

4.2.3 Legal medical services

Although most women do not report domestic violence or abuse to police, and evidence suggests that police are reluctant to register complaints officially, women that do face further difficulties in obtaining essential medical-legal reports, often because the police request payment for these:

“supposedly for the conveyance of the police officials who would be involved in obtaining the medical report. This request, which is a common practice despite the fact that medico-legal reports in police cases are supposed to be free, is designed to test the victim's determination”⁶³

Women are then faced with discriminatory attitudes from the medical services to which they have to present for examination, according to Human Rights Watch. Their report provides extensive details of interviews with medical officers stating that in most cases women fabricate evidence or, if they are rape victims, were not coerced into sex.

The U. S. Department of State summarise Human Rights Watch research:

“Human Rights Watch also reported that women face problems in the collection of evidence; that the doctors tasked to examine rape victims often believe that the victims are lying; that they are trained insufficiently and have inadequate facilities for the collection of forensic evidence pertaining to rape; that they do not testify very effectively in court; and that they tend to focus on the virginity status of the victim, and, due either to an inadequate understanding of the need for prompt medical evaluations or to inadequate resources, often delay the medical examinations for many days or even weeks, making any

⁶² U.S. State Department (2001), op. cit.; Women may be accused of *zina*, which **includes** adultery, but also bigamy, fornication and rape

⁶³ Balchin, C. (1998), op. cit., p.77

*evidence that they collect of dubious utility. Medical examiners and police personnel sometimes are physically or verbally abusive during these exams, especially in cases where a woman is charged with adultery or fornication (for which an exam may be requested) and does not wish to be examined (such women, despite the fact that by law they should not be examined without their consent, have been examined, and even have been beaten for their refusal to be examined). Police and doctors often do not know that a woman must consent to this type of exam before it can be performed, and judges may not inform women of their right to decline ”.*⁶⁴

4.3 The judicial and legal system

4.3.1 Introduction

Although it is important to caution against unfounded generalizations, judicial indifference to women’s rights has also been raised as cause for concern, and further undermines the attempts of women to gain justice:

*“Redress for abuses suffered by women is hampered not only by disregard of police towards women’s rights and their connivance with perpetrators of abuse; judicial decisions sometimes reflect insensitivity to women’s concerns and contribute to a climate in which women’s rights are violated with impunity... Male judges sometimes appear disinclined to accept women’s testimony... .. The AGHS Legal Aid Cell in May 1998 in its resolution stated that ‘the situation of women has seen a series of setbacks as Pakistan’s judiciary remains insensitive to their rights’.*⁶⁵

Human Rights Watch Report states that: *“Biased and chauvinistic attitudes are also common among prosecutors”* citing one example where a public prosecutor in one district of Karachi was unable to recollect any criminal proceedings against perpetrators of domestic violence.⁶⁶

4.3.2 The legal system and violence against women

The Qisas and Diyat law *“poses a huge obstacle to justice in domestic violence cases”.*⁶⁷ Section 3 explained how this law gives women and their guardians or heirs the opportunity to pardon perpetrators. It is clear that this law is inadequate for cases of domestic violence: it is highly inappropriate to place the onus of making such a decision regarding pardoning or punishment on the woman herself, since this clearly fails to recognise the power and control exercised over women that typifies abusive relationships. Pressures to pardon perpetrators do not only come from perpetrators themselves, and the

⁶⁴ U. S. Department of State (2001), op. cit.; See also Balchin, C. (1998), op. cit.

⁶⁵ Amnesty International (1998), op. cit.

⁶⁶ Human Rights Watch (1999), op. cit.

⁶⁷ Balchin, C. (1998), op. cit., p.81

woman's knowledge that she might face further violence as a result of her decision, but also from her own family, particularly where ties may exist between her family and the family of her abuser(s). Where perpetrators are the woman's own relatives, (she may be married to her cousin for instance), the pressure to pardon the perpetrator is likely to be even more intense.

Women are thus discouraged or coerced into pardoning perpetrators of violence, and the Qisas and Diyat law thus represents a major failure of the legal system to protect women who have experienced domestic violence. In addition, her heirs or guardians may make unofficial financial settlements with perpetrators in return for pardoning them:

"The "privatization" of crimes by the qisas and diyat laws has particularly damaging consequences in cases of intrafamily violence, the majority of which involve domestic abuse or spousal murder. As a result of the law, not only are women victims of domestic violence and their heirs susceptible to pressure and intimidation to waive qisas, but the concept of monetary compensation can be meaningless in a situation where payments flow from one member of the nuclear family to another".⁶⁸

The failure of the law of Qisas and Diyat has led to an atmosphere of impunity where perpetrators of domestic violence are fearless of punishment.⁶⁹

Where Qisas and Diyat cannot be invoked because the woman's heir is a direct relation of the perpetrator, the court has the power to punish the perpetrator using *tazir* sentencing. This power has been widely criticised, but *"as yet this right of the State has not been subjected to judicial scrutiny in the apex court"*.⁷⁰ Some of the criticism directed at *tazir* sentencing includes scepticism as to whether courts use *tazir* sentencing consistently and meaningfully in cases of domestic violence:

"courts are directed to weigh the decision to impose tazir punishment 'having regard to the facts and circumstances of the case', which grants them a large measure of discretion. In light of the biased attitudes of the courts with respect to domestic violence, the fact that punishment in such cases of spousal murder has been left entirely to the discretion of judges may well spell total impunity for the most extreme form of domestic violence. In the words of one commentator, 'Although it is still unclear how the law will be applied in practice, it may be a means by which the state abdicates its responsibility to control violence in the most common type of intrafamily murder-the killing of a female member by the male head of the family'.

"The large degree of judicial discretion embodied in the qisas and diyat law has been widely criticized in light of the endemic societal and

⁶⁸ Human Rights Watch (1999), op. cit.

⁶⁹ Balchin, C. (1998), op. cit. p.81

⁷⁰ Shah, H. (1998), op. cit., p.261

judicial discrimination against women in Pakistan. Among the dangers that arise from decodification and an increase in judicial discretion is the opportunity for discrimination and corruption”.⁷¹

4.3.3 The legal system and sexual offences

It was noted above that there is no definition of rape within marriage. This has led to a situation where a perpetrator may avoid punishment not only by demonstrating that he was married to the woman he is accused of assaulting, but also that he *believed* he was married to her:

“A showing by the perpetrator that he was or believed he was validly married to the victim at the time of intercourse is a complete defense to the crime of zina-bil-jabr or rape”.⁷²

As noted above, It has been argued that the *Zina Ordinance*, by including rape (*zina-bil-jabr*) under the same law that deals with adultery and fornication (*zina*) has created a situation where women reporting rape may find themselves charged with adultery or fornication if unable to prove that they did not consent.

Saeed & Khan provide disturbing evidence of this:

“Out of the 473 women admitted to Lahore’s central jail between March 1996 and June 1997, an astonishing 158 were accused of zina. Courts habitually fail to offer bail, parole or probation to women. Unlike men co-accused, women are unlikely to have money for bail. Nor do they often have a relative who is willing to provide this to the satisfaction of the court. According to a new report by HRCP [Human Rights Commission of Pakistan], most accused women face long periods of incarceration. Figures collected in 1998 from 20 jails in the Punjab found that of nearly 1000 women prisoners, almost 90 percent were awaiting trial. The Commission also found that more than one-third of women undergoing trials did not have a lawyer to defend them”⁷³

Evidence suggests that most of these women are later found innocent, and that poorer women are even more likely to suffer unjust incarceration due to fewer resources:

The “Commission of Inquiry for Women criticized Hudood Ordinances relating to extramarital sex and recommended that they be repealed asserting that they are based on an erroneous interpretation of Shari’a (see Section 1.c.). The Commission charged that the laws on adultery and rape have been subject to widespread misuse, with 95 percent of the women accused of adultery being found innocent either in the court of first instance or on appeal. However, the Commission pointed out that, by that time, the woman may have spent months in jail, suffered

⁷¹ Human Rights Watch (1999), op. cit.

⁷² Human Rights Watch (1999), op. cit., p.4; see also Alavi (1991) op. cit., p.9

⁷³ Saeed & Khan (2000), op. cit., p.125

sexual abuse at the hands of the police, and seen her reputation destroyed. The Commission found that the main victims of the Hudood Ordinances are poor women who are unable to defend themselves against slanderous charges. These ordinances also have been used by husbands and other male family members to punish their wives and female relatives for reasons having nothing to do with sexual propriety, according to the Commission. At year's end, 511 women were awaiting trial for adultery under the Hudood Ordinance in Lahore; 400 in Peshawar; and 300 in Mardan (see Section 1.e.).

Most women tried under the ordinance are acquitted, but the stigma of an adultery charge alone is severe. A Hudood law meant to deter false accusations is enforced weakly, and one human rights monitor claimed that 80 percent of adultery-related Hudood cases are filed without supporting evidence. Men accused of rape sometimes are acquitted and released while their victims are held for adultery or fornication”.⁷⁴.

Once cases are brought to the courts, there is also evidence of bias:

“According to Human Rights Watch, women face difficulty at every level of the judicial system in bringing rape cases. Police are reluctant to take the complaint and sometimes are abusive toward the victim; the courts do not have consistent standards of proof as to what constitutes rape and to what corroboration is required; and judges, police, and prosecutors are biased against female rape victims, tending towards a presumption of female consent and the belief that women lie about such things. Judges on the whole reportedly are reluctant to convict; however, if there is some evidence, judges have been known to convict the accused of the lesser offense of adultery or fornication (consensual sex)”.⁷⁵

Different standards of evidence govern the severity of punishments that might be administered for convictions under *Hudood Ordinances*. Whilst serious sexual offences are **liable** to *Hadd* (the most severe) punishments, difficulties in meeting the higher standards of evidence required for such punishments has meant no *Hadd* punishments have yet been delivered:

“Hadd punishments are mandatory if there is enough evidence to support them. Hadd punishments regarding sexual offences are most severe for married Muslims; for example, if a married Muslim man confesses to rape or there are four adult male Muslim witnesses to the act, the accused must be stoned to death; if the accused rapist is not Muslim or married, if he confesses, or if the act is witnessed by four adult males (not all Muslim), the accused must be sentenced to 100 lashes with a whip, and such other punishment, including death, as the court may deem fit. The testimony of four female witnesses, or that of

⁷⁴ U.S. Department of State (2001), op. cit.; see also Alavi (1991), op. cit.

⁷⁵ U.S. Department of State (2001), op. cit; this therefore implies the woman is also guilty

*the victim alone, is insufficient to impose Hadd punishments. If the evidence falls short of Hadd criteria, then the accused may be sentenced to a lesser class of penalties (Tazir). **Since it is difficult to obtain sufficient evidence to support the Hadd punishments, most rape cases are tried at the Tazir level, under which sentences may be imposed up to 25 years in prison and 30 lashes. No Hadd punishment has ever been applied in the more than 20 years that the Hudood ordinances have been in force.***⁷⁶

4.4 Other support services

Although there are services for women fleeing domestic violence, they are extremely limited, and the reality of gaining adequate protection is unlikely. There are both privately run and government run shelters, or *Darul Aman*. An article in The Guardian earlier this year raised concerns at the way privately run shelters operate, and stated that there is growing concern amongst Human Rights workers regarding the prison-like conditions within which women fleeing domestic violence are forced to abide.⁷⁷

The U.S. Department of State indicates the lack of support services.

*“A crisis center for women in distress was opened in 1997 in Islamabad. The center, the first of its kind in the country, is an initiative of the Ministry of Women's Development with the assistance of local NGO's. The center offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists, and a hotline for women in distress. During the year, the crisis center served 75 women. A second crisis center in Vehari, in southern Punjab, opened during the year ”.*⁷⁸

4.5 Summary

Human Rights Watch Report summarises the reality of women gaining protection or justice being administered to the perpetrators of such violence

“There is no question that violence against women is an enormous problem in Pakistan that is exacerbated and perpetuated by the government's inadequate response to the problem. In fact, the state's response to domestic violence in Pakistan is so minimal and cases of intrafamily violence are so rarely addressed in any way by the criminal justice system that it was not possible for us to achieve one of our research goals for this report: that is, to track specific domestic violence criminal suits in order to identify larger patterns in the prosecution of domestic violence. We found that despite the staggering

⁷⁶ U.S. Department of State (2001), op. cit.; see also Alavi (1991), op. cit., pp.9-10

⁷⁷ McCarthy (2001), op. cit.

⁷⁸ U.S. Department of State (2001), op. cit.

*levels of intrafamily violence against women, it is widely perceived by the law enforcement system and society at large as a private family matter, not subject to government intervention let alone criminal sanction. At present there is virtually no prosecution of crimes of assault and battery when perpetrated by male family members against women; even intrafamily murder and attempted murder rarely are prosecuted”*⁷⁹

⁷⁹ Human Rights Watch (1999), op. cit.

5. The situation for separated or divorced women

That there is an extremely limited amount of protection for women experiencing domestic violence or abuse has been indicated above. The prospects of a woman fleeing domestic violence facing further abuses of her human rights as identified by the European Convention on Human Rights needs to be considered in this context. In this section, we consider the situation that might face women forced to return to Pakistan, and hope to provide further, complementary evidence to enable practitioners to evaluate the likelihood that a claim on human rights grounds might succeed.

5.1 Discrimination

The introduction to this report provides some detail of the extent of discrimination and human rights abuses perpetrated against women in Pakistan. Women face fewer chances than men in virtually all aspects of life. This is reflected by demographic and economic statistics:

*“More than one half of women (compared to a third of men) lived on or below the poverty line... Next to Afghanistan, Pakistan had the widest gender-gap in school-going population... Girls were twice as likely to die as boys between one to five years of age”.*⁸⁰

The U.S. Department of State also details women’s position in society:

“There are significant barriers to the advancement of women beginning at birth. In general female children are less valued and cared for than are male children. According to a UN study, girls receive less nourishment, health care, and education than do boys. In February Dr. Sher Shah Syed, of the Pakistan National Forum on Women's Health in Karachi, reported that the maternal mortality rate is 600 per 100,000 pregnancies; this figure contradicts the Government's figure of 300 per 100,000 pregnancies. At Karachi's civil hospital, the maternal mortality rate was 2,257 per 100,000 in 1999. According to a 1996 report by the Islamabad-based human development center, only 16 women are economically active for every 100 men.

“Discrimination against women is particularly acute in rural areas. In some areas of rural Sindh and Baluchistan, female literacy rates are 2 percent or less. A survey of rural females by the National Institute of Psychology found that 42 percent of parents cited "no financial benefit" as the reason they kept their daughters from attending school, and sent their sons instead. Similarly a study by the NWFP directorate of primary education concluded that most girls in rural areas do not go to school because they have to look after the household while their mothers help in the fields. In Karachi only 28 percent of girls completing matriculation (10th grade) exams in science during the year would be able to find places in government-run colleges, as opposed to

⁸⁰ Human Rights Commission of Pakistan (2001), op. cit.

83 percent of boys passing the same tests. In Baluchistan conditions are much worse, with only 2 percent of the province's women having send their daughters to school due to the poor quality of instruction and the lack of facilities.

*“Human rights monitors and women's groups believe that a narrow interpretation of Shari'a has had a harmful effect on the rights of women and minorities, as it reinforces popular attitudes and perceptions and contributes to an atmosphere in which discriminatory treatment of women and non-Muslims is more readily accepted”.*⁸¹

Most human rights reports refer to a greater degree of discrimination against women in rural areas, and fewer opportunities for women who are poor, although the situation varies considerably according to class and regional factors:

*“The situation of women in Pakistan varies considerably depending on geographical location and class. Women fare better in urban areas and middle- and upper-class sections of society, where there are greater opportunities for higher education and for paid and professional work and women's social mobility is somewhat less restricted. Seventy-five percent of Pakistan's female population is, however, rural, and the average Pakistani woman is beset with the "crippling handicaps of illiteracy, constant motherhood and poor health." And, despite the relative privilege of some, all Pakistani women remain structurally disadvantaged and second-class citizens as a result of legal and societal discrimination premised on social and cultural norms and attitudes”.*⁸²

Alavi highlights how in some rural areas women carry the burden of agricultural work, partly due to male migration to cities, whilst in other rural areas such as the Punjab, where women may belong to more wealthy agricultural families, they have experienced a shift in their position over the last thirty years:

“In rural areas, the place of women in society and their role in the division of labour in production differs very widely from region to region and also between different classes...”

...“after the Green Revolution of the 1970s many well to do peasants, who had prospered, withdrew their womenfolk from the labour force and confined them, to the purdah, secluded and isolated within the four walls of their homes, as a mark of their new higher social status. In the course of research in Punjab villages my wife and I found that far from rejoicing in this partial relief from the burden of work, the women

⁸¹ U.S. Department of State (2001), op. cit.

⁸² Human Rights Watch (1999), op. cit.

*resented this change. Many of them described their new situation to my wife as the equivalent of being locked up in a prison. They had lost the small degree of economic freedom and with it their freedom of movement”.*⁸³

In urban areas, Alavi again highlights class differences: although women’s contributions (through paid employment) to the family economies of middle class families, have increased, *“judging from evidence brought up in court cases during the last decade, it seems that the women continue, nevertheless, to be subject to patriarchal domination”*. Equally, although women from upper class families might have greater access to financial resources, they may be in a position of extreme dependency upon their husbands:

*“worries stem from their total dependence on the husband and consequently insecurity for fear of being abandoned by the husband in favour of a second wife. In the absence of the possibility of an independent job or career, compounded by extreme difficulty for women in setting up an independent household without the 'saya', or protection, of a male head of family, their dependence on the husband is total. They are therefore reduced virtually to the status of well fed, well dressed and well ornamented slaves who depend absolutely upon the whim of their husbands. Where the husband ill-treats or abuses them they must put up with it. Because of the difficulty in setting up an independent household even women with careers share this problem”.*⁸⁴

This introduces some of the difficulties that may face women returned to Pakistan, both in terms of seeking divorce and attempting to establish themselves independently. Alavi adds:

*“No woman, even one with an independent career in a city can set up a home on her own, without the 'saya' (lit: shade or protection) of a male. A divorced woman or a widow must turn to her father or brother, if they will have her, unless she has a grown up son under whose protection she can live. This is a powerful factor of control over women”.*⁸⁵

Divorced women are likely to experience further discrimination.

⁸³ Alavi (1991), op. cit., p.2

⁸⁴ Alavi (1991), op. cit., p.3

⁸⁵ Alavi (1991), op. cit., p.1; Furthermore, the Human Rights Commission of Pakistan stated that last year *“A deficit of 150,000 housing units was added to the backlog up 6.45 million. A total of 20 million units served a population of almost seven times that number. There were an average of 6.6 persons to each unit”*, HRCP (2001), op. cit.

5.2 The consequences of divorce

Women are unlikely to seek divorce not only due to the impossibilities of setting up an independent home as raised above. There is substantial social stigma regarding divorce, and if she has children, she faces further difficulties in securing maintenance for them. Within regard to domestic violence:

“Women are reluctant to file charges because of societal mores that stigmatize divorce and make women economically and psychologically dependent on their relatives

*“Both civil and religious laws theoretically protect women's rights in cases of divorce, but many women are unaware of them, and often the laws are not observed. The Parliamentary Commission of Inquiry for Women has recommended that marriage registration (nikahnama) be obligatory and that women, as well as men, have the right to initiate divorce proceedings. It also has called for the punishment of those who coerce women or girls into forced marriages. A husband legally is bound to maintain his wife until 3 months after the divorce. A father is bound to maintain his children until they reach the age of 14 for males, or the age of 16 for females. However, the legal system is so complicated and lengthy that it can take years for the children to get maintenance”.*⁸⁶

Alavi states that women:

“dare not insist on a divorce for, generally, she has nowhere to go and virtually no prospects of building a new life in a society that despises a divorced woman who is invariably blamed for the failure of her marriage. She is lucky if she has grown up sons who might make it possible for her to set up an independent home”.

Furthermore, her potential isolation is illustrated:

*“In Pakistan, unlike the West, the social life of most people functions within frameworks of extended kinship, and the values and norms of kinship obligations cannot be flouted without penalty, except by the rich and the powerful or those who live in cosmopolitan circles”.*⁸⁷

In some cases, women living alone face not only discrimination but also a risk of further violence perpetrated by members of the public, as noted in this successful asylum claim made by a Pakistani woman in the United States:

“The applicant cannot permanently return to Pakistan because of the "crime" she committed by marrying outside of her faith. Furthermore,

⁸⁶ U.S. Department of State (2001), op. cit. This extract is incorrect for several reasons: “The Parliamentary Commission of Inquiry for Women” should read “The Commission of Inquiry for Women”; Marriage registration **is** mandatory; “*nikahnama*” is the term for the marriage contract, and not marriage registration – a marriage contract may or may not be registered; women **do** have the right to initiate divorce proceedings.

⁸⁷ Alavi (1991), op. cit., p.3

*she has no male relatives in Pakistan who would protect her. Without protection, the applicant would face the severe discrimination, even rape or murder, that is meted out on women who live with no male head of household".*⁸⁸

5.2 Economic security

Single or divorced women whose families are unable to support them, and who may consequently face living alone, experience extreme discrimination, and this may particularly hinder her economic security. Anita Weiss provides considerable information on the economic position of women in Pakistan; its intricate connections to traditional expectations about women's roles means that in effect, in most cases, a woman's chances of financial security are dependent upon being married or living within a family environment. Although women do work, it appears that in most cases this is within the family home and that the financial rewards are limited. It is plausible that if she were single, her chances of working at home would be restricted and she would be less likely to be able to provide economic security independently.

"Work in many parts of Pakistan – be it making, selling, fixing, or moving something for which there is some kind of economic compensation – appears to exist in the public space of the male world. While true virtually everywhere, it is particularly important in poorer areas of Pakistan for a woman's status (as well as for that of her family) that her activities are popularly considered to be respectable. Historically, this has implied a prohibition on mixing freely with unrelated men and a marked sexual division of labor. Concerns over traditional notions of propriety have not prevented women from working for pay; instead, they often simply prevented women and their families from admitting that women engage in such work..."

... "Most urban women are engaged at home, either in piecework or in contributing to family-based production

*... The traditional view that a woman's modesty can best be protected if she remains within the confines of her home is still reported as the main impediment to female participation in industrial employment, even at the government level"*⁸⁹

Weiss refers to her own research in Lahore, which found that the most common form of women's work is based within the home. Women's dependency on middlemen to provide them with access to markets for work that they are involved in, frequently sewing and embroidery, means that their financial rewards are less than those of men: *"Work within the home is*

⁸⁸ Centre for Gender and Refugee Studies (CGRS), University of California
www.uchastings.edu/cgrs/.

⁸⁹ Weiss (1994), op. cit., pp.420-3

*possible because of its anonymity – but precisely because of this, wages are unreasonably low”.*⁹⁰

If women seek work outside the home in order to gain better financial rewards, they often experience discrimination:

*“In rural areas, although women engage in labor for their family’s subsistence, few own productive resources or have an opportunity for paid employment. In urban areas, factory employment tends to be temporary and insecure, void of such luxuries as maternity leave and medical benefits”.*⁹¹

⁹⁰ Weiss (1994), op. cit., p.422

⁹¹ Weiss (1994), op. cit., p. 422

6. Case law

6.1 The United Kingdom

The cases of two women, Shahana Islam and Syeda Shah who claimed asylum based on domestic violence were the subject of a groundbreaking House of Lords ruling in 1999.⁹² Both of these women had experienced domestic violence and were forced to leave their homes. They faced accusations of adultery, and thus possible criminal charges of “sexual immorality”, further violence not only from family but also community members, and possible death sentences.

The ruling recognised Syeda Shah and Shahanna Sadiq Islam as members of a social group, i.e. women in Pakistan, who experienced discrimination on the grounds of them being women; as such, the House of Lords ruled that they should be given protection under Article 1A(2) of the 1951 U. N. Convention. The ruling acknowledged that they would face both serious harm and a lack of State protection if forced to return to Pakistan, and they were recognised as refugees accordingly. The most important thing to note here is the recognition that women in Pakistan face persecution because the State was unwilling or unable to offer them protection.⁹³

Four of the Lords agreed with Lord Steyn, that:

“The distinctive feature of this case is that in Pakistan women are unprotected by the State: discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the State”⁹⁴

6.2 The United States

The following case from the U.S. has been summarised by the Centre for Gender and Refugee Studies (CGRS) based at Hastings University in California, although little information is given as to how the evidence. It concerns the case of a Pakistani woman who was granted asylum on grounds of religion and social group. Despite not providing detail of how religion and social group were used within the case, the decision highlights the inadequate means of protection available for women fleeing violent families plus the stigmas attached to being a single woman in Pakistan.

“The applicant was born in Pakistan to a Muslim family of Iranian descent. She married a man of the Baha'i faith who was born in Pakistan of Iranian citizenship. Her parents were against the marriage because he was of a different faith. Since they married outside of their faith, the applicant and her husband had to flee from Pakistan to avoid persecution by Muslims in Pakistan. They moved to Africa and lived in several countries.

⁹² Islam v SSHD; R v IAT ex parte Shah [1999] INLR 144 HL. Further details of this case are given in the introductory section of the project

⁹³ Refugee Legal Centre (1999) *Refugee Legal Centre Bulletin No.50*

⁹⁴ Islam v SSHD; R v IAT ex parte Shah [1999] INLR 144 HL, p.146

In the past few years, the applicant's husband has become physically abusive. Neither of the countries they have lived in provide adequate resources to protect her from her husband. The authorities in Botswana refused to intervene and told the applicant that she should be a better wife if she wants to be safe. She has nowhere to go in Botswana that she would be safe from her husband. There are no services for battered women in Botswana.

The applicant cannot permanently return to Pakistan because of the "crime" she committed by marrying outside of her faith. Furthermore, she has no male relatives in Pakistan who would protect her. Without protection, the applicant would face the severe discrimination, even rape or murder, that is meted out on women who live with no male head of household. She cannot return to Iran because she is not an Iranian resident.

Asylum Grounds: Religion; social group

Asylum Granted?: Yes”

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Appendix A: Home Office country assessment

PAKISTAN ASSESSMENT

April 2001

Country Information and Policy Unit

Women

5.3.86 The status of Pakistani women varies considerably with their social background and the region in which they live. Women belonging to the elite classes have been able to move beyond their traditional role and attend university, take up non-traditional careers, join political movements and even choose their husbands. However, women in rural areas and from the working classes of the industrial centres are illiterate, live in poverty and are subject to onerous labour. [3] & [12c] In Baluchistan for example, it is traditional for women to stay at home. In the poorer villages they are unlikely to go out alone, or even vote without their husband's consent. These traditions are however by no means universal. In the large cosmopolitan cities such as Lahore, Karachi or Islamabad a woman wearing a burqa would be a rarity, with most women following Islamic custom by wearing a headscarf. [28i]

5.3.87 The Pakistani Constitution recognises the equality of men and women before the law. It prohibits all forms of discrimination (especially sexual discrimination) within the civil service, and grants women the right to participate fully in all activities in the national arena. However in practice these constitutional clauses do not provide equality in the reality of daily life. [3] & [12c]

5.3.88 Apart from the women's wing of the Muslim League, the Women's Voluntary Service was the first women's movement to emerge in Pakistan and was founded in 1947. This opened the way for many other organisations, among them the All Pakistan Women's Association founded in 1949, which is affiliated with various international organisations. Aurat and Shirkat Gah, which came into being in the late 1970s, are two organisations that have also played an active role in the promotion of women's rights. The number of organisations working for the cause of women has subsequently continued to grow. Pakistani women can obtain legal and medical assistance as well as consultation services from centres such as Bedari and Roshni in Islamabad, Eve's Protector in Karachi, Behbood in Rawalpindi and AGHS Legal Aid Cell in Lahore. [12c]

5.3.89 Pakistan has signed and ratified the following international instruments:
Convention of the Political Rights of Women
Slavery Convention of 1926 as amended
Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. [15]

5.3.90 Pakistan has also ratified the United Nations' Convention on the Elimination of All Forms of Discrimination against Women in March 1996. However, according to Amnesty International, reservations were inserted whereby nothing in the Convention which came into conflict with the Constitution or Sharia Law would apply. [4c] Pakistan has also signed, but not ratified, the Convention on the Nationality of Married Women. [15]

5.3.91 Special women's police stations were established in 1994 in response to growing numbers of complaints of custodial abuse of women, including rape. These stations are staffed by female personnel, but receive even fewer material and human resources than regular police stations. According to the government's own Commission of Inquiry for Women the stations do not function independently or fulfill their purpose. Despite court orders and regulations that only female officers may interrogate female suspects, women continued to be detained overnight at regular police stations and abused by male officers during 2000. Based on Lahore newspaper reports from January to May 1999 the HRCP found 11 cases of violence, rape or torture of women in police custody. [2b]
See also Police: paragraphs 5.2.1 - 5.2.5; and Torture: paragraphs 5.2.8 - 5.2.9.

5.3.92 The Haddood Ordinances, and in particular the Offence of Zina (relating to rape, abduction, adultery and fornication), which replaced the sections in the Pakistan Penal Code relating to rape, have also had an impact on women. The Penal Code defined rape as forced sexual intercourse, but the Islamic definition of rape (zina) is that it is an extra-marital offence and thus excludes any notion of marital rape. A woman who reports a case of rape to the authorities can find herself charged with adultery under the Ordinances as all extra-marital sexual relations, whether consensual or not, are considered to be adultery and thus a violation of the Haddood Ordinances. As a consequence most women do not report sexual abuse and rape. [3] & [12c]

5.3.93 It is estimated that less than a third of all rapes are reported to police, who may be reluctant to take the complaint and sometimes be abusive toward the victim. The courts do not have consistent standards of proof as to what constitutes rape. Judges, police and prosecutors may be biased against female rape victims, tending towards a presumption of female consent and the belief that women lie about such things. Judges, although on the whole reportedly reluctant to convict, have been known to convict the accused of the lesser offense of adultery or fornication (consensual sex). [2b]
See also Haddood Ordinances: paragraphs 4.2.17 - 4.2.18.

5.3.94 Human Rights Watch report that women face problems in the collection of evidence. Doctors tasked to examine rape victims often believe that the victims are lying, and are trained insufficiently with inadequate facilities for the collection of forensic evidence pertaining to rape. Medical examiners and police personnel are sometimes physically or verbally abusive during exams, especially in cases where a woman is charged with adultery or fornication and does not wish to be examined. Such women, despite the fact that by law they should not be examined without their consent, have been examined and have even been beaten for their refusal. Women may also be harassed by police or alleged perpetrators into dropping cases. [2b]

5.3.95 Domestic violence is a widespread and serious problem. Human rights groups estimate that anything from 70% to 90% of women are victims of domestic violence at the hands of their husbands, in-laws or other relatives. Husbands are known to have killed their wives for trivial offences. There are no specific laws pertaining to domestic violence except for the Qisas and Diyat ordinances, which are rarely invoked and may privatize the crime. Qisas and Diyat however cannot be invoked where the victim is a direct lineal descendant of the perpetrator. Police and judges tend to see domestic violence as a family problem and are reluctant to take action in such cases. Thus it is difficult for women to obtain relief from the justice system in cases of domestic violence. [2b]

5.3.96 During 2000 the press reported on hundreds of incidents of violence against women and drew attention to the killings of married women by relatives over dowry or other family-related disputes. Most of the victims were burned to death, allegedly in kitchen stove accidents; some women were reportedly burned with acid. During 2000 593 burn cases were recorded in Lahore newspapers; cases were registered in 74% but only 10 % of the suspects were arrested. Human rights monitors assert that many cases are not reported by hospitals and even when they are the police are reluctant to investigate or file charges. Furthermore, human rights monitors agree that most 'stove deaths' are in fact killings based upon suspicion of illicit sexual relationship or upon dowry demands. Increased media coverage of cases of wife burnings, spousal abuse, spousal killing and rape has helped to raise awareness about violence against women. The Government has failed to take action in honour killing cases, particularly when influential families are involved. [2b] One human rights organisation estimated that there are three hundred deaths a year as a result of bride burning. [35a]

5.3.97 A crisis center for women in distress was opened in 1997 in Islamabad. The center - the first of its kind in the country - is an initiative of the Ministry of Women's Development with the assistance of local NGOs. The center offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists and a hotline for women in distress. During 2000 the crisis center served 75 women. A second crisis center in Vehari, southern Punjab, opened during 2000. [2b]

5.3.98 There is no uniform family law for all Pakistanis: for each religious community a separate set of laws apply. The legislation which applies to Muslim citizens is the Muslim Family Law Ordinance, 1961. [23] This law circumscribed the practice of polygamy and required that all marriages must be registered, which eliminated the abused practice of divorce by declaration (talaq). Furthermore the law grants women the right of divorce on condition that a clause to this effect was written into the marriage contract (nikah nama). However it is reported that men continue to have an advantage in divorce proceedings, and can dissolve a marriage more easily than women can. [3] & [12c]

5.4.99 The class and caste system is a pervasive aspect of Pakistani society. Inter-caste marriages can cause problems, with mixed couples sometimes running a high risk of being killed. Although the legal system is designed to protect such individuals, police and the judiciary (particularly at the local level) may be unwilling or unable to offer effective protection from societal persecution. [20b]

5.3.100 In addition to the Muslim Family Laws Ordinance of 1961, the Dissolution of Muslim Marriages Act 1929 lays down the grounds on which a woman may divorce her husband. The Muslim Family Law Ordinance of 1961 only applies to Muslim citizens of Pakistan; the Dissolution of Muslim Marriages Act 1929 applies to all Muslims in Pakistan, whether or not they are citizens of Pakistan. [23]

5.3.101 According to a report by Amnesty International in 1998, several judgements over the last few years have stated that adult Muslim women have the right to marry men of their own choice, irrespective of their father's consent. There are nonetheless many instances of young women running away to marry men of their own choice, and subsequently living in fear of their male relatives' revenge for the woman's perceived disobedience and for "dishonouring" the family. [4g] On 6 April 1999, a woman seeking divorce was shot dead in her lawyer's office. The lawyer was also fired at but not injured, and a colleague was abducted by the perpetrators but eventually released. [4k] The issue gained widespread publicity following the killing. [31]

5.3.102 While the government does not generally interfere with the right to marry, it has on occasion assisted influential families to prevent marriages that they opposed. [2b] In a significant ruling in January 2001 however, a Punjab court ruled in favour of a woman who claimed to have been forcibly married to her cousin three years previously. The woman stated that she feared for her life if she was sent back to her husband's house and court officials took her to a refuge for women. It was nonetheless unclear whether this ruling would set a precedent for similar cases. [35c]

5.3.103 It has been estimated that as many as 300 women are killed each year by their husbands or family, mostly as a result of 'honour killings'. Those suspected of illicit sexual relations are killed in order to restore tribal or family honor. The problem is believed to be even more extensive in rural Sindh. 'Karo/kari' (or adulterer/adulteress) killings are common in rural Sindh and Baluchistan. The HRCP reported an average of 30 killings per month for the first half of 2000. Tribal custom among the Baluch and the Pathans also sanctions such killings. The Government has publicly criticized the practice of honour killings but has failed to take corrective steps and such killings have continued. The Government has also failed to take action in honour killing cases when influential families have been involved. [2b]

5.3.104 Although women participate in Government, they are under-represented in political life at all levels. The Musharraf Government announced in August 2000 that one-third of the seats in the forthcoming local council elections would be reserved for female candidates, although some political activists doubt that there would be enough female candidates in certain remote areas of the country to fulfill this requirement. Women participate in large numbers in elections, although some are dissuaded from voting by family, religious and social customs. [2b]

Pakistan

Appendix B

Update March 2002

1.2 Human rights in Pakistan today

1.2.1 Women

The 2002 U.S. State Department Report comments:

“Women

“Significant barriers to the advancement of women begin at birth. In general female children are less valued and cared for than are male children. According to a U.N. study, girls receive less nourishment, health care, and education than do boys. In February 2000, Dr. Sher Shah Syed, of the Pakistan National Forum on Women's Health in Karachi, reported that the maternal mortality rate is 600 per 100,000 pregnancies; this figure contradicts the Government's figure of 300 per 100,000 pregnancies. At Karachi's civil hospital, the maternal mortality rate was 2,257 per 100,000 in 1999. According to a 1996 report by the Islamabad-based Human Development Center, only 16 women are economically active for every 100 men.

“Discrimination against women particularly is acute in rural areas. In some areas of rural Sindh and Baluchistan, female literacy rates are 2 percent or less. A survey of rural females by the National Institute of Psychology found that 42 percent of parents cited "no financial benefit" as the reason they kept their daughters from attending school, and sent their sons instead. Similarly a study by the NWFP directorate of primary education concluded that most girls in rural areas do not go to school because they have to look after the household while their mothers help in the fields. In Karachi only 28 percent of girls completing matriculation (10th grade) exams in science during the year would be able to find places in government-run colleges, as opposed to 83 percent of boys passing the same tests. In Baluchistan conditions are much worse, with only 2 percent of the province's women having received any formal education. Education activists have noted that many parents would like to educate their daughters; however, many parents reportedly chose not to send their daughters to school due to the poor quality of instruction and the lack of facilities.

“Although a small number of women study and teach in universities, postgraduate employment opportunities for women largely remain limited to teaching, medical services, and the law. Nevertheless an increasing number of women are entering the commercial and public sectors.

“Human rights monitors and women's groups believe that a narrow interpretation of Shari'a has had a harmful effect on the rights of women and minorities, as it reinforces popular attitudes and perceptions and contributes to an atmosphere in which discriminatory treatment of women and non-Muslims is accepted more readily.

Both civil and religious laws theoretically protect women's rights in cases of divorce, but many women are unaware of their rights, and often the laws are not observed. One NGO reported that legal literacy is constrained by the lack of laws printed into local languages. Judicial reforms begun in April with foreign funding included plans to publish laws in Urdu, which is understood by the majority of citizens; some laws had been published in Urdu as of year's end. The Parliamentary Commission of Inquiry for Women has recommended that marriage registration (nikahnama) be obligatory and that women, as well as men, have the right to initiate divorce proceedings. It also has called for the punishment of those who coerce women or girls into forced marriages. A husband legally is bound to maintain his wife until 3 months after the divorce. A father is bound to maintain his children until they reach the age of 14 for males, or 16 for females. However, the legal process is so complicated and lengthy that it can take years for the children to get maintenance.

“In inheritance cases women generally do not receive--or are pressed to surrender--the share of the inheritance they legally are due.

“In rural areas, the practice of a woman "marrying the Koran" still is accepted widely if the family cannot arrange a suitable marriage or wants to keep the family wealth intact. A woman "married to the Koran" is forbidden to have any contact with males over 14 years of age, including her immediate family members. Press reports indicate that the practice of buying and selling brides still occurs in parts of the NWFP and the Punjab.

“A special three-member bench of the Lahore High Court upheld in 1997 the federal Shariat Court's ruling that a Muslim woman can marry without the consent of her wali (guardian--usually her father). However, in practice social custom dictates that couples are to marry at the direction of family elders. When this custom is violated, especially across ethnic lines, violence against the couple may result, and the authorities generally fail to prosecute such cases vigorously.

“Civil marriages do not exist; marriages are performed and registered according to one's religion. Upon conversion to Islam, the marriages of Jewish or Christian men remain legal; however, upon conversion to Islam, the marriages of Jewish or Christian women, or of other non-Muslims, that were performed under the rites of the previous religion are considered dissolved (see Section 2.c.). Children born to Jewish or Christian women who convert to Islam after marriage are considered illegitimate only if their husbands do not also convert, and if women in

such cases do not separate from their husbands. Children of non-Muslim men who convert are not considered illegitimate.

“The value of women's testimony is not equal to that of a man's in certain court cases tried under the Hudood Ordinances or before a Federal Shariat Court (see Section 1.e.)”

[...]

“In December 2000, speakers at a seminar stated that large numbers of working women face discrimination and sexual harassment. Women routinely are denied equal opportunities for promotion, pay, and benefits. Additionally women in some sectors are denied days off and overtime benefits.

“Trafficking in women also is a serious problem (see Section 6.f).

[...]

“Women's organizations operate primarily in urban centers. Many concentrate on educating women about existing legal rights. Other groups concentrate on providing legal aid to poor women in prison who may not be able to afford an attorney.

“During the year, the Government held elections and installed local governments where women compose one-third of the members. Federal Ministers, especially the Minister for Women's Development, have continued to speak out against "honor killings" at public seminars and symposiums. In late April, President Tarar issued an amendment ordinance to the citizenship law to enable women married to foreigners to claim citizenship for their children.”⁹⁵

2. Domestic violence

2.1 The extent of domestic violence

The US State Department, addressing domestic violence, reported that

“Domestic violence is a widespread and serious problem. Human rights groups estimate that anywhere from 70 to 90 percent of women are victims of domestic violence at the hands of their husbands, in-laws, or other relatives. The Progressive Women's Organization (PWO) reported in 1999 that one out of every two women is the victim of mental or physical violence. The Parliamentary Commission of Inquiry for Women reported that violence against women "has been described as the most pervasive violation of human rights" in the country, and it called for legislation clearly stating that domestic violence against women is a criminal offense. Husbands are known to kill their wives

⁹⁵ U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Pakistan*, Washington, Bureau of Democracy, Human Rights and Labor, available at www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm

even for trivial offenses. In 1999 the Pakistan Peace Coalition surveyed 1,000 women in 10 communities in rural Punjab; 82 percent of the respondents reported that they feared violence from their husbands over trivial matters. While abusers may be charged with assault, cases rarely are filed. Police usually return battered women to their abusive family members. Women are reluctant to file charges because of societal mores that stigmatize divorce and make women economically and psychologically dependent on their relatives. Relatives also are reluctant to report abuse to protect the reputation of the family. There are no specific laws pertaining to domestic violence, except for the Qisas and Diyat ordinances (see Section 1.e.), which rarely are invoked and may privatize the crime. However, Qisas and Diyat cannot be invoked where the victim is a direct lineal descendant of the perpetrator. Police and judges tend to see domestic violence as a family problem, and are reluctant to take action in such cases. Thus it is difficult for women to obtain relief from the justice system in cases of domestic violence.

“The Shirkat Gah Women's Resource Center in Karachi published a report in 1999 that summarized reports in the English language press about violence against women between 1993 and 1998. Even though it limited itself to reports of violence by close male relatives, Shirkat Gah documented 535 women who were killed or who committed suicide during the period; 95 of these women were killed or committed suicide after they expressed interest in marrying a man of their own choice.

“During the year, the press reported on hundreds of incidents of violence against women and drew attention to the killings of married women by relatives over dowry or other family-related disputes. Most of the victims were burned to death, allegedly in kitchen stove accidents; some women reportedly were burned with acid. During the year, 471 dowry deaths were reported, but according to one NGO, only 60 to 70 percent of such cases are reported. During 2000 593 burn cases were recorded in Lahore newspapers; cases were registered in 74 percent of these incidents but suspects were arrested in only 10 percent of the cases. Human rights monitors assert that many cases are not reported by hospitals and that, even when they are, the police are reluctant to investigate or file charges. Furthermore, human rights monitors agree that most "stove deaths" in fact are killings based upon a suspicion of illicit sexual relationship or upon dowry demands. Increased media coverage of cases of wife burnings, spousal abuse, spousal killing, and rape has helped to raise awareness about violence against women. By year's end, there was no progress in the 1998 case of Shahnaz, who died after her husband poured gasoline on her and set her on fire. The police registered a case against her husband and three in-laws. As of September 30, the husband and in-laws remained in custody after the court rejected their appeal for bail. Two new cases that were reported by an NGO during the year involved the deaths of Kausar of Tala Gang, District Chakwal, and Tahira of Simly Dam, District Islamabad.

*A crisis center for women in distress was opened in 1988 by the Progress Women's Association (PWA) in Rawalpindi. After several years of lobbying the Government, in 1997 the Government opened a center in Islamabad with the assistance of the PWA and other local NGO's. The center offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists, and a hotline for women in distress. During 2000 the crisis center served 75 women. A second crisis center in Vehari, in southern Punjab, opened in 1998.*⁹⁶

2.2 Rape and sexual violence

The 2002 report by the US State Department noted

*"Rape is a pervasive problem. The HRCP estimates that at least eight women, five of them minors, are raped every day, and more than two-thirds of those are gang-raped. The law provides for the death penalty for persons convicted of gang rape. No executions have been carried out under this law and conviction rates remain low because rape, and gang rape in particular, commonly is used by landlords and criminal bosses to humiliate and terrorize local residents. It is estimated that less than one-third of all rapes are reported to the police. Police rarely respond to and sometimes are implicated in these attacks (see Section 1.c.)."*⁹⁷

2.4 "Honour" crimes

The US State Department 2002 country report stated

"There are numerous reports of women killed or mutilated by male relatives who suspect them of adultery. Few such cases are investigated seriously and those who are arrested often are acquitted on the grounds that they were "provoked," or for a lack of witnesses. While the tradition of killing those suspected of illicit sexual relations in so-called "honor killings," in order to restore tribal or family honor, applies equally to offending men and women, women are far more likely to be killed than men. The PWO estimated that as many as 300 women are killed each year by their husbands or family, mostly as a result of "honor killings," known as "karo/kari" (or adulterer/adulteress) in Sindh. More than 800 women were killed by family members in so-called "honor killings" during the year. In March 2000, women's rights activists told a local newspaper that the frequency of honor killings was on the rise. By the end of 2000, the PWO had collected data on 369 honor killings. The problem is believed to be even more extensive in rural Sindh. "Karo/kari" killings are common in rural Sindh and

⁹⁶ U.S. State Department (2002), op. cit.

⁹⁷ U.S. State Department (2002), op. cit.

Baluchistan. The HRCP reported an average of 30 killings per month for the first half of 2000. Tribal custom among the Baluch and the Pathans sanctions such killings. The Commission of Inquiry for Women has rejected the concept of "honor" as a mitigating circumstance in a murder case and recommended that such killings be treated as simple murder. Women who are the victims of rape may become the victims of their families' vengeance against the victims' "defilement." The Government has failed to take action in honor killing cases, particularly when influential families are involved. Mehvish Miankhel, a member of an influential political family in Dera Ghazi Khan, allegedly was killed by her uncle in April. Her uncle had accused her of having an affair with the family's driver. A criminal complaint was filed against Miankhel's uncle, father, grandfather, two cousins, and two maternal uncles on July 7. All were granted prearrest bail and were not detained. In December 2000, Khalida was killed by her uncle and other relatives who accused her of having illicit relations with Momin Gorchani. Khalida's relatives also injured Momin's father and another one of his relatives. Police arrested one person in connection with the murder. In June 2000, a man from Yar Hussain in the NWFP allegedly killed his 20-year-old daughter, Mumlikat Bibi, while she was sleeping. The father reportedly opposed his daughter's efforts to choose a spouse without parental consent. Al also reported that if an accused adulteress is killed, and the adulterer manages to escape this fate, he may be required under the karo/kari tradition to compensate the family of the accused adulteress; sometimes, a woman from the adulterer's family is given compensation to repair the honor of the adulteress' family."⁹⁸

3. Domestic violence and the law

3.2 The law and sexual violence

In highlighting the difficulties facing women attempting to obtain justice following sexual violence, the US State Department reported that

"According to a police official, in most rape cases the victims are pressured to drop charges because of the threat of Hudood adultery or fornication charges against them if they cannot prove the absence of consent. All consensual extramarital sexual relations are considered violations of the Hudood Ordinances, and carry Hadd (Koranic) or Tazir (secular) punishments (see Section 1.e.). Accordingly, if a woman cannot prove the absence of consent, there is a risk that she may be charged with a violation of the Hudood ordinances for fornication or adultery. The Hadd--or maximum punishment for this offense--is public flogging or stoning; however, for Hadd punishments to apply, especially stringent rules of evidence are followed. Hadd punishments are mandatory if evidentiary requirements are met; for sexual offenses, four adult male Muslims must witness the act or the alleged perpetrator

⁹⁸ U.S. State Department (2002), *op. cit.*

must confess. For non-Muslims or in cases where all of the 4 male witnesses are not Muslim, the punishment is less severe. The testimony of four female witnesses, or that of the victim alone, is insufficient to impose Hadd punishments; therefore, even if a man rapes a woman in the presence of several women, he cannot be subjected to the Hadd punishment. If Hadd punishment requirements are not met, the accused may be sentenced to a lesser class of penalties (Tazir); in practice most rape cases are tried at this level. Under Tazir a rapist may be sentenced to up to 25 years in prison and 30 lashes. No Hadd punishment has been applied in the more than 20 years that the Hudood ordinances have been in force. For Tazir punishments, there is no distinction between Muslim and non-Muslim offenders.

“In 1998 approximately one-third of the women in jails in Lahore, Peshawar, and Mardan were awaiting trial for adultery; that percentage likely remains accurate. According to an HRCP lawyer, the Musharraf Government has brought fewer charges against women under the Hudood Ordinance than were brought in the past, and the courts have shown greater leniency toward women in their sentences and in the granting of bail. On August 1, a government official stated that the majority of women in prison were there on murder charges, and asserted that the number of cases filed under the Hudood Ordinances was exaggerated. In cases where a woman wishes to bring rape charges, she will have trouble bringing her attacker to justice. According to AI, men accused of rape sometimes are acquitted and released, while their victims are held on adultery charges.

“According to Human Rights Watch, women face difficulty at every level of the judicial system in bringing rape cases. Police are reluctant to take the complaint and sometimes are abusive toward the victim; the courts do not have consistent standards of proof as to what constitutes rape and what corroboration is required; and judges, police, and prosecutors are biased against female rape victims, tending towards a presumption of female consent and the belief that women lie about such things. Judges on the whole reportedly are reluctant to convict; however, if there is some evidence, judges have been known to convict the accused of the lesser offense of adultery or fornication (consensual sex). Human Rights Watch also reported that women face problems in the collection of evidence; that the doctors tasked to examine rape victims often believe that the victims are lying; that they are trained insufficiently and have inadequate facilities for the collection of forensic evidence pertaining to rape; that they do not testify very effectively in court; and that they tend to focus on the virginity status of the victim, and, due either to an inadequate understanding of the need for prompt medical evaluations or to inadequate resources, often delay the medical examinations for many days or even weeks, making any evidence that they collect of dubious utility. Medical examiners and police personnel sometimes are abusive physically or verbally during these exams, especially in cases where a woman is charged with

adultery or fornication (for which an exam may be requested) and does not wish to be examined (such women, despite the fact that by law they should not be examined without their consent, have been examined, and even have been beaten for their refusal to be examined). Police and doctors often do not know that a woman must consent to this type of exam before it can be performed, and judges may not inform women of their right to decline. If they report rape to the police, women's cases often are delayed or mishandled, and women frequently are harassed by police or the alleged perpetrators to drop the case. Police sometimes accept bribes from the accused rapist to get the victim to drop a case; however, in other cases, police will request bribes from the victim to pursue the case against the accused rapist. Police tend to investigate the cases poorly, and may not inform women of the need for a medical exam or may stall or block women's attempts to obtain one.

“The Parliamentary Commission of Inquiry for Women criticized Hudood Ordinances relating to extramarital sex and recommended that they be repealed asserting that they are based on an erroneous interpretation of Shari’a. The Commission charged that the laws on adultery and rape have been subject to widespread misuse, with 95 percent of the women accused of adultery being found innocent either in the court of first instance or on appeal. However, the Commission pointed out that, by that time, the woman may have spent months in jail, suffered sexual abuse at the hands of the police, and seen her reputation destroyed. According to one human rights monitor, 80 percent of adultery related Hudood cases are filed without supporting evidence. The Commission found that the main victims of the Hudood Ordinances are poor women who are unable to defend themselves against slanderous charges. These ordinances also have been used by husbands and other male family members to punish their wives and female relatives for reasons having nothing to do with sexual propriety, according to the Commission. One NGO run by a prominent human rights activist reported that 262 women were on trial for adultery in Lahore as of May. An additional 33 were awaiting trial and 26 had been convicted under the Hudood Ordinances. At the end of 2000, 511 women were awaiting trial for adultery under the Hudood Ordinance in Lahore; 400 in Peshawar; and 300 in Mardan.

“Marital rape is not a crime. The Hudood Ordinances abolished punishment for raping one's wife. However, the Commission of Inquiry for women has recommended reinstating penalties for marital rape. Marriage registration (nikah) sometimes occurs years before a marriage is consummated (rukhsati). The nikah (unconsummated) marriage is regarded as a formal marital relationship, and thus a woman or girl cannot be raped by a man to whom her marriage is registered, even if the marriage has not yet been entered into formally. Maulvi Qari Mohammad Sharif, a cleric, was granted bail and pardoned by President Rafiq Tarar in late December 2000. Sharif had been convicted of marital rape and mutilating his wife in a highly publicized

case in 1994. Sentenced to 30 years imprisonment, the punishment was reduced on appeal to 10 years before he was released. Government officials declined to comment on the rationale for Sharif's pardon.⁹⁹

4.4 Other support services

Cassandra Balchin from Women Living Under Muslim Laws provided the following information regarding the protection available to women in government-run and private shelters.

Government-run shelters, called 'Darul Aman', must be distinguished from the small number of privately run shelters.

“Conditions in the privately run shelters may not be perfect and the women are unable to move out for fear of attack but the government shelters are actually used as sub-jails where women are confined there by magistrates. Most often, if a young woman, especially under 18, leaves her home (natal or marital) and the court is trying to decide if she has the right to go where she wants to (either with a husband the family disapproves of or escape both her marriage and her natal family which put her in the bad marriage), the court will often send her off to a Darul Aman while the case is being heard.”

It is easy for the families of women living in the shelters, (both government-run and private) to orchestrate a demonstration and to attack the shelters. For example the father of a woman in the Dastak shelter used his connections to the religious parties to mobilise a demonstration to attack where his daughter was being sheltered.

“Also, both in government run shelters and private shelters, women have very real reason to fear: in both instances, women have been killed while entering/leaving the shelters or in transit from a shelter to lawyer's offices.”¹⁰⁰

⁹⁹ U.S. State Department (2002), op. cit.

¹⁰⁰ Correspondence with Cassandra Balchin from Women Living Under Muslim Laws, (2001), see www.wluml.org

6. Case law

6.3 Australia

The following case, of a women fleeing domestic violence, is under consideration by the High Court of Australia. The facts of the case were

“...that in Pakistan she was a target of domestic violence at the hands of her husband, and, to a more limited extent, of his family. The violence included slappings, beatings, which led to her hospitalisation, a threat to throw acid on her and a threat to kill her by setting fire to her. On one occasion, an attempt to set fire to her commenced when she was doused with petrol, an activity which stopped when a neighbour arrived in response to the screams of Ms Khawar and her children.”¹⁰¹

She reported the violence to the police on four separate occasions. The first time, she was told that *“such incidents were occurring throughout the country and that they could do nothing about it”*. The second time, the police officer

“...did not write down her story accurately and did not seem to take her seriously. When her husband returned home that evening with his brother, Tariq, he told her that he knew of the police report and warned her that the police could do nothing. He and Tariq then beat her so harshly that she had to be taken to hospital where she stayed for seven days.”

On the third occasion the police officer wrote a *“grossly inaccurate”* account. The fourth occasion followed the attempt by her husband to set fire to her after he doused her with petrol. The police officer *“told her that women always tried to blame their husbands for problems of which they were the real cause and that she should sort out her “own work”.*” Following this incident she left Pakistan.¹⁰²

In June 2001, the High Court granted leave to appeal the decision of the Federal Court.

*“MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS v KHAWAR & ORS (S128/2001)
Court appealed from: Full Court of the Federal Court of Australia
Date of judgment: 23 August 2000
Date of grant of special leave: 1 June 2001*

¹⁰¹ Federal Court of Australia (2000) *Minister For Immigration & Multicultural Affairs v Khawar* [2000] FCA 1130, 23 August 2000, Available at: www.austlii.edu.au/au/cases/cth/federal_ct/2000/1130.html

¹⁰² Facts of the case summarised by RWRP from the hearing in the Federal Court of Australia (2000) op. cit.

"Mrs Khawar ("the Respondent") and her three children are Pakistani citizens who arrived in Australia on 17 June 1997. On 16 September 1997 they applied for Protection Visas. The Respondent claimed that she was the target of domestic violence at the hands of her husband, his brother and to a limited extent, their family. She claimed that she went to the Pakistani police on four occasions and on each occasion the authorities took no action against her husband. On 4 February 1998 a departmental delegate refused her application, as did the Refugee Review Tribunal ("RRT") on 11 January 1999. The RRT found that the conduct that the Respondent feared was not for reasons of her membership of any particular social group, nor was it for any other Convention related reason. It found that the Respondent's problems were related solely to the fact that she married her husband against the wishes of her husband's family.

"On 5 November 1999 Branson J set aside the RRT's decision and on 23 August 2000 the Full Federal Court (Mathews and Lindgren JJ, Hill J dissenting) dismissed an appeal by the Minister. The majority found that the critical issue was; "whether the RRT erred in its view that the absence of state protection for any particular group of which Mrs Khawar might have been a member was, as the RRT considered, irrelevant to the causal link demanded by the words 'for reasons of' in the Convention definition of 'refugee'." The majority answered that question affirmatively, firstly by finding that the state's conduct constituted persecution and secondly, by finding that the combination of the husband's conduct and the state's conduct also constituted persecution.

"Justice Hill however found that there was no causal link between the persecutory conduct and the Respondent's membership of a social group. This was because mere inaction by a state could not, without more, constitute persecution. As a corollary, his Honour found that the only possible relevant social group, Pakistani women with abusive alcoholic husbands, was defined by reference to the persecutory conduct itself.

"The grounds of appeal are:

- The majority erred in law in holding that persecution may consist of the effect of the conduct of two or more persons, only one of whom may be moved by a Convention reason.*
- The majority erred in law in holding that the RRT in the circumstances of the case erred by reaching a conclusion on the question of whether the Respondent's fear of persecution was for reason of her membership of a particular social group without first identifying such a group, if any, of which she was a member.*
- The majority erred in law by holding that a state's systemic failure to protect the members of a particular social group who were subject to domestic violence could constitute persecution 'by reason of' the victim's membership of the group, even though the perpetrator of*

the violence was not motivated by a Convention reason to inflict the violence.

- *The majority erred by holding that the causal nexus required by the words 'by reason of' could be established if domestic violence, perpetrated for a non-Convention reason, was inflicted in the knowledge that state protection would not be provided to the victim by reason of her membership of a particular social group.*
- *The majority ought to have held that the primary judge erred in finding that the RRT had erred in law in the manner comprehended by section 476(1)(e) of the Migration Act 1958.*¹⁰³

The case was heard by the High Court on 13 November 2001. To date, the judgement is not available.¹⁰⁴

¹⁰³ High Court of Australia, (2001) *Minister for Immigration and Multicultural Affairs v Khawar & Ors* (S128/2001), 1 June 2001, Available at: www.hcourt.gov.au/registry/matters/matters_nov2001.htm

¹⁰⁴ High Court of Australia Bulletin 2002, No.1, as at 25 February 2002, Available at: www.austlii.edu.au/au/other/hca/bulletin/hcab0201.html#internal18