

A CHARADE OF CHANGE: QISAS AND DIYAT ORDINANCE ALLOWS HONOR KILLINGS TO GO UNPUNISHED IN PAKISTAN

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ABSTRACT

This study begins with the story of Samia Sarwar. At age 17, Samia married her cousin through an arranged marriage. When Samia tried to obtain a divorce, her relatives hired an assassin to kill her. Although this was a murder, Pakistani law allowed Samia's mother and uncle, the most apparent accomplices in her murder, to remain free. As expected, under the Qisas and Diyat Ordinance, Samia's parents forgave the murderer they hired to kill their daughter. Since 1999, several amendments to Pakistan's Penal Code (PPC), particularly the 2004 amendment and the Protection of Women (Criminal Laws Amendment) Act of 2006, introduce legislative action to end honor killings and gender discriminatory legal practices in Pakistan. Until the Qisas and Diyat Ordinance is removed from the PPC, however, perpetrators of honor killings need not fear retribution because many commit their crimes with the consent of family members. Pakistan must revoke its Qisas and Diyat Ordinance in order to stop these heinous murders from going unpunished and to prevent discrimination against women within Pakistan in accordance with international human rights law.

This article will examine all aspects of the Qisas and Diyat Ordinance and its significance to the women and laws of Pakistan: its place within Pakistan's parallel legal systems; the history of Shariah laws and the birth of the Qisas and Diyat Ordinance; the role of Islam in the perpetuation of the Qisas and Diyat Ordinance; how the tradition of honor killings finds a safe haven in the Qisas and Diyat Ordinance; how the act runs counter to the constitution of Pakistan; and how the Qisas and Diyat Ordinance violates international law.

INTRODUCTION

Killings are private offences, against the individual, not the state, so who will bring and pursue the charges of murder? If the father or brother kills a woman, the family of the girl will not pursue the case, as in their eyes no wrong has been done... The

prosecution case collapses in almost all the scenarios of an honour killing: In *karo-kari* cases there is no aggrieved party to pursue the case, society as a whole approves of the killing... If a brother kills his sister on the ground of honour, her guardian, her father[,] can forgive his son.¹

Hina Jilani made the above statement before an Amnesty International Delegation, giving a summation of the “legal hurdles to prosecution in honor killings[.]”² Jilani, a human rights lawyer, witnessed the brutal, world-renowned public honor killing of Samia Sarwar in 1999.

At age 17, Samia Sarwar of Pakistan’s North West Frontier Province (NWFP), married her cousin as arranged by her family.³ For ten years, Samia endured her husband’s abuse; in 1999, she decided that she had had enough and desired a divorce.⁴ Samia discussed her intentions with her family. Rather than offering support for her decision, Samia’s parents threatened her life.⁵ When her parents left on their Hajj pilgrimage, Samia fled and sought the legal advice of Hina Jilani in hopes of obtaining a divorce.⁶

While in Hina Jilani’s office on April 6, 2006, Habibur Rehman, accompanied by Samia’s mother and uncle, shot and killed Samia Sarwar.⁷ Habibur Rehman, a hit man hired by Samia’s family, was killed during the trio’s escape from Hina Jilani’s office.⁸ Even though there is no doubt that Samia Sarwar was murdered, the law in Pakistan allowed both her mother and her uncle, the most obvious accomplices in Samia’s murder, to remain free.⁹ When the case went to court, Samia’s parents appeared as her heirs. The *Qisas and Diyat* Ordinance allowed them to compromise.

¹ Amnesty Int’l, *Pakistan: Violence Against Women in the Name of Honour*, AI Index ASA 33/017/1999, at 50 (Sept. 22, 1999), available at <http://web.amnesty.org/library/index/engasa330171999>.

² *Id.*

³ Rachel A. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT’L L. REV. 1523, 1523 (2000).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 1523-24.

⁷ *Id.* at 1524.

⁸ Amnesty Int’l, *Pakistan: Violence Against Women in the Name of Honour*, *supra* note 1, at 22.

⁹ Kiran Nazir Ahmed, *Concurrent Session B-1, Gender (In) Justice, Hudoob: Still a Controversial Issue*, SDPI RESEARCH AND NEWS, 6TH SPECIAL BULLETIN, VOL. 10, NO. 6, Nov.–Dec. 2003, [http://www.sdpi.org/help/research_and_news_bulletin/SDPI_%20research_and_news_bulletin_nov_dec_2003/articles/Day%20three%20articles/Gender%20\(In\)%20Justice.htm](http://www.sdpi.org/help/research_and_news_bulletin/SDPI_%20research_and_news_bulletin_nov_dec_2003/articles/Day%20three%20articles/Gender%20(In)%20Justice.htm).

Unsurprisingly, they forgave the man they hired to kill their daughter.¹⁰

Since 1999, several amendments to Pakistan's Penal Code (PPC), particularly the 2004 amendment and the Protection of Women (Criminal Laws Amendment) Act of 2006, purport to enact effective legislative action to end the honor killings and gender discriminatory legal practices in Pakistan.¹¹ However, until the *Qisas* and *Diyat* Ordinance is removed from the PPC, the perpetrators of honor killings need not fear retribution because many of these crimes are committed by and with the consent of family members.¹² Pakistan must revoke its *Qisas* and *Diyat* Ordinance to comply with international human rights law, which discourages discrimination against Pakistani women.

I. HISTORY OF HUMAN RIGHTS IN THE PAKISTANI LEGAL SYSTEM: PARALLEL SYSTEMS CROSSING THE LINE

Today, Pakistan's justice system operates as a hybrid of secular, religious, and Western models.¹³ Like many Muslim countries, Pakistan has a secular court system as well as *Sharia* courts to govern particular religious and family matters. The Islamic laws in Pakistan deal with four types of offences: "offence against property (theft and armed robbery); offences of *Oazf* (bearing false witness or making false accusations); prohibition (drug trafficking and alcohol consumption); and offences of *Zina* (rape, abduction of women and "zina", or adultery)."¹⁴ Additionally, "tribal council arbitration... wields incredible control over all manner of disputes arising amongst peoples living in tribal areas."¹⁵ Even though Pakistani women endure overwhelming intra-family violence and abuse, the Pakistani law enforcement and legal system often consider these human rights violations a private, family matter.¹⁶ In many instances, law enforcement ignores reports of domestic violence, and domestic violence that could ultimately result in

¹⁰ Ahmed, *supra* note 9.

¹¹ Protection of Women (Criminal Laws Amendment) Act of 2006 (Dec. 1, 2006), available at <http://www.pakistani.org/pakistan/legislation/2006/wpb.html> (last visited Jan. 24, 2009).

¹² See generally Amnesty Int'l, *Pakistan: Honour Killings of Girls and Women*, AI Index ASA 33/018/1999 (Sept. 1, 1999), available at [http://web.amnesty.org/library/pdf/ASA330181999ENGLISH/\\$File/ASA3301899.pdf](http://web.amnesty.org/library/pdf/ASA330181999ENGLISH/$File/ASA3301899.pdf).

¹³ Mazna Hussain, "Take My Riches, Give Me Justice": A Contextual Analysis of Pakistan's Honor Crimes Legislation, 29 HARV. J. L. & GENDER 223, 233 (2006).

¹⁴ Rifaqat Ali, *Viewpoint: Women as Victims of Islamic Laws*, BBC WORLD SERVICE TRUST.ORG, Mar. 27, 2006, http://www.bbc.co.uk/worldservice/trust/news/story/2006/03/060307_piece_by_rifaqat_ali.shtml.

¹⁵ Hussain, *supra* note 13, at 233.

¹⁶ Ruane, *supra* note 3, at 1534.

honor crimes.¹⁷ Pakistan's parallel secular and Islamic legal systems effectively neutralize recent Pakistani legislation claiming to combat honor crimes and discrimination against women within Pakistan's legal system.

A. *The law post independence from Great Britain*

After the country's liberation from Great Britain, Pakistani law readopted its prior emphasis on female modesty and the male relative's corresponding obligation to help maintain it.¹⁸ There was, however, a great deal of debate about how the dictates of Islam would influence Pakistan's laws.¹⁹ Ultimately, Article 203 C(I) of the Constitution created the Federal Shariat Court in 1977 and gave it "special authority to examine laws for their conformity with the injunctions of Islam."²⁰ "Post-independence courts continued to hand down token sentences to perpetrators of alleged 'honour killings', ignoring the clear terms of the law, and granting male family members a virtual license to kill their women on the pretext of 'honour'."²¹

B. *The Sharia laws*

Pakistan, having proclaimed itself an Islamic State, instituted the Sharia Courts in 1978.²² These courts operate parallel to the existing Supreme and Federal Courts of Pakistan to ensure that existing laws do not run counter to the teachings of Islam.²³ After establishment of the Shariat Courts, "various laws were challenged on the basis of their conformity with the Koran and Sunna, including those parts of the Penal Code dealing with murder and bodily hurt."²⁴ Even though Islam does not condone murder (including honor killings) or false accusations of adultery, the long held custom of killing women to maintain honor combined with Islam's "male-dominated interpretations of concepts like female chastity and male authority...

¹⁷ *Id.*

¹⁸ Sohail Akbar Warraich, 'Honour Killings' and the Law in Pakistan, in HONOUR 78, 82-84 (Lynn Welchman & Sara Hossain eds., Zed Books 2005).

¹⁹ *Id.* at 83.

²⁰ *Id.*

²¹ *Id.*

²² Are Knudsen, *License to Kill: Honour Killings in Pakistan* 10 (Chre Michelson Institute Development Studies and Human Rights, Working Paper No. 1, 2004), available at <http://www.cmi.no/publications/file/?1737=license-to-kill-honour-killings-in-pakistan>.

²³ *Id.*; see also ASIA PACIFIC FORUM ON WOMEN, LAW AND DEVELOPMENT [hereafter APWLD], *An Asia Pacific Regional Overview on Harmful Traditional and Cultural Practices related to Violence against Women and Successful Strategies to eliminate such Practices*, at 5 (2005), available at www.unescap.org/esid/GAD/Events/EGM-VAW2007/Background%20Papers/Regional%20Overview%20on%20HTCP.pdf.

²⁴ Warraich, *supra* note 18, at 83-84.

reinforce[d] an Islamic culture of male dominance.”²⁵

By 1983, all four provinces of Pakistan had local level courts. Each court was “led by an Islamic cleric acting as a religious judge (*Qazi*).”²⁶ These courts presided predominantly over cases concerning Islamic law, including situations where murder victims were accused of offenses like adultery or promiscuity, and often reached discriminatory verdicts that punished women while absolving men.²⁷ Despite having already incorporated the *Sharia* into its legislative and judiciary practice, Pakistani legislators found it “necessary to give to these measures constitutional and legal backing,” in Act X of 1991.²⁸ The system is “inherently patriarchal and rests in the control of women’s bodies and sexualities.”²⁹ Since 1991, Act X *Sharia* courts possess the constitutional power to strike down laws found ‘unislamic,’ as well as the power to uphold discriminatory laws because they embody Islamic values such as male dominion over the household (and all those within it).³⁰

C. *The introduction of Qisas & Diyat Ordinance into Pakistani law*

Following the Supreme Court Shariat Appellate Bench’s 1989 decision, *Federation of Pakistan v. Gul Hassan*, where the court found certain sections of the PPC and the Criminal Procedure Code (CrPC) concerning murder and bodily hurt contrary to Islam, the *Qisas* and *Diyat* Ordinance was introduced.³¹ “*Qisas* and *Diyat* Ordinances essentially place the choice of prosecution wholly in the hands of the victim or her heirs, rather than the government.”³² The passing of this ordinance profoundly affected the judiciary’s handling of honor killings because the victim’s “heirs” are often also her killer.³³ Furthermore, the *Qisas* and *Diyat* Ordinance is riddled with exceptions and offense distinctions, particularly when it is known that the offender was a family member. Even now, the Ordinance is criticized within “Pakistani legal circles and in the press for being extremely confusing.”³⁴

²⁵ Hussain, *supra* note 13, at 237.

²⁶ Knudsen, *supra* note 22, at 10.

²⁷ *Id.*

²⁸ *Act X of 1991, An Act for the Enforcement of Shari’ah*, GAZETTE OF PAKISTAN, June 18, 1991, Extraordinary, Part 1, <http://www.pakistani.org/pakistan/legislation/1991/actXof1991.html> (last visited Jan. 24, 2009).

²⁹ APWLD, *supra* note 23, at 5.

³⁰ *Id.*

³¹ Warraich, *supra* note 18, at 84.

³² Hussain, *supra* note 13, at 232.

³³ Warraich, *supra* note 18, at 86.

³⁴ HUMAN RIGHTS WATCH, CRIME OR CUSTOM? VIOLENCE AGAINST WOMEN IN

II. HONOR CRIMES IN PAKISTAN

“In many societies the ideal of masculinity is underpinned by a notion of ‘honour’ – of an individual man, or a family or a community – and is fundamentally connected to policing female behaviour and sexuality.”³⁵ Women serve their male guardians and families as vessels of honor; however, they do not possess any honor of their own.³⁶ A woman is not in sole control of her honor. Instead, it is a combination of community norms and societal policing.³⁷ Honor is maintained by constraining “[the] movement, conversations, friendships, choice of marriage partners, and so on,” of women. Likewise, when honor is supposedly betrayed or lost, disciplining, or even killing, the woman at fault may restore honor that has been damaged by a woman’s immoral or unchaste actions.³⁸ Honor killings stem from this cultural belief.

Originally, only catching a man and a woman in an immoral or illegal sexual act justified honor killings in Pakistan. Over time, however, a woman’s mere disobedience became enough to justify an honor killing.³⁹ “Women in Pakistan live under a rigid code of appropriate behaviour. Norms about what a woman should and should not do are upheld by customary practices.”⁴⁰ Typically, a close family member executes the honor killing. According to the Human Rights Commission of Pakistan, 1235 of the 1339 individuals accused of honor killings between 1998 and 2002 were members of the victim’s family: 462 brothers, 395 husbands, 217 relatives, 103 fathers, and 58 sons.⁴¹ The majority of Pakistani society considers such crimes justified. Family members of the dead usually do not show remorse or mourn the death of the victim.⁴² The most common causes of honor crimes are accusations of adultery or unchaste behavior, termed *zina* offenses.⁴³

PAKISTAN (1999), available at <http://www.hrw.org/reports/1999/pakistan/>.

³⁵ Radhika Coomaraswamy, *Violence Against Women and ‘Crimes of Honour’*, Preface to HONOUR, at xi, xi (Lynn Welchman & Sara Hossain eds., Zed Books 2005).

³⁶ *Id.*

³⁷ Purna Sen, ‘Crimes of Honour,’ *Value and Meaning*, in HONOUR 42, 48 (Lynn Welchman & Sara Hossain eds., Zed Books 2005).

³⁸ *Id.*

³⁹ Warraich, *supra* note 18, at 80-81.

⁴⁰ APWLD, *supra* note 23, at 7.

⁴¹ U.N. Econ. & Soc. Council [hereafter ECOSOC], Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, E/CN.4/2005/NGO/12, at 3 (Jan. 27, 2005) (written statement submitted by the Asian Indigenous and Tribal Peoples Network, a NGO in special consultative status), available at <http://aitpn.org/UN/61st-G0510559.pdf>.

⁴² Knudsen, *supra* note 22, at 4.

⁴³ *Id.* at 5.

In recent years, the government of Pakistan has passed several amendments in efforts to end the discriminatory application of the Hudood Ordinances relating to *zina* crimes, honor killings, and the resultant abuse of the *Qisas* and *Diyat* Ordinance.⁴⁴ One example is a 2004 PPC amendment which purports to address the issue of honor crimes in Pakistan.⁴⁵ The amendment, however, does not counter the statutory reprieves for family members who carry out honor killings.⁴⁶ The Women's Protection Bill of 2006 is another example. Although this bill seeks to combat discriminatory laws pertaining to rape and women who survive accusations of adultery, it does little to either prevent honor killings or to attain justice for the victims of honor killings.⁴⁷ The act implies that the privacy of the home shall leave certain crimes out of its reach under Article 14 of Pakistan's constitution.⁴⁸ Even though the act creates a more fair procedure for the investigation and prosecution of *zina* crimes, it cannot hope to prevent discriminatory application of *zina* crimes so long as they are an indictable offense in Pakistan. Likewise, these constructive changes do little good for women who are being murdered before the accusation of *zina* reaches the legal system. For honor killing victims, the provisions laid out in the Women's Protection Bill are useless because the accusation of *zina* against her is not voiced to the legal system until after she is dead. Pakistan's Interior Ministry reports that since 2001, there have been more than 4,100 honor killings; however, *qisas* and *diyat* laws allowing "next of kin to 'forgive' the murderer in exchange for monetary compensation remain in force, and continue to be used by offenders to escape punishment[.]"⁴⁹

III. UNRAVELING THE *QISAS* AND *DIYAT* ORDINANCE

In discussing the *Qisas* and *Diyat* Ordinance, it is important to remember that its origins lie in the *Sharia* system based on Islam. Even though this ordinance demands *qisas* (retribution) when a murder occurs, this does not necessarily apply to all murders.⁵⁰ According to Islam, murder is never acceptable unless the person murdered committed an act that is

⁴⁴ HUMAN RIGHTS WATCH, WORLD REPORT 2007: PAKISTAN, <http://hrw.org/englishwr2k7/docs/2007/01/11/pakist14756.htm> (last visited Jan. 24, 2009).

⁴⁵ Miranda Hussain, Comment, *Taking the Moral High Ground on Honor*, DAILY TIMES: YOUR RIGHT TO KNOW, A NEW VOICE FOR A NEW PAKISTAN, Oct. 30, 2004, http://www.dailytimes.com.pk/default.asp?page=story_30-10-2004_pg3_5.

⁴⁶ Warraich, *supra* note 18, at 105.

⁴⁷ HUMAN RIGHTS WATCH, WORLD REPORT 2007: PAKISTAN, *supra* note 44.

⁴⁸ Protection of Women (Criminal Laws Amendment) Act of 2006, *supra* note 11.

⁴⁹ HUMAN RIGHTS WATCH, WORLD REPORT 2007: PAKISTAN, *supra* note 44.

⁵⁰ Warraich, *supra* note 18, at 87.

punishable by death under Islam, or the act is carried out in self-defense.⁵¹ On several occasions, the Pakistani courts expressed that Islam did not permit the killing of “‘one who is *massoom ud dam*’ (one whose life is sacred or whose blood is protected)[.]”⁵² Hence, “[u]nder the... *qisas* and *diyat* provisions, and given the definitional issues surrounding *masoom ud dam*, the victim’s conduct is directly linked to the possible sentence. These factors invariably skew cases in favour of those who kill women and men and claim an ‘honour’ motive.”⁵³ Under these legal postulates, a male guardian (husband, father, brother, etc.) may, regardless of the veracity of the claim, sentence to death a woman accused of a *zina* crime. “Combined with the *Zina* Ordinance, the Law of *Qisas* and *Diyat* has reinforced the very notion of male control over women and subordinate the status of women in the family.”⁵⁴ These occurrences communicate that in Pakistan, a woman’s life is worthless because of sexual choices she may or may not have made. Furthermore, the application of the *Qisas* and *Diyat* Ordinance also means that it is within a male guardian’s discretion – not that of the law – to determine whether the woman’s life is worthless, thus permitting ending the woman’s life without the need for a fair trial or sanctioned legal retribution.

The *qisas* and *diyat* laws give the deceased’s heirs several options for implementing legal justice. The heirs may seek: *qisas* retribution; *diyat* compromise or compensation; or total forgiveness of the victim.⁵⁵ In honor killings, close family members kill women for bringing dishonor to their families. Under the *Qisas* and *Diyat* Ordinance, their other family members or heirs can choose to pardon the killer.⁵⁶

A murder is liable to *qisas* (retribution, i.e. the death sentence) if the accused confesses to the satisfaction of the court, or the requisite number of credible eyewitnesses are available. Where the level of proof is not met, the murder is liable to *tazir* – a sentence of life imprisonment or death under s.302(b) PCC.⁵⁷

However, if the victim’s killer is a parent, grandparent, or spouse survived by children born within the marriage, then certain limits are placed

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 90.

⁵⁴ *Id.* at 105 (emphasis added).

⁵⁵ Amnesty Int’l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 12; see also Mubashir Bhutta Human Rights (MBHR), *Struggling for the betterment of humanity and working for the human rights in Pakistan*, http://www.humanrightspakistan.com/honor_killing.htm (last visited Jan. 24, 2009).

⁵⁶ Ali, *supra* note 14.

⁵⁷ Warraich, *supra* note 18, at 85.

on the implementation of *qisas* and *tazir* under s.302(b) of the PPC.⁵⁸ In these situations, “the death penalty may not be imposed . . . as either *qisas* (punishment equal to the offence committed) or *tazir* (discretionary punishment...),” and the offender cannot receive more than fourteen years imprisonment.⁵⁹

Even though the *Qisas and Diyat Ordinance* repealed the PPC section 300-1 provision that reduced homicide due to “grave and sudden provocation” from murder to manslaughter, claims of provocation used to justify honor killings are considered mitigating factors allowing for monetary *diyat* compensation.⁶⁰ Furthermore, with an honor killing, the perpetrator often avoids *qisas* or *tazir* because the heirs of the deceased prefer to receive monetary compensation (*diyat*).⁶¹ Many Pakistanis are intensely impoverished, and regardless of whether or not the family consented to the murder, for the sake of living family members, the prospect of financial benefit outweighs any desire for legal justice.⁶² In 2002, National Geographic released a documentary depicting this phenomenon. A woman’s son-in-law killed her daughter in a purported honor killing. Despite her anger and remorse, the woman accepted compensation of 200 U.S.D. to support her other children.⁶³

Sadly, poverty is not the only reason family members choose to accept *diyat* payments to atone for the murder of their women. There exists a “lure to exploit the honour system and kill women for the sake of compensation payment.”⁶⁴ The *Qisas and Diyat Ordinance* is a constitutionally backed *Sharia* law that allows for monetary compensation upon the death of a relative. Permitting this sort of exchange implicitly condones tribal law relating to *karo-kari* (pair in an illegal love affair) killings, and the tribal *jirga* system of monetary compensation from the man (the *karo*) who was the cause of the loss of honor and subsequent death of the woman (*kari*).⁶⁵ There has been a marked rise in fake honor killings where a man makes false accusations of *karo-kari*, so that he may both justify the killing of his spouse/female relative and make a financial gain.⁶⁶

Most importantly, the *Qisas and Diyat Ordinance* discriminates against

⁵⁸ Amnesty Int’l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 12; *see also* Warraich, *supra* note 18, at 85.

⁵⁹ Amnesty Int’l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 12.

⁶⁰ Knudsen, *supra* note 22, at 8-9.

⁶¹ Hussain, *supra* note 13, at 233.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Amnesty Int’l, *Pakistan: Violence Against Women in the Name of Honour*, *supra* note 1, at 34.

⁶⁵ Amnesty Int’l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 5.

⁶⁶ *Id.* at 8-9.

women because it condones honor killings, the victims of which are predominantly women, by allowing the victim's heirs (typically the perpetrators) to pardon the crime. Before introduction of the *Qisas* and *Diyat* Ordinance, the PPC allowed honor and "grave and sudden provocation" to serve as mitigating factors in the adjudication of these crimes.⁶⁷ Even though the ordinance removed those sections of the PPC, the tradition of considering threats to honor and provocation mitigating factors in honor killing cases remains. These actions by the judiciary enable the murderer to commit an honor killing without fear of any kind of punishment. Even though the Pakistani courts may exercise their PPC s.311 right to impose a discretionary *qisas* sentence in situations where family members have waived the right to *qisas*, this is only allowed where at least one heir is in disagreement about waiving his/her right to retribution.⁶⁸ However, it is most often the case that "heirs have very little incentive to bring criminal charges, . . . due to cultural obstacles and familial ties that deter them from seeking redress."⁶⁹

Finally, despite its constitutional support, the application of *Qisas* and *Diyat* Ordinance is contrary to the Pakistani Constitution because it discriminates against women. Even the Supreme Court of Pakistan has noted that the implicit acceptance of honor killings under the *qisas* and *diyat* laws defeats the purpose of the laws because it does not align with the religion or the laws of Pakistan.⁷⁰ In *Mahammad Akram Khan v. The State* in 2001, the Court held that honor killings are murders and violate "fundamental rights as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, which provides that no person would be deprived of life and liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution."⁷¹ The ancient custom of killing women in the name of honor, coupled with the gender discriminatory nature of the *Zina* Ordinance, leads to a slanted application of the *Qisas* and *Diyat* Ordinance. Pakistan's judges, particularly in the lower level courts, often reinforce cultural norms of gender inequality through their decisions.⁷² For example, in the Lahore High Court in 1994, a judge accepted counsel's reasoning that her brother rightfully stabbed the victim to death because she allegedly had committed *zina*.⁷³ Implementation of the *Qisas* and *Diyat* Ordinance in honor killing cases violates Article 25 of

⁶⁷ Knudsen, *supra* note 22, at 8-9.

⁶⁸ Warraich, *supra* note 18, at 98.

⁶⁹ Hussain, *supra* note 13, at 233.

⁷⁰ ECOSOC, *supra* note 41, at 3.

⁷¹ Warraich, *supra* note 18, at 97.

⁷² Amnesty Int'l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 14.

⁷³ *Id.* at 15.

Pakistan's Constitution, which guarantees that "all citizens are equal before the law and are entitled to equal protection of the law" and that "[t]here shall be no discrimination on the basis of sex alone."⁷⁴ Pakistan's recent efforts to create PPC provisions to combat honor killings inadequately address the discriminatory application of the *Qisas* and *Diyat* Ordinance to honor killings. Instead, Pakistan must uphold the rights set forth in its own constitution and in the international treaties and agreements that bind Pakistan.⁷⁵

IV. THE *QISAS* AND *DIYAT* ORDINANCE VIOLATES INTERNATIONAL LAW

Pakistan hides behind a shield of cultural relativism in attempts to justify "the violation of women's rights by inhumane and discriminatory practices in the community and family – despite such practices being clearly contrary to international human rights law."⁷⁶ Even the judiciary attempts to justify honor killings by arguing that because this inhumane, gender oppressive form of punishment is accepted by Pakistani society, the judicial system should also permit it.⁷⁷ Cultural relativism continues to prevail as a defense to human rights violations because the male spokesmen of offending countries only represent the positions and best interests of the men who run their countries.⁷⁸ Furthermore, the culture that cultural relativism seeks to protect usually concerns dominant cultures within particular regions typically "constructed from male histories, traditions, and experiences."⁷⁹ When States claim exemption from human rights law on cultural grounds, the international community is easily blinded by the wishes of the power class within that State.⁸⁰ "We need to listen with care, but also with skepticism, to sweeping definitions of this thing called culture, forged as they are in a world of constantly expanding difference and complexity."⁸¹ The most powerful example of abusing cultural protection is equating the demands for upholding human rights with "disrespect for indigenous

⁷⁴ PAK. CONST. arts. 25(1)-(2) (1973).

⁷⁵ ECOSOC, *supra* note 41, at 3; *see also* Amnesty Int'l, *Pakistan: Violence Against Women in the Name of Honour*, *supra* note 1.

⁷⁶ Coomaraswamy, *supra* note 35, at xii.

⁷⁷ Amnesty Int'l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 15.

⁷⁸ Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 167, 170-71 (Julie Peters & Andrea Wolper eds., Routledge 1995).

⁷⁹ HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 225 (2000).

⁸⁰ Rao, *supra* note 78, at 171.

⁸¹ *Id.*

religious norms set by Islamic Law[.]”⁸² For instance, all Muslim States are members of the 1990 *Cairo Declaration on Human Rights in Islam*, which states that all rights must align with Islamic law or be void. Notably, this document lacks any provisions supplying women equal rights and protections of the law.⁸³

Another tactic utilized by violator States is protective governmental rhetoric.⁸⁴ Protective governmental rhetoric defends discriminatory cultural practices by claiming that maintaining those same practices protects women, members of the supposedly weaker sex, from cultural backlash and confusion. In essence, even though the government embraces the international community’s human rights laws, it cannot enforce those laws because it would cause an uproar amongst the people, and the women would be the first to suffer. Although this argument has merit, it cannot trump the long-term benefits of enforcing human rights law. Furthermore, protective governmental rhetoric also serves a manipulative purpose because it enables States, “through incentives as well as force,” to control “women’s reproductive capacities, to torture women, and to curtail women’s freedom through specific social policies.”⁸⁵

Nonetheless, most human rights discourse does not take place between human rights organizations and victims of human rights violations. Government figureheads play out human rights discourse in a series of pronouncements. Sometimes, these pronouncements are made with sincere hopes of future change. Too often, however, they are merely half-hearted attempts at doing just enough to restrain the Human Rights Committee and human rights non-governmental organizations (“NGOs”). They do not present a feasible solution to the State’s systematic discrimination against women.⁸⁶ The voices of women victims of discrimination continue to go unheard and their issues remain insufficiently addressed. The gender complexity and circularity within arguments of cultural relativism cannot be completely exposed until the women who face these challenges and systematic discrimination are placed at the center of political formulations

⁸² Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, *World Conference on Human Rights*, U.N. Doc. A/CONF.157/PC/62/add.18 (1993); Ann Elizabeth Mayer, *Cultural Particularism as a Bar to Women’s Right: Reflections on the Middle Eastern Experience*, in *WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 176, 177 (Julie Peters & Andrea Wolper eds., Routledge 1995) (citing ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* (Westview Press 1991)); see generally Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct*, 15 *MICH. J. INT’L L.* 307 (1994).

⁸³ Mayer, *Cultural Particularism*, *supra* note 82, at 177.

⁸⁴ Rao, *supra* note 78, at 169.

⁸⁵ *Id.*

⁸⁶ *Id.* at 170.

and conclusions born from these arguments.⁸⁷

Without questioning the political uses of culture, without asking whose culture this is and who its primary beneficiaries are, without placing the very notion of culture in historical context and investigating the status of the interpreter, we cannot fully understand the ease with which women become instrumentalized in larger battles of political, economic, military, and discursive competition in the international arena.⁸⁸

Women are hit the hardest by arguments of cultural relativism because they are a minority without a voice. Their efforts to protect their own rights are terminally thwarted by male members of their own cultural group who serve as their only spokesperson to the rest of the world, and who claim that the systematic cultural discrimination these women endure is the basis of their race, religion, or culture. Women in this situation are denied the chance to represent their culture, leading us to ask, whose culture is this anyway?

In light of the effects of cultural relativism, it must be understood that regardless of such theories, Pakistan is committed to several international agreements – particularly the Convention for the Elimination of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women (the Declaration). It is also bound by globally accepted instruments of international law – primarily the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).⁸⁹ Pursuant to this small excerpt of international human rights law, cultural justification for systematic human rights violations is unacceptable. More specifically, article two of CEDAW obligates all signatories (Pakistan ratified CEDAW in 1996) to “condemn discrimination against women in all its forms,” and particularly “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women[.]”⁹⁰ On these grounds alone, it is obvious that Pakistan must abolish the *Qisas* and *Diyat* Ordinance to halt discrimination against women within its borders in accordance with international human rights law.

Pakistan violates the parameters of CEDAW with regard to articles five,

⁸⁷ *Id.*

⁸⁸ *Id.* at 174.

⁸⁹ HUMAN RIGHTS WATCH, CRIME OR CUSTOM? VIOLENCE AGAINST WOMEN IN PAKISTAN, *supra* note 34.

⁹⁰ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, art. 2(f), U.N. GAOR 3d Comm., 34th Sess., 107 plen. mtg., Annex 1, U.N. Doc. A/34/L.61 (Dec. 18, 1979) [hereafter CEDAW].

fifteen, and sixteen. Article five (a) of CEDAW commands that Pakistan:

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁹¹

Pakistan appeases the international community by passing amendments such as the 2004 PPC amendment and the Women's Protection Bill of 2006. However, it does not address the root of the problem that causes the continuation of these deadly cultural practices. Pakistan's Interior Ministry reports that since 2001 there have been more than 4,100 honor killings. Honor killings continue to occur because *qisas* and *diyat* laws allow the perpetrators of these crimes to go unpunished.⁹² The *qisas* and *diyat* laws catalyze discriminatory cultural practices by placing the value of a woman's life in the hands of her family members. Women honor killing victims who die at the hands of a family member have no value to their heirs. The *Qisas* and *Diyat* Ordinance lends support to this discriminatory, frightening reality for Pakistani women. The *Qisas* and *Diyat* Ordinance violates CEDAW Article five (a) by reinforcing the discriminatory conception of women as disposable vessels of honor. CEDAW Article fifteen affords women equal protection before the law.⁹³ Honor killing cases are typically heard in extremely biased, local *Shariah* courts because defendants couch their actions in accusations of *zina* against the deceased woman. The *Qisas* and *Diyat* Ordinance, while it may be facially neutral, is discriminatory in its application within Pakistan's judiciary, violating Article fifteen of CEDAW. Lastly, the *qisas* and *diyat* laws violate CEDAW Article sixteen (1), which prohibits "discrimination against women in all matters relating to marriage and family relations[,]" to ensure "equality of men and women."⁹⁴ This ordinance allows for discriminatory family relations in the matter of honor killings because the heirs may pardon the perpetrator for the murder of the female relative they deemed valueless.

The Declaration of the Elimination of Violence against Women – although it in many ways restates CEDAW – is the "first international human rights instrument to explicitly address the issue of violence against women."⁹⁵ Of even greater significance, the Declaration requires States to eliminate violence against women within both the public and private

⁹¹ *Id.* art. 5(a).

⁹² HUMAN RIGHTS WATCH WORLD REPORT 2007: PAKISTAN, *supra* note 44.

⁹³ CEDAW, *supra* note 90, art. 15.

⁹⁴ CEDAW, *supra* note 90, art. 16(1).

⁹⁵ Ruane, *supra* note 3, at 1565-66.

sectors.⁹⁶ Therefore, Pakistan's claims that honor killings are a private, domestic matter, better handled solely by *Sharia* courts or not by the judicial system at all, is in violation of the Declaration. Article four of the Declaration orders States not to "invoke any custom, tradition or religious consideration to avoid their obligations[.]" to eliminate violence against women.⁹⁷ The *Qisas* and *Diyat* Ordinance excuses honor killings pursuant to Pakistani custom. First, in accordance with Islamic custom, heirs determine punishment for the killers of their family member under *qisas* and *diyat* laws. Yet, pursuant to Pakistani custom, a woman accused of violating family honor has no value in the eyes of her family; therefore, her family will likely bring about her death and feel no need to punish the killer. Second, perpetrators of honor killings often justify their actions by accusing the deceased of a *zina* offense. Pakistani courts often interpret the *qisas* and *diyat* laws to require retribution only for those who led "innocent lives."⁹⁸ Hence, if the killer accuses the departed of *zina*, that woman's life no longer has worth under the Islamic *qisas* and *diyat* laws. Further, the *qisas* and *diyat* laws implicitly condone honor killings because even when either a family member or the government invokes *qisas*, there is no more than a fourteen-year sentence for family members of the deceased who committed the honor killing.⁹⁹ The *Qisas* and *Diyat* Ordinance violates the Declaration because it facilitates the honor killings of women in Pakistan by providing a shield of cultural acceptance.

The *Qisas* and *Diyat* Ordinance violates the globally accepted Universal Declaration of Human Rights (UDHR), articles three, six, seven, ten, and eleven. It discriminatorily violates women's UDHR article three right to life by appraising their lives at little to no worth because of the arbitrary *zina* accusations made against them by their killers.¹⁰⁰ There is a violation of article six because the *qisas* and *diyat* laws do not give women "the right to recognition everywhere as a person before the law."¹⁰¹ Instead, it catalyzes honor killings and views the dead woman as a commodity rather than a person. Article seven, demanding "equal protection of the law," is also violated because the application of the *Qisas* and *Diyat* Ordinance is culturally slanted so that the perpetrators of honor killings against women receive lenient treatment in terms of consideration of cultural norms and the

⁹⁶ Declaration of the Elimination of Violence against Women, G.A. Res. 48/104, art. 1, U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. E/CN.6/W6.2/L3 (Dec. 20, 1993).

⁹⁷ *Id.* art. 1.

⁹⁸ Warraich, *supra* note 18, at 87.

⁹⁹ Amnesty Int'l, *Pakistan: Honour Killings of Girls and Women*, *supra* note 12, at 12.

¹⁰⁰ Universal Declaration of Human Rights, G.A. Res. 217A, art. 3, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/180 (Dec. 12, 1948) [hereafter UDHR].

¹⁰¹ *Id.* art. 6.

ultimate sentence.¹⁰²

UDHR article ten entitles every person to a fair trial before an impartial tribunal for any criminal charges. Article eleven (a) gives “[e]veryone charged with a penal offense... the right to be presumed innocent until proved guilty[.]”¹⁰³ Even though *zina* laws violate the UDHR, it is noteworthy to mention that the women victims of honor killings never have the chance to exercise their right to fair trial and presumption of innocence. The court simply accepts the killer’s accusations of *zina* as true; consequently, honor killing victims are devalued and deprived of justice.

Pakistan did not ratify the International Covenant of Civil and Political Rights (ICCPR). However, the ICCPR is a “cornerstone of international human rights law.”¹⁰⁴ The *Qisas* and *Diyat* Ordinance violates articles two, six, and fourteen of the ICCPR. Pakistan’s gender discriminatory application of the *qisas* and *diyat* laws violates ICCPR article two right to non-discriminatory application of the protections of the ICCPR.¹⁰⁵ Article six encompasses the right to life, and likewise, the *Qisas* and *Diyat* Ordinance violates this article in the same way it violates UDHR article three.¹⁰⁶ More specifically, Pakistan violates ICCPR article six (2), in that the *qisas* and *diyat* laws essentially allow killers to impose the death penalty on a woman for a *zina* offence rather than it be “carried out pursuant to a final judgment rendered by a competent court.”¹⁰⁷ Finally, the *Qisas* and *Diyat* Ordinance violates women’s ICCPR article fourteen (1) equal right to fair trial and (2) right to presumption of innocence in the same manner that the ordinance violates articles six and seven of the UDHR.¹⁰⁸

CONCLUSION

Pakistan must repeal the *Qisas* and *Diyat* Ordinance in order to end discrimination against women victims of honor killings. It must comply with the text of its own constitution and act in accordance with international human rights law. Passing amendments to the PPC that purport to protect women’s rights and facilitate fair legal treatment are insincere efforts designed to merely appease the international community. The amendments seek to conceal the reality that *qisas* and *diyat* laws allow discrimination

¹⁰² *Id.* art. 7.

¹⁰³ *Id.* art. 11.

¹⁰⁴ HUMAN RIGHTS WATCH, CRIME OR CUSTOM? VIOLENCE AGAINST WOMEN IN PAKISTAN, *supra* note 34.

¹⁰⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 2, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (Mar. 23, 1976) [hereafter ICCPR].

¹⁰⁶ *Id.* art. 6; UDHR, *supra* note 100, art. 3.

¹⁰⁷ ICCPR, *supra* note 105, art. 6(2).

¹⁰⁸ *Id.* arts. 14 (1)-(2); UDHR, *supra* note 100, arts. 6-7.

against women in the form of honor killings to continue regardless of what amendments Pakistan might pass. The application of the *Qisas* and *Diyat* Ordinance combined with *zina* laws perpetuates the subordination of women in Pakistan.¹⁰⁹ “[I]nstead of systematically intervening to address violations of the right to life, judges have focused on the victim’s conduct and have been influenced by and reflected customary attitudes condoning the control of and violence against women.”¹¹⁰

Furthermore, the *Qisas* and *Diyat* Ordinance violates international law, particularly CEDAW, the Declaration, the UDHR, and the ICCPR. Unfortunately, the enforcement value of international human rights law is minimal, as there is no *per se* enforcement mechanism for this body of law. Yet, through proper utilization of the media, consistent pressure from the international community, and the persistence of women’s rights activists both within and outside of Pakistan, the desire to repeal the *Qisas* and *Diyat* Ordinance may someday become a reality.

Abolishing the *Qisas* and *Diyat* Ordinance is not a Western attempt to condemn the teachings of Islam, but instead a hope of finding “alternative interpretations that can combine both traditional understandings of Islamic law with fundamental principles of human rights.”¹¹¹ Sadly, the repeal of the *Qisas* and *Diyat* Ordinance cannot change centuries of systematic discrimination and violence. What it can do, through action and subsequent adjudication of honor killing cases, is send the message that a woman’s life is equal to that of a man’s in the eyes of the law and that no one, not even a woman’s closest of kin, has the right to devalue or end her life without facing the consequences of legal justice.

¹⁰⁹ Warraich, *supra* note 18, at 105.

¹¹⁰ Warraich, *supra* note 18, at 104.

¹¹¹ Ruane, *supra* note 3, at 1570.