

**Protecting Women: An Examination of the Deficiencies
in the Protection of Women Act and Other Qualitative
Barriers**

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ABSTRACT

President Musharraf enacted the Protection of Women Act, which came into effect for all of Pakistan on December 1, 2006. Its purpose is to protect women from violence and from the misuse of the Hudood Ordinances. However, there is no evidence, which suggests that the Act has been accepted or implemented across the country. Therefore, this paper identifies the qualitative barriers against the Act.

Specifically, this paper examines the debates and protests surrounding the passage of the Act to discern broader conflicts that serve as barriers (e.g. the conflict over the basis of moral right). The text of the Act is also examined to identify deficiencies that prevent it from being effective. Ultimately, the analysis confirms the presence of qualitative barriers, such as the struggle over cultural change. Moreover, it indicates that the Act itself contains many deficiencies and cannot protect women as it is currently formulated.

Keywords: Pakistan, the Act, Protection, Violence, Women, Hudood Ordinances, Human Rights, Protests

Subject Terms: Pakistan, Women—Violence Against, Human Rights, Culture and Law, Cultural Relativism

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PART 1: INTRODUCTION

The Act and its Purpose

On December 1, 2006 President Musharraf enacted the Protection of Women Bill. The Protection of Women Act (the Act) amends Pakistan's criminal code to include the crime of sexual assault. Previously, sexual assault was tried by Sharia courts under the Hudood Ordinances. This meant that victims had to meet the burden of proof stipulated for adultery or Zina. The Act recognizes that the Zina Ordinance, in particular, has been exploited to persecute women and deny their universal human rights (PWA, 2006). As a result, the Act seeks to displace and amend the Hudood Ordinances.

At a broader level, the purpose of the Act is to protect women and provide them with the right to be free from violence. Specifically the Act asserts that women should be protected from violence and from the misuse of the Hudood Ordinances (PWA, 2006). This is a universal human right that is included in the Convention on the Elimination of All Forms of Discrimination against Women. This right is also consistent with the right to security of person as described by the Universal Declaration of Human Rights. The Act also removes the Zina-based burden of proof from the victim. Finally, the Act aims to reduce the incidence of sexual assault by making it easier to report such cases.

However, the Act cannot achieve its purpose/aims if it is not accepted and implemented across the country.

There is no evidence to suggest that the Act has been accepted and implemented across the country. Similarly, there is no evidence, which indicates that, to date, the Act has achieved its purpose/aims. Therefore, this paper examines the Act itself to identify any gaps and deficiencies in the legislation, which hinder it from achieving its purpose/aims or from being accepted and implemented. This paper also identifies other qualitative barriers, which prevent the Act from being accepted and implemented. These barriers are evident from the debates surrounding the passage of the Act. This paper does not attempt to identify any quantitative barriers (e.g. lack of resources) against the Act; as such information is not accessible through secondary research.

Purpose of the Paper: Assessing the Act and Identifying Barriers

The Act is the first legislation, which explicitly seeks to protect women. Moreover, it un-presciently amends and seeks to displace the deeply embedded Hudood Ordinances. The achievement of its purpose is contingent upon the effectiveness of the legislation itself. The formulation of the legislation also impacts the extent to which it has been or will be widely accepted and readily implemented. The political and public debates surrounding the passage of the Act also highlight some of the qualitative barriers, which prevent the Act from

being accepted and implemented in its current form. Therefore, this paper addresses the following questions:

1. Are there deficiencies within the Act, which prevent it from achieving its purpose (i.e. protecting women) and from being accepted and implemented?
2. What are the other qualitative barriers, as evident from the debates, which prevent the Act from being accepted and implemented?
3. Can the Act, as it is currently formulated, protect women?

The analysis ultimately identifies several deficiencies. For example, the Act fails to sufficiently displace the Hudood Ordinances. Moreover, the ongoing conflict over the basis of moral right and the struggle over cultural change that are evident from the debates, are major barriers, which prevent the Act from being accepted and implemented.

Background: Reporting Sexual Assaults, the Hudood Ordinances, & the Act

The incidence of sexual assaults has steadily increased in Pakistan over the last decade (Human Rights Commission of Pakistan, 2007). According to the Human Rights Commission of Pakistan, 250 sexual assaults occurred in the first five months of 2005 (IRIN, 2005). The Commission further indicated that this was a marked increase from the same period for 2004 (IRIN, 2005). In the first five months of 2006 the number of incidences increased to 389 (Human Rights Commission of Pakistan, 2006). These numbers may underestimate the incidence of sexual assault in Pakistan. According to the Progressive Women's

Association more than 60 percent of sexual assaults go unreported (Progressive Women's Association, 2008). As a result, some estimates place the annual number of sexual assault victims at 10,000, rather than in the hundreds (IRIN, 2005).

There are barriers, which make it difficult for women to report sexual assaults. One barrier is the conduct of the police. According to an Amnesty International Report, the Pakistani police are biased towards male attackers and rarely prosecute them (Amnesty International, 1999). The report also indicates that many of the offenders who are convicted are not sentenced (Amnesty International, 1999). This discourages women from reporting attacks. This is consistent with the work of Merry who argues that police receptivity and conduct play a key role in shifting women's subjectivities towards exercising their rights (Merry, 2006). Subjectivities are defined as an individual's subject position on a particular discourse, such as rights (Merry, 2006). The Hudood Ordinances have also made it extremely difficult for women to report sexual assaults.

The Hudood Ordinances were enacted in 1979 by military ruler Zia-ul-Haq. The Ordinances are based on Islamic or Sharia law. The Zina Ordinance stipulated that the woman alleging the sexual assault had to produce four adult male witnesses of good standing to corroborate that the "the act of penetration" occurred (The Offence of Zina - Enforcement Of Hudood Ordinance, 1979). To prove the sexual assault the victim also had to admit that sexual intercourse took

place (The Offence of Zina - Enforcement Of Hudood Ordinance, 1979). Doing so was risky as the victim was charged with adultery if she was unable to produce the witnesses. Eyewitness testimony is the only acceptable evidence required for sexual assault, according to the Ordinance.

Some estimates indicate that since 1979, hundreds of victims have been charged with adultery and incarcerated (National Commission of the Status of Women Report, 2003). Other estimates place the number in the thousands (Christian Science Monitor, 2007). According to the Pakistan National Commission on the Status of Women, 80 percent of female prisoners in 2003 were victims of sexual assault and imprisoned for adultery (National Commission of the Status of Women Report, 2003).

The Protection of Women Bill was developed and presented to parliament, partly in recognition of this situation. The Bill was also a response to the much publicized case of Mukhtar Mai. In 2002, Mai was gang raped out of honour revenge (BBC News world, 2005). Mai's brother was accused of dishonouring a woman from a more powerful clan in their village. To regain their lost honour, men from that clan assaulted Mai (BBC News world, 2005). Mai's case gained much international attention. President Musharraf and his government were widely criticized for their response to the Mai case. In particular, the government was criticized for placing Mai on the exit-control list, which prevented her from flying abroad (The Washington Post, 2005). President Musharraf was also condemned by women's rights activists and domestic/ international NGOs for his

comments about how women tried to get assaulted or used an assault as the basis for obtaining a foreign visa (The Washington Post, 2005). Finally, the Bill was developed to demonstrate that Pakistan was a moderate Islamic state (BBC, 2006). Intense political debates and public protests followed the presentation of the Bill. However, an amended version of the Bill was passed by parliament in November of 2006.

The Methodology: Conflict and Criteria

To examine the debates and protests surrounding the passage of the Act, the major participants are identified and their positions described. The debates and protests inform broader conflicts and struggles, which serve as barriers that prevent the Act from being accepted and implemented. For instance, the conflict over the basis of moral right is one such barrier. This is a conflict between universal human rights or Islam as the basis of moral right.

To analyze the text of the Act, four specific criteria are applied to it. The basis of these criteria is anthropologist Sally Merry's arguments and assertions about universal human rights in the local context. For example, she asserts that in order for universal human rights to be accepted at the country level, those rights must be presented in a way that is culturally resonant. The assertion provides the basis for criteria # 3, which is described below. All of the criteria described below are not offered or used by Merry.

1. Legislation, which employs a universalist approach, is more likely to be accepted and implemented, if it promotes rights consciousness among the target group. Therefore, the Act must empower women and encourage them to frame their grievances in terms of rights (Merry, 2006). Such empowerment creates a rights conscious local constituency that pushes the government to accept and implement the legislation (Merry, 2006). Ultimately, the Act must clearly afford rights to women and indicate how to use those rights.

2. As Merry points out, rights consciousness is effective if it shifts subjectivities (Merry, 2006). In addition to recognizing and accepting any rights afforded to them by the Act, women must also be willing to exercise those rights. Such willingness represents a shift in subjectivities (Merry, 2006). However, exercising those rights is contingent upon police conduct and receptivity. Therefore, the Act must include provisions to ensure that police conduct is receptive to the needs and rights of women. In the absence of such provisions women would not be willing to shift their subjectivities.

3. In order to be accepted, implemented and generally effective, the Act must be framed in a way, which is culturally resonant. According the sociologists, frames are interpretive packages that surround a core idea (Ferree, 2003). The core idea of the Act is that women must be protected from violence. Specifically, women must be protected from the misuse and abuse of the Hudood Ordinances (PWA, 2006). However, the debates and protests surrounding the passage of the Act indicate that for many the Hudood Ordinances reinforce

Islam as the basis of moral right. Therefore, the Act must be framed in such a way that does not directly contradict the Hudood Ordinances. Directly contradicting the Ordinances would prevent the Act from being widely accepted and implemented.

4. This Act must be translated into existing power relationships in order to achieve its purpose/aims. However, if it is too fully blended into existing power relationships then it loses the potential to affect change (Merry, 2006). In other words, if the Act reinforces the Hudood Ordinances then it cannot be effective. Conversely, if the Act is too radical it would not be accepted and implemented.

The following section describes Merry's approach to human rights. It also describes the major arguments offered by universalism as well as the major criticisms against it. Similarly, it outlines the major arguments of cultural relativism and the criticisms of that approach. These two approaches inform the concept of moral right and conflicts over the basis of it.

Literature Review: Universalism, Cultural Relativism and an Alternative

Introduction

The human rights discourse is characterized by a debate between two polarized approaches. The first approach is the universalist approach, which is premised on the concept of universalism. According to universalism, universal human rights provide the sole basis of moral right. The second approach is the relativist approach, which is based on cultural relativism. Cultural relativists argue

that culture, which includes religion, is sole basis for moral right. Proponents of the universalist approach stress the importance of ratifying international human rights treaties, which are created at multilateral institutions, such as the United Nations. Signatories have specific obligations stipulated by the treaties, which include the institutionalization of universal human rights. By contrast, the relativist approach focuses on culturally derived institutions to institutionalize rights. Each approach asserts in its own superiority and exclusivity from the other.

Universalism: Background and Major Arguments

The concept of universalism became prominent after WWII. In the post-war years countries engaged in extensive discussions about human rights and the universal applicability of those rights (Morsink, 1999 and Wronka, 1998). The emphasis on universal application was largely spurred by the horrors of WWII, in particular Germany's racial purity laws and the extermination of millions of Jewish people (Morsink, 1999 and Wronka, 1998). Early proponents of universalism argued that individual cultures should not determine their own values because in so doing, they overlook human dignity and life (Morsink, 1999 and Wronka, 1998).

Eventually, these discussions culminated into the Universal Declaration of Human Rights, which was developed in 1948. The underlying principle of this document was that human rights are universal and supersede all cultures. This principle informs the major arguments and claims of contemporary universalists.

One major claim is that all humans have rights by virtue of their humanity. Baehr asserts that all human beings have rights and those rights are human rights (Baehr, 2001). Similarly, Jones argues that human rights are universal because they ascribe a single set of rights to all humanity (Jones, 2000).

A second major claim is that a person's rights cannot be conditioned by gender or national origin (Donnelly, 2003). This means that everyone has human rights regardless of their status in society or country of residence. Another interpretation of this claim, made by Bell, is that universal human rights are held equally by all individuals (Bell, 1999). As a result, every individual is entitled to enjoy the benefits of human rights (Reichert and McCormick, 1998). And governments are obligated to provide a framework, which ensures the delivery of those rights (Reichert, 2006).

Universalists also argue that universal human rights are the highest moral right or the sole source of moral right (Donnelly, 1984). Thus, universalism employs a rigid ordering of the different moral communities to which individuals and groups belong (Donnelly, 1984). Absolute priority is given to the demands of the cosmopolitan moral community (international human rights regime) over all other moral communities, within individual cultures (Donnelly, 1984). This hierarchy means that individual rights cannot be subordinated (Donnelly, 1984).

Similarly, Charney contends that universal human rights protect individuals against the actions of other individuals and or collectivities (Bell, 1999). He also asserts that the world needs to follow the principles of liberal democratic regimes. He further argues that the basic principles of the liberal democratic regime are universal human rights (Bell, 1999). Charney specifically refers to democracy and civil rights (i.e. American style civil and political liberties) as contained in the Universal Declaration of Human Rights. Charney further supports his argument by indicating that liberal democratic rights are universal because non-western social critics uphold civil and political rights in opposition to their own governments (Bell, 1999).

According to universalism, moral ultimacy cannot be given to any single culture (Jones, 2000). As a result, universalism seeks to identify and displace cultures and religious ideologies that do not recognize human rights (Jones, 2000). Jones and other proponents of universalism have no qualms about disregarding or displacing cultures and subordinating state power to a universal ethic. Rather, they justify the displacement and subordination by arguing that the purpose of universalism is to transform the world into a better and more just place (Jones, 2000).

Ultimately, universalism is accorded a privileged status by its proponents. According to proponents, this privileged status reflects the superiority of the concept (Jones, 2000). They further assert that this superiority justifies the

imposition of universalism on the world (Jones, 2000). Donnelly demonstrates the superiority of universalism by citing the number of states that have ratified international human rights treaties (Donnelly, 2003).

Major Criticisms of Universalism

The concept of universalism is manifested in the Universal Declaration of Human Rights and in subsequent UN conventions. However, critics charge that the declaration and conventions are ineffective because they lack an enforcement mechanism. The critics also argue that the true motivations of universalists are selfish, imperialistic and driven by a desire for increased economic gains.

According to critics, human rights are based on western morality and should not be imposed on non-western societies (Reichert, 2006). They argue that any such imposition disregards the historical and economic development of other societies as well as their cultural differences (Reichert, 2006). Therefore, the critics conclude that the imposition of western human rights on non-western cultures is unjust (Reichert, 2006). Critics also charge that universalism perpetuates colonialist practices. The basis of colonialist practices is the assumption of superiority over other values and ethics (Harriss-Short, 2003). They also argue universalism morally legitimizes the West's economic agenda of exploiting the rest for material benefit (Mullender, 2004).

Another argument against universalism is that the imposition of universal human rights at the country-level limits the role of domestic governments and in so doing, violates the sovereignty of those nations. This violation is particularly harmful to developing countries as it perpetuates their dependence on the West (Reichert, 2006). For example, international aid is sometimes provided in response to a country's ratification of a UN convention (Reichert, 2006).

Regardless, of whether ratification is voluntary or forced, it is meaningless, according to critics. They contend that UN conventions lack enforcement mechanisms to ensure compliance. As a result, states are able to ratify the conventions without any intention of implementing them. Hafner-Burton argues that ratification equals window dressing and subverts criticisms from ongoing human rights violations (Hafner-Burton, 2005). Tsutsui supports this view by arguing that UN conventions are more effective in developed countries than in developing countries (Tsutui, 2007). The most significant criticism of universalism is that it disregards cultural and religious diversity (Merry, 2006). The staunchest critics of universalism are cultural relativists. They offer cultural relativism as an alternative to universalism.

Cultural Relativism: Background and Major Arguments

Cultural relativism gained intellectual significance in the latter half of the colonial period (the 19th century). It embodied resistance to western domination (Prasad, 2007). Early proponents of cultural relativism included prominent anthropologists, such as, Margaret Mead and Ruth Benedict (Ulin, 2005). They

argued that all truths are subject to the norms and expectations of each specific culture. Additionally, neither liberties nor values are fundamentally inherent to human nature (Prasad, 2007). This directly contradicts the universalist claim that humans have rights by virtue of being humans. Cultural relativists counter the universalist claim of superiority by arguing that no culture is better or worse than another (Prasad, 2007). Rather, they argue that each culture should be valued for its unique identity and acknowledged for its self-worth.

Bozeman asserts that there are profound differences between western legal theories and the cultures of Asia, Africa and the Middle East (Bozeman, 1971). Given these differences, one must be a product of the culture to understand the culture (Bozeman, 1971). Dundes is a strong supporter of this view. She argues that the right action can only be determined with reference to the context of the specific culture (Dundes, 1988). She also argues that proponents of universalism are often not products of the cultures that they seek to override or displace (Dundes, 1988). Dundes' argument also reinforces Herskovits' assertion that judgments are based on experience and experience is interpreted based on culture (Herskovits, 1971). Bozeman also suggests that even if a culture accepts a universal human right, the right is modified as it is filtered through that culture's language and traditions (Bozeman, 1971).

Most importantly, cultural relativists assert that there is no universal meaning to a moral value (Prasad, 2007). Therefore, every culture or religion

provides the basis for its own moral right (Prasad, 2007). Moreover, according to Fleischacker moral values cannot be separated from cultural values (Fleischacker, 1999). He also contends that individuals generally prefer the rich and specific way of life embodied in their cultures to the vague abstractions promoted by universalism and its proponents (Fleischacker, 1999).

Some cultural relativists assert that many traditional societies do not recognize human rights (Reichert, 2006). For example, Kennedy argues that not all cultures identify human rights as meriting protection of the sort advocated by universalism (Kennedy, 2001). Furthermore, he argues that the perspective of these cultures must be respected and no regime is justified in attempting to change that perspective (Kennedy, 2001). Reichert cites a striking example to illustrate Kennedy's argument. The example is as follows: If a culture allows female genital mutilation (FGM) then the existence of a universal human right that prohibits cruel treatment should not prevent the practice from occurring. In other words, if the culture accepts FGM, no universal right should supersede that cultural norm (Reichert, 2006).

Ultimately, cultural relativism is based on notions of moral autonomy, communal self-determination and the demand for international evaluations (Donnelly, 2003). This means that a culture evaluates its own practices rather than allowing for or acknowledging external evaluations. The desire and drive for

internal evaluation supports Karl Popper's view that indigenous cultures are closed because of the determinations of tradition (Popper, 1994).

Major Criticisms of Cultural Relativism

In the late colonial and early post-colonial period, proponents of cultural relativism advocated the need for tolerance and debunked myths of racial superiority (Ulin, 2005). Their efforts were largely acknowledged. However, the other major arguments and claims of cultural relativists are highly criticized for perpetuating human rights violations.

Critics charge that cultural relativism condones harmful cultural practices, such as violence against women by arguing and defending cultures as wholes (Merry, 2006). This criticism is supported not just by proponents of universalism but also by anthropologists, such as Merry. Merry asserts that arguments about preserving culture provide the basis for defending male control over women (Merry, 2006). Similarly, Miller argues that cultural relativism merely perpetuates traditional practices. She contends that women have not played a significant role in determining cultural practices because traditionally, male activities have set the cultural standards (Miller, 2006). As a result, violence against women is common in many cultures (Miller, 2006).

Cultural relativism is also strongly criticized for employing a static definition of culture (Merry, 2006). Cultural relativists examine individuals within a system of meaning at a given time with the underlying assumption that the

system is unchanging (Merry, 2006). In so doing, cultural relativists ignore the dynamic and fluid nature of culture. Merry argues that cultural relativists should recognize and adopt a more fluid definition of culture (Merry, 2006). Employing a static definition of culture also reproduces the assumption that culture is homogenous and localized. Gellner contends that approaches, such as cultural relativism, which emphasize the local, are unscientific (Gellner, 1995). This means that the validity of relativist claims is suspect.

Donnelly also supports the view that the claims and arguments of cultural relativists are invalid by arguing that rural areas have been corrupted by foreign influences (Donnelly, 2003). Specifically, he asserts that foreign institutions ranging from the modern state to the money economy have penetrated local cultures (Donnelly, 2003). Therefore, the traditional culture, which cultural relativists seek to protect no longer, exists (Donnelly, 2003).

A final major criticism is that repressive regimes hide behind cultural relativism for their own self-preservation (Prasad, 2007). Repressive regimes often engage in practices that violate the human rights of their citizens. More often than not, these practices have no cultural basis. However, cultural relativism provides a shield to protect these practices against external evaluations. So, cultural relativism allows human rights violations and preserves the institutions, which perpetrate those violations.

An Alternative Approach

Universalism completely disregards the significance of cultural difference and cultural relativism does not allow for the universal application of human rights. As a result, both concepts are individually problematic for protecting women's universal human rights. In recognition of this problem, human rights models have emerged, which attempt to reconcile the universality of human rights with cultural and or religious diversity. One such model, which is offered by Merry, is described below.

Unlike more traditional cultural relativists Merry argues that culture must be viewed as open and fluid rather than as rigid and unchanging (Merry, 2006). Unchanging cultural values and beliefs serve as barriers to women's universal human rights (Merry, 2006). According to Merry, such barriers can be removed through education (Merry, 2006).

Merry also argues that cultures are not just comprised of beliefs and values but also of practices, habits and institutions. She further asserts that cultural institutions that permit violence against women must be transformed (Merry, 2006). Such transformation can only be achieved if the culture is open and receptive to change (Merry, 2006). Fostering receptivity means placing universal human rights in terms, which are acceptable and persuasive in local contexts.

Finally, Merry suggests that universal human rights ideas must be translated into local terms and situated within local contexts of power and meaning (Merry, 2006). Doing so, results in universal human rights that are culturally resonant. In this way, human rights become the source of moral right. As a source of moral right, they are universally applied in local contexts (Merry, 2006).

The Protection of Women Act employs a universalist approach by amending and seeking to displace the Hudood Ordinances. By contrast, the Hudood Ordinances represent a relativist approach to rights by using Islam and Shari'a law as its basis. The following section examines the political debates and public protests surrounding the passage of the Act. These debates inform broader conflicts, such as the conflict over the basis of moral right, which serve as barriers against the Act.

PART 2: POLITICAL DEBATES AND PUBLIC PROTESTS

Pakistan's Parliamentary System

Pakistan has a bicameral federal legislature. It is known as the Majlis-i-Shoora or the Council of Advisers (GoP, 2008). It consists of the Senate, or the upper house and the National Assembly, or lower house. The National Assembly has 342 members of which 272 are filled by direct elections (GoP, 2008). Seats are allocated to each of Pakistan's four provinces based on proportional representation. Seats are also given to the Federally Administered Tribal Areas and to the Islamabad capital territory.

Members of the National Assembly or MPs serve five-year terms (GoP, 2008). The Prime Minister appoints the President (GoP, 2008). The Prime Minister has a Federal Cabinet. The Cabinet ministers are appointed by the President on the advice of the Prime Minister (GoP, 2006).

The Senate has equal representation from each of the four provinces. There are 100 senators (GoP, 2008). Senators are elected by the members of their respective provincial assemblies (GoP, 2008). The Federally Administered Tribal Areas and the Islamabad Capital Territory also have representatives in the Senate. According to the constitution, the chairman of the Senate is next in line to the president (GoP, 2006).

The Senate or the National Assembly may initiate and pass legislation. However, only the National Assembly approves the federal budget and all finance bills (GoP, 2008). The president may veto non-financial bills (GoP, 2008). However, the legislature may overrule the President's veto if a majority of members in both houses vote to do so (GoP, 2008).

In 2006, the ruling coalition consisted of Pakistan's Muslim League and the MQM party (IRIN, 2006). President Pervez Musharraf led the government. Pakistan's People Party (PPP) was in the opposition. The PMLN opposed the Musharraf government (IRIN, 2006). The MMA also opposed the government. The MMA was a six party alliance of religious parties (IRIN, 2006). The Musharraf government and the PPP held a majority of seats in parliament. The MMA held 53 seats (IRIN, 2006).

Political Debates and Protests Surrounding the Passage of the Bill

President Musharraf enacted the Protection of Women Bill after four months of intense political debates and protests. The original version of the Bill was amended in response to protests, particularly from the MMA. The amended version was not passed by the legislature. The MMA and other parties strongly protested against a subsequent version of the Bill (referred to as the new amended bill). Despite these protests the new amended bill was passed by the National Assembly and by the Senate. This section describes the political debates and protests surrounding the original versions of the Bill and the protests against the new amended version of the bill prior to and after its enactment.

Initial Political Protests and Debates

The Bill was presented to the National Assembly in August of 2006. The MMA immediately condemned the Bill as anti-Islamic (BBC Monitoring South Asia, 2006). MPs from the MMA tore the Bill and trampled on it to demonstrate their opposition to it (BBC Monitoring South Asia, 2006). They also argued that the Bill was a means to increase lewdness and indecency in Pakistani society (BBC News, 2006).

The Jamaat E Islami party (JEI party) was another vocal opponent of the Bill. The Jamaat-E-Islami is Pakistan's largest religious party. It is the major partner in a six-party religious alliance that came into power in the North West Frontier and Baluchistan provinces in October of 2002 (Terzieff, 2004). On August 25, 2006 the female wing of the Jamaat E Islami held a protest demonstration against the Bill (Pakistan International Press, 2006). This demonstration was part of a nationwide campaign against the Bill (Pakistan International Press, 2006). Participants of the demonstration included female MPs and MMA members (Pakistan International Press, 2006).

In addition to the religiously based criticisms against the Bill, MMA leaders and the leaders of other parties argued that acceptance of the Bill indicated support for America and support for Musharraf's military dictatorship (Daily Times, 2006). To further demonstrate their opposition, MPs from MMA and the PMLN walked out of parliament twice in September (Associated Press of Pakistan, 2006). However, these walkouts only delayed parliamentary

proceedings. As a result, the MMA threatened to quit the National Assembly if the government did not withdraw the Bill (Daily Times, 2006).

To appease the MMA and prevent a mass resignation, the government amended the Bill. The amended bill stipulated that in the absence of four witnesses a victim could file a case under the criminal penal code (The Times, 2006). However, if four witnesses were available then the case would be filed with a Sharia court, which was consistent with the Hudood Ordinances (The Times, 2006).

However, the amended bill provoked a strong reaction from liberal and secular political parties. The MQM, threatened to withdraw from the ruling alliance if the amended bill was presented (The Times, 2006). The MQM viewed the amended bill as being anti-women since it allowed for the continued use of the Hudood Ordinances (The Times, 2006). As a result, attempts to pass the amended bill, in September of 2006, failed.

The New Amended Bill and Continued Debates and Protests

Despite the failure to pass the Bill in September, the government did not withdraw it. Rather, the government devised a new amended version of the bill. Under the new amended bill, rape cases would be tried only in criminal courts (IRIN, 2006). However, both criminal and Sharia courts would try adultery cases based on the preference of the complainant (IRIN, 2006). The government believed that the newly amended bill would satisfy the opposition and the MMA.

However, the MMA declared that the new amended bill was unacceptable (IRIN, 2006). As a result, that version of the bill spurred even more intense political debates and protests.

The MMA argued that the new amended bill encouraged free sex (BBC News, 2006). This party further argued that if passed, the bill would spread evil in Pakistani society by encouraging acts of adultery and fornication (BBC News, 2006). Maulana Falzur Rehman, opposition leader and general secretary of the MMA said that the Bill was meant to appease the United States (Daily Times, 2006). Similarly, the JEI party asserted that the new amended bill's purpose was to appease the American government (Jamaatwomen.org, 2006). To support its assertion, the JEI party issued a resolution, which indicated that the amendments made to the bill, coincided with the dictates of the American government as available on the state department website (Jamaatwomen.org, 2006). In particular, the resolution cited the State Department's demand to scrap Islamic law in Pakistan (Jamaatwomen.org, 2006). The resolution also asserted that no non-Muslim resident of Pakistan endorsed the newly amended version of the Bill (Jamaatwomen.org, 2006). Therefore, the JEI demanded the immediate withdrawal of the Bill. However, this demand was not met.

The JEI party also examined the Hudood Ordinances. Their analysis indicated that the Ordinances were in line with the Quran and Sunnah (Jamaatwomen.org, 2006). As a result, the Ordinances were religiously acceptable and had to be protected and preserved. Moreover, the JEI party

contended that the Hudood Ordinances were devised by a body of Muslim scholars trained in Sharia law (i.e. the ulema) and had been accepted by the five National Assemblies that were elected after the Zia Al Haq regime (Jamaatwomen.org, 2006). Their analysis also suggested that the provisions of the new amended bill conflicted with Islamic teachings and in particular with the Quran and Sunnah by amending and seeking to displace the Ordinances (Jamaatwomen.org, 2006).

The JEI party also argued that new amended bill directly contradicted sections 2a and 227 of the constitution of Pakistan (BBC, 2006). The former stipulates that Islam will be the state religion. The latter section contends that no laws will be passed, which are repugnant to the Quran and Sunnah. To this charge the government responded that the bill was consistent with sections 2a and 227 of the Constitution. The government also insisted that the new amended bill did not contradict the teachings of the Quran and the Sunnah (BBC News, 2006). However, this response was not sufficient to appease the JEI party or the MMA.

In November of 2006, the MMA announced that its members would resign from the national and provincial assemblies if the new amended bill was passed (BBC Monitoring South Asia, 2006). According to MMA officials, the party did not want to be affiliated with a government that produced anti-Islamic legislation (BBC Monitoring South, Asia). Moreover, the MMA had become frustrated with the government's disregard for its criticisms of the Bill and all its versions (BBC

Monitoring South Asia, 2006). A senior MMA leader indicated that the mass resignation would take place on December 6 and 7 of 2006 (BBC News, 2006). In 2006, the MMA held 53 seats in the National Assembly (IRIN, 2006). Therefore, a mass resignation would affect parliamentary proceedings. There was also a fear that a mass resignation by the MMA MPs would spur resignations among other parties, and particularly among PMLN MPs (IRIN, 2006). The PMLN was a supporter of the MMA. It was the MMA's partner in the Alliance for Restoration of Democracy (IRIN, 2006). The major aim of the Alliance was to oust President Musharraf. Leaders of both the MMA and PMLN strongly opposed President Musharraf and the military's role in politics (IRIN, 2006).

The November 2006 Vote and Results

Despite the threat of mass resignation and its potential repercussions, the new amended bill was put to a vote on November 15. The MMA boycotted the vote (IRIN, 2006). They justified their boycott by arguing that the new amended bill contradicted the teachings of the Quran and Sunnah by allowing the crime of sexual assault to be tried in criminal courts (IRIN, 2006). However, the PMLN did not support the MMA, as expected. Rather, the PMLN abstained from the vote (IRIN, 2006). The PPP voted in favour of the new amended bill (IRIN, 2006). Ultimately, the National Assembly passed the new amended bill (Paktribune, 2006).

In the Senate, the government voted for the passage of the new amended bill (The Dawn, 2006). The PPP also voted in favour of it (The Dawn, 2006). As in

the National Assembly, the PMLN party abstained from the vote (IRIN, 2006). However, the MMA voted against the Bill (The Dawn, 2006). Despite the MMA vote, the Senate passed the new amended bill.

Public Protests against the Bill

The presentation of the Bill to parliament in August of 2006 sparked intense public protests. The two most active participants in the protests were conservative Islamists including religious leaders and numerous activists from domestic NGOs, such as the Women's Action Forum. The former condemned all versions of the Bill, including the new amended version, which was passed by parliament. The latter supported the original versions of the Bill. However, these activists criticized the new amended bill for not repealing the Hudood Ordinances.

In August of 2006, conservatives announced a nationwide campaign against the original version of the Bill (Daily Times, 2006). The campaign was swiftly launched. Posters against the Bill appeared on public walls in many major Pakistani cities, such as Lahore (IRIN, 2006). As part of the campaign, Muslim religious leaders known as Imams used their Friday sermons as a forum for encouraging mobilization against the Bill (IRIN, 2006). They argued that under the criminal code men could be falsely implicated in cases of sexual assault (IRIN, 2006). However, the eyewitness testimony of four male witnesses safeguarded men against false allegations (IRIN, 2006). They also asserted that

the Hudood Ordinances were based on Sharia law and therefore could not be displaced (IRIN, 2006).

By contrast, according to many activists from domestic NGOs, the fact that the Bill was developed, indicated that the Hudood Ordinances could be displaced even though they were based on Sharia law (BBC Monitoring South Asia, 2006). They also believed that the passage of the Bill would reduce the plight of victims of sexual assault (BBC Monitoring South Asia, 2006). Specifically, they argued that removing the burden of proof from the victims would safeguard them from being charged with adultery and imprisoned. The activists noted that hundreds and possibly thousands of victims of sexual assault were suffering in prison because they were unable to produce the witnesses to prove their cases (BBC Monitoring South Asia, 2006).

Public Protests against the New Amended Bill

The most intense public protests occurred against the new amended version of the bill that was passed in November of 2006. Both Islamists and NGO activists engaged in the protests. Ultimately, these protests did not prevent the passage of the new amended bill. In November, various protest days against the new amended bill were observed in cities across the country. One of the most notable protest days was held in Karachi. Demonstrations and rallies against the new amended bill were held outside of major mosques following Friday prayers (Pakistan International Press, 2006). The MMA and other religious parties spearheaded these protest days (Pakistan International Press, 2006).

On November 26 four hundred ulema or a body of Muslim scholars trained in Sharia law, signed a fatwa or formal legal opinion against the new amended bill (BBC Monitoring South Asia, 2006). They viewed all versions of the bill as being un-Islamic and immoral (BBC Monitoring South Asia, 2006). The ulema declared that the new amended bill was repugnant to the Quran and Sunnah (BBC Monitoring South Asia, 2006). They mobilized support against it by arguing for the preservation and protection of the Hudood Ordinances from blasphemous government intervention (BBC Monitoring South Asia, 2006). Finally, the ulema argued that the new amended bill was unconstitutional as it violated sections 2 and 227 of the Pakistani constitution (BBC Monitoring South Asia, 2006).

At the same time, activists from various NGOs and other civil society organizations held protest demonstrations outside of parliament to demand a total repeal of the Hudood Ordinances. While acknowledging the necessity of the new amended bill, activists criticized it for not repealing the Hudood Ordinances (The Toronto Star, 2006). In particular, activists from the Women's Action Forum, Pattan Development Organization, Aurat Foundation, ActionAid Pakistan, Sungi Development Foundation, Sustainable Development Policy Institute, Rozan, Strengthening Participatory Organization and Potochar Organization for Development Advocacy participated in the demonstrations (BBC Monitoring South Asia, 2006). While many of these organizations are based in the capital city of Islamabad, they have branch offices throughout the country.

During the demonstrations, the activists also criticized the government for succumbing to the pressure of the religious parties (BBC Monitoring South Asia, 2006). They argued that the new amended bill would leave women at the mercy of the police and judiciary (BBC Monitoring South Asia, 2006). They concluded that women's universal human rights would not be institutionalized and protected by the new amended version of the bill. Despite these protests, the government put the new amended bill to a vote in the National Assembly and Senate.

The votes in the National Assembly and Senate only intensified protests. Street demonstrations were held in Lahore by Islamist protesters who claimed that the new amended bill was un-Islamic (The Toronto Star, 2006). They also asserted that the new amended bill provided a subversive way of introducing debased western values into Pakistani society (The Australian, 2006).

Islamists also gathered by the thousands in the city of Quetta (The Daily Telegraph, 2006). Thousands of protestors gathered in Rawalpindi (Islamabad's neighboring city). In Rawalpindi, they chanted anti-Musharraf slogans and demanded that the government withdraw the new amended bill (The Statesman, 2006). Smaller rallies took place in most cities across the country (The Statesman, 2006). Despite, these widespread protests, President Musharraf enacted the new amended bill into law on December 1, 2006. The enactment of the new amended bill into law did not stop the protests. Rather, new forms of protests emerged

against the Act. The most notable new form of protest was constitutional petitions.

Public Protests against the Protection of Women Act

Two constitutional petitions against the Women's Protection Act (the Act or the law) were filed with the Supreme Court in December of 2006. The purpose of the petitions was to declare the new law void on the basis that it conflicted with Islam and with Pakistan's constitution (BBC Monitoring South Asia, 2006). The petitions were filed under article 184 (3) of the constitution (BBC Monitoring South Asia, 2006). A religious leader known as a Maulana filed one of the petitions. His position was consistent with the Islamists who had protested against the Bill since August of 2006. A journalist filed the other petition (The Dawn, 2006).

According to the petitions, parliament transgressed its mandate by passing the new amended version of the bill (BBC Monitoring South Asia, 2006). They further contended that by removing the offence of sexual assault from under the Hudood Ordinances, parliament had committed a subversion of Islam (BBC Monitoring South Asia, 2006). The petitioners also argued that laws prescribed by the Quran and Sunnah cannot be converted into the criminal code because they are divine laws (BBC Monitoring South Asia, 2006).

The petitions also asserted that the government had violated sections 2 and 227 of Pakistan's constitution. Moreover, under section 228 of the

Constitution the Council of Islamic ideology may make proposals on Islamic legislation (Daily Times, 2006). However, the government did not consult with the Council while drafting the different versions of the Bill (Daily Times, 2006). The government's failure to do so was viewed as a violation of section 228. It should be noted that the PMLN party tried to defer the new amended bill in late November by moving a motion to send it to the Council of Islamic Ideology (Daily Times, 2006). However, only 20 members voted in favour of this motion (Daily Times, 2006). The support of at least 40 members is required to pass such a motion (Daily Times, 2006).

In January of 2007, the Tarik e Islami, encouraged the public to protest against the newly enacted law (BBC Monitoring South Asia, 2007). The Tarik e Islami is part of the MMA. It is the only religious party that represents the Shia minority within the MMA alliance. Like other religious parties and previous protests, the Tarik e Islami party argued that the law promotes obscenity and nudity (BBC Monitoring South Asia, 2007). According to this party, the law also promotes adultery (BBC Monitoring South Asia, 2007). Therefore, the law is anti-Islamic and must be repealed (BBC Monitoring South Asia, 2007). The Tarik e Islami led mass public protests against the Act in late January of 2007.

Barriers against the Act

The ongoing protests against the Act provide some indication of why the Act has not been accepted and implemented. The debates and protests also

inform broader conflicts and struggles, which also serve as barriers against the Act. This section more closely describes and examines these qualitative barriers.

Barrier # 1: The Conflict over the Basis of Moral Right

The various opponents of the Bill, including religious parties and Islamists constitute a moral community. A moral community is comprised of individuals and or groups that subscribe to a common basis of moral right (Donnelly, 1984). As per the cultural relativist approach to human rights, this moral community believes that that Islam and its teachings provide the sole basis of moral right.

By contrast, supporters of the Bill and those calling for a total repeal of the Hudood Ordinances, including secular parties and NGO activists, comprise another distinct moral community. For this community, universal human rights provide the only basis of moral right. This is consistent with the universalist approach to human rights, which ascribes a single set of rights to all humanity and seeks to displace and cultural/religious institutions that do not recognize human rights (Jones, 2000).

Moral Community for Islam

Therefore, the protests against the Bill and the demands to repeal the Hudood Ordinances were reflective of a broader conflict over the basis of moral right. For opponents of the Bill, the Hudood Ordinances reinforced Islam as the basis of moral right. Conversely, the Bill challenged Islam as the basis of moral right and threatened the identity of various groups within the moral community.

The JEl party and other parties argued that the Bill was unconstitutional as it violated sections 2 and 227 of Pakistan's constitution (BBC News, 2006). Since Pakistan is an Islamic state, the Constitution reinforces Islam as the basis of moral right. Therefore, by violating the Constitution, the Bill challenged the basis of moral right. So, the charge of unconstitutionality was really about protecting Islam as the basis of moral right.

During the public protests, the ulema argued for the primacy of Sharia law (BBC Monitoring South Asia, 2006). The use of Sharia law to punish crimes, such as adultery and sexual assault also reinforces Islam as the basis of moral right. The Bill disregarded the primacy of Sharia law and sought to displace it by inserting the crime of sexual assault under the criminal penal code. This was another direct challenge to the Islam as the basis of moral right.

By challenging Islam as the basis of moral right, the Bill threatened the identity of various members of the moral community. For religious parties their identity is based on Islamic teachings. They use Islam to inform their political platforms. Therefore, protests against the Bill by political parties reflected, at least in part, a drive for self-protection.

Moral Community for Universal Human Rights

Conversely, for another moral community the Bill reinforced universal human rights, which take priority over all other rights. This view is consistent the

universalist approach to human rights. Universalists employ a rigid ordering of moral communities, whereby the demands of universal human rights are given primacy over all other culturally or religiously based moral communities (Donnelly, 1984).

For this community, the Hudood Ordinances were a culturally derived institution that disregarded the universal human rights of women. As a result, they argued for a total repeal the Hudood Ordinances. The Bill tried to displace the Hudood Ordinances by placing sexual assault under the criminal penal code. This displacement is also consistent the universalist approach, which seeks to displace any cultural institution that disregards human rights (Jones, 2000). This is also consistent with the major criticism of universalist approach, which asserts that universalism displaces cultural institutions, with a complete disregard for cultural and or religious diversity (Reichert, 2006).

The Conflict over Moral Right as a Barrier

Ultimately, one moral community sought to safeguard Islam as the basis of moral right by preserving and protecting the Hudood Ordinances. Conversely, the other moral community sought to displace and change the basis of moral right. As described in the preceding section, this struggle has not concluded with the passage of the Bill. Protests against the Act are ongoing in the form of demonstrations and constitutional petitions. Moreover, NGO activists continue to demand a total repeal of the Hudood Ordinances. As a result, the conflict over the basis of moral right is ongoing.

This conflict serves as a barrier, which prevents the Act from being accepted and implemented. For example, sub national governments such as, the Jamaat E Islami have not accepted or implemented the Act, at least partly because it challenges Islam as the basis of moral right. Moreover, without acceptance and implementation, the Act cannot achieve its purpose of protecting women.

Barrier #2: The Struggle over Cultural Change

In addition to the conflict over the basis of moral right, the protests against the Bill also inform another broader struggle. That is the struggle over cultural change. According to opponents, the Act would spread evil in Pakistani society by encouraging adultery and fornication (BBC News, 2006). This view of the Act reflects a stronger concern about the preservation of Pakistani culture and society.

During the protests, the different opponents posited the same arguments against each version of the Bill. Aside from charges of being un-Islamic, opponents argued that the Bill indicated support for America and its values. For example, the JEI party argued that the Bill was consistent with the dictates of the State Department website (Jamaatwomen.org, 2006). So, for opponents, the Bill not only contradicted Islam, it also sanctioned western values that contradicted Pakistani values.

Opponents of the Bill also wanted to safeguard specific aspects of Pakistani society and culture. For example, the Imams who denounced the Bill as un-Islamic mobilized support against it by arguing for the preservation of what were essentially benefits for men. Specifically, they argued that the passage of the Bill would make it easier to falsely accuse innocent men of sexual assault (IRIN, 2006). They further argued that the Hudood Ordinances protected men from being falsely accused by ensuring that the woman had to produce four male witnesses to corroborate the claim of assault (IRIN, 2006).

This suggests that the Hudood Ordinances reinforce patriarchal benefits for men. This is consistent with Merry who argues that in some instances cultural institutions are preserved because of the benefits that they offer to the male population and not because of some intrinsic cultural value (Merry, 2006). So, the preservation of the Hudood Ordinances helps prevent cultural change and protects patriarchal benefits for men.

On the other side of the struggle were NGO activists who were fighting for cultural change by calling for a total repeal of the Hudood Ordinances. They were critical of the new amended bill because it did not repeal the Ordinances. However, they acknowledged that the Act represents a first step towards much needed change. They further argued that change is necessary for ensuring the betterment of women and for the institutionalization of their rights. These activists

continue to demand a total repeal of the Hudood Ordinances. Therefore, the struggle for cultural change is ongoing.

The Struggle over Cultural Change as a Barrier against the Act

Supporters of the Ordinances continue to struggle for its preservation and use. It is probable that this struggle is fueled at least in part, by the fact that the Ordinances provide patriarchal benefits to men. Moreover, opponents of the Act prevent it from being implemented because it is viewed as a threat to Pakistani culture, values and society. This means that the struggle *against* cultural change is ongoing.

Such opposition to the Act suggests that Pakistani culture and society are not fluid. This is consistent with cultural relativism, which argues that culture is unchanging. However, the fact that the Bill was passed is an indication that Pakistan culture and society are becoming receptive to change. Moreover, the moral community, which continues to seek a repeal of the Ordinances, is another indication that Pakistani culture and society are becoming more receptive. This receptivity also provides a positive indication of cultural fluidity.

According to Merry, this receptivity is necessary for transforming cultural institutions, such as the Hudood Ordinances. Ultimately, the conflict over moral right and the struggle over cultural change are ongoing. These barriers prevent the Act from being accepted and implemented. Having identified these barriers, the paper now examines the text of the Act using specifically devised criteria.

PART 3: AN ANALYSIS OF THE TEXT

Criterion #1: The Promotion of Rights Consciousness

Legislation, which employs a universalist approach is more likely to be accepted and implemented if it promotes rights consciousness among the target group. Therefore, the Act must empower women and encourage them to frame their grievances in terms of rights (Merry, 2006). Such empowerment creates a rights conscious local constituency that pushes the government to accept and implement the legislation (Merry, 2006). Ultimately, the Act must clearly afford rights to women and indicate how to use those rights.

Analysis of Raising Rights Consciousness

The Act acknowledges that women should be protected from violence, and from the misuse of the Hudood Ordinances (PWA, 2006). Therefore, the Act amends section 5 of the Zina Ordinance by stipulating that no case of sexual assault shall be converted into a case of fornication or into a case of Zina (PWA, 2006). Moreover, the Act stipulates that only courts of session may try sexual assault cases (PWA, 2006). These courts do not require the eyewitness testimony of four male witnesses, as required for Zina (PWA, 2006). This means that the Act distinguishes between adultery and the crime of sexual assault. While these stipulations remove the burden of proof from the victims and may

protect them from being charged with adultery, the Act does not explicitly confer any rights on the victims or on women more generally.

Instead of focusing on rights, the Act amends Pakistan's criminal penal code. As such, it focuses on the determent of crime. Therefore, the language it uses focuses on punishment. For example, section 376(1) stipulates that whoever commits rape shall be punished with death or imprisonment (PWA, 2006). Similarly, section 367(A) asserts that whoever kidnaps or abducts in order to subject the abductees to unnatural lust shall be punished with death or rigorous imprisonment (PWA, 2006). Ultimately, the Act does not use rights based language. Nor does it encourage victims to frame grievances in terms of rights.

Ultimately, the Act fails to give women or victims any explicit rights, including the right to be free from violence. This means that it does not raise rights consciousness among this targeted group. As a result, no constituency is created to lobby the government to accept and implement the Act. This failure to empower women also prevents the Act from achieving its purpose and other aims. Without rights awareness the plight of victims cannot be reduced. If women are not aware of their rights, they are unable to exercise those rights. As a result, reporting cases remains difficult. To conclude, only amending the criminal penal code and the Zina Ordinance, are not sufficient for protecting women.

Criterion # 2: Shifting Subjectivities

As Merry points out, rights consciousness is effective if it shifts subjectivities. In addition to recognizing and accepting any rights afforded to them by the Act, women must be willing to exercise those rights. Such willingness represents a shift in subjectivities (Merry, 2006). Exercising those rights is contingent upon police conduct and receptivity. Therefore, the Act must include provisions to ensure that police conduct it receptive to the needs and rights of women. In the absence of such provisions women would not be willing to shift their subjectivities. Subjectivities are defined as an individual's subject position on a particular discourse, such as rights (Merry, 2006).

Analysis of Shifting Subjectivities

The Act explicitly states that it aims to curb police abuse of powers (PWA, 2006). It stipulates that the police will have no authority to arrest anyone in cases of Zina unless they are a directed to do so by the court (PWA, 2006). The purpose of this measure is to safeguard those accused of Zina from languishing in jail during their trials (PWA, 2006). In terms of police conduct, Section 9(v) of the Act states that the police may arrest an individual accused of sexual assault without a warrant (PWA, 2006). It also states that sexual assault is a non-bailable offense. However, there is no other stipulation regarding police conduct, particularly with respect to their receptivity to victims. The following anecdotal evidence from 2007 and 2008 describes police conduct following the enactment of the Act.

On January 10, 2007, four men sexually assaulted a 17-year-old girl in Lahore. The police refused to register the family's complaint (The Dawn, 2007). As a result, no arrests were made. In another case, 11 men reportedly assaulted a 16 year girl in the province of Sindh. The police refused to register the case even though medical evidence was provided (Womensphere, 2008).

In February of 2007, a sixteen year old girl was kidnapped and sexually assaulted by 11 men in a village 530km from the port city of Karachi (The Australian, 2007). Her assault was out of honour revenge. It was perpetrated because the victim's cousin had eloped with a female relative of one of her attackers (The Australian, 2007). The incident was reported to the police. Despite medical evidence the police remained complacent (The Australian, 2007).

These are not isolated cases. The cases suggest that police conduct is not receptive towards victims. Moreover, these cases support the Amnesty International report, which asserted that the Pakistani police are biased towards male attackers and rarely make arrests (Amnesty International, 1999). Finally, these cases suggest that allowing the police to arrest those accused of sexual assault without a warrant is not sufficient for ensuring that the police's conduct towards victims would be receptive. Nor would it be sufficient for addressing police biases or for curbing abuses of power. Ultimately, the Act fails to address issues of police conduct and receptivity to victims. Therefore, it cannot effectively shift women's subjectivities. Based on this and the previous criterion it is evident

that the Act does not protect women as it does not give them rights nor does it compel them to exercise any rights.

Criterion # 3: Cultural Resonance

In order to be accepted and implemented, the Act must be framed in a way that is culturally resonant. According to the sociologists, frames are interpretive packages that surround a core idea (Ferree, 2003). The core idea of the Act is that women should be protected from violence. Specifically, women must be protected from the misuse and abuse of the Hudood Ordinances (PWA, 2006). However, the protests surrounding the passage of the Act indicate that for many the Hudood Ordinances reinforce Islam as the basis of moral right. Therefore, the Act must be framed in such a way that does not directly contradict the Hudood Ordinances. Directly contradicting the Ordinances would prevent the Act from being widely accepted and implemented.

Analysis of Cultural Resonance

One of the major stated aims of the Act is to make the Zina and Qazf Ordinances conform to the stated objectives of the Constitution and the injunctions of Islam (PWA, 2006). This objective directly challenges the validity of the Hudood Ordinances and suggests that they are contrary to the Constitution of Pakistan and inconsistent with Islamic teachings. According to the Act, the Ordinances deem certain acts as punishable, even though, those acts are not mentioned in the Quran or Sunnah, as offenses (PWA, 2006). The

Act further asserts that the procedures of proof required for these other acts cannot be same the as those required for Zina (PWA, 2006).

The Act also affirms the authority of the State in amending the Ordinances. It stipulates that any acts not mentioned in the Quran and Sunnah is subject to state legislation. As a result, such acts, including sexual assault, are removed from the Hudood Ordinances and inserted into the criminal code. This removal directly challenges the validity of the Hudood Ordinances and attempts to displace them.

Since the Act directly contradicts the Hudood Ordinances and questions their validity and adherence to Islamic teachings, it is not culturally resonant. Its failure to be culturally resonant prevents it from being accepted and implemented. As described in a previous section, there is a large moral community, which believes that Islam provides the only basis of moral right. One political member of that community is the provincially ruling Jamaat-i-Islami party. This party has not accepted and implemented the Act at least in part because it directly contradicts the Hudood Ordinances and is not culturally resonant. This is supported by the fact that the JEI party is an avid supporter of the Ordinances and a vocal opponent of the Act. Without being accepted and implemented the Act cannot protect women or achieve its other aims.

Criterion # 4: Blending and Radicalism

This Act must be translated into existing power relationships in order to achieve its purpose of protecting women. However, if it is too fully blended into

existing power relationships then it loses the potential to affect change (Merry, 2006). In other words, if the Act reinforces the Hudood Ordinances then it cannot be effective. Conversely, if the Act is too radical it would not be accepted and implemented.

Analysis of Blending into Existing Power Relationships

The Act retains the definitions of Zina and Qafz. Moreover, it allows for the continued use of eye witness testimony as proof in cases of Zina. The Act also retains the punishments for Zina and Qafz as described by the Ordinances (PWA, 2006). Therefore, the Act does not effectively displace the Ordinances, and by extension Islam as the basis of moral right. Rather, the Act reinforces the Ordinances. By so doing, the Act fuels more potential resistance against itself, particularly as opponents of the Act continue to use the Ordinances and apply it to cases of sexual assault.

Conversely, the Act amends the Zina and Qafz Ordinances. The Act asserts that these Ordinances are contrary to Islamic teachings and to the Constitution of Pakistan. As a result, the Act directly challenges the validity of the Ordinances. This is extremely radical. This radicalism prevents the Act from being accepted and implemented.

Ultimately, the Act is doubly flawed based on this criterion. It does not sufficiently displace the Ordinances, thereby blending too much into existing power relationships. At the same time it amends the Zina and Qafz Ordinances

and radically challenges their validity. This radicalism prevents the Act from being accepted and implemented. As a result, the Act cannot achieve its purpose of protecting women.

PART 4: ANALYSIS AND CONCLUSIONS

The analysis of its text indicates that the Act contains deficiencies, which prevent it from being effective (i.e. achieving its purpose) and prevent it from being accepted and implemented. It fails to empower women and shift their subjectivities. Raising rights consciousness through empowerment is necessary for fostering acceptance and implementation of the Act. It is also necessary for reducing the plight of victims and for making it easier to report cases. The Act also fails to address the problems of police conduct and receptivity. This failure has two implications. Firstly, this prevents women from shifting their subjectivities. Secondly, the Act's focus on punishment as a deterrent against sexual assault is irrelevant given the problems with police conduct. Additionally, the Act is not culturally resonant. This also prevents it from being accepted and implemented.

The Act's ability to achieve its purpose/aims and be accepted and implemented is further hindered by the conflict over moral right and the struggle over cultural change. In fact, the Act actually exacerbates this conflict and struggle. By not sufficiently displacing the Hudood Ordinances, the Act fuels efforts to preserve, protect and apply the Hudood Ordinances. As a result, the opposing moral community continues to struggle against the Ordinances and seeks to displace them. The analysis also indicates that the desire to preserve

the Hudood Ordinances reflects a desire to protect Pakistani culture and society against change. Similarly, the struggle against the Ordinances is a struggle for cultural change.

To conclude, the Act contains many deficiencies. The impact of these deficiencies is twofold. Firstly, they prevent the Act from achieving its purpose and being effective. For example, the Act does not sufficiently displace the Hudood Ordinances, which is necessary of protecting women. Secondly, the deficiencies also prevent the Act from being accepted and implemented. The analysis further indicates that the ongoing conflict over moral right and struggle over cultural change are qualitative barriers that prevent the Act from being accepted and implemented. Ultimately, the Act as it is currently formulated cannot protect women.

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