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I. INTRODUCTION

Torture, inhuman punishment and degrading treatment of prisoners constitute gross violations of human rights. Under the Universal Declaration of Human Rights, its implementing covenants and the United Nations Convention Against Torture, the right not to be subjected to such abuse ranks as one of the most fundamental, guaranteed to all persons without distinction of any kind, including discrimination on the basis of gender.

Yet, until recently, torture and ill-treatment of women in custody -- as a phenomenon distinct from the mistreatment of men -- had received scant attention from those concerned with human rights in the international community.¹ This failure adequately to address women's rights is rooted partly in the human rights community's past emphasis on politically motivated abuses by governments. However, even as human rights monitors worldwide have expanded their focus to include the nature of abuses regardless of their motivation, the international community has barely begun to concern itself with violations of human rights that are gender-specific in character. This failure contributes to a persistent misunderstanding of the type, function and frequency of abuses suffered by women around the world and to a lack of government accountability for such violations.

This report on sexual and physical abuse of women in police custody in Pakistan examines not only the gender-specific aspects of the abuses women suffer, but also the role of gender-discrimination in their imprisonment. In addition, it focuses on the government of Pakistan's systematic failure to prosecute those responsible for such

¹ In December 1991, Amnesty International (AI) released a report documenting rape and sexual abuse of women in detention worldwide. See Amnesty International, *Rape and Sexual Abuse: Torture and Ill-Treatment of Women in Detention*, (London, 1991). It was one of the first reports ever to be released by AI that focused exclusively on custodial violence against women worldwide. It concluded that rape is torture or ill-treatment when committed by a government agent -- an abuse for which the state is responsible. A 1988 AI submission to the UN Commission on the Status of Women also examines ill-treatment of women in detention. The U.S. Department of State's (DOS) annual *Country Reports on Human Rights Practices* began documenting violence against women in custody in 1989. Both AI's work and that of the DOS indicate that women are raped or sexually abused by government agents in all regions of the world.

violations. The report's findings and recommendations are based, in part, on a two-week investigation conducted by Asia Watch and the Women's Rights Project, both divisions of Human Rights Watch, in late October 1991.

This report is part of an ongoing effort by Human Rights Watch and its regional divisions to shed light on government abuses of women's human rights and to integrate efforts to end gender-specific violations into the work of those seeking to promote human rights. Asia Watch and the Women's Rights Project of Human Rights Watch chose to report on Pakistan because of reports that more than 70 percent of women in police custody experience physical or sexual abuse at the hands of their jailers. Reported abuses include beating and slapping; suspension in mid-air by hands tied behind the victim's back; the insertion of foreign objects, including police batons and chili peppers, into the vagina and rectum; and gang rape. Yet despite these alarming reports, to our knowledge not a single officer has suffered criminal penalties for such abuse, even in cases in which incontrovertible evidence of custodial rape exists.² One senior police official told a delegation of local human rights activists that "in 95 percent of the cases the women themselves are at fault."³

This attitude is reflected in the way police handle cases of rape brought by a woman. We found that police routinely refuse to register such complaints, particularly if the complaint is lodged against a fellow officer. We also found that police officers often illegally detain women in police lock-up for days at a time without formally registering a charge against them or producing them before a magistrate within the required 24-hour period. Women can thus be held indefinitely without the knowledge of the courts. It is during these periods of "invisibility" that most sexual abuse of female detainees occurs.

In one case we investigated from 1988, three women were detained for alleged sexual offenses under the *Hudood* laws (see below) and

² Interview with Deputy Inspector General Maqbool, Lahore, October 1991. Inspector Maqbool told us that to his knowledge "not a single officer had been convicted."

³ Human Rights Commission of Pakistan, *Newsletter*, October 1991, p. 7.

were held in police custody for 48 hours before being produced before a magistrate and ultimately released for lack of evidence. While in police lock-up, all three women were raped and sexually abused by several officers; one of the women, who was 60 years old, had police batons inserted forcibly and repeatedly into her vagina and rectum. Although a judicial inquiry into the incident initiated by local human rights attorneys supported the rape and abuse charges, the police were never prosecuted. The 60-year-old woman told us that her life was "finished" and she no longer hoped for justice.

Given the likelihood that women will experience abuse in police custody, we were particularly disturbed to find that many of the women detainees in Pakistan did not deserve to be in custody in the first place. In pointing this out, of course, we do not suggest that such abuse would be justified even if they were deservedly incarcerated. We found that between 50 and 80 percent of all female detainees in Pakistan were imprisoned under the *Hudood* Ordinances, Islamic penal laws introduced in 1979, which in law and in practice discriminate against them. Prior to the passage of the *Hudood* Ordinances, women were not directly involved with the criminal justice system in any significant number; only 70 women were incarcerated in the entire country. By 1991, over 2,000 women were imprisoned under these laws alone. The steep rise in the number of female prisoners in turn increased the opportunity for police misconduct towards women.

The *Hudood* Ordinances criminalize, among other things, adultery, fornication and rape, and prescribe punishments for these offenses that include stoning to death, public flogging and amputation. Human Rights Watch has no opposition to Islamic law *per se* and does not object to laws founded on religion, provided that human rights are respected and the principle of equality before the law is upheld. However, the *Hudood* laws, as written and applied, clearly conflict with these rights and principles. Not only do they prescribe punishments that are cruel and inhuman under international law, but they clearly discriminate on the basis of gender.⁴ The laws also conflict with the Pakistani Constitution, which guarantees the right to equality and non-discrimination on the basis of gender.

Under the *Hudood* laws, proof of rape for the maximum (*Hadd*) punishments of stoning to death or 100 lashes in a public place requires the testimony of four male Muslim witnesses to the act of

⁴ The *Hudood* Ordinances have also been shown to discriminate on the basis of religion, but this issue falls outside the purview of this report.

penetration. The testimony of women -- not only the victim but *any* woman -- carries no legal weight. This requirement means that women who have been sentenced to the maximum punishments, deemed cruel and inhuman under international law, have been so sentenced under a law that prevents them from testifying on their own behalf. Men have also been cruelly sentenced under these laws, although in general men accused of rape are effectively exempted from the maximum *Hadd* punishments because women can neither testify nor is any person likely to be able to produce four male Muslim witnesses to the act of penetration. We recognize that no *Hadd* sentences have been carried out to date, but nothing impedes the state from doing so in the future. We recommend their immediate repeal as well as the removal of all obstacles to a woman's right to testify equally with a man in a court of law.

We found that the majority of rape and adultery or fornication cases attract the lesser (*Tazir*) punishments which entail public flogging, rigorous imprisonment and fines. While the testimony of women is admissible at this level, we found that Pakistani courts still exhibited a bias against women. The courts tend to see women as complicit in sexual offenses, despite a lack of evidence, or evidence to the contrary, and required from female rape victims extraordinarily conclusive proof that the alleged intercourse was forced. Moreover, many women who alleged but were unable to prove rape have themselves been charged with adultery or fornication for consensual sex, although a failure to prove rape does not prove that consensual sex occurred. The courts effectively have set a lesser burden of proof for the prosecution in cases involving female defendants.

The differing effect of available medical evidence often compounds this discrimination. In some cases, when medical evidence has been introduced in support of a rape charge in which forcible intercourse cannot be proved, the male has also been charged with adultery or fornication. However, medical evidence implicating accused males often cannot be obtained, so they are frequently released for lack of evidence while their women victims are imprisoned pending trial based on their own allegations of forcible intercourse.

A case from 1991 that we investigated (discussed in Section III of this report) is illustrative. Eighteen year-old Majeeda Mujid was abducted by several men, raped repeatedly by her abductors over a two-month period, and finally turned over by them to the police. Although she complained that she had been raped, the police charged her with illicit sex, imprisoned her pending trial, and let the men go free.

The discriminatory provisions of the *Hudood* laws are exacerbated by their discriminatory application by the police and judiciary. According to several Pakistani legal aid attorneys who represent indigent women charged with *Hudood* offenses, the vast majority of *Hudood* cases (most of which are registered by the woman's husband or father) are not supported by the evidence and should not have been prosecuted. We investigated several cases, documented in Section III of this report, in which women were wrongfully prosecuted for *Hudood* offenses because they refused to marry men chosen by their families, decided to leave home or married men against their parents' will, or sought to separate from or divorce abusive husbands.

In part, judges hear ill-founded *Hudood* cases because they, like the police, are eager to show that they are tough on crime. However, wrongful prosecution of women also reflects a tendency on the part of the police and judiciary to see women as guilty until proven innocent. In effect, the *Hudood* laws have given legal sanction to biased social attitudes towards women, thus not only legitimating the oppression of women in the eyes of the state but also intensifying it: women who seek to deviate from prescribed social norms now may not only be subject to societal censure, but also to criminal penalties. It is this enforcement of religion and its use as a tool to legitimate abusive state power, rather than religion itself, that is at issue here. Although acquittal rates for women in *Hudood* cases are estimated at over 30 percent, by the time a woman has been vindicated she will have spent months, and in many cases years, in prison and, in all likelihood, been subjected to police abuse while in custody.

We found that even in cases in which no formal charge is brought against a woman, judges often suspect that if she was abducted or raped she must have been behaving inappropriately to begin with and was in some way complicit in the offense. We found that in lieu of filing a formal charge against the women in such cases, judges frequently remand female rape and abduction victims to private detention facilities for indefinite periods to await the outcome of the cases lodged against their alleged abusers. We visited one such facility in Lahore which, though nominally private, functions like a prison. Thirty-nine women had been remanded there against their will by local courts - including one who had been forced to spend more than two-and-a-half years in custody.⁵ The facility's administrators justified such prolonged detention as a form of "protective custody" for the

⁵ An additional 20 women were in the facility, Darulaman, voluntarily.

women, but in effect it amounted to the punitive detention of innocent women for the crime of being an alleged victim. After our visit, a local human rights organization filed *habeas corpus* petitions on the women's behalf and fifteen were freed. However, the cases had no effect on the underlying problem of private detention of women accused of no offense. As of March 1992, there were 38 women in the facility. (See Section IV for a further discussion of this issue.)

It is extremely difficult for women prisoners to seek redress for sexual and physical abuse by police. They must confront rape and evidence laws that overtly discriminate; they face the possibility of criminal prosecution or - at a minimum - social ostracism if they fail to prove their rape allegation; they must combat police and judicial attitudes that are clearly biased against them; and they must overcome procedural obstacles to prosecuting the police that affect all victims of custodial abuse, including the absence of any independent body to investigate and prosecute abuses of police power.

The possibility of obtaining equal justice in Pakistan has been further reduced over the past decade by the steady erosion of judicial independence, mainly through the government's retention of undue influence over the judiciary and through the establishment of parallel religious and speedy-trial courts. While Human Rights Watch does not oppose religious courts or speedy-trial rules *per se*, both the religious and speedy trial courts in Pakistan have been shown to weaken the independence and jurisdiction of the civil courts and to violate many aspects of due process. This trend culminated in the adoption of the 1991 *Shariat* Act, which subjects the Constitution and the law-making authority of the legislature to the revisional authority of Islamic religious leaders, many of whom, according to local human rights activists, "have been known to take positions against women."⁶

The discriminatory treatment encountered by women who enter the criminal justice system reflects the treatment of women as second class citizens by Pakistani society at large. From birth, the life of the average Pakistani woman is characterized by her economic, social,

⁶ A representative of the Women's Action Forum (WAF), a non-governmental, national women's rights organization, quoted in Women Living Under Muslim Laws, "WAF Rejects Shariat Bill," *Special Bulletin on the Erosion of the Judiciary and Human Rights Legislation* (Lahore, 1992), p. 7.

cultural and political subordination. She will receive less food, medical care, and education, be paid and inherit less, have fewer opportunities to participate in civil society, and live a shorter lifespan than her male counterparts. Even in comparison with women in many other parts of the world, she will on average marry earlier, bear more children, suffer higher rates of maternal mortality and work more hours without compensation. Like women everywhere, she will be subjected to violence in the home and, in some areas of Pakistan, by the community, particularly when she engages in behavior seen to deviate from prescribed social norms.

Given this subordinate status, once a woman is in prison it is extremely unlikely that she will possess the knowledge or the means to secure even the minimal protections due to her under law, or that such efforts as she makes will be given credence. Eighty percent of all female prisoners in Pakistan are illiterate and nearly 90 percent live on a monthly family income of less than 40 dollars. According to a survey conducted in 1988, over 90 percent of the 90 women prisoners interviewed in two prisons in Punjab were unaware of the law under which they had been imprisoned. Over 60 percent had received no legal assistance whatsoever.⁷

These deplorable conditions are not the exclusive lot of Pakistani women in Pakistani jails. Women from Bangladesh, many of whom have been forcibly taken to Pakistan, often via India, for the purpose of domestic or sexual servitude, are arrested by the Pakistani police, often for *Hudood* offenses, and subjected to the same abusive and discriminatory treatment as that suffered by their Pakistani counterparts. According to a 1991 national survey by a nongovernmental social welfare organization in Pakistan, between 100 and 150 Bangladeshi women are illicitly taken to Pakistan each month. The majority are lured by promises of better jobs, but often end up in brothels where they are compelled to provide sexual services, or in private homes where they are forced to work as domestic servants or, in some cases, to become wives. The average age of the women and girls victimized by this trafficking is 15. At current prices, and depending on the virginity, beauty and health of the girls and women,

⁷ Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhotac Books, 1990), pp. 134-136 (hereinafter *A Divine Sanction?*).

a sale can bring the equivalent of from U.S. \$800 to U.S. \$2,000.

Rather than protecting these women and girls by arresting those engaged in their illegal sale and abuse, the government of Pakistan imprisons them while letting the pimps go free. According to the survey mentioned above, 1,400 Bangladeshi women and girls are currently in prison in Pakistan, ostensibly for entering the country illegally or for offenses under the *Hudood* Ordinances. While pimps involved in the sale of Bangladeshi women have occasionally been arrested by the police, we are unaware of a single one who has been prosecuted or punished for trafficking in women or for abuses commonly associated with the practice. This official inaction exists despite Pakistan's obligations under the Convention for the Suppression of the Traffic in Persons, to which it is a party, to punish such abuses. Rather, as one local observer commented, the government seems bent on "victimizing the victims" rather than prosecuting the victimizers. (See Section VI for information on trafficking of Bangladeshi women.)

Human rights and women's rights advocates have been actively campaigning for over 10 years for the repeal of discriminatory laws, including the *Hudood* Ordinances, good faith prosecution of abusive police, greater adherence to the fundamental principles of due process and equality before the law, and increased legal services for women. Some members of Pakistan's judiciary, particularly at the High Court level, have recognized the epidemic proportions of violence against women in custody and have initiated investigations into instances of the problem that the police themselves have refused to examine. On September 21, 1991, Pakistan's Prime Minister promulgated regulations prohibiting police from keeping women overnight in custody, although they have not been observed in practice, and the Cabinet reportedly is considering legislation that would require women to be detained in judicial rather than police facilities.

Despite these welcome measures, the government's response remains woefully inadequate. Pakistan is obliged under international law and its own Constitution to refrain from torture and ill-treatment of prisoners in custody and to provide female victims of such abuse with equal protection of the law. But the government has failed to eliminate the overtly discriminatory laws and practices that promote the wrongful prosecution of women and result in their prolonged imprisonment. And rather than remove procedural obstacles to justice

for the victims of police abuse, the government has adopted policies that perpetuate police impunity and erode judicial independence. Finally, the government's response to the fate of the hundreds of Bangladeshi women in Pakistani jails, and the thousands more who have been forced into prostitution and domestic servitude in Pakistan, has aptly been characterized by the local press as one of "bottomless indifference."

As a member of the United Nations, Pakistan has an obligation to uphold the rights and principles enshrined in the Universal Declaration of Human Rights, including the right not to be tortured or to be subjected to cruel or inhuman punishment or degrading treatment, and the right to be free of discrimination on the basis of gender. As this report shows, it has wholly failed to meet this obligation. Moreover, despite the government's stated intention to eliminate custodial violence and gender-discrimination, it has yet to adopt most of the relevant international human rights instruments, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Although Pakistan is a signatory to the Convention for the Suppression of the Traffic in Persons, it has largely failed to meet its obligations under this agreement.

As Pakistan bids to be a significant regional power and reassert its past international standing, the government must take immediate steps to adopt and adhere to international human rights standards and to end all forms of violence against women and gender-discrimination. Its failure to do so will only perpetuate the oppression of women in Pakistan and further diminish the country's stature as a nascent democracy in the eyes of the international community.

II. BACKGROUND

A. History

1. The Creation of Pakistan

In 1947 British India was partitioned along religious lines to create two independent nations: India, which had a majority Hindu population, and Pakistan, which was predominantly Muslim.⁸ Continuing controversy over the role of Islam in Pakistan's political life and tension among the country's ethnic groups have dominated the process of state-building in Pakistan since independence.⁹ Pakistan occupies a strategic crossroads of South Asia, bordering Afghanistan and Iran to the west, China to the north and India to the east. Its relations with these countries, above all Afghanistan and India, have had critical consequences for foreign and domestic politics, particularly with respect to the role of the military and the course of Islamization.

⁸ Modern Pakistan has a population of approximately 115 million, of which over 95 percent are Muslim. The majority of these are Sunni Muslims. There are no statistics on the proportion of the population which is Shia, but it is estimated to be between 5 and 25 percent. John Esposito, "Islam: Ideology and Politics in Pakistan," in Ali Banuazizi and Myron Weiner, eds., *The State, Religion and Ethnic Politics* (Syracuse, NY: Syracuse University Press, 1986), pp. 363 and 369, fn. 46. India, which in 1992 has a population of approximately 850 million, has a Muslim minority of over 100 million.

⁹ The predominant ethnic groups are the Punjabis, Sindhis, Baluchis and Pashtuns. Pakistan's four provinces -- Punjab, Sind, Baluchistan and the Northwest Frontier Province (NWFP) -- were created during colonial times to correspond roughly to the majority ethnic groups in the area. The immigration of Muslims, known as Mujahirs, from India at the time of partition changed the ethnic composition of some areas, particularly Sind. Discontent with Punjabi-Mujahir political dominance has contributed to the rise of ethnically-based separatist movements in Sind and Baluchistan. The western border areas of Baluchistan and the NWFP include semi-autonomous areas designated as Tribal Agencies populated by a number of tribal groups with links to similar groups in Afghanistan and Central Asia. The Tribal Agencies are administered directly by a political agent appointed by the federal government who has complete authority for administrative and judicial matters. Civil and criminal cases are not adjudicated under Pakistani law, but are generally determined by tribal custom.

The movement for a separate Muslim homeland¹⁰ in the subcontinent was headed by Pakistan's founding father, Mohammed Ali Jinnah, a lawyer and a colleague of India's nationalist leaders Mohandas (Mahatma) Gandhi and Jawaharlal Nehru. Jinnah had originally supported the Indian National Congress, the organization that spearheaded the independence movement in British India.¹¹ However, by the 1930s, Jinnah had grown frustrated with the Congress's failure to heed fears that the rights of the Muslim minority might not be safeguarded in an independent India. In 1935 Jinnah became president of the Muslim League and by 1940 he had rebuilt the party on the platform of a separate state. His leadership changed what had been a party with a small elite following into one with mass support among many, but not all, Muslims in British India.¹²

In February 1947, the British government formally agreed to end British rule in India. Lord Mountbatten was dispatched to negotiate a

¹⁰ The word "homeland" (*watan*) was used by Iqbal, the Urdu poet and intellectual credited with first inspiring Jinnah and others with his vision of Pakistan. As C. M. Naim has noted, "Iqbal never intended Pakistan to be a homeland for Muslims from elsewhere in the world; the very idea of Pakistan was as rooted in the history of the peoples of the subcontinent as it was in the great traditions of Islam." See C. M. Naim, "Afterword," in C. M. Naim, ed., *Iqbal, Jinnah and Pakistan: The Vision and the Reality* (Syracuse, NY: Syracuse University, 1977), p. 177.

¹¹ The Indian National Congress was founded in 1885. It provided much of the organization and leadership behind the independence movement. Both the Congress and the Muslim League grew out of reform movements of the 19th century. Women's rights as such did not feature prominently in these movements, except in so far as they supported women's education. The first Muslim women's organization in British India was the Women's Reform Movement which demanded increased educational facilities for girls and women. See Khawar Mumtaz and Farida Shaheed, *Women of Pakistan: Two Steps Forward, One Step Back* (London: Zed Books, Ltd., 1987), p. 42. (hereinafter Mumtaz and Shaheed). In 1918, both the Congress and the Muslim League supported giving women suffrage. By 1928 every province had granted women the right to vote.

¹² Conservative religious leaders, particularly those of the Jama'at-e-Islami (Islamic Society, a conservative Islamic organization), opposed the creation of a Muslim state, because they believed that an Islamic nation contradicted the belief in a universal Muslim *umma*, or community. Their opposition also reflected their concern for the millions of Muslims remaining in India. Jinnah's Westernized background also alienated many religious leaders, as did his organizational style, for example, his promoting women's wings for the Muslim League. Mumtaz and Shaheed, p. 7.

settlement with the Congress and Muslim League and to oversee the final months of the transfer of power. Amid rising communal violence the leaders finally agreed to partition the country.¹³ A boundary commission was established which demarcated contiguous Muslim-majority areas on either side of India as Pakistan's western and eastern wings.¹⁴ The decision, which was reached one month before independence, launched one of the greatest mass migrations in history, as ten million people on either side fled across the new borders. Bengal and Punjab were split between India and Pakistan, setting off bloody communal riots in both provinces. In the weeks before partition more than half a million people died in sectarian violence. The experience permanently embittered relations between India and Pakistan.

2. The 1956 Constitution and Ayub Khan

Although Islam was the basis for the Muslim League's claim to a separate identity and nation, neither Jinnah nor the Muslim League ever articulated the legal basis of an Islamic state of Pakistan. Jinnah himself was opposed to the idea of a theocratic state.¹⁵ The constitutional debates of the early 1950s were dominated by protracted arguments over the place of the *shariat*¹⁶ in Pakistani law. While

¹³ Even for Jinnah, the partition was a compromise that created a "moth-eaten Pakistan" without all of Bengal and Punjab.

¹⁴ Located on the line of partition bordering Pakistan, India and China, the state of Jammu and Kashmir, which had a Muslim majority population and a Hindu ruler, presented an anomaly. The state's accession has been the source of considerable controversy and the site of two wars between Pakistan and India. For more on the Kashmir crisis, see Asia Watch, *Kashmir Under Siege* (New York, 1991).

¹⁵ According to Justice Mohammed Munir, Jinnah in fact believed that religion should "have nothing to do with the business of the State and [was] to be merely a matter of personal faith for the individual." Punjab, *Report of the Court of Inquiry Constituted Under Punjab Act II of 1954 to Enquire into the Punjab Disturbances of 1953* (Lahore: Government Printing, 1954), p. 201, as cited in David Gilmartin, *Empire and Islam* (Berkeley: University of California Press, 1988), p. 3.

¹⁶ There are four schools of law in Sunni Muslim tradition. The Hanafi school has dominated South Asia. The four schools agree on the basic matters of belief, but disagree on a variety of other points. See Barbara Metcalf, *Islamic Revival in British India: Deoband 1860 - 1900* (Princeton: Princeton University Press, 1982), p. 20.

Pakistan's *ulama*¹⁷ argued that the *shariat* provided the only legitimate basis for the new state, most politicians fought for a constitution that embodied the principles of modern parliamentary democracy. The debates lasted nine years and ultimately produced a constitution which "demonstrated ... [an] unwillingness to articulate and implement an Islamic ideology" in that the "relationship of modern constitutional concepts to Islamic principles was asserted but not delineated."¹⁸

Still, Pakistan's early leaders gave in to some of the demands of the religious leadership by including in the Constitution the declaration that Pakistan was an Islamic republic and by granting the *ulama* an advisory role, though it carried little influence.¹⁹ But if there was little confidence in Islam as the basis for building political consensus, there was equally little faith in the country's weak political institutions.²⁰ As a result, the military came to assume a dominant role in Pakistani politics. As one observer has noted:

Continuing difficulties in the politicians' efforts to reconcile Pakistan's ideological foundations with a structure of state authority inherited from the colonial tradition led many bureaucrats and military leaders in the mid-1950s to fear for the stability of the state itself. It was in this context that the military came to assume a larger role in the politics of Pakistan, seizing

¹⁷ Scholars of Islamic law, generally considered the most powerful religious authorities in Islam. The singular is *alim*.

¹⁸ Esposito, p. 336.

¹⁹ It is possible they feared the *ulama* might attempt to provoke communal disturbances. Mumtaz and Shaheed, p. 9.

²⁰ According to Stephen Cohen, the early political parties in Pakistan did not really operate as channels for group demands or instruments of state policy but instead often functioned as vehicles for local feudal leaders. "The notions of a legitimate opposition, of parties as permanent institutions rather than as instruments of individual power, and of consensus on vital issues were all absent." The party that spearheaded the movement for Pakistan, the Muslim League, had been strongest in the areas that remained in India after partition, and so did not play much of a role in independent Pakistan. Stephen P. Cohen, "State Building in Pakistan," in Ali Banuazizi and Myron Weiner, eds., *The State, Religion, and Ethnic Politics* (Syracuse, NY: Syracuse University Press, 1986), pp. 306-7.

power finally in General Ayub Khan's 1958 coup.²¹

Ayub Khan saw Pakistan's religious elites as obstacles to development of the country as a modern state and fought to diminish their influence. For example, in 1961, over the strong objections of the *ulama*, the Muslim Family Law Ordinance was adopted to reform the laws on marriage, divorce and inheritance.²² At the same time, Ayub Khan was also suspicious of his political opposition and banned all political parties, "thus sounding the death-knell for political institution building in Pakistan."²³

By promoting rapid industrialization in West Pakistan, largely through the diversion of foreign aid and capital from the East, the Ayub government also set the stage for Pakistan's greatest political crisis, which ended in a second partition. In March 1969, amid rising public discontent, General Yahya Khan replaced Ayub Khan and again imposed martial law. When elections were held for the National Assembly in December 1970, Bangladeshis in East Pakistan voted overwhelmingly for the Awami League, a party advocating autonomy for the province. The party won an absolute majority in the country, a situation which both Yahya Khan and Zulfikar Ali Bhutto, the head of the Pakistan People's Party in West Pakistan, refused to accept. In response, Yahya Khan suspended the National Assembly and ordered the army to arrest the Awami League leaders. On March 25, 1971, as the military began a brutal crackdown, opposition leaders in East Pakistan declared the independence of Bangladesh. For the next nine months the country was engulfed in a bloody civil war in which perhaps as many as one million died, most of them civilians.²⁴ The precise number killed, including those who died of starvation and

²¹ Gilmartin, pp. 228-9.

²² Esposito, p. 338.

²³ Mumtaz and Shaheed, p. 10.

²⁴ According to a recent study by Naila Kabeer, a research fellow at the Institute for Development Studies at the University of Sussex, in 9 months of war 30,000 Bangladeshi women were raped by Pakistani soldiers, purportedly in their mission to "improve the genes of the Bangladeshi people and populate Bangladesh with pure Muslims." See Naila Kabeer, "The Quest for National Identity: Women, Islam and the State in Bangladesh," in Deniz Kandiyoti, ed., *Women, Islam and the State* (Philadelphia, PA: Temple University Press, 1991), p. 122.

disease, is unknown, although some estimates put the number much higher than one million. India's intervention in December brought the war to an end, and on December 15, 1971, Bangladesh became independent.

3. The Bhutto Years, 1972-77

In January 1972, the military handed over power to Bhutto, whose Pakistan People's Party (PPP) had won a majority of National Assembly seats in West Pakistan in the 1970 elections. Bhutto espoused an ideology of "Islamic socialism" that included land reform, nationalization of basic industries and "*roti, kapra aur makan*" (bread, clothing, and shelter). Women in large numbers participated actively in political organizations that lobbied for reform of laws concerning the rights of working women and political representation.²⁵ A new Constitution was adopted that guaranteed a number of individual rights and for the first time granted equal rights to women and prohibited discrimination on the basis of gender or religion. The 1973 Constitution also provided for greater decentralization of power with the four provinces being given their own governors and legislative assemblies. The changes were partly in response to rising ethnic tension in the non-Punjabi provinces. Ethnic tension remained high, however, particularly in Baluchistan, where the pressure for greater autonomy and even secession was acute. Between 1973 and 1977, Pakistani forces fought a brutal war against Baluch insurgents in which hundreds of civilians were killed, many in indiscriminate air-attacks on Baluch villages.²⁶

Bhutto made some efforts, generally unsuccessful, to win over the religious establishment. The most significant was the 1974 amendment

²⁵ Prior to this, women's organizations had been concerned primarily with social welfare issues. However, the All Pakistan Women's Association, founded in 1949, lobbied for reform in family laws to protect women's rights in marriage and divorce. Mumtaz and Shaheed, p. 13, p. 52 and pp. 62-5. *See also* Section II(B) of this report on the status of women.

²⁶ *See* Lawyers Committee for Human Rights, *Zia's Law: Human Rights under Military Rule in Pakistan* (New York: Lawyers Committee for Human Rights, 1985), p. 11. *See also* Selig Harrison, "Ethnicity and the Political Stalemate in Pakistan," in Ali Banuazizi and Myron Weiner, eds., *The State, Religion and Ethnic Politics* (Syracuse, NY: Syracuse University Press, 1986), pp. 262-3.

to the Constitution that declared the minority Ahmadi sect non-Muslims.²⁷ Bhutto also courted good relations with Muslim countries, particularly the oil states,²⁸ and introduced other symbolic measures, such as banning liquor sales and recognizing Friday instead of Sunday as the official weekly holiday.²⁹ Although these moves anticipated Zia's later Islamization programs, they failed to win Bhutto much support among religious leaders, who denounced his socialism as un-Islamic. Bhutto also alienated the military establishment, which feared that the populist policies of the PPP might unleash forces that could threaten the survival of the state.³⁰

By the time national elections were called in 1977, the PPP faced a formidable challenge from the Pakistan National Alliance (PNA), a coalition that included the entire opposition from fundamentalist religious to centrist and liberal parties. The left, which had previously supported Bhutto, also joined the Alliance, along with urban middle-class Pakistanis frustrated with Bhutto's increasingly autocratic and repressive rule³¹ and his failure to implement economic reforms.

²⁷ The Ahmadis are members of a sect founded in 1889 by Mirza Ghulam Ahmad. Their belief that Ahmad was a prophet contravenes the orthodox Islamic tenet that Mohammed was the last prophet. The 1974 amendment actually had little impact, but it paved the way for the 1984 Ordinance on anti-Islamic activities that prohibited Ahmadis from referring to their faith as Islam or "outrag[ing] the religious feelings of Muslims." Under the 1984 law, Ahmadis may be prosecuted for simply displaying the Quran or otherwise practicing their religion.

²⁸ See Cohen, pp. 325-26.

²⁹ Mumtaz and Shaheed, p. 89.

³⁰ As Cohen notes, "In Pakistan, the confrontational dimensions of democratic government are emphasized: democracy thus seems synonymous with hostile and uncompromising opposition to established governments, even legitimizing outrageous and destructive behavior. ... Accordingly, security and bureaucratic elites regularly support repressive measures in the face of such behavior, and they also tend to exaggerate the dangers of such behavior. The image of democracy gone berserk is widely held within the military and civilian bureaucracies of Pakistan." The military was particularly unhappy with Bhutto's creation of a Federal Security Force -- a paramilitary force that Bhutto used as his own police force with better arms and greater powers than the army. Cohen, pp. 323-324.

³¹ While the 1973 Constitution guaranteed fundamental rights, the Bhutto regime was responsible for widespread violations of those rights. According to Amnesty International, before the March 1977 elections there were several thousand political

Landowners and industrialists who were unhappy with the PPP's economic policies also supported the PNA.³² Both the Alliance and the PPP invoked Islamic precepts in the campaign. The PPP officially won by a large margin, but the opposition claimed widespread electoral fraud and immediately began agitating against the government. The PNA boycotted the provincial elections held three days later, and large rallies were staged at mosques during Friday prayers.³³ Bhutto responded by imposing martial law, but on July 5, 1977, he was deposed in the country's third military coup, led by Army Chief of Staff General Zia ul-Haq. Two years later, Bhutto was tried for the murder of a political opponent, sentenced to death and executed, on April 4, 1979.

4. Islamization Under Zia

Soon after seizing power, Zia ul-Haq used appeals to Islamic values to legitimize his regime and consolidate his hold on power. He attributed Bhutto's downfall to un-Islamic behavior, and promised to "transform the country's socio-economic and political structure in accordance with the principles of Islam."³⁴ He first postponed elections promised for 1977, and again canceled those scheduled for 1979 on the grounds that Pakistan's political system was not Islamic.³⁵ In 1978, Zia expanded the Council of Islamic Ideology (CII)³⁶ to include many conservative *ulama*. Under the 1973 Constitution, the CII had been authorized to review existing laws and recommend reforms to bring

prisoners in jail in Pakistan, most of whom had been held without trial. Thousands more were arrested in the days before and after the election. Special tribunals set up to try political detainees suspended ordinary rights of due process and police engaged in torture and intimidation to extract confessions. See Amnesty International, *Report 1977*, pp. 202-8.

³² Mumtaz and Shaheed, pp. 14-15.

³³ Esposito, p. 342; International Commission of Jurists (ICJ), *Pakistan: Human Rights After Martial Law* (Geneva, 1987), p. 23.

³⁴ *Dawn*, September 30, 1977, as cited in Esposito, p. 343.

³⁵ *Ibid.*, p. 344.

³⁶ The CII, which had little power, was established under Pakistan's first Constitution of 1956 as a concession to the *ulama*. Mumtaz and Shaheed, p. 11.

Pakistan's political, legal and economic institutions into line with Islamic principles. Before 1978, that power had not been exercised, but Zia used the CII to give its stamp of approval to his policies, notably his ruling that Pakistan was to continue under martial law without elections or political parties.³⁷

Zia's Islamization efforts had their greatest impact on Pakistan's criminal justice system.³⁸ The potential for misuse of power by the police and jail authorities had existed since colonial times, and successive periods of martial law had further increased the powers of the law enforcement agencies and eroded safeguards against abuses. The effect of Islamization was to bring more people, particularly women, into contact with an already abusive and corrupt criminal justice system and, to increase the state's power over the lives and liberties of its citizens. When Zia came to power, Pakistan had two functioning legal systems: the civil courts system, based on Anglo-Saxon common law and the law of the colonial state, and the martial law courts, which were expanded under successive military governments. Zia rapidly took steps to restrict further the jurisdiction of the civil courts and to bring them under the martial law authorities.³⁹

The May 1980 Constitutional Amendment Order prohibited the High Courts from reviewing the jurisdiction or judgments of the martial law courts. The Provisional Constitutional Order (PCO) of 1981 went even further, empowering the martial law authorities to decide whether a case would be held in the martial law or civil courts and retrospectively validating everything done by the military regime since 1977.⁴⁰ Article 17 of the PCO required judges of the High Courts and the Supreme Court to take an oath to abide by the PCO; those who

³⁷ Esposito, p. 344.

³⁸ As Binder notes, "[T]he major manifestation of the Islamic character of the government of Pakistan is the return to legalism. ... [T]hrough the reaffirmation of Islamic law, Zia has won over the conservative religious leadership and he has denied religious legitimacy to his opponents." Leonard Binder, "Islam, Ethnicity and the State in Pakistan," in Ali Banuazizi and Myron Weiner, eds., *The State, Religion and Ethnic Politics* (Syracuse, NY: Syracuse University Press, 1986), pp. 262-3.

³⁹ See Cohen, pp. 309-10. In addition, there were the tribal codes recognized since colonial times as legitimate in the Tribal Agencies.

⁴⁰ Cohen, p. 310; International Commission of Jurists, *Pakistan*, p. 50.

did not, or who were not asked to, were dismissed.⁴¹ The PCO also curbed the power of the High Court to grant interim relief or bail with regard to a detention order on a *habeas corpus* petition.⁴²

Under Zia, the martial law courts had exclusive jurisdiction to consider any crime defined as a violation of martial law. For example, political meetings or anything that could be construed as "defamation" of the martial law regime were illegal.⁴³ In addition, the martial law courts had discretion to hear any case involving an offense under the Penal Code. Most cases came before summary military courts, but important political cases were heard before special courts that could impose the death penalty. Both courts suspended safeguards against unfair trials and coerced confessions. Writs of *habeas corpus* could not be obtained from a civil court to review a military arrest or conviction. Defendants' access to counsel was highly restricted, and proceedings were held *in camera*, usually within the prison.⁴⁴ Throughout the martial-law period, all fundamental rights guaranteed under the 1973 Constitution were suspended, political parties and trade unions were banned, and opposition activists were jailed by the thousands. Mistreatment and torture of detainees, including the flogging of prisoners, were widespread.

Zia further undermined the independence of the civilian court system with the introduction of the *shariat* courts (discussed in full in this report's section on the judiciary). In 1978, he established *Shariat* benches in each High Court to review all laws to ensure that none was repugnant to the Quran or the Sunnah. In May 1980, these benches were reorganized and centralized under the Federal *Shariat* Court, which consisted of eight High Court judges or persons so qualified.⁴⁵ As a system parallel to the civil court, the effect of the *Shariat* Courts was to weaken the jurisdiction of the Superior Courts, create insecurity

⁴¹ As the ICJ noted in its 1987 report, "This was a severe blow to the security of tenure of judges, which is a cardinal principal of the independence of the judiciary." The PCO also granted the president other powers of appointment and transfer of judges. International Commission of Jurists, *Pakistan*, p. 49.

⁴² *Ibid.*, p. 50.

⁴³ Cohen, p. 310.

⁴⁴ Lawyers Committee for Human Rights, *Zia's Law*, p. 24 and pp. 27-8.

⁴⁵ Cohen, p. 349.

amongst superior judiciary and make unnecessary inroads in a judicial system that could have dealt with the *Shariat* jurisdiction in its existing structure.⁴⁶

In 1981 and again in 1982, the structure of the Federal *Shariat* Court was amended to reduce the number of civil judges, or persons so qualified, and to add *ulama* to the bench.⁴⁷ In 1983, 150 *qazi* (religious judge) courts were also established at the district level.⁴⁸ Zia took other steps to reinforce the process of Islamizing the legal system. Among these were the promulgation of the *Hudood* Ordinances (1979) and the *Qanun-e-Shahadat* (Law of Evidence) Order (1984). Both of these laws have had a devastating effect on the rights of women.⁴⁹

Zia's foreign policy interests also had an impact on domestic Islamization efforts. The year after Zia seized power, civil war broke out in Afghanistan. That war intensified with the Soviet invasion of 1979, driving some three million refugees into Pakistan. Zia immediately offered support to the resistance, reorganizing and expanding the military intelligence agency, ISI, as the pipeline for assistance to the *mujahidin*.⁵⁰ The resistance groups favored by the ISI advocated the installation of a radically fundamentalist Islamic state in Afghanistan and Zia hoped that by aiding them, Pakistan would continue to have influence over Afghanistan once they were in power.⁵¹

⁴⁶ International Commission of Jurists, *Pakistan*, pp. 48-9.

⁴⁷ *Ibid.*, pp. 53-4.

⁴⁸ Cohen, p. 311.

⁴⁹ The laws are discussed in detail in Chapter III.

⁵⁰ *Mujahidin* is the term generally used for the Afghan resistance. It literally means those fighting a *jihad*, or holy war.

⁵¹ The resistance consisted of ethnically diverse factions loosely organized into a number of parties espousing different political interests. The more radical Islamist groups, particularly the Hezb-e-Islami of Gulbuddin Hekmatyar, were believed responsible for the murder and disappearance of Afghan moderates in Peshawar, Pakistan, where most of the parties are based. In 1990, fundamentalist *mujahidin* groups launched attacks on relief organizations and women's groups in Peshawar, accusing them of Christian or un-Islamic practices. See Asia Watch, *Afghanistan: The Forgotten War* (February 1991).

In December 1984, Zia called for a referendum on his policies and continued rule. Opposition groups called for a boycott, which was declared illegal under martial law. The government claimed to have received widespread support in the referendum, which Zia asserted gave him a mandate to continue in office until 1989. Opposition sources and foreign journalists reported that voter turnout had been very low. In February 1985, general elections (which had been postponed in 1977 and canceled again in 1979) were held for the National Assembly. Political parties were banned from participating in the elections, and many individuals associated with political parties were barred from running as individuals. Again, advocating a boycott was declared illegal, and hundreds of opposition leaders were detained before the elections. Mohammed Khan Junejo, who along with other Pakistan Muslim League party members ran as individuals, became the new prime minister.

The new Assembly's first order of business was to adopt the Eighth Amendment to the Constitution, which ensured that all constitutional amendments, laws and orders promulgated during the martial law period, including all the new Islamic laws, were affirmed, adopted and declared, notwithstanding any judgement of any court, to have been validly made by competent authority and, notwithstanding anything contained in the Constitution, could never be called into question in any court on any ground whatsoever. Adopting the Eighth Amendment was the precondition for the lifting of martial law, which took place on January 1, 1986.

With the end of martial law, the PCO was repealed. Under the Revival of the Constitution 1973 Order, the Constitution was restored, but it had been drastically amended to increase the powers of the president over the judiciary and National Assembly and to ensure that President Zia remained in control even after martial law was lifted.⁵² Over the next two years, opposition parties began to demonstrate openly, but some restrictions remained and several hundred opposition party leaders remained in prison. Ethnic tension in Sind province between Pathans, Sindhis and Muhajirs continued to escalate, erupting in street gunbattles and car bomb attacks.

In a surprise move on May 29, 1988, Zia dismissed the government of Prime Minister Junejo and called for national elections to be held within 90 days.⁵³ On August 1 of that year, Zia, along with several

⁵² International Commission of Jurists, *Pakistan*, p. 29.

⁵³ The reason for Zia's abrupt decision was apparently his growing impatience with

senior military officers and U.S. Ambassador Arnold Raphel, was killed in a plane crash, the cause of which has never been determined. The president of the Senate, Ghulam Ishaq Khan, became acting president. Following a Supreme Court ruling, elections for prime minister were held on a party basis, pitting the PPP under Benazir Bhutto, daughter of Zulfikar Ali Bhutto, against an alliance of conservative and Islamist parties known as the IJI (Islami Jamhjoori Ittehad, or Islamic Democratic Alliance) under Punjab Chief Minister Nawaz Sharif. When the election was held on November 16, the PPP won 93 and the IJI 55 of the 205 seats contested.⁵⁴

5. Pakistan Since Zia

Despite high hopes among women's rights organizations and other civil liberties groups in Pakistan that Benazir Bhutto's government would reverse the repressive policies initiated by Zia, she failed to do so. Citing rising violence in Sindh province and rampant government corruption, President Ghulam Ishaq Khan dismissed the Bhutto government on August 6, 1990. Elections were held in November 1990 which the IJI was declared to have won, amid charges of electoral fraud that were never fully substantiated nor convincingly refuted. Punjab Chief Minister Nawaz Sharif became Prime Minister.

During the campaign, Sharif won the support of the Jama'at-e-Islami by promising to Islamize all laws, and in April 1991, he took steps to fulfill that pledge by introducing legislation to make the *shariat* the supreme law of Pakistan, taking precedence over the Constitution.⁵⁵ In December 1991, the Lahore High Court ruled that

Junejo's interference in the military, particularly his insistence that Pakistan sign the Geneva Accords on Afghanistan and his attempts to investigate a mysterious explosion at an arms dump run by military intelligence. *See Far Eastern Economic Review, Asia 1989 Yearbook* (Hong Kong: Dai Nippon Printing Co., 1988), p. 194. The President's power to dissolve the National Assembly is provided under Article 58 of the Constitution as amended by the Revival of Constitution 1973 Order and the Eighth Amendment.

⁵⁴ Twenty-five seats were divided among smaller parties; 10 were filled by religious minority candidates; 20 were reserved for women elected by the assembly; and 2 were contested later because the candidates died before the election. *See Asia 1989 Yearbook*, p. 195.

⁵⁵ Zia had first introduced the bill in 1988, when it lapsed after the National Assembly was dismissed.

under Article 2A of the Constitution, the *shariat* was the supreme law and that the High Court had jurisdiction to enforce it.⁵⁶ On March 1, 1992, the Federal *Shariat* Court ordered the government to dismantle the country's banking system and establish an interest-free system in line with Islamic prohibitions against usury. While the Sharif government has supported such a policy in name, it appeared taken aback by the court's sudden decision, which potentially threatens Sharif's efforts to reform the economy and attract more foreign investment at a time when the U.S. -- Pakistan's principal supporter for most of its history -- has suspended all aid because of Pakistan's nuclear weapons program.

Since Sharif's election, violence among ethnically based political groups in Sindh has continued to escalate. Opposition figures, particularly those associated with the PPP, have been subjected to arbitrary arrest and detention, and journalists who have criticized government policy have been physically attacked.

Shifts within the military and foreign policy establishment in Pakistan in late 1991 and early 1992, including the retirement of Army Chief General Aslam Beg, who was seen as a strong proponent of Islamization; the sacking of the former ISI Chief Hamid Gul, who favored the most radical of the Afghan *mujahidin*; and the decision to support the U.N. peace plan for Afghanistan,⁵⁷ appear to indicate Sharif's inclination to hold in check those forces calling for more radical Islamization. On May 5, 1992, the Jama'at-e-Islami withdrew from Sharif's coalition government, claiming that he had "betrayed" the most radical of the Afghan *mujahidin* and had failed to fully Islamize Pakistani society. Given Sharif's precarious political position it is unlikely that he will be willing to risk further alienating pro-Islamization forces by retracting any existing laws.

⁵⁶ Article 2-A was added to the Constitution by the Revival of Constitution 1973 Order.

⁵⁷ The decision was condemned by the Jama'at-e-Islami. The Sharif government has concluded that Pakistan's military security and economic development now depend on a settlement in Afghanistan. An important consideration for the shift in Pakistan's policy has been the attitude of the new leaders of the former Soviet republics of Uzbekistan, Tajikistan and Turkmenia, where there is growing anxiety about the potential spread of Islamic fundamentalism. After the overthrow of President Najibullah on April 16, Nawaz Sharif was the first foreign leader to meet with the new governing council in Kabul.

B. The Status of Women

The situation of women in Pakistan is by no means uniform. Conditions vary depending on geographical location and class, with the situation of women better in urban and middle- and upper-class sections of society, where there are greater opportunities for higher education and for paid and professional work, and women's social mobility is somewhat less restricted.⁵⁸ However, despite the relative advantages of women in some sectors, women from all walks of life in Pakistan remain second class citizens. Both the 1985 report of the Pakistan Commission on the Status of Women and the government's Sixth Five Year Development Plan (1988-1993) denounced the systematic discrimination that all Pakistani women face as a result of social and cultural norms and attitudes, as well as the "crippling handicaps of illiteracy, constant motherhood and poor health."⁵⁹

The 1985 report by the government-sponsored Commission concluded that "the average rural woman of Pakistan is born in near slavery, leads a life of drudgery and dies invariably in oblivion."⁶⁰ Seventy-five percent of Pakistan's female population of over fifty million is rural.⁶¹ The average rural woman works 16 to 18 hours a day

⁵⁸ Farida Shaheed has noted that in the less populated frontier provinces of Pakistan, life for women is "strictly governed by a rigid code of tribal beliefs and patterns of behavior." Any deviation from this code by a woman, such as being seen with a man to whom she is not related or married, can bring severe penalties from the community, including death. The women observe strict *purdah* [seclusion of women] and are rarely seen outside their homes. However, in the more heavily populated provinces of Sindh and Punjab, which account for well over half of Pakistan's population, women have relatively greater social mobility. They are visible, working in the fields or in the village areas, and have increased access to education and health care. Finally, women in Pakistan's urban centers, though a small minority of the total female population, have the greatest mobility, with considerable access to jobs and education and greater freedom in marriage and divorce.

⁵⁹ Government of Pakistan, *The Sixth Five Year Plan 1988-1993 and Perspective Plan 1988-2003* (Islamabad, 1988).

⁶⁰ Government of Pakistan, *Report of the Pakistan Commission on the Status of Women* (Islamabad: Government of Pakistan Press, 1986), p. 31.

⁶¹ Ayesha Jalal, "The Convenience of Subsistence: Women and the State in

and will bear eight children in her lifetime. Approximately 80 percent of all pregnant and nursing women suffer from malnutrition.⁶² Every year approximately 26,000 women die from complications due to childbirth and the general mortality rate of women is higher than that of men. The vast majority of women live in utter poverty and only 4.8 percent participate in the official labor force. Pakistan has one of the lowest female literacy rates in the world; only 16 percent of the female population can be said to be functionally literate, compared to 35.1 percent for men.⁶³

Despite the social and economic hardships and discrimination suffered by the vast majority of Pakistan's women today, women did benefit from the social and political reforms that accompanied Pakistan's independence movement. As early as 1917, a group of women in India organized for improved educational opportunities and the right to vote for women. The colonial administration initially rejected the demand for the female franchise. But by 1935, with India's two major nationalist parties, the All-India Muslim League and the Indian National Congress, having joined the demand, women "with the requisite property and educational qualifications" -- the same

Pakistan," in Deniz Kandiyoti, ed., *Women, Islam and the State* (Philadelphia, PA: Temple University Press, 1991), p. 77.

⁶² United Nations Development Programme, *Women in Development, Pakistan* (Islamabad, 1991), p. 2.

⁶³ Farida Shaheed, *Pakistan's Women: An Analytical Description* (Lahore, 1990), pp. 20-22 (hereinafter Shaheed), based on a paper prepared for NORAD Royal Norwegian Embassy, Sanjh. The picture of the life of average Pakistani women painted by Shaheed is common to women throughout the South Asian region, although with differences according to culture, religion, and social, economic and political conditions. For example, a 1990 study by UNICEF, *The Lesser Child: The Girl in India*, reports that one-quarter of the 12 million girls born in India each year die as a result of neglect, discrimination and sometimes infanticide because of their gender. UNICEF estimates that 75 percent of Indian women are illiterate. A 1991 report by UNIFEM and the UN Division for the Advancement of Women, found that both Bangladesh and Pakistan have very low ratios of women to men, largely as a result of systematic sex-discrimination in maternal health care and provision of food and medical services to girls. Harvard economist Amartya Sen estimates that 60 million women are "missing" as a result of various forms of sex-discrimination in the Asian region as a whole.

restrictions imposed on men -- were granted the franchise. Moreover, for the first time, women were guaranteed 6 out of a total of 150 seats in the Council of State and 9 out of 250 seats in the Federal Assembly.⁶⁴ Women's participation in public life advanced so markedly during this period that by December 1938, the All-India Muslim Women's League had branches all over the country.

How much progress women have been able to achieve in Pakistan has depended to a large extent on the political expediencies of the moment. In the 1930s, before the partition of Pakistan and India, women played a central role in the Muslim League's efforts, under the leadership of Mohammed Ali Jinnah, to create a separate Muslim state. In 1944, Jinnah told a gathering at Aligarh University:

No nation can rise to the height of its glory unless your women are side by side with you. We are victims of evil customs. It is a crime against humanity that our women are shut up within four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live. You should take your women along with you as comrades in every sphere of life.⁶⁵

Women galvanized popular support for the Muslim League, participated in public rallies and gatherings, and turned out in large numbers to vote in the 1945-46 elections. According to sociologist Farida Shaheed, "from 1940 to 1947 unprecedented numbers of women young and old from all classes broke the unwritten rules of conduct prescribed by purdah [seclusion of women]."⁶⁶ Women's participation was crucial in advancing the crusade by India's Muslim minority for an independent Pakistan, and they became an important symbol for the progressive forces within the All-India Muslim League advocating

⁶⁴ Jalal, p. 83. See also Percival Spear, *A History of India II* (Middlesex, England: Penguin, 1965), p. 208.

⁶⁵ Mumtaz and Shaheed, p. 183. The author gratefully acknowledges the unpublished honors thesis of Rachel Rosenbloom, Columbia University, April 1990, for drawing attention to this quote.

⁶⁶ Shaheed, p. 8.

for a new nation.⁶⁷

However, the more conservative elements within the Muslim community in India, many of whom opposed the creation of Pakistan, attacked women's increased participation in public life and saw women's heightened visibility as a challenge to, rather than a symbol of, Muslim identity. At the center of this dispute was a debate over women's role in maintaining the family as the essential unit of Muslim culture. Particularly in the context of British colonial rule and India's overwhelmingly Hindu majority, the family was viewed as the mainstay of traditional Muslim values outside the reach of state power. Conservative religious leaders criticized Jinnah and the Muslim League for encouraging a public role for women that they felt would disrupt the family and might contribute to the downfall of the Muslim way of life.

Chief among the League's detractors was Maulana Maududi, the founder of the Jama'at-e-Islami (JI), a conservative Islamic organization started in 1941. The JI advocated, among other things, an end to women's political participation and their strict adherence to *purdah*. In criticizing Muslims whom he felt were choosing the wrong path, Maududi wrote:

For them material gains and sensual pleasures are of real worth whereas the sense of honor, chastity, moral purity, matrimonial loyalty, undefiled lineage and the like virtues are not only worthless but antiquated whims which must be destroyed for the sake of making progress... they are violating the principles of the Islamic way of life and taking their wives, sisters and daughters, though hesitatingly, on the way of Western civilization....People who are treading this path should clearly understand that the beginning may not bring them grief, but it will surely lead their children and the children of their children to grave consequences.⁶⁸

⁶⁷ In one of the major political demonstrations by women supporting the Muslim League in 1946, a 13-year-old girl climbed the gates of the British Secretariat, removed the Union Jack, and replaced it with her *dupatta* [head cover], which she had made into a Muslim League flag.

⁶⁸ Maulana Maududi, *Purdah and the Status of Women in Islam* (1939), pp. 72-81, cited in Khawar Mumtaz and Farida Shaheed, *The Rise of the Religious Right and its Impact on Women* (unpublished paper, 1988), pp. 14-15.

According to Harvard political scientist Ayesha Jalal, even the great poet philosopher of Pakistan, Muhammad Iqbal, criticized women who pursued careers other than those of wives and mothers as abhorrent. European suffragettes in his opinion were "superfluous women...compelled to conceive ideas instead of children."⁶⁹

Thus, in the years immediately preceding Pakistan's independence, women were at the center of a fundamental paradox that was to affect their status in Pakistani society for the next 50 years: on the one hand, their increasing freedom was intricately linked with a political movement to create an independent Muslim state; on the other, conservative interpretations of the identity of that same state -- depending on social, political and economic conditions -- was turned against women as a means of consolidating state power in times of instability.⁷⁰ Seen in this light, the changes suggested by women's increased political participation in the pre-independence period smacked more of political expediency than of a conscientious challenge to biases against women. In essence, women were, and still are, used to stabilize the unsteady balance between religion and politics in Pakistan, but their rights were rarely treated as ends in themselves.

The period from 1947 to 1977 saw improvements in the legal status of women, although the changes mainly benefitted a small minority of upper and middle class women and left the vast majority unaffected.

⁶⁹ Javed Iqbal, ed., *Stray Reflections: A Notebook of Allama Iqbal* (Lahore: Sh. Ghulam Ali and Sons, 1961), pp. 64-5, cited in Deniz Kandiyoti, ed., *Women, Islam and the State* (Philadelphia, PA: Temple University Press, 1991), p. 83.

⁷⁰ The discussion of religion in this section avoids the use of the term fundamentalism because overuse has blurred its precision. Fundamentalism and Islam are often interpreted as one and the same while in fact there are various Islamic schools of thought, ranging from very conservative or fundamentalist to reformist or modernist. The primary religious forces at work in Pakistan, most notably the Jama'at-e-Islami (JI), Pakistan's main religious political party, generally reflect a conservative interpretation of Islam. However, the JI has frequently shown its policies to be dictated as much by prevailing political winds as by a dedication to a particular set of fundamental religious principles. As noted by sociologists Khawar Mumtaz and Farida Shaheed, "to use the term fundamentalist to describe the JI is grossly misleading. The party positions have been determined by opportunistic motives rather than fundamental principles." Mumtaz and Shaheed, *The Rise of the Religious Right and its Impact on Women* (unpublished paper, 1988), p. 2.

In 1937, prior to independence, Jinnah succeeded in securing the adoption of the Muslim *Shariat* Application Act, which granted women inheritance rights that had been denied them by the British colonial courts' interpretation of customary law, although he did so only after eliminating agricultural land from the list of property that women could inherit.⁷¹ With Pakistan's independence, women hoped to secure full rights to property inheritance and, in 1948, women members of the National Assembly introduced a bill to that effect. When the Assembly failed to act on the bill, thousands of women marched in the newly independent country's first mass protest, and secured the law's adoption in 1951.

However, even this victory was marred by the tension between women's rights and religious ideology that, as discussed above, has been central to Pakistani politics. Women did secure inheritance rights in independent Pakistan that were unavailable to them under colonial rule, but did so only in the context of Islamic inheritance laws, which continued to treat males as the main heirs while leaving daughters to inherit only half of what is given to sons. As noted by Jalal, women's support for the inheritance bill suggests that "unequal rights under Islam were better than no rights at all."⁷²

The first Constituent Assembly of Pakistan included two female members who had been active in the independence struggle. Both pushed for the inclusion of 10 reserved seats for women in the provincial and national legislatures. When the Constitution was finally adopted in 1956, it included women's suffrage for seats reserved for women, which were to be filled on the basis of special women's territorial constituencies, but which amounted to only 3 percent of the provincial and central assemblies. Thus, the Constitution granted women a dual franchise: for the three percent of the seats which were reserved for women and for the general seats as well.

The main victory for women in this period was brought about by the creation of the first national women's movement of Pakistan -- the All-Pakistan Women's Association (APWA) -- and its activism on behalf of women's rights. The organization was founded by the prime minister's wife, Begum Rana Liaquat Ali Khan, and was seen as an

⁷¹ See David Gilmartin, "Customary Law and Shariat in British Punjab," in Katherine P. Ewing, ed., *Shariat and Ambiguity in South Asian Islam* (Berkeley, CA: University of California Press, 1988), pp. 43-62.

⁷² Jalal, p. 87.

indication of the new government's commitment to improving the status of women. APWA was the moving force in Pakistan's early years behind improvements in women's access to education and health care, and it founded one of the first legal aid services for women. One of APWA's lasting contributions was its campaign against gender discrimination in the family. The campaign was sparked by the prime minister's decision to take a second wife, which led the government to establish a Commission on Marriage and Family Laws to review and reform existing laws on polygamy and divorce.

The Commission recommended improving women's legal rights of marriage, divorce and child custody. But these recommendations became enmeshed in the controversies over Pakistan's national identity that re-emerged in the constitutional debates of the mid-1950s. Pakistan's first government was under increasing attack by both conservative Muslims, for its failure to create a truly Islamic state, and by dissenters within its own party, for failure to stabilize the independent government. These pressures, coupled with mounting social and economic problems, created a crisis of confidence in state power. The government delayed adopting the Commission's recommendations for fear of further weakening its already tenuous hold on power. The government's decision about what to do was preempted by General Ayub Khan's military coup of 1958, which established the military as the central governing authority of independent Pakistan.

As noted, Ayub Khan viewed Pakistan's religious elites along with other dissident voices as obstacles to the country's progress. Although his reign instituted a period of martial law that contributed to the collapse of Pakistan's fledgling democratic structures, the effect on women was mixed: while Ayub Khan undercut some recent gains his regime also encompassed a period of remarkable development for women. In 1961, after considerable lobbying by APWA and several other women's groups, Ayub Khan's government promulgated the Muslim Family Laws Ordinance, which drew heavily on the Commission's earlier recommendations.⁷³ Moreover, during his

⁷³ The Muslim Family Laws Ordinance eliminated the husband's right to unilateral divorce (*talaq*) by requiring all divorces to be registered with a local council for a period of 90 days before they are final. Polygamy was restricted by the requirements that a man obtain permission from his first wife and seek permission for additional marriages from an arbitration council. Moreover, all marriages were required to be registered and the standard marriage contract, *nikah nama*, gave women the right to divorce, as long as it was agreed upon at the time of the marriage. For a detailed

administration from 1956 to 1969, Ayub Khan adopted social and economic policies that led to women's increased participation in the labor market and their improved access to education.⁷⁴

However, these seemingly progressive policies toward women were undercut by Ayub Khan's unwillingness to advance beyond a certain point for fear of compromising his political power base. The adoption of the Muslim Family Laws Ordinance was a major advance, but the limitations of Ayub's policies toward women were exposed by his vehement opposition to the popular candidacy of Fatima Jinnah, the sister of Pakistan's founder, for the office of president in the 1965 elections.⁷⁵ Ayub opposed Jinnah on the grounds that no woman could be the head of state of a Muslim country, and he had several *ulama*, whom he had previously denounced, issue religious edicts to the effect that a woman head of state was un-Islamic.⁷⁶

By contrast, driven by their own political calculations, the conservative religious parties, including the Jama'at-e Islami, which had steadfastly opposed every advance in women's rights since the creation of Pakistan, supported Fatima Jinnah's candidacy on the grounds that in "extraordinary circumstances" a woman could hold such an office. In this case, the "extraordinary circumstances" were that her candidacy, which was very popular, might result in the return to power of a government more sympathetic to their views than Ayub Khan's. As noted by Farida Shaheed, the Fatima Jinnah controversy "underscored the manner in which religion has been constantly used by political forces in Pakistan to further their own purposes and justify contradictory positions."⁷⁷

Among the most serious setbacks of this period were the elimination of reserved seats for women (included in the 1956 Constitution) from the 1962 Constitution adopted during Ayub Khan's

discussion of the Ordinance, *see generally* Mumtaz and Shaheed.

⁷⁴ Jalal notes that while "in 1951 women constituted a mere 3.1 percent of the total civilian labor market, by 1961 the figure had gone up to 9.3 percent. [It decreased in subsequent years.] Between 1961 and 1964 the number of women employed in the non-agricultural sectors of the economy increased by approximately 250,000."

⁷⁵ Mumtaz and Shaheed, p. 60.

⁷⁶ Shaheed, p. 10.

⁷⁷ *Ibid.*, p. 10.

leadership, and the government's failure to implement the Muslim Family Laws Ordinance. In the absence of a concerted government effort, the law's effect was limited, and pre-existing cultural and religious norms continued to hold great sway. A study conducted 20 years after the law's passage found that women's limited access to legal redress in marriage- or divorce-related disputes remained severely limited by "lack of awareness, social and economic pressures, apathy, misconceptions and lack of faith in legal machinery and faulty or inadequate implementation of the law."⁷⁸

In 1969, Ayub Khan's government was replaced by one under General Yahya Khan, who again imposed martial law. Yahya Khan's rule was short-lived, lasting only long enough to preside over the bloody civil war that ended with the partition of Pakistan and the creation of Bangladesh. In 1972, General Khan handed over power to Zulfikar Ali Bhutto, whose Pakistan People's Party (PPP) had won a majority of National Assembly seats in West Pakistan in the election held just before the war. Women played a key role in mobilizing on the PPP's behalf, and the PPP political platform promised equality for women.

Bhutto's tenure, while characterized by political oppression similar to that of his predecessors, brought about additional advances for women. Most notable was the adoption of the 1973 Constitution which, for the first time in Pakistan's history, guaranteed women equality under the law⁷⁹ and established their rights to full participation in all spheres of national life.⁸⁰ That women still had a long way to go to exercise these rights had been underscored by the limited success of women candidates in the 1970 elections. The 1973 Constitution reserved 10 seats in the assembly for women, who would be nominated by the assembly members themselves.⁸¹ This provision was not meant to undercut women's right to stand in general elections, but it made clear that women were still disadvantaged politically and lacked a strong popular constituency.

⁷⁸ Hina Jilani, "Scope and Methods of Dissemination of Legal Information to Women" (unpublished paper).

⁷⁹ Constitution, Article 25.

⁸⁰ *Ibid.*, Article 27.

⁸¹ *Ibid.*, Article 35.

During Bhutto's administration, reforms opened up the Civil Service, the Foreign Service and other government agencies to women, and women's participation in government increased dramatically. With government support, an independent Commission on Women's Rights was established in 1975 to examine the status of women in Pakistan and propose legal reforms to improve their social, legal, political and economic conditions. In this period, the number of independent women's organizations engaged in social welfare and grassroots political activism increased.

The general failure of Bhutto's economic reforms alienated a wide spectrum of political groups, most importantly those from the urban middle class and the left, that had previously supported him. Bhutto's promotion of women's rights, while failing to address the vast social and economic inequities suffered by the majority of women in Pakistan, also added to a conservative backlash from religious parties who drew their support from the middle class Pakistanis who had been hit hardest by Bhutto's economic reforms. Finally, the military, which became increasingly disturbed over the deterioration of law and order, blamed the persisting problems on Bhutto's "populist" policies and overthrew him in a coup led by General Zia ul-Haq in 1977.

Zia's coup represented the convergence of conservative religious interests with those of the army. In the absence of any clear popular constituency, Zia cultivated the conservative religious parties to bolster his legitimacy. In return, he provided those parties, which had never had strong support from the electorate, with access to national political power. Zia came to power denouncing Bhutto's regime as un-Islamic, and one of his main rallying cries was the return of Pakistani society "to the moral purity of early Islam." His most vulnerable and strategic targets were women, whom he promised to return to "the sanctity of the *chardivari* [the four walls of the home]," thus resuscitating the family and women's role in it, as the cornerstone of a Muslim way of life. Within months he had introduced a series of legal and social changes that reversed many of the legal advances for women of the prior thirty years. This backsliding demonstrated that, despite seeming progress, the status of the majority of Pakistan's women had not changed substantially since independence. Women's few hard-won legal gains were easily curtailed.

With the imposition of martial law, Zia suspended all fundamental rights guaranteed in the Constitution, including the right to be free of discrimination on the basis of gender. He then introduced a series of laws that gave legal sanction to women's subordinate status, including the *Hudood Ordinances*, the *Qanun-e-Shahadat* (Law of Evidence Order)

and proposed laws regarding *Qisas* and *Diyat*, Islamic penal laws governing compensation and retribution in crimes involving grave bodily injury. The cumulative effect of these laws is discussed in greater detail in the next section of this report.

Briefly summarized, the *Hudood* Ordinances penalize theft, drunkenness, fornication, adultery, rape and defamation. They require the testimony of four male Muslim witnesses to impose maximum punishment for rape, adultery and fornication. In adultery, fornication and rape cases for married persons, the maximum punishment is stoning to death; for unmarried persons, it is 100 lashes in a public place. Women's testimony was excluded, which had the effect not only of protecting men accused of rape from maximum punishments (which in any case are considered cruel and inhuman under international law), but also of disfavoring women who were, in the absence of four male Muslim witnesses to the act of penetration, unable to prove rape. This made women victims susceptible to charges that, rather than having been raped, they had committed the crimes of adultery or fornication. The Law of Evidence similarly relegates women to inferior legal status and, in some circumstances, renders the testimony of women equal to only half that of men. In addition, under the *Qisas* and *Diyat* laws proposed at the time, compensation for the death of a female victim was half that of a man. On the other hand, a woman charged with murder could receive the same punishment as a man.

Zia reinforced the legal strictures he imposed on women with a series of informal regulations and unwritten polices designed to curtail women's personal liberty and their participation in public life. In 1980, Zia required all government officials to adhere to Islamic dress codes. However, men were only required to wear national dress⁸² whereas women were expected to adhere to the stricter Islamic Code of Dress. In 1982, he followed this directive with another aimed solely at women, which required women teachers and students in government schools and all female government official to wear the *chador*⁸³ over their clothes and to cover their heads.⁸⁴ Female members of the Foreign

⁸² The national dress for males in Pakistan is a long tunic shirt (*kurta*) worn over loose trousers called *salwar*. For women, national dress consists of *salwar* and a long tunic shirt (*kameez*).

⁸³ The *chador* is a traditional garment covering women from head to foot.

⁸⁴ The exact text of the directive read, "The Federal government has decided that in

Service were recalled and the Ansari Commission, set up by Zia in 1983 to "Islamize" Pakistan's political system, recommended that the office of the head of state be closed to women and that female members in the National Assembly be over 50-years-old and have the permission of their husbands to participate.

While the Ansari Commission's suggestions concerning women were largely ignored (with the exception of recommendations restricting the nature and length of women's appearances on television), they contributed to the chilling atmosphere of state-sponsored and -tolerated discrimination against women. According to Shaheed, the effect was to raise "an entire generation in Pakistan to distrust and dislike any woman deviating from...[the] norm of good, house-bound, veiled, self-effacing, self-sacrificing, second class citizen."⁸⁵

The Zia era produced a shift in the relationship between women's rights and religion in Pakistani politics. Until 1977, the constantly changing religious and political alignments mitigated against both conservative and progressive extremes and, with the help of a growing number of independent organizations, women were able to secure a steady flow of moderate reforms, although their impact on the majority of women was minimal. After Zia's coup, the politics of the army and the religious right were so closely aligned that the opportunity for reform disappeared, and women took a step backward. Increased social control of women was an important part of the Zia regime's appropriation of conservative religious values to legitimate state power.

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

all institutions under its control, girls from class IX upward will henceforth wear a proper *dupatta* as head cover rather than a thin strip of cloth which is generally used at present. It has further been decided that all female staff in the schools and colleges will be modestly dressed and will wear a *chador* over their dress." Cited in Mumtaz and Shaheed, p. 79.

⁸⁵ Shaheed, p. 12.

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

Pakistan's poorer women, who had gained least from the legal reforms previously secured by their better-off sisters, were the hardest hit by Zia's retrenchment. The number of women in prison at any moment -- the vast majority of whom were illiterate and impoverished and, therefore, in no position to press for their rights -- soared, from as few as 70 in 1980 to as many as 4,500 in 1990. Their experience is the subject of the remainder of this report. A 1985 study by the Pakistan Commission on the Status of Women, whose findings were suppressed by the Zia administration, concluded that

women in Pakistan were treated as possessions rather than self-reliant, self-regulating humans. They are bought, sold, beaten, mutilated and even killed with impunity and social approval. They are dispossessed and disinherited in spite of legal safeguards [and] the vast majority are made to work for as long as 16 to 18 hours a day without payment.⁸⁶

Yet despite, or perhaps because of, this intensified repression, it was women (particularly the better protected middle and upper class urban women) who formed the backbone of opposition to the Zia regime's exploitation of Islam for political ends. As noted by Khawar Mumtaz and Farida Shaheed:

It was only after the imposition of General Zia ul-Haq's martial law...that women belonging to the upper and upper-middle classes realized just how fragile their hold on rights was. With this came the realization that firstly, one could not depend on the central government to guarantee women's rights, women themselves would have to be mobilized and, secondly, that until a greater number of women became conscious of their lack of rights and were prepared to join forces to counter the prevailing trends, whatever rights were granted or enjoyed would remain insecure.⁸⁷

In September 1981, women came together in Karachi in an emergency

⁸⁶ *Report of the Pakistan Commission on the Status of Women*, p. 3.

⁸⁷ Mumtaz and Shaheed, p. 75.

meeting to oppose the adverse effects on women of martial law and the Islamization campaign. They launched what was to become the first full-fledged national women's movement in Pakistan: the Women's Action Forum (WAF).

WAF grew steadily in its first two years, opening branches in most of Pakistan's major urban areas and attracting endorsements from all the established women's organizations, including the APWA. However, WAF's rise to national and international prominence did not come until February 12, 1983 when the Pakistan Women Lawyers Association organized a march on the Lahore High Court in which many WAF members participated to protest Zia's Law of Evidence. The march was the first public demonstration by any group against a martial law edict. Police broke up the demonstration using tear gas and batons, injuring some women and arresting nearly 50 others. Pictures of the courageous women being lathi-charged⁸⁸ by the police were plastered all over Pakistan, and WAF along with women's rights issues were catapulted onto the national scene.

WAF was to become one of the main voices of opposition to Zia and the leading opponent of his policies toward women. WAF staged public protests and campaigns against the *Hudood* Ordinances, the Law of Evidence, the *Qisas* and *Diyat* laws (temporarily shelved as a result), the Ansari Commission's report, and the proposed 9th Constitutional Amendment. The Amendment, which was defeated in part because of effective opposition by women, would have placed the hard-won Muslim Family Laws Ordinance of 1961 under the jurisdiction of the Federal *Shariat* Court.

However, in challenging Zia's policies, WAF found itself challenging "Islam" and denounced as "un-Islamic," although nearly all of its membership was Muslim. WAF's quandary went to the heart of the relationship between religion and women's rights in Pakistani politics. It raised the question of what is meant to be by "Islamic" and whether, in an Islamic country, women's rights should be founded in religion or secular law.

From the standpoint of an international human rights organization, the provenance of women's rights in a given state is not of paramount concern -- so long as those rights comport with accepted international principles of equality before the law and equal protection of the law. Rather, it is abuses of women's rights by the state, no matter what the justification (religious, secular or otherwise) that warrant international

⁸⁸ *Lathi* are police batons.

condemnation. However, for women trying to obtain rights denied them by a particular state, the source of rights is often an important strategic issue.

From its inception, WAF hotly debated whether to adopt a secular or religious approach to securing women's rights in Pakistan. Some members promoted an understanding of Islam that supports and protects equality for women, and believed that this approach would be more persuasive to the majority of Pakistan's women. Other WAF members vehemently opposed this approach, saying that it would subject to religious interpretation rights that are already established as universal and fundamental, and that should not be modified in accordance with local cultural circumstances. In Pakistan, the two approaches have often been in conflict, yet WAF has attempted to use both -- a flexibility which has helped it to survive in difficult times.⁸⁹

The coming to power of Benazir Bhutto in 1988 represented yet another radical shift in the history of women's rights in Pakistan. It amounted to an unprecedented alignment of state power with an apparently progressive women's rights policy. Bhutto's campaign pledge to repeal the *Hudood* laws, to release women imprisoned under *Hudood*, and to remove all other discriminatory statutes had great appeal. However, soon after Bhutto's election, it became clear that, once again, the protection of women's rights had been subordinated to the need to maintain a delicate balance between various political forces, including those representing conservative religious values. The PPP's failure to secure a majority in the national assembly made it necessary for Bhutto to strike political deals with smaller groups, including the Jama'at-e-Islami, and her campaign promises on women's rights gradually proved empty. Although Bhutto did release women sentenced under *Hudood*, she limited the amnesty only to convicted women. Pending-trial female prisoners, who constituted the vast majority, were not affected. Moreover, she never repealed a single one of Zia's Islamization laws.⁹⁰

⁸⁹ At WAF's National Convention in 1991, the organization officially stated its adherence to "secular values" for the demand of equality and social justice. This has been included in the organization's Charter.

⁹⁰ Her promise to do so was made especially difficult to fulfill due to the fact that, by virtue of the 8th Constitutional Amendment, these laws were protected both from amendment and from judicial review.

When Bhutto's government was dissolved in 1990, the women's groups that had been lulled into inaction by the appearance of a female Prime Minister were discouraged. The appointment of Nawaz Sharif, the present Prime Minister, appeared to provide little opportunity for progress. Sharif's political rhetoric was reminiscent of the Zia years. When he came to power in November 1990, he promised to adopt Islamic law as the supreme law of Pakistan, and in April 1991 he introduced legislation to that effect. Many women's rights activists, including WAF, feared that women would be forced to take yet another step backward.

Yet, despite Sharif's rhetoric, the political reality has shifted considerably since Zia's days. The interests of the state are not as clearly aligned with the religious right as during martial law; indeed, in some cases, they are clearly in conflict. In this context the implications of the *Shariat* Act remain unclear: on the one hand, after sustained lobbying by women's rights groups and the PPP, a clause protecting women's constitutional rights was incorporated in the act's language; on the other, the act as a whole has strong support from the religious right, even though it has opposed even the minimal guarantees added to the amendment. Women are particularly concerned that the reaffirmation of constitutional rights in the *Shariat* Act may not protect reforms like the Muslim Family Laws Ordinance that are not spelled out in the Constitution.

Today, the role of religious interests at the national level remains uncertain, as does the direction of government policy toward women. Regardless of its direction, however, clear violations of international law on the rights of women occur daily in Pakistan without an adequate state response. As the remainder of this report discusses, thousands of Pakistani women are being imprisoned under laws that are overtly discriminatory and are applied in a discriminatory manner. Once incarcerated, the large majority are subjected to physical and sexual abuse by police authorities.

III. WOMEN IN CUSTODY

A. Number and Treatment

Precise data on the number of women currently in police custody or prison in Pakistan are difficult to obtain. Police do not keep statistics separated by gender, nor do they compile national criminal statistics in any systematic way. However, available figures clearly indicate that, after a sharp decline in convicted prisoners during the tenure of Benazir Bhutto, the number of female detainees is rapidly rising.

A 1980 study of criminal justice in Pakistan documented only some 70 female convicts in the entire country.⁹¹ By 1987, the number had increased to 125 female convicts in the state of Punjab alone,⁹² and an estimated 91 in the state of Sindh.⁹³ The number of pre-trial female prisoners is even more difficult to determine because of their dispersal in jails throughout the country. However, according to police records for all of Pakistan in 1983, a minimum of 1,682 women faced trial for offenses solely under the *Hudood* Ordinances. That number increased to 1,843 in 1984 and has continued to rise ever since. In late 1988, according to a study conducted by Pakistani human rights attorneys Asma Jahangir and Hina Jilani, there were 503 female pre-trial prisoners in Punjab's 21 jails alone.⁹⁴ By 1990, the number reportedly had reached 738.⁹⁵ Sociologists Khawar Mumtaz and Farida Shaheed estimated that in 1990 there were a total of 4,500 women prisoners (both convicts and pre-trial) in the entire country.⁹⁶

⁹¹ Ch. Abdul Majeed A. Auolakh, *Criminal Justice: Crime, Punishment and Treatment in Pakistan* (Lahore: Pak Muslim Academy, 1986).

⁹² Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhotas Books 1990), p. 132 (hereinafter *A Divine Sanction?*).

⁹³ Sabiha Sumar and Khalid Nadvi, *Zina: The Hudood Ordinances and its Implication for Women, Dossier #3* (1988), p. 37.

⁹⁴ *A Divine Sanction?*, p. 132

⁹⁵ "Pak Women Fear Controversial Law," January 15, 1990.

⁹⁶ Khawar Mumtaz and Farida Shaheed, "Bhutto Inherits Laws Which Restrict the Rights of Women: Veils of Tears," *Far Eastern Economic Review* (1989). According to a recent article, the figures are even higher: a 1990 press report puts the number of pending *Hudood* cases in the Punjab at 6,416. "Pak Women Fear Controversial Law,"

Compared to the number of men incarcerated in Pakistan these figures are extremely low.⁹⁷ However, they represent a vast increase in the involvement of Pakistani women with the criminal justice system that, before the passage of the *Hudood* laws in 1979, had been minimal. Women's increased involvement in the criminal justice system has in turn exposed them to more frequent violence by the police.

Torture and abuse of prisoners in police custody -- particularly in police lock-ups⁹⁸ -- are common throughout Pakistan,⁹⁹ and abuses against women detainees are frequent. According to a 1988 survey of female prisoners in Punjab (both convicts and pre-trials), 78 percent alleged maltreatment while in police custody and 72 percent claimed they had been sexually abused by the police.¹⁰⁰ Sexual abuses ranged from rape, including the insertion of foreign objects into the vagina and rectum, to beating and manipulation of exposed genital areas, to stripping and public exposure.

The U.S. Department of State's *Country Reports on Human Rights Practices for 1991* cites a growing number of press reports "about the unresponsiveness to or even involvement of police in incidents of rape or abuse of women."¹⁰¹ A study of newspaper reports for 1990 found that "the press records on a regular basis incidents of torture, sexual humiliation and ill-treatment of women in police lock-up."¹⁰² A random sample of crimes of violence against women reported in

⁹⁷ *A Divine Sanction?*, p. 135

⁹⁸ Before being imprisoned, detainees are often kept in police lock-ups. Once they have been formally charged, they are transferred to jails or specialized prisons, for example, for convicted women prisoners. Physical and sexual abuse of female detainees primarily occurs in the lock-ups.

⁹⁹ See Human Rights Commission of Pakistan (HRCP), *State of Human Rights in Pakistan* (1990) (hereinafter *HCRP 1990 Report*).

¹⁰⁰ *A Divine Sanction?*, p. 137.

¹⁰¹ U.S. Department of State, *Country Reports on Human Rights Practices for 1991* (published February 1992), p. 1602 (hereinafter *Department of State 1991 Country Reports*).

¹⁰² Nausheen Ahmad, "Criminal Abuse of Women by Law Enforcing Agencies" (Karachi: unpublished paper, 1991).

Pakistan's English and Urdu¹⁰³ newspapers in 1991 revealed that of 20 alleged cases of rape or ill-treatment, 12 directly or indirectly involved police officials.¹⁰⁴

By all accounts, these figures drastically understate the seriousness of the problem of abuse of women in Pakistani society, even in noncustodial situations. According to researchers in both Karachi and Lahore, 80 percent of all rape victims never take their cases to the police. Official statistics for 1991 in the city of Karachi, which has a population of approximately 7 million, reveal only 103 rape cases for the city's four districts. However, in the month of December alone, independent rape monitoring groups reported 21 rapes for Karachi's South District.¹⁰⁵ According to Lahore-based researchers quoted in a recent study of rape, "the official 1991 figure of 1,117 reported rapes in the Punjab [population approximately 50 million] is not even the tip of the iceberg. In Pakistan, the social stigma attached to rape and laws that often lead to the victim herself being prosecuted [see below] have resulted in most cases of rape going unreported."¹⁰⁶

B. Significant Characteristics of the Female Prison Population

The vast majority of Pakistan's female prisoners are poor and illiterate. A 1987 study of female prisoners in the Multan jail in Punjab concluded that the majority were from rural areas, 69 percent lacked any formal education, 26 percent could read only the Quran, and only a small proportion had some formal education. Seventy-one percent of the female prisoners came from Pakistan's lowest income bracket.¹⁰⁷ A 1988 study of the Multan and Lahore prisons in the Punjab revealed similar, more disturbing patterns. Eighty-two percent of the female prisoners came from rural areas, 88 percent were completely illiterate,

¹⁰³ Urdu is the native language of Pakistan.

¹⁰⁴ *The Herald Annual*, January 1992, pp. 50-51.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Lubna Shah and Mehdi Hassan, *Problems of Women Prisoners in the Central Jail for Women - Multan, Women's Division* (Islamabad, 1987) (hereinafter *Multan Jail*).

and more than half came from families with a monthly income of less than 1,000 Pakistani rupees, or roughly 40 U.S. dollars.¹⁰⁸ These attributes place female prisoners in a particularly precarious position when they are in the custody of the police.

The researchers found that most of the detainees were unaware of their basic rights to due process and equal justice, nor were they in a position to secure counsel. Of 90 prisoners interviewed, 91 percent did not know under what law they had been accused. Sixty-two percent had received no legal assistance whatsoever, and of those who had lawyers, almost half had never met them. Of the entire female pre-trial population in Punjab in 1988, 45 percent had been in jail for over a year. Many had no legal representation at all. According to one female judge we interviewed, "women who do not have counsel will rot."¹⁰⁹

Perhaps most disturbing is that many of the women detainees imprisoned under such circumstances do not belong in prison in the first place in that the law under which they were imprisoned is overtly discriminatory and, in any event, there is often no evidence to support the charge against them. According to a 1987 interview with the Inspector General of prisons, "[m]aybe 50 percent of the women in jail are innocent, but because they are unaware of their rights and are too poor to hire proper legal aid, they are convicted."¹¹⁰ He told researchers investigating conditions in the women's prisons that most women prisoners were victims of intrigues and vendettas pursued by males.¹¹¹ A local human rights attorney, who frequently acts of behalf of indigent women charged with *Hudood* offenses, estimates that over the vast majority of such cases are not supported by the evidence and should never have been prosecuted.¹¹²

C. Why Women Are In Custody

¹⁰⁸ One U.S. dollar equals approximately 24 Pakistani rupees.

¹⁰⁹ Interviews with women judges, Karachi, October 1991.

¹¹⁰ *Multan Jail*, p. 2.

¹¹¹ *A Divine Sanction?*, p. 136.

¹¹² Zia Awan, quoted in Deneb S. Sadiq, "When The Law Is Abused," *Dawn*, October 20, 1989.

1. General Comments

The primary focus of this report is police abuse that women prisoners experience in custody. However, to grasp fully the desperate situation facing women in custody in Pakistan, it is necessary to understand why and how women are detained in the first place. Some have committed criminal offenses and are deservedly incarcerated. However, as discussed below, we found that women often end up in prison because of discrimination, either in the law itself or as it is applied (or ignored) by the criminal justice system.

The 1987 study of women in the Multan jail in Punjab, cited above, indicates that women are most frequently detained for spousal murder or for offenses under the *Hudood* Ordinances. Other less frequent offenses include theft, alcohol abuse, and possession of drugs or illegal arms. A large number of women from Bangladesh are also imprisoned in Pakistani jails, largely as a result of trafficking in women.

2. Murder

Murder is one of the two offenses that account for the majority of the female prison population. A 1987 study of 100 female convicted and pre-trial prisoners indicates that 42 were incarcerated for murder, and of these, the majority were accused of murdering their husbands. In late 1991, of over 30 convicts in the Multan jail, half were convicted for murder and sentenced to death. Nine of these had been charged with killing their husbands.¹¹³

Until 1990, punishment for murder was governed by section 302 of Pakistan's Penal Code, which stated that "whoever commits murder shall be punished with death or imprisonment for life and should also be liable to fine." According to the 1987 study cited above, nine of the women convicted of murder were sentenced to death. Another 25 murder convicts were sentenced to 25 years in prison and, in some cases, lashes or a fine or both.¹¹⁴ The remaining prisoners facing murder charges were sentenced to lesser punishment or were awaiting trial.

The issue of spousal murder has yet to be fully studied in Pakistan, and it is for the most part outside the purview of this report. However,

¹¹³ Interview with Hina Jilani, October 1991.

¹¹⁴ *Multan Jail*, p. 14.

preliminary research suggests that women who kill their husbands in Pakistan receive heavier sentences than husbands who kill their wives. Men accused of murdering their wives often received mitigated sentences pursuant to section 300 of the Pakistani Penal Code, which states that culpable homicide will not be considered murder if "the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of a person who gave the provocation." By contrast, women who kill their husbands are not known to benefit from this defense. According to preliminary research conducted by human rights lawyer Hina Jilani, most cases of "grave and sudden provocation" involve a man who has killed his wife because of marital infidelity.

Under the new penal law passed in 1990, murder and attempted murder along with the crime of causing grave bodily injury (both intentional and unintentional) are punishable by retribution (*qisas*) or compensation (*diyat*) for the benefit of the victim or his or her legal heirs.¹¹⁵ When these laws were first proposed in the early 1980s during General Zia's Islamization campaign, the testimony of women was not accepted in the execution of *qisas*, which meant that a woman accused of committing an offense requiring retribution would not have been allowed to testify on her own behalf. Moreover, when the victim was a woman, the amount of *diyat* was halved.¹¹⁶ The current law does not distinguish between the sexes with regard to payment of *diyat*, but both the amount of the *diyat* and the validity of a woman's testimony have been left to judicial discretion "in accordance with the qualifications prescribed by the injunctions of Islam."¹¹⁷ This invitation to exercise discretion only with regard to women encourages judges to manifest their own prejudices and biases against women.

¹¹⁵ In *qisas* and *diyat* crimes, the victim or heir has the right to determine whether to exact retribution or compensation or to pardon the accused. Where an injury has been inflicted, the offender is liable to an equal amount of hurt as *qisas* punishment. *Qisas* is to be executed in public by a medical practitioner. The victim or heirs of a deceased may choose to accept compensation (*diyat*) in place of *qisas*. As a result of the Penal Code reforms, the state's authority to punish or pardon is now contingent on the approval of the heirs, although the state reserved the right unilaterally to punish repeat offenders and to impose additional sentences in cases deemed to be threatening to the social order.

¹¹⁶ Asma Jahangir, "A Pound Of Flesh," *Newsline*, December 1990, pp. 61-62.

¹¹⁷ *Ibid.*

3. The Hudood Ordinances

The *Hudood* Ordinances¹¹⁸ account for much of the increase in the women's prison population since the early 1980s and are one of the major reasons why women are detained or jailed and why their complaints of police misconduct go unanswered. The *Hudood* Ordinances are Islamic penal laws introduced by General Zia ul-Haq in 1979 as part of his "Islamization" campaign. The Ordinances apply to all Pakistanis -- Muslims and non-Muslims alike -- and consist of five sections: the Offense of *Zina* (adultery, fornication and rape); the Offense of *Qazf* (perjury or defamation about fornication or adultery); the Prohibition (of Alcohol) Order; the Execution of the Punishment of Whipping; and the Offenses Against Property Ordinance. While as noted above, Human Rights Watch does not oppose laws founded on religion *per se*, as long as human rights are upheld, the *Hudood* laws violate such fundamental human rights and principles. They impose

¹¹⁸ Islamic penal laws are referred to as *Hudood*, which means "prevention, hindrance, restraint, prohibition and hence a restrictive ordinance or statute of Allah respecting things lawful and unlawful." See Lippman, McConville and Yerushalmi, *Islamic Criminal Law and Procedure: An Introduction* (New York: Praeger, 1988), p. 38.

Under Article 89 of the Constitution, the president is empowered to promulgate an ordinance if the National Assembly is not in session and circumstances require immediate legislation. An ordinance lapses in four months if it is not endorsed sooner by the Assembly. The Human Rights Commission of Pakistan (HRCP) has severely criticized the use of ordinances by several presidents to bypass parliamentary debate and govern without national consensus. In several cases in which ordinances have been introduced, including the *Hudood* Ordinances, the four months lapsed without action by the National Assembly and the president simply reintroduced the same ordinance. The HRCP's 1990 report documented 18 ordinances that were introduced by the Sharif government, including the Special Courts for Speedy Trial Ordinance, the Suppression of Terrorist Activities Ordinance, and several criminal law amendments. By August 1991, 22 ordinances had been introduced by the federal government, including the Terrorist Affected Areas (Special Courts) Ordinance.

In describing the anti-democratic effects of rule by ordinance, HRCP director I.A. Rehman notes, "Something has gone terribly wrong when a law concerning a citizen's life or death, even a constitutional amendment, can be clumsily drafted by some anonymous functionary, can be privately considered by a few individuals, and can be enforced in a few minutes, without the public getting any chance to discuss it. This is not a way to curb crime. The government's quarry does not seem to be the outlaw, but justice itself." Quoted in *Frontier Post*, August 1991.

the death penalty and punishments deemed cruel and inhuman under international law and clearly discriminate on the basis of sex. The Offenses of *Zina* and *Qazf* and the Execution of the Punishment of Whipping Ordinance are the *Hudood* sections most relevant to the discussion of women in custody.

Zina, which can be translated as both adultery and fornication, is defined as "sexual intercourse without being validly married."¹¹⁹ *Zina-bil-jabr*, which can be translated as rape, is defined as "sexual intercourse without being validly married" when it occurs without consent.¹²⁰ *Qazf*, which can be translated as defamation, is defined as false accusations of *Zina* or rape.¹²¹

The Offense of *Zina* Ordinance repealed the previous rape laws in Pakistan's Penal Code,¹²² which defined rape as compulsory sexual intercourse. The new law adds to this definition that both a man and a woman may be guilty of rape, and dramatically narrows the circumstances in which rape can be said to have occurred. Statutory rape, previously defined as sex with or without the consent of a girl under the age of 14,¹²³ is no longer a crime, making it possible for a minor girl (defined as one who is determined by the court to have reached puberty) to be charged with engaging in illicit sex.¹²⁴ In

¹¹⁹ *Offence of Zina* (Enforcement of *Hudood*) Ordinance, 1979, section 4 (hereinafter *Zina* Ordinance).

¹²⁰ Under the *Zina* Ordinance, rape is understood to have happened when sexual intercourse without being validly married occurs in the following circumstances: (a) against the will of the victim; (b) without the consent of the victim; (c) with the consent of the victim obtained under duress; and (d) with consent obtained by lying about the validity of the parties' marriage.

¹²¹ Lippmann, McConville and Yerushalmi, p. 46.

¹²² *Zina* Ordinance, sections 3 and 19(3). The repeal of the previous penal law means that rape cases may now only be tried under religious law and that appeals in such cases will only be heard by the Islamic higher courts.

¹²³ See Pakistan Penal Code, Chapter XVI, Offenses Affecting the Human Body, Of Rape, section 375(5).

¹²⁴ Advocate Asma Jahangir has documented cases of girls as young as twelve years old charged and imprisoned for illicit sex. See Women Living Under Muslim Laws, "How Far Are the Penal Laws Effective in Protecting Women," *Dossier* #3 (1988), p. 33.

addition, the legal possibility of marital rape has been eliminated; by definition, rape is an extra-marital offense.

One of the most important changes brought about by the adoption of the *Hudood* laws, which has had a profound impact on the rights of women, is that for the first time in Pakistan's history, fornication (extra-marital sex) is illegal and, along with adultery, is non-compoundable¹²⁵, non-bailable¹²⁶ and punishable by death.

Once convicted of adultery, fornication or rape a person can be sentenced in one of two ways, depending on the religion and marital status of the accused, the witnesses and the evidence on which the conviction rests. The maximum sentence is known as *Hadd*, the singular of *Hudood*. It is a mandatory sentence that a judge may not mitigate. In the case of fornication and adultery, if the accused is a Muslim and (a) confesses¹²⁷ or (b) there are four adult, pious, male Muslim witnesses to the act of penetration, then the accused must be sentenced to death by stoning.¹²⁸ If, on the other hand, the accused is a non-Muslim and (a) confesses or (b) the crime is witnessed as described above, the accused must be sentenced to 100 lashes with a whip. Sentences vary according to the marital status of the accused: married offenders are to be stoned, while unmarried offenders (including widows, divorced women and prostitutes) are subject to 100 lashes. In any case, the maximum (*Hadd*) punishment for

¹²⁵ A non-compoundable offense is one which the police or government may continue to investigate and prosecute even if the original complainant withdraws his or her statement implicating the accused.

¹²⁶ Those prosecuted on such charges are not eligible as of right for release pending trial by posting bond. Bail is left to the discretion of the judge.

¹²⁷ Confessions must be given four times in open court on separate occasions. This provision is designed to guard against coerced or false confessions. To satisfy the requirements of law a confession must be (a) unequivocal, (b) describe the criminal act in detail, and (c) must be corroborated by other evidence. See M. Mahmood, *Enforcement of Hudood, Practice and Procedure* (Lahore: Pakistan Law Times Publications, 1991), p. 574. A confession can be withdrawn at any time prior to the execution of sentence. In the case of a retracted confession, the finding of guilt may be nullified, but a conviction and lesser sentence may be meted out if there is independent corroborating evidence for the confession. See also *Najib Raza Rehmani v. The State*, PLD 1978 Supreme Court 200.

¹²⁸ *Zina Ordinance*, sections 5 (2)(a) and 6(3)(a).

fornication, adultery or rape is identical. The testimony of four female Muslim witnesses is not adequate for the maximum (*Hadd*) punishment. To date, although *Hadd* punishments have been imposed, none has been carried out.

If the evidence falls short of what is required for maximum punishment but the case is still proven, then the accused is sentenced to a lesser class of punishment known as *Tazir*. Evidence for *Tazir* punishment is governed by the standard evidence code (*Qanun-e-Shahadat*) which was introduced by General Zia in 1984. The evidence code states that:

Unless otherwise provided in any law relating to the enforcement of *Hudood*...in matters pertaining to financial or future obligations,...the instruments shall be attested to by two men, or by one man and two women..., in all other matters, the court *may* accept, or act on, the testimony of one man or one woman"¹²⁹

The use of the word "may" in the second part of the section provides for the admissibility of the testimony of women, but does not guarantee that such testimony will be admitted or given equal weight with that of a man.

At both the *Hadd* and *Tazir* levels of punishment, the burden of proof is on the prosecution to prove rape or adultery/fornication charges beyond a reasonable doubt.¹³⁰ There is a general rule that if there are two versions of an incident, the one favoring the accused should be accepted by the court. For example, in one 1988 *zina* case, the benefit of the doubt was given to the accused and he was acquitted when penetration was not positively proved.¹³¹ Other cases have also maintained that stains of semen or vaginal swabs do not necessarily mean that sexual intercourse has taken place; there must be positive proof of penetration or other corroborative evidence.¹³²

¹²⁹ *Qanun-e-Shahadat* Order, 1984, section 17 (emphasis added).

¹³⁰ *Mehboob Hussain*, PLD 1988 FSC 3.

¹³¹ NLR 1983 Cr. 662.

¹³² *Azmat Khan*, 1982 FSC 246, *on appeal* PLJ 1982 FSC 44; *Mohammed Shoaib*, PLD 1951 Baluchistan 22; *Mohammed Nawaz*, PLJ 1984 FSC 107; *Mst. Sukhan*, PLJ 1985 FSC 20.

In practice, at the lesser *Tazir* level the courts continue to exhibit a bias against female testimony. The courts tend to see women as complicit in sex crimes, notwithstanding a lack of evidence or evidence to the contrary. We found that while the courts extend the benefit of the doubt to men accused of rape, they set standards of proof for female rape victims that require extraordinarily conclusive proof that the alleged intercourse was forcible. Moreover, when women unable to prove rape are themselves charged with illicit sex, we found that the courts routinely set a lesser burden of proof for the prosecution and fail to extend to female defendants the same benefit of the doubt that is commonly granted to male defendants.

The *Tazir* punishment for adultery or fornication is up to 10 years in prison, thirty lashes with a whip and a fine of indeterminate amount.¹³³ The *Tazir* punishment for rape is up to 25 years in prison and 30 lashes. For the purposes of *Tazir*, no distinction is made between a married and unmarried offender.¹³⁴ It is important to note that insufficient evidence to impose a *Hadd* punishment does not eliminate criminal liability. The accused may still be convicted for *Tazir*. Most *Tazir* convictions result in a sentence of public whipping. While no *Hadd* punishments have been carried out, *Tazir* punishments of whipping, which constitute cruel and inhuman punishment under international law, do occur.¹³⁵

All available research indicates that the majority of accusations under the *Hudood* Ordinances end in lesser *Tazir* rather than maximum *Hadd* punishments. According to attorneys Asma Jahangir and Hina Jilani, "twenty-six *Hadd* sentences were passed by the trial courts, but none of these was executed." However, "there has been an abundance of *Tazir*." Between 1980 and 1988, 4,831 appeals in *Tazir* cases reportedly

¹³³ *Zina* Ordinance, section 10(2).

¹³⁴ Rubya Medhi, "Offense of Rape in the Islamic Law of Pakistan," 18 *International Journal of the Sociology of Law* (1990), pp. 19-29.

¹³⁵ The Punishment of Whipping Ordinance provides that women be seated while being lashed while male convicts must stand during this punishment. Whippings handed down during the pregnancy of a convict are postponed until miscarriage or two months after delivery. All whippings have to be carried out in public. According to Jahangir and Jilani, since 1986 the government had been discouraging prison administrators from whipping female convicts. Of 30 convicts interviewed in 1988, two had been administered the punishment of whipping. See *A Divine Sanction?*, p. 137.

were presented to the Federal *Shariat* Court.¹³⁶

The following sections describe how the *Zina* Ordinance discriminates against women and has resulted in a sharp increase in the number of women prisoners, many of whom are innocent of the charges under which they are detained. The steep rise in the number of women prisoners has in turn increased the opportunity for police misconduct toward women. Simultaneously, the *Zina* laws have deterred women from reporting such abuse.

a. Discriminatory Effects

The *Hudood* Ordinances apply to Muslim and non-Muslim, male and female Pakistanis. As one commentary on the Ordinances notes, "all Pakistanis, regardless of sex, suffer the rigors of the system."¹³⁷ However, we found that both in law and in practice the *Hudood* laws weigh most heavily on women.

First, in determining maximum punishment the law clearly discriminates against the testimony of women by disallowing it altogether. This means that women who have been sentenced to the cruel and inhuman *Hadd* punishments have been sentenced under a law that prevents them from testifying on their own behalf. Men have also been sentenced under these laws, but in general men accused of rape are effectively exempted from maximum *Hadd* punishment both because women victims cannot testify and because it is extremely unlikely that there would have been four male Muslim witnesses to the act of penetration. Asia Watch and the Women's Rights Project oppose the maximum penalties as cruel and inhuman and, although we recognize that no such punishments have been carried out to date, are distressed that nothing impedes the government from implementing them in the future. We recommend the immediate repeal of the laws authorizing such sentences, as well as the removal of all obstacles to a woman's right to testify equally with a man in a court of law.

The majority of *Hudood* cases involving *Zina* or *Zina-bil-jabr* are heard at the *Tazir* or lesser level of punishment. While the testimony of

¹³⁶ *A Divine Sanction?*, p. 32. The Federal *Shariat* Court is the sole court of appeal for offenses under the *Hudood* Ordinances. See "The Response of the Judiciary" in this report.

¹³⁷ *A Divine Sanction?*, p. 134.

women is admissible at this level, we found as noted that the courts continue to exhibit a bias against women victims and defendants and their testimony is not accorded equal weight with that of men. As discussed below, this bias has three main results: (a) women find it extremely difficult to prove rape and, if they cannot prove rape, are themselves vulnerable to prosecution for fornication or adultery; (b) men accused of rape often receive unfairly reduced charges; and (c) women are often wrongfully prosecuted for *Hudood* offenses and are provided with limited protection from such ill-founded accusations. It is under these laws that the majority of women prisoners in Pakistan are detained, and thus exposed to abuse by police authorities.

i. Conversion of Rape into Adultery/Fornication

Asia Watch and the Women's Rights Project take no position in this report on a government's decision to criminalize adultery and fornication *per se*. However, the criminalization of adultery and fornication in Pakistan, when coupled with the discrimination against women in law and in practice in Pakistan's criminal justice system, has created an extremely adverse and precarious situation for women, and in particular for women victims of rape.

We found that while Pakistani courts extend the benefit of the doubt to men accused in rape cases, they set standards of proof for rape victims that are colored by gender bias to such an extent that the woman victim must provide extraordinarily conclusive proof that her "participation" in impermissible intercourse was forced.¹³⁸ We found

¹³⁸ Under Pakistan's Evidence Code whether a woman sought immediate assistance following her rape can be a factor in determining whether her complaint is true. In the United States, this requirement is known as the "fresh complaint rule," which, according to *Black's Law Dictionary*, Fifth Edition (1979), provides that in sexual assault cases, proof that the alleged victim did not complain of the assault within a "reasonable" time after it occurred, to a person to whom she would ordinarily turn for help, is admissible to denigrate the credibility of the victim. This rule has been widely discredited in the United States and Europe because it has been used to create the presumption that women who fail to report rapes may not have in fact been raped. The rule fails to acknowledge the many sound reasons why women might fail to report rape including, in the context of Pakistan, the risk of criminal prosecution if they fail to prove their case.

that absent a showing of extreme resistance or severe bodily injury, the courts are prone to disbelieve the woman's testimony that the sexual act was non-consensual and are even likely to presume consent, which makes her liable to prosecution for adultery or fornication.¹³⁹

In one 1982 case in which a rape charge was changed into one of adultery for the purpose of mitigation of sentence, Sohail Iqbal was accused of rape and the charge was supported by medical evidence.¹⁴⁰ He was convicted and sentenced to 20 years' imprisonment, ten lashes and a fine of 2,000 rupees. On appeal, the Federal *Shariat* Court reduced Iqbal's rape conviction to fornication, resulting in a lesser charge carrying five years' imprisonment, ten lashes and no fine. The Court said "there is a possibility that the victim might have been a willing party to the offense." On further appeal, the Supreme Court criticized the Federal *Shariat* Court's earlier finding on the grounds that:

With respect it is pointed out the Federal *Shariat* Court failed to notice that the correct age of the victim was only 16 years....She has a frail body weighing only 94 pounds. She bore marks of violence on the back of both forearms....She was a virgin before the act. The fact that the gagging of her mouth with a cloth did not produce any injury was not indicative at all of either it being a false assertion or that it was unnatural....We are unable to agree that it might have been a case of consent.¹⁴¹

In a 1983 case, the Federal *Shariat* Court reduced a rape conviction to one of fornication on the grounds that "since no violence was found on her body, it could be reasonable to infer that she was a willing party to sexual intercourse."¹⁴² In 1987, the Federal *Shariat* Court overturned

¹³⁹ As noted by Jahangir and Jilani, "While the question of consent on the part of the [rape] victim has raised serious questions in all systems of jurisprudence ... the *Hudood* laws go much further. Under Anglo-Saxon systems of law, consent would lead to acquittal of the accused, but under *Hudood*, consent will amount to *Zina* and lead to punishment of the victim." *A Divine Sanction?*, p. 88.

¹⁴⁰ There was medical evidence of abrasions and bruises on the arms of the victim, a fresh tear in her hymen, swelling and soreness in her vaginal area, and the presence of semen on vaginal swabs.

¹⁴¹ NLR 1982 Criminal 500 (Supreme Court).

¹⁴² PLD 1983 FSC 117 Ubaidullah.

a lower court's conviction of rape on the grounds that medical examiners "did not observe any injury on the thighs, legs, elbows, arms, knees, face, back and buttocks of the victim," and held that "she was bound to sustain injuries...as she was supposed to put up resistance."¹⁴³ Although victims such as the 94-pound girl raped by Iqbal may have no chance of fending off an attacker, Pakistani judges seem to require that they resist and also suffer visible physical injury if they wish to defend themselves against charges of consensual sex.

If a woman alleging rape cannot prove that the encounter was forcible or non-consensual, she may herself be charged with the capital crime of adultery or fornication. In practice, we found in such cases that the standard of proof beyond a reasonable doubt is not applied equally.¹⁴⁴ While the courts generally require rape charges to be proven beyond a reasonable doubt, they often accept a woman's rape allegation -- once disproved -- as *prima facie* evidence that she engaged in consensual extra-marital sex, despite the fact that a failure to demonstrate rape (coerced sex) beyond a reasonable doubt does not automatically prove beyond a reasonable doubt that consensual sex occurred. Put another way, we found that the benefit of the doubt that is rightfully accorded to men accused of rape often is not equally extended to women whose rape charges have been converted into charges against them of consensual sex.

¹⁴³ PLD 1987 FSC 11.

¹⁴⁴ Although the general rule regarding proof beyond a reasonable doubt seems clear, various evidentiary presumptions in *Zina* and *Zina-bil-jabr* cases are applied inconsistently. A 1982 case (*Shera*, 1982 PSC 1261, affirmed, PLJ 1983 FSC 95) ruled that if the accused are living together as husband and wife, then *Zina* is established. However, another case (*Mohammed Aslam*, PLJ 1983 FSC 103) ruled that there can be no *Zina* conviction even when a couple lives together unless there is proof that they are intimate. One rape case (*Janoo*, PLJ 1982 FSC 68) held that corroboration of a victim's testimony may not be necessary "unless the circumstances of the case indicate the possibility of consent," while another rape case (*Abid Hussain*, PLJ 1983 FSC 124), held exactly the opposite: "generally speaking corroboration is needed to support the version of the prosecutrix to convict the accused."

All of these cases come from the Federal *Shariat* Court and indicate that even at the high court level Pakistan's judiciary appears unable or unwilling to apply consistently the evidentiary rules regarding the prosecution's burden of proof beyond a reasonable doubt. At the very least, the arbitrary nature of these decisions indicates a serious lack of due process in *Zina* and *Zina-bil-jabr* cases.

The differing effect of available medical evidence often compounds this discrimination. Medical reports that show pregnancy or forced penetration introduced in support of the original rape charge can be used against the female victim to prove that impermissible sex occurred. However, medical evidence implicating the accused male is often lacking, so he may be released for lack of evidence while she is imprisoned pending trial.

The most infamous case of this kind is that of Safia Bibi, an 18-year-old blind girl who became pregnant allegedly as a result of rape in 1983. She was unable to prove her allegation of rape and was charged with fornication, found guilty, and sentenced to three years' rigorous imprisonment, 15 lashes and a fine of 1,000 rupees. While her pregnancy was cited to prove that she had engaged in extra-marital sex, her assailant was acquitted due to "want of evidence." After national and international protest, the Federal *Shariat* Court acquitted Safia of fornication on appeal.¹⁴⁵

In another well-publicized 1983 case, 15-year-old Jehan Mina claimed her pregnancy was a result of rape. According to her testimony, she was doing domestic work for her aunt and was raped by her uncle and his son. Initially, her family members disbelieved and threatened to kill her. However, one uncle believed her charges and registered a rape accusation on her behalf. The court decided that her statement did not warrant a rape conviction because she had failed to register the complaint immediately. Instead, she was charged with fornication. In sentencing her to three years' rigorous imprisonment and ten lashes, the court stated that the case was

not a case where merely her statement [alleging rape] can be regarded as a basis of conviction, but in fact the basis of conviction is her unexplained pregnancy coupled with the fact

¹⁴⁵ *A Divine Sanction?*, p. 88. See also NLR 1985 SD 145 Safia Bibi. In its decision, the Federal *Shariat* Court wrote, "this is an unfortunate case which received considerable publicity in the national and international press. In view of the circumstances and facts which were apparent from the reporting, it was considered reasonable to issue notice to the State in exercise of Revisional Jurisdiction of this Court to show cause why this judgment should not be set aside." The Court's decision was taken on technical grounds and made no reference to the problem of conversion of the rape charge to one of *Zina*.

that she is not a married girl.¹⁴⁶

The two accused of rape were released for lack of evidence.

In a 1987 report on human rights after martial law in Pakistan, the Geneva-based International Commission of Jurists concluded that "there have been many reported cases where a complaint of rape has been made and the court has convicted and punished both parties for adultery or fornication...."¹⁴⁷ According to a 1988 study by human rights advocate Asma Jahangir, these sentences are often upheld by the superior courts.¹⁴⁸

As noted by Jahangir and Jilani:

[R]ecent empirical research has shown that the addition of *Zina* [fornication and adultery] has altered the entire legal picture on sex crimes. For example, a victim of rape now runs the risk of being punished under *Zina* whether she complains of rape or not. If she does, she must make out a water-tight case where there is no question whatsoever of her consent. Otherwise the offense changes from rape to *Zina*. Once the charge is converted to *Zina*, the rape victim herself becomes co-accused. If on the other hand, the victim does not complain of rape and as a consequence of it she becomes pregnant, she is herself charged with *Zina*....Victims of rape have now been placed in a snare. Silence is as risky as making a complaint.¹⁴⁹

A 1991 report by Amnesty International describes an August 1989 case in Pakistan in which two nurses were raped at gunpoint by three interns in a hospital. One of the women tried to lodge a rape complaint with the police and found herself charged with illicit sex. According to Amnesty International's report, the woman lost her job and her marital engagement was broken off as a result of the charges.¹⁵⁰

¹⁴⁶ PLJ 1983 FSC 134.

¹⁴⁷ International Commission of Jurists (ICJ), *Pakistan: Human Rights After Martial Law* (Geneva, 1987), p. 128.

¹⁴⁸ See Women Living Under Muslim Laws, *Dossier #3*, p. 33.

¹⁴⁹ *A Divine Sanction?*, pp. 87-88.

¹⁵⁰ Amnesty International, *Rape and Sexual Abuse: Torture and Ill-Treatment of*

In November 1991, we investigated a case in which a rape accusation brought by 18-year-old Majeeda Mujid was converted into a charge of fornication against her. Majeeda told us that she had been working with her family at a brick kiln¹⁵¹ for four months when the landowner and some other men abducted her. She was held by the landowner and others for over two months and raped repeatedly.

Ten days after her abduction, Majeeda's family filed a first information report (FIR)¹⁵² with the local police. Eventually, the landowner brought Majeeda to the Nawankot police station in Lahore and told her to tell the police that she was staying with them of her own will. She refused and told the police that the landowner had raped her. She was kept in the police station for six days without ever seeing a female police officer. On the sixth day she was taken to prison, having been charged by the police with fornication. She was held in the prison for over two months before being released pending trial.¹⁵³

As might be expected, the real possibility of criminal prosecution has a deterrent effect on women victims' willingness to seek punishment of rapists as provided for by law. In a 1985 decision, the Federal *Shariat* Court observed that it is extremely brave of women to complain of rape under Pakistan's legal system.¹⁵⁴ As one Pakistani analyst told us, "women in Pakistan do not see the law as a mechanism for their protection. They are afraid of it."¹⁵⁵

Cases like those described above are not uncommon. However, more often *Zina* charges are not brought against the alleged rape victim by the courts. Instead, the woman victim is excused and, based

Women in Detention (London, 1991), p. 7.

¹⁵¹ One of Pakistan's key local industries is brick-making. The bricks are baked in large kilns that dot the countryside in certain areas of Pakistan. In 1990, the Human Rights Commission of Pakistan released a report entitled "Bonded Labor in the Brick Kiln Industry," which documents systematic exploitation of kiln workers by employers who secure their continued employment through a system of bonded labor.

¹⁵² Under section 154 of the Criminal Procedure Code, to set the criminal system in motion all information relating to an offense must be recorded in a FIR.

¹⁵³ Interview with Majeeda Mujid (Lahore), October 1991.

¹⁵⁴ *A Divine Sanction?*, p. 92. See also NLR 1985 SD 67 FSC Manzoor Hussain.

¹⁵⁵ Interview with Hina Jilani, October 1991.

on the possibility that she consented to the act, the accused is given the benefit of the doubt and the rape charge against him is converted to one of adultery or fornication to reduce his sentence. This occurs despite the fact that according to human rights advocates Jahangir and Jilani, "if the benefit of the doubt did exist, principles of criminal law require the court to acquit the accused and not to construe it as a mitigating circumstance."¹⁵⁶ (As noted above, the *Tazir* punishment for adultery or fornication is considerably lighter than that for rape.) While in such cases the female rape victim is not criminally punished, she must still suffer the social stigma that comes from consensually engaging in impermissible sex, since her alleged rapist was charged only with adultery or fornication.

In *A Divine Sanction?*, Jahangir and Jilani documented a series of cases in which charges of rape were reduced to charges of adultery or fornication for the purpose of mitigating the alleged rapist's sentence. Pointing to several such cases, they note:

Ihsan Ahmed alias Nana was accused of abduction and rape. Possible consent of the victim was taken as a defense and accepted by the courts. The conviction was converted from rape to *Zina*. Niamat Ali was accused of rape on a minor. Doubt on the consent of the victim was taken as a mitigating circumstance. The conviction was converted to *Zina*....The Supreme Court reduced the sentence of Khushi Muhammas alias Bogi from fifteen years to five years. The conviction was altered from one of rape to *Zina*. Bahadur Shah was convicted of rape at trial. The FSC altered the conviction to *Zina* on the grounds that there were no marks of violence on the victim.¹⁵⁷

Men accused of rape profit from the bias against female testimony. The presumption of female consent that underlies the tendency to reduce rape charges against men to lesser charges of adultery or fornication also yields a disinclination to credit women's testimony about rape.

However, men are by no means exempt from the sanctions of the *Hudood* laws. Men have been cruelly punished for rape. For example,

¹⁵⁶ *A Divine Sanction?*, p. 91.

¹⁵⁷ *Ibid.*, pp. 90-92. The cited cases are: 1980 P. Cr.L.J. 1037 *Ihsan Ahmed alias Nana*; PLD 1982 FSC 220 *Niamat Ali*; PLD 1986 SC 12 *Khushi Muhammad alias Bogi*; and NLR 1987 SD 185 *Bahadur Shah*.

on November 1, 1991, three accused rapists were flogged in the presence of 6,000 people following their conviction for raping a minor girl. The conviction and sentence had been upheld on appeal by the Supreme Court.¹⁵⁸ In addition, as discussed below, men are also denounced as co-defendants in cases of fornication and adultery.

Since punishment for all *Hudood* offenses is determined under the same section of the penal law, the police keep no separate records for rape, adultery and fornication. Similarly, the courts do not keep separate records on rape and *Zina*. Thus, it is difficult to determine how many women in prison in Pakistan are incarcerated as a result of rape charges which were converted into charges against them. However, available research indicates that by far the most frequent accusation that women face does not result from complaints they bring themselves (e.g., of rape), but from accusations of *Zina* (adultery and fornication) filed against them by others.

ii. Wrongful Prosecution

Prior to the implementation of the *Hudood* Ordinances, under Pakistani penal law (which, as noted, was derived from British colonial law) adultery charges could be brought only by the husband of the alleged adulteress. Moreover, the female party to adultery could not be criminally punished. As noted by Jahangir and Jilani, "British legislators relegated women to the status of secondary but protected citizens."¹⁵⁹ Under the new laws, all parties are punishable, adultery and fornication are non-bailable and non-compoundable offenses, charges of *Zina* can be made by any person, whether aggrieved or not, and police are empowered to arrest without warrant and, in effect, without probable cause (see discussion of Police Rules below).

As noted by one commentator, "the situation is fraught with the danger of malicious prosecution, police harassment and abuse of power," that places all Pakistani citizens regardless of sex at risk.¹⁶⁰

¹⁵⁸ "First Public Flogging Under New Law," *Dawn*, November 2, 1991, p. 1. On February 21, 1991, *The Independent* reported on page 12 that at least 15,000 people gathered in a village near Peshawar to witness the public flogging of a man found guilty by local religious leaders of kidnapping and raping a 14-year-old girl.

¹⁵⁹ *A Divine Sanction?*, p. 86.

¹⁶⁰ Zain Sheik, "The Hudood Laws" (unpublished paper), p. 2.

However, women, because of their subordinate social and economic status in Pakistan, and the discriminatory application of the *Hudood Ordinances*, are particularly vulnerable to such dangers and disproportionately victimized by these laws.

We found that disgruntled husbands and fathers may bring ill-founded adultery or fornication charges against their daughters and wives who, on the basis of such accusations, often unsupported by any evidence, are arrested and imprisoned pending trial. According to attorneys Jilani and Jahangir, "often husbands file *Zina* cases against their wives or former wives, either to keep them in forced marriages or simply to humiliate them. Mere suspicion of adultery by the wife is often reported as *Zina*."¹⁶¹ Of the 90 women prisoners accused of *Zina* surveyed in 1988, more than half had been accused by their husbands or fathers.

In a 1987 case, 24-year-old Roshan Jan filed for divorce from her husband on the grounds of severe physical mistreatment, and moved into her neighbor's house. Her husband then lodged an First Information Report (FIR) with the local police alleging that she was committing adultery with the neighbor, who was married. On the basis of this allegation, she was arrested and imprisoned pending trial. The outcome of this case is not known.¹⁶²

In a 1986 case, a husband accused his wife Riaz Begum of having illicit sex with a family friend, Gul Zaman. The trial court convicted the two accused and sentenced them to 10 years in prison and 30 lashes in public. On appeal they were acquitted for lack of evidence. At the time of the acquittal, the husband stated, "it is correct that I have not suspected my wife of having illicit relations...I had not suspected the accused Gul Zaman of illicit relations with my wife, however, the people used to talk regarding their illicit relations and I gathered it was true."¹⁶³

Women who divorce and re-marry are also at risk of malicious denunciation under the *Hudood Ordinances*. According to the Muslim Family Laws Ordinance, passed in 1961, a man seeking to divorce his wife, after pronouncing the divorce to her orally (*talaq*),¹⁶⁴ must send

¹⁶¹ *A Divine Sanction?*, p. 103.

¹⁶² Sumar and Nadvi, p. 37.

¹⁶³ *Gul Zaman*, NLR 1986 SD 583.

¹⁶⁴ The *talaq* is a unilateral declaration of divorce according to *Shariat* law.

written notice of the divorce to a local council and provide a copy to his wife. After this official registration, 90 days (*iddat*) must pass before the divorce becomes legally binding. During this three-month period, an arbitration council is established to try to reconcile the couple. If it succeeds, the divorce is revoked.

Since the 1979 passage of the *Hudood* laws, a husband's failure to register a divorce has often resulted in criminal penalties against the wife. Women who have re-married mistakenly believing that their first husband had properly registered the divorce have been charged by that husband with adultery and, in some cases, rape. The charge of rape is sustained on the grounds that the re-married woman misled her second husband to believe that she was validly divorced and thus eligible to have sex with him.¹⁶⁵ Such prosecutions have occurred even in cases in which the woman believed she was divorced and validly re-married, despite the *Hudood* law's authorization of punishment only in cases in which where the accused does not believe she is legally married to the victim.¹⁶⁶ Such prosecutions violate the internationally accepted requirement of *mens rea*, or criminal intent, for determinations of criminal guilt.

On November 7, 1987, a court in Karachi sentenced Shahida Parveen and Mohammed Sarwar to death by stoning for adultery and rape. Shahida had been divorced by her first husband and married Mohammed after the required 90-day period. Shahida had an affidavit attesting to her single status. However, unbeknownst to Shahida, her first husband had failed to register their divorce as required under the Muslim Family Laws Ordinance and decided that he wanted her back. Because Shahida's first divorce was not recognized by the court, she and her new husband were charged with adultery and rape and sentenced to death. The sentence was later overturned by the Supreme Court on the grounds that it had no basis in law or fact, but not before Shahida had spent over nine months in prison.¹⁶⁷ Mohammed, the co-defendant, was also previously married and had not divorced his wife.

¹⁶⁵ "Zina: The Hudood Ordinance and its Implications for Women," Sabiha Sumar and Khalid Nadvi write that "in such a case the woman can be accused of 'raping' her second husband on the grounds she misled him into believing that she was validly divorced." Sumar and Nadvi, p. 37.

¹⁶⁶ Mumtaz and Shaheed, p. 102.

¹⁶⁷ *A Divine Sanction?*, p. 97.

However, he was released immediately on bail and, since polygamy is legal in Pakistan, was easily acquitted.

Women who decide to marry against the wishes of their relatives can also be denounced under the *Hudood* laws. Of the 44 women in Karachi Central jail in 1987 who were charged with *Hudood* offenses, over half were accused of having committed *Zina* due to leaving their homes with a man of their choice, which is often interpreted as abduction by Pakistani courts.¹⁶⁸ A woman freely choosing to accompany a man is commonly understood to have been abducted and, simply is presumed to have committed fornication. As discussed in the section of this report on the judiciary, there is little sympathy from the police or the courts with the notion that she would choose to go of her own free will. Rather, in Pakistani society and in the eyes of the court, a woman is not a free agent and has no right to leave her family against their will. Thus, if she does so, she in effect abducts herself from them.

In a landmark 1982 case, Allah Bux and Fehmida were sentenced to death by stoning and 100 lashes respectively for fornication. The original charge was brought against the couple by Fehmida's father, who had objected to her desire to marry Allah Bux with whom she then eloped. After failing to convince her to return freely to the family, Fehmida's father filed a report with the police alleging that Fehmida had been abducted. Despite the couple's repeated contention that they were married (although they waited to get married until two weeks after Fehmida was pregnant, a fact which was interpreted by the court as a confession of *Zina*¹⁶⁹) and upon finding that Fehmida was pregnant, the Court sentenced them both to maximum punishment under the *Hudood* laws. The conviction was later overturned by the Supreme Court for lack of evidence.

In a 1987 case, Zahida was denounced by her father for running away with a man whom her family did not want her to marry. On the day she left with her chosen husband-to-be, her father lodged a complaint of abduction against them and the police detained the couple. Despite Zahida's contention that she ran away of her own free will, both she and her fiancé were imprisoned and charged not only

¹⁶⁸ Sumar and Nadvi, p. 37.

¹⁶⁹ Implicit in this decision is the notion that one cannot cleanse oneself of fornication by getting married.

with abduction but also with illicit sex.¹⁷⁰

Women are also found guilty of being accomplices in their own abduction, despite the illogic of the claim. In one case reported in a local Karachi daily, 18-year-old Azra Parveen was allegedly abducted by a bus driver who was picked up by police after a complaint was filed by her father. Azra was recovered at the time of the arrest, but rather than returning her to her family the police arrested her as an accomplice to her own abduction. According to Azra's attorney's, the Karachi-based Lawyers for Human Rights and Legal Aid, the police requested 10,000 rupees from Azra's parents in exchange for their daughter's release.¹⁷¹ In *A Divine Sanction?*, Jilani and Jahangir note that such cases are common.

The *Hudood* laws are also abused by police officers both to extort money and to exercise social control over women and, through them, the broader population. It is common for women to be denounced under the *Hudood* Ordinances by police seeking to pressure men to whom the women are related. According to the U.S. State Department, "the predominately male police force reportedly uses the Hadood [sic] Ordinances to threaten people on the basis of personal and political animosities."¹⁷²

In one 1990 case, four women were taken from the house of Mrs. Halim by police who were searching for the women's male relatives. The four women were brought to the police station, reportedly after being molested by several police *en route*, and illegally detained for nine hours until the accused male relatives surrendered. In hearing the case, Lahore High Court Justice Munir Khan noted:

[T]o apprehend women from their house and take them to police stations as well as keep them hostage until the arrest of the required accused is a crime worse than murder. When such women return to their homes their husbands and parents will not be prepared to believe their chastity due to which their social stature will be ruined for all time.¹⁷³

¹⁷⁰ Sumar and Nadvi, p. 37.

¹⁷¹ "Detained Girl Freed," *Sindh Express*, Karachi, July 21, 1990.

¹⁷² *Department of State 1991 Country Reports*, p. 1551.

¹⁷³ Justice Mohammad Munir Khan, cited in "Taking a Woman Hostage a Crime," August 12, 1990.

Justice Khan's statement indicates his recognition that, at least according to popular beliefs, the police are likely to abuse women in their custody.

As many of the cases discussed above indicate, men are also victimized by false adultery and fornication charges. They are often arrested as co-defendants in such cases and imprisoned pending trial. Moreover, at first glance, the conviction rates of men facing such charges appear quite high: 56 percent at the lower-court level (compared to 46 percent for women) and 70 percent at the higher-court level (compared to 30 percent for women).¹⁷⁴

However, although men are convicted for adultery and fornication, these figures are misleading. They fail to distinguish between cases in which the original charges against men were adultery and fornication and those in which the initial charges involved rape. Particularly at the High Court level, the rape charges are often converted into the lesser charges of adultery and fornication as a prelude to conviction. Moreover, men appear to be arrested less frequently than women on adultery and fornication crimes. Interviews with women prisoners charged with *Hudood* offenses in 1988 found that in 29 percent of the cases no male accused was mentioned in the original report. Among those in which a male was accused, he was not arrested in 40 percent of the cases. Finally, although men and women alike are at times the victims of ill-founded allegations, men are better protected than women under Pakistani law against false accusations of adultery and fornication than women because the defamation laws, described in the following section, discriminate on the basis of sex.

iii. Limited Protection Against False Accusations (*Qazf*)

As noted, women, and in many cases co-defendant men, are often maliciously prosecuted under the *Hudood* laws. The authors of the *Hudood* laws attempted to guard against such abuse by criminalizing false accusations of adultery and rape, known as *Qazf*. *Qazf*, which can be translated as defamation, is understood to have been committed when a person makes a false accusation of *Zina* intending or believing that it will harm the reputation or hurt the feelings of the accused. The maximum punishment for *Qazf* is 80 lashes and must be proven by the

¹⁷⁴ Charles Kennedy, *Asian Survey*, Vol. XXVIII No. 3 (1988), cited in *A Divine Sanction?*, p. 137.

testimony of two pious Muslim male witnesses, except when the accused is non-Muslim. The *Tazir* punishment for *Qazf* is two years, 40 lashes and a fine.

In theory, *Qazf* protects everyone against false allegations of *Zina*. However, despite the high rate of acquittals in *Zina* cases (33 percent) the number of *Qazf* proceedings is negligible. From 1980 to 1987, a total of 43 *Qazf* cases were filed with the Federal *Shariat* Court compared to 3,399 cases of *Zina*.¹⁷⁵

Many factors render the filing of *Qazf* difficult. First, *Qazf* can be found only if the accused possessed a *malefide* intent to harm the reputation or hurt the feelings of the target of the complaint. In the absence of such intent, which must be proven in court, *Qazf* charges are dropped. Second, an allegation of *Qazf* opens up the original allegation of adultery or fornication for reconsideration by the court, placing a person alleging *Qazf* under constant threat of being re-prosecuted for the crime he or she is alleged to have committed in the first place.

The most severe limits on the protection provided by *Qazf*, particularly for women, result from the fact that, as with other *Hudood* offenses, only male testimony is accepted for maximum punishment. Moreover, the law effectively exempts from criminal punishment for *Qazf* husbands who falsely accuse their wives of adultery. Although the law does not explicitly preclude women from making such defamation charges, the Federal *Shariat* Court has interpreted the statute to prohibit women from initiating criminal proceedings against their husbands while validly married.¹⁷⁶

Section 14 of the *Qazf* Ordinances provides that when a husband brings an accusation of *Zina* which the wife denies, he must swear to the truth of his allegation four times before the court. In turn, the wife must deny the allegations four times. If both parties follow this procedure (*Lian*), the court is required to dissolve the marriage and no criminal prosecution of the husband for defamation ensues.

In theory, this form of dissolution of marriage protects spouses from criminal prosecution initiated by each other. In practice, however, it protects the husband from criminal proceedings, but still leaves the wife vulnerable. If a man refuses to swear to the truth of his allegation, he is imprisoned until such time as he decides to do so. On

¹⁷⁵ *A Divine Sanction?*, p. 80.

¹⁷⁶ *Ibid.*, p. 81.

the other hand, if a woman refuses to deny the allegation, she faces a possible punishment of 10 years of rigorous imprisonment and administered 30 lashes in public.

In addition, when the court dissolves the marriage after both parties take the oath, the husband is free from punishment for the false allegation, but the wife is still vulnerable to prosecution for the alleged adultery. In *Nek Bakht v. the State* (1984), the majority of the Federal Shariat Court found that Section 14 of *Qazf* must be read with Section 10 of the *Hudood* Ordinances (which provides for lesser punishment (*Tazir*) in the absence of four male Muslim witnesses to the alleged offense). The court held that even if the wife takes the oath and denies the allegations of adultery, she is still subject to *Tazir* punishment for the underlying adultery on the basis of the additional evidence against her. The *Qazf* Ordinance does not appear to contemplate the reverse situation in which a wife accuses her husband of adultery and he then charges her with defamation.¹⁷⁷

D. Conclusion

In sum, the *Hudood* laws affect all citizens of Pakistan, but are applied to women with particularly disastrous effect. Women are discriminated against by law, they find it extremely difficult to prove rape and may face criminal prosecution if they fail to do so. Women who behave in ways their husbands or fathers dislike, or who seek to divorce and re-marry, or who choose to marry against the will of their parents, or who happen to be related to a man wanted by the authorities and thus get wrongly accused of *Hudood* offenses as a means of intimidating their relatives, all risk criminal prosecution under the *Hudood* laws, often with no basis in fact. Their male co-defendants in such cases also suffer, although they are better protected by the law and benefit from its biases against women.

More than half of the female prisoners interviewed by us were detained for offenses under the *Hudood* Ordinances. Statistics gathered in recent studies indicate that in some Pakistani prisons, *Hudood* offenses account for 60 to 80 percent of women in detention.¹⁷⁸

¹⁷⁷ "*Qazf* in the language of the law, is understood [to mean] a man insinuating a charge of whoredom against his wife." M. Mahdood, *Enforcement of Hudood, Practice and Procedure* (1991), p. 494.

¹⁷⁸ See *A Divine Sanction?* and Mumtaz and Shaheed.

According to 1991 figures compiled by the Karachi-based Committee for the Repeal of the *Hudood* Ordinances, more than 2,000 women are currently in jail awaiting trial under this law.¹⁷⁹

Although many convictions are reversed on appeal (approximately 33 percent of rape and adultery charges are overturned), women and men alike in such cases have already suffered lengthy imprisonment. This is particularly true for women who lack the financial resources to obtain adequate counsel or to post bail. Thus, even if cases against them are ultimately dismissed, females are subjected to the rigors of police lock-ups and lengthy prison terms. Perhaps most disturbing is that, once incarcerated, women are routinely physically and sexually abused by police authorities.

¹⁷⁹ Cited in *Department of State 1991 Country Reports*, p. 1551.

IV. TREATMENT OF WOMEN IN POLICE CUSTODY AND PRISON

A. Women in Police Lock-up

1. General Comments

The absence of hard statistical data, and a constantly shifting prison population, make it difficult to determine exactly the number of female detainees who have suffered abuse in police custody in Pakistan. However, available figures coupled with accounts by local human rights organizations, foreign diplomats, international agencies and the Pakistani press all point to a serious and widespread practice of custodial violence against women that is virtually ignored by the government of Pakistan.

In 1991, Amnesty International cited "regular reports of torture, including rape, of women in custody" in Pakistan.¹⁸⁰ The U.S. State Department reports that "women in police custody, or who go to a police station to file a report or inquire after a detainee, have been sexually abused:...Some women under detention are reportedly coerced by police to offer sexual favors in exchange for release; other women are simply raped."¹⁸¹ Sexual abuse is also known to have been used to extract confessions or to force women to implicate their spouses, relatives or friends.

According to a 1987 study entitled *Problems Of Female Prisoners at Multan Jail*, nearly one half of the women complained of abuse at the hands of police authorities. Surveys in 1988 of 90 female pre-trial and convicted prisoners in two Lahore prisons revealed that 78 percent complained of police abuse in custody.¹⁸²

Despite these alarming reports, Pakistani police officials are doing

¹⁸⁰ Amnesty International, *Pakistan: Reports of Torture and Death in Police Custody* (June 1991), p. 11 (hereinafter *AI Pakistan Report*).

¹⁸¹ U.S. Department of State, *Country Reports on Human Rights Practices for 1991* (published February 1992), p. 1550 (hereinafter *Department of State 1991 Country Reports*).

¹⁸² Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhotas Books, 1990), p. 137 (hereinafter *A Divine Sanction?*).

little to address the problem of custodial violence against women.¹⁸³ The Deputy Inspector General (DIG) of Police in Punjab,¹⁸⁴ who is responsible for the investigation of charges against police officers in Lahore district, acknowledged in an interview with us that "there could be the odd case of women illegally confined in police stations,"¹⁸⁵ but dismissed as "overblown" and "exaggerated" reports of custodial rape and violence against women. The Inspector General of Police of Punjab had earlier in the month told human rights and women's rights advocates, who expressed concern about rising rates of custodial violence against women, that "in 95 percent of the rape cases the women themselves are at fault."¹⁸⁶

2. Police Rules

Under Pakistan's Criminal Procedure Code, all information relating to an offense must be recorded in a written First Information Report (FIR) by the Station House Officer (SHO), who is the officer in

¹⁸³ In June 1990, a women's police center opened in Lahore to assist women victims in registering complaints with the local police. The center itself has no investigatory capacity, but is designed to improve the general police response to women victims of abuse. Farkhanda Iqbal, one of the few female Deputy Superintendent of Police in all of Pakistan, told us that up until now "women have been ignored by the police and the government has not taken the proper steps." The Center is viewed by local human rights advocates as a welcome improvement, although its limited powers greatly restrict its effectiveness.

¹⁸⁴ Each of Pakistan's four provinces has a separate police force under the control of the provincial government. The government appoints an Inspector General of police to oversee the force in each province. The administration of police in each district within the province is carried out by a District Superintendent and Deputy and Assistant Superintendents also appointed by the provincial government. The provincial government may also direct these officials to appoint more than one superintendent and any number of inspectors, sergeants, sub-inspectors, assistant sub-inspectors, head constables and constables. The various districts are divided into police station jurisdictions. Each police station is headed by a sub-inspector known as a station house officer. There is also a federal police force, created in 1948 by the Pakistan Special Police Establishment Ordinance, that operates under the direct supervision of an officer appointed by the federal government.

¹⁸⁵ Interview with Deputy Inspector General Maqbool, October 1991.

¹⁸⁶ Human Rights Commission of Pakistan, *Newsletter* (October 1991), p. 7.

charge of the police station.¹⁸⁷ Failure to record a FIR constitutes a breach of duty by the officer.¹⁸⁸ In addition to lodging FIRs, the SHO must keep a daily record of all complaints and charges made, the names of all persons arrested, the charges against them and the names of complaining witnesses.¹⁸⁹ Once the officer has registered a FIR, he or she may investigate the charge but there is no requirement to do so nor does it appear that there are any guidelines for making such a decision.¹⁹⁰ However, the law is clear that no FIR may be cancelled without the order of a magistrate.¹⁹¹

Most women, as noted above, are arrested under the *Hudood Ordinances*, which provide for arrest without warrant. The Criminal Procedure Code provides that police may arrest without warrant when they have a "reasonable suspicion" or have received "credible information" or a "reasonable complaint" regarding the suspect's involvement in a crime.¹⁹² This falls short of a "probable cause" standard and, as noted above, has led to considerable abuse of power by the police. All arrests without warrant must be reported to a magistrate, but there is no time limit within which reports of such arrests must be made. Once a suspect has been arrested he or she must be brought before a magistrate within 24 hours "without unnecessary delay."¹⁹³ The magistrate is empowered to remand the suspect to police custody for an additional 15 days to allow for further police investigation of a charge.¹⁹⁴

¹⁸⁷ Criminal Procedure Code, 1898, sections 154, 155; Police Rules, 1934, Chapter XXIV, Rule 24-1.

¹⁸⁸ 1968 Pakistan Criminal Law Journal (Lahore) 17; 1968 Pakistan Legal Decisions (Lahore) 101.

¹⁸⁹ Police Act, 1861 (as amended), section 44.

¹⁹⁰ Criminal Procedure Code, section 156; Police Rules, 1934, Chapter XXV, Rule 25-1.

¹⁹¹ Police Rules, 1934, Chapter. XXIV, Rule 24-7.

¹⁹² Criminal Procedure Code, 1898, section 54(1).

¹⁹³ *Ibid.*, sections 60 and 61.

¹⁹⁴ *Ibid.*, section 167 (2).

There are special rules governing the arrest and interrogation of women. No woman may be arrested by any officer below the rank of assistant sub-inspector unless she is arrested in the presence of her male relatives and village or town elders.¹⁹⁵ All arrests of women must be reported immediately to the Superintendent of Police.¹⁹⁶ Once arrested, women prisoners must be searched (like men), but only by a female officer.¹⁹⁷ Women suspects are not to be kept in police custody overnight "except in unavoidable circumstances," and women who are only picked up for questioning may never be kept overnight.¹⁹⁸ On September 21, 1991, Prime Minister Nawaz Sharif, in response to reports of rape and torture of women in police custody, ordered a ban on the arrest and interrogation of women by male police officers.¹⁹⁹ The arresting officer is in all cases "responsible for the taking of necessary measures for the safe and decent custody of the prisoner."²⁰⁰

3. Procedural Violations

Police regulations are routinely ignored in Pakistan.²⁰¹ This affects all prisoners, but women experience special hardships, particularly when the violation concerns the registration of rape cases (custodial or otherwise), the timely and accurate lodging of FIRs, arrest and interrogation by female officers, the 24-hour rule and remand to police custody.

¹⁹⁵ Police Rules, 1934, Chapter XXVI, Rule 26-18-A.

¹⁹⁶ *Ibid.*, Chapter XXIV, Rule 24-12 (table).

¹⁹⁷ *Ibid.*, Chapter XXVI, Rule 26-3.

¹⁹⁸ *Ibid.*, Chapter XXVI, Rule 26-18-A.

¹⁹⁹ Masood Shah, *Agence France-Presse*, September 21, 1991.

²⁰⁰ Police Rules, 1934, Chapter XXVI, Rule 26-18-A.

²⁰¹ According to the *Department of State 1991 Country Reports*, "there continues to be pervasive evidence of misuse of police powers. Corruption, including extortion, is rampant. Police and jailers often use force to coerce confessions and to compel detainees and prisoners to incriminate others. Beating, whipping the soles of the feet with rubber whips, sexual assault and prolonged isolation occur in Pakistani jails." *Ibid.*, p. 1549.

For example, it is common for police officers to refuse to register a complaint of rape brought by a woman, particularly if the complaint is lodged against another police officer. The police simply deny the woman's request and send her away. According to a 1990 study of rape in Pakistan, "the police is notorious for delays or outright refusals to register FIRs."²⁰²

While such treatment of a crime victim would be illegal and abusive under any circumstances, it has particularly serious ramifications for female rape victims. To file a FIR, rape victims must be medically examined in the presence of a police officer, preferably within 48 hours of the assault. If she is not examined, the rape victim must herself account for the delay, even when it was caused by reluctant police. Without police cooperation, both the medical examination and the FIR are impossible to obtain and evidence essential to prove a rape allegation may be lost.²⁰³ For example:

- * On October 24, 1991, according to press reports, Jannat from the town of Kehrore Pacca was allegedly raped by eight armed men who broke into her house. The assailants cut off Jannat's nose and fled with her clothes. On October 25, a friend of Jannat's went to the local police station and tried to register a case of gang-rape, but the SHO refused. After two days the SHO registered a complaint, but described the crime as theft. Only after Jannat's case was widely publicized did the police relent and, 10 days after the incident, register a rape charge against her assailants.²⁰⁴
- * On July 30, 1989, Nazir Ahmed, his wife Anwar and sister Fatima of Mandi Bahauddin, in Punjab, were stopped by former employers who charged them with theft and denounced them to

²⁰² Simorgh Collective, *Rape in Pakistan* (Pakistan, 1991), p. 67. The tendency not to register a rape complaint is exacerbated by the immense pressure on the police from the federal and provincial governments to reduce crime rates in their jurisdictions. Many times police officers do not register FIRs simply because they would indicate a crime increase that would not be well received by their superiors. For a more detailed discussion of this problem see Zia Awan, "Violations of Citizen's Fundamental Rights," *Dawn*, September 14, 1990.

²⁰³ See Shahid Nadeem, "Rape: A Nation Shamed," *Newsline*, September 1989, p. 62.

²⁰⁴ "Chronology of Horror," *The Herald Annual*, January 1992, p. 51.

the local police. They were taken by police to the local station house, where the women were stripped naked by several officers, raped and had sticks inserted into their vaginas. The police delayed accompanying the women for a medical exam (which, though performed three days after the assault, supported allegations of repeated rape and sexual assault) and refused to register a case against the implicated officers. Only after press reports and a public demonstration did the police finally register a rape charge.²⁰⁵

When a woman is the accused rather than the victim, police are also known to file false or inaccurate FIRs or simply to refuse to register them, further reducing the likelihood that she will receive fair treatment from the justice system. In the first place, the FIR contains the information on which the charge against the woman is based and, as such, is important evidence when the validity of the charge is later reviewed by the court. More important, the FIR indicates the time when a woman was admitted to police custody and therefore is an essential factor in determining the officers' adherence to the 24-hour rule. If a FIR is not lodged, as often happens, a woman can be held indefinitely without the knowledge of the courts. It is during these periods of "invisibility" that most sexual abuse of female detainees occurs.

Police officers regularly use their near-total control over the registration and content of FIRs to extort money from petitioners. According to a 1990 study of the treatment of women by the police, "the reasons for this dereliction of duty is [sic] due to rampant corruption of the police force; the degree of extortion will depend on the financial position of the persons involved."²⁰⁶ Although the practice of extortion is not limited to cases in which the victim or accused is female, women are far less likely than men to have the funds necessary to convince the police to register a FIR.

The lack of a FIR can also harm women prisoners because courts do not entertain bail applications unless they are accompanied by a FIR.²⁰⁷ As further described below, women have considerable

²⁰⁵ Nadeem, p. 59. See also *AI Pakistan Report*, p. 11.

²⁰⁶ Shazreh Hussein, with The Simorgh Collective, *Rape* (Lahore: Simorgh Collective, 1990), p. 67.

²⁰⁷ *A Divine Sanction?*, p. 136.

difficulty obtaining bail in any case, and the added complication of a missing FIR makes pre-trial release even less likely. Reportedly, when women are represented by counsel, their attorneys have been known to resort to paying the police to provide FIRs. However, for women who have no counsel, and they are the vast majority, the failure to register a FIR can result in the effective denial of bail. According to the Human Rights Commission of Pakistan, a 1989 Jail Reform Committee that was dissolved at the end of Benazir Bhutto's government recommended that "a copy of the FIR be provided to each prisoner in any jail in the country by the jail administration."²⁰⁸

The delay or refusal to register FIRs when the victim or accused is a woman has become so commonplace that several regional High Courts have been compelled by the intervention of human rights lawyers to take *suo moto*²⁰⁹ notice of certain cases and to force local police to register FIRs. This appears to be true of custodial rape cases in particular. In one recent case, the Lahore High Court empowered itself to act as "police officers" and arrested four officers implicated in rape charges whom the police had refused to arrest.²¹⁰

After arrest, women detainees are almost never interrogated or guarded by female police officers, despite the rules requiring those procedures.²¹¹ Also in violation of the rules, women detainees are

²⁰⁸ Final recommendation of the Jail Reform Committee, reported in Human Rights Commission of Pakistan (HRCP), *The State of Human Rights In Pakistan* (1990), p. 45 (hereinafter *HRCP 1990 Report*).

²⁰⁹ A court takes *suo moto* notice of a case when it does so on its own initiative.

²¹⁰ *Imam Din vs. SHO and four others*, PLJ 1990 Cr.C (Lahore) 200. In this case, Justice Muhammad Munir Khan exercised his authority under the Criminal Procedure Code to "assume all the powers of a police officer" and arrest the four officers accused of rape. He also instructed the police to register a FIR against the four suspects.

²¹¹ The number of female constables is plainly inadequate to meet this requirement. According to the *Department of State 1991 Country Reports*, "there are few policewomen to perform matron duties, despite regulations requiring that policewomen be present for the questioning or detention of female suspects in station houses." *Ibid.*, p. 1550. Sociologist Farida Shaheed points out that "the police force hardly employs any women (800 in Punjab) and their upward mobility is limited to the rank of Deputy Superintendent....[This] initial problem is compounded by segregated training programs where, unlike men, women have to wait until a minimum number of women are ready to be trained before a course is held. As a result, women are superseded by younger male officers," Shaheed, *Pakistan's Women: An Analytical Survey* (Lahore, 1990), p.

frequently kept overnight in police custody and often spend more than one night there, usually without the knowledge of the courts. When they are finally presented before a magistrate, police simply postdate the FIR to indicate that the woman was in custody for only the prescribed 24-hour period. As exemplified by the Raheela Tiwana case discussed below, police are known to threaten female detainees (and their relatives) if they tell the court that they have been in police lock-up for longer than 24 hours or testify about abusive treatment they received in custody.

Conditions in police lock-ups are deplorable. We visited three police lock-ups in the city of Lahore and one judicial lock-up in Karachi.²¹² The police lock-ups are small, dark and bare. Two of the three we visited had rudimentary toilet facilities within the cell and the other had facilities outside. Water in all three was kept in large jars just outside the bars of the cell, and is reportedly moved out of reach of prisoners as a form of punishment. Ceiling fans were visible in one lock-up, but they were not operating despite the hot weather. The largest lock-up we visited was below ground. Thin windows at the top of the cell provide very little light. It was directly across the hall from the men's lock up, in violation of the rules calling for total separation of male and female prisoners.

We interviewed four women during our lock-up visits. At all times we were accompanied by police officials. One of the women in the Civil Lines lock-up in Lahore had been there nine days and said she had yet to be produced before a magistrate. She was pregnant and was being held on suspicion of theft, along with her son. Two other women had been in the same lock-up overnight. One of them was pregnant and lying on the bare floor. A female police officer stood guard by the cell. No female police were visible at the two other lock-ups we visited.

Court lock-ups serve as holding pens for pre-trial prisoners whose cases are heard that day. The lock-up we visited in Karachi was a narrow room with no amenities of any kind except for two benches. According to local human rights lawyers, it is often overcrowded and very hot.²¹³ It is usually guarded by a female officer.

36.

²¹² The Lahore lock-ups we visited were in the Civil Lines, Lower Mall and Kotwali police stations. The judicial lock-up was outside the courthouse in Karachi.

²¹³ *The Human Rights Commission of Pakistan (HRCP) 1990 Report* states that "the condition of the judicial lock-ups was worse [than the jails]. Several lock-ups have

We interviewed Anwar Bibi in the Karachi judicial lock-up. While a female officer was outside, Anwar told us that she had fled from an abusive husband who had beaten and threatened to kill her and she was seeking a divorce. Her parents urged her to return to her husband. She refused and moved in with another man. Her family filed a kidnapping case against the man and both were arrested on charges of adultery. She spent 14 days in police lock-up in Hydery, was transferred to Karachi Central Jail, and was held there for one-and-a-half years before her case was taken up by Lawyers for Human Rights and Legal Aid. According to LHRLA, Anwar was severely beaten in the police lock-up, but our interview was cut short by the return of the female police officer. Anwar refused to continue speaking in the officer's presence and seemed agitated and afraid.

In more than 14 interviews that we conducted in the women's section of Kot Lakhpat prison in Lahore -- interviews conducted in the presence of several female prison guards and prison administrators -- we learned of similar patterns of illegal prolonged detention in police lock-up, the absence of female officers, and physical and sexual abuse in police custody. Of 58 women in the prison, 31 were charged with *Zina*. As noted earlier, neither the police nor the courts distinguish between adultery, fornication, and rape when registering a *Zina* charge. Most of the women we interviewed said they were suspected of adultery or fornication. The remainder were charged with murder, theft, possession of drugs or vagrancy. Almost all the women we interviewed lacked legal counsel.

- * Kurshid Bibi, 40, and her daughter Kausa, 10-12, had been in prison for five months for theft. They spent one-and-a-half months in a police lock-up before being transferred to prison. Kurshid said she had been beaten for two days in lock-up, the daughter for ten days. The mother has three other children at home. They had no lawyer and had not sought bail.
- * Gana Bibi, age unknown, was charged with *Zina*. She was first held for four days at Ichra police station, where she said she was badly beaten and raped. She told no one about her treatment, underwent no medical exam, and had no attorney.

been handed over to other agencies...and those used to house under-trials lacked essential facilities." Ibid., p. 10.

- * Munazar Zamadi, age unknown, was charged with murdering her husband. She had been in jail for fifteen days. She was at a police station for one day and was remanded there for seven additional days by a magistrate. She told us that an officer named Sharif "lifted my legs" and "beat me on my sensitive parts" and "verbally abused me." She said the police threatened to implicate her family in the murder charge so she confessed to the crime. She had no lawyer and had told no one what happened had to her.
- * Ghulam Janak, in her mid-40s, had been in prison with her four daughters for 15 days. They were charged with running a brothel, a *Zina* offense, by a neighbor with whom they were having a dispute. All of the daughters are married, each has two children and one had an infant with her in prison. The five women were held at Civil Lines lock-up for four days before they were produced before a magistrate. They had no lawyer.
- * Rehana Kasur, 22, had been in the prison for over a month. She was picked up for vagrancy, but charged with *Zina* pursuant to a police accusation that she had been "standing around waiting to be picked up by some man." She spent two days in the Lower Mall police lock-up in Lahore. She had no attorney and had not sought bail.
- * Husaini Begum, 25-30, was charged with murder. She said that she and her husband had had a fight and that he had pushed her and their two children into a canal. The children drowned, but she was rescued by a passerby. She was then charged with the murder of her two children. She was held overnight in the police station before transfer to prison. She had no attorney.
- * Norwal, 12, had been in prison for seven days. She was charged with *Zina*. She had eloped with her cousin "because she loved him" and her parents filed a *Zina* charge against them both. She was arrested with her cousin, who was also in jail, at the train station. She had spent two days in a police lock-up in Lahore.
- * Sonai, also called Nailia, had been in prison for four months. She was charged with *Zina*. She had been living with a man to whom she was not married. Both were arrested. She was held in the Gulberg police station for 10 days before she was produced before a magistrate. No other women had been present, nor were there

any female officers. She said she was twice beaten by the SHO who was interrogating her. She could hear her co-defendant being beaten in the next room. She had been granted bail by the court, but had no surety (see below).

As these cases show, it is common for women to be held in police custody illegally for long periods without the protection of their families or the knowledge of the courts and in the absence of any female officers. They are frequently subject to physical and/or sexual abuse. Moreover, judges have been known to remand women back to police custody without requiring them to be produced in court. According to one Karachi-based human rights and legal aid organization, in Sindh there was a practice of magistrates going to police stations and signing remand papers. A number of Sindh High Court decisions have held that the remand given by a magistrate in a police station is illegal and does not provide the detainee with an opportunity to complain about ill-treatment in police custody. A January 14, 1990 circular from the Lahore High Court reminded all magistrates that by law suspects must be produced in court before remand to police custody.²¹⁴

4. Torture and Ill-Treatment in Police Lock-up

We investigated several cases of rape and ill-treatment of women in police custody. We are also aware of many other cases reported in the Pakistani press and to local human rights attorneys.²¹⁵ The

²¹⁴ Memo from the Registrar, Lahore High Court, to 11 District and Sessions Judges and Magistrates in the Punjab, January 14, 1990.

²¹⁵ For example, on January 14, 1991, several policemen abducted Marium from her home and took her to the nearby Mirpur Bathoro police station, Thatta District, where they repeatedly raped her. Initially the police refused to register a FIR against the three suspects. After a public demonstration, a FIR was filed and the three police officers were suspended. No arrests were ever made, nor did any criminal prosecution occur.

A survey of police rape cases reported in the press conducted by a Lahore-based legal aid association, AGHS Associates Legal Aid Cell, documented 41 cases from January 1990 to June 1991. To the association's knowledge, not a single case led to criminal penalties for the accused officers.

In its 1990 report, the Human Rights Commission of Pakistan alleges that a woman, Nargis Alias Sonia, was sexually tortured in a Lahore police station after being arrested

frequency and similarity of these cases indicate a pattern of abuse of women in police custody that occurs with impunity. This systematic abuse deserves the immediate attention of the Pakistani government.

Aasia Ayoub

On September 3, 1991, Aasia Ayoub was detained at the Banni police station in Rawalpindi. The police said she was implicated in the theft of her neighbor's purse. Aasia was arrested without a warrant, no FIR was filed, and no female officers were present during either her arrest or her interrogation. She was kept overnight along with her husband and 14-year-old son who were also detained at the Banni station.

Aasia told us that she and her family were taken into a room with SHO Iftikar and Sub-Inspector Mustafa, and three other policemen. The SHO asked her about the theft and then began to beat her husband and son to force Aasia to confess. The police threatened Aasia that if she refused to confess they would beat her family more. She refused.

Aasia's son and husband were taken to another room. The police then tied her hands and legs and the SHO repeatedly slapped her on the face and pulled her hair. He ordered one of his subordinates to bring chilies and a big stick and threatened to put them in her vagina if she did not confess. One policeman took off her *salwar*²¹⁶ and molested her, kissing her, touching her legs, and her vagina and breasts.

At dawn, Aasia, her son and husband were released. The SHO told her that if she told her husband what had happened during the night, the police would bring her daughter to the police station and "do the same thing to her." After her release, Aasia suffered a mental breakdown and spent twenty days in Rawalpindi General Hospital.

on a *Hudood* charge. She accused a police officer of disrobing and torturing her. Her story was confirmed by another detainee who testified during an inquiry into Nargis's case that he had seen her without clothes and undergoing torture in the police station. To our knowledge no action has been taken against the accused officer.

A 1988 study, entitled "Crimes Against Women by Law Enforcing Agencies," by advocate Asma Jahangir documents 12 reported cases of police rape. In one case, reported on January 7, 1988, police officers of the Naulakha Police Station sexually assaulted Saeeda Gul. Local officials appealed to the IG Police for action against the concerned police officers, but no action was ever taken.

²¹⁶ *Salwar* are the loose pants that go under a long tunic which comprise a common mode of dress in Pakistan.

The police refused initially to register a FIR against the officers implicated in Aasia's case. All of the police officers were suspended temporarily, but no charges were filed. A local human rights attorney then filed a writ in the High Court asking it to force the police to register a FIR. After appeals from Aasia's husband, the district magistrate ordered a judicial inquiry. The inquiry concluded that the police had sexually tortured Aasia, and the magistrate ordered the police to file a FIR. The magistrate was later transferred when he refused to give the police officers bail. The case attracted so much national attention that Prime Minister Sharif sent it to the Speedy Courts²¹⁷ where the officers were acquitted for lack of evidence. This decision is discussed in detail in Section V of this report.

Bushra Bibi and Anwari

On August 25, 1990, Bushra Bibi and Anwari, the latter a deaf mute, were allegedly sexually abused by police at the Sheikhpura jail. The women complained to police authorities and an inquiry into their allegations was ordered. Medical reports²¹⁸ supported the charge of rape, and the Inquiry Officer recommended registration of a criminal charge against the police, but no FIR was filed. Pursuant to a writ filed

²¹⁷ In 1991, the government of Pakistan established a regime of speedy courts to be used at the government's discretion to try cases which "in the opinion of the government [are] gruesome, brutal and sensational in character or shocking to public morality or [have] led to public outrage or created panic or an atmosphere of fear or anxiety amongst the public or a section thereof." For a more detailed discussion, see Section V on the Judiciary.

²¹⁸ It is still common in Pakistan for state medical officers to use the "finger test" to determine whether rape victims are "habituated" to sexual intercourse. The medical report for Bushra Bibi reads, "vagina admits two fingers painlessly and easily...in my opinion she is habitual to sexual intercourse...." The report for Anwari reads "vagina admits two fingers painfully...in my opinion she is not habitual to sexual intercourse." Although, "habituation" to sexual intercourse has no bearing whatsoever on whether forcible sexual intercourse occurred, in practice medical findings of "habituation" to sex are often used to cast doubt on the victim's character and her rape allegation. For example, in 1989, 13-year-old Zubeida Kausar was arrested for fornication when she complained of being abducted and gang-raped by two men over a 14 day period. The judge acknowledged that she was a minor, but because she was menstruating considered her an adult for the purposes of applying the *Hudood* Ordinances. He found that the medical evidence indicated that "she had sex regularly." However, he failed to determine whether this "habituation to intercourse" was a result of the multiple rapes. Zubeida was sentenced to five years in jail.

by the women's attorneys, the Lahore High Court intervened and ordered that rape charges be filed and the officers transferred.²¹⁹ The women were released on bail.

In the meantime, the women suddenly withdrew from the case. According to the statements of two eyewitnesses, one of the policemen implicated in the rape visited the women in their village and obtained their statements withdrawing their rape complaint against him and the other officers. The attorneys told us that they suspected the police had coerced and perhaps bribed the women's families to drop the case.

Raheela Tiwana

On December 26, 1990, 26-year-old Raheela Tiwana, former president of the student wing of the Pakistan People's Party, the main opposition party led by former Prime Minister Benazir Bhutto, was taken into custody without warrant and held for over ten days by the Crime Investigation Agency (CIA).²²⁰ She was accused of illegal arms trafficking. Tiwana's brother and father were also arrested.

During three days in police custody, after being kept awake and constantly questioned, Raheela was taken before Deputy Sub-Inspector Mohammed Khan. Her hands were tied and she was hung from the ceiling. A Sub-Inspector slapped her, pulled her hair, punched her in the neck and face, and kicked her in the stomach. She told us that "it felt like my arms were going to pull apart." The skin on her shins and wrists was rubbed raw and she began bleeding inside her mouth. She was suspended from 11:00 p.m. until 4:00 a.m. She was let down when her wrists became disjointed. The entire time she was suspended, the officers made lewd remarks and gestures. She believes the only reason she was not raped was because her family is politically powerful in Sindh.

On January 7, before being taken to court, the police threatened that they would kill her and her family members if she told anyone what they had done to her. The police said she had only been arrested the night before and filed an application for remand to custody.

²¹⁹ Order Sheet, Lahore High Court, Lahore, October 10, 1990.

²²⁰ The Crime Investigation Agency is a parallel police force that deals primarily with political offenses and is known for its brutal tactics and lack of accountability under standard police rules. In October 1991, the Karachi magazine *The Herald* published an investigative report on the CIA. The magazine was seized from the newsstands, allegedly by CIA operatives.

Although Raheela told the magistrate about her abuse by the police, he nonetheless remanded her to CIA custody. On January 31, Raheela was sent to a local hospital pursuant to a court order. She was later released on bail and still awaits trial. The Human Rights Commission of Pakistan issued a strong statement protesting the CIA's action, but no charges have been brought against the officers.

Ahmadi Begum, Mussarrat and Rehana

On July 15, 1988, 60-year-old Ahmadi and two younger women were arrested by the police on suspicion of running a brothel.²²¹ They were held for 48 hours in the police lock-up at Nawan Kot, Lahore, before being produced before a magistrate, charged with *Zina*, and sent to prison. The three women alleged that they were repeatedly raped and sexually tortured by the police while in police lock-up. They told their story to the Lady Superintendent at the prison and a visitor.

Local police refused to register a FIR against the officers. Human rights attorneys requested an order to file a FIR from the Lahore High Court, which instead issued an interim order requesting an official inquiry. The inquiry, including medical examinations, revealed that the two younger women had been repeatedly and violently raped by the officers and that Ahmadi had severe vaginal and rectal damage and bleeding resulting from the repeated forcible insertion of sticks into her vagina and rectum.

Following the inquiry, the High Court ordered the registration of a case against the police officers. The officers obtained bail and ultimately were acquitted, after a trial in which the state prosecutor refused to call the victims as witnesses.²²² Under the Criminal Procedure Code the women have the right to bring a private charge against the police but, according to their attorneys, repeated threats by police officials dissuaded the three women from doing so. The original charge of *Zina* against the three women was dismissed for lack of evidence.

Saima Anjum

On December 25, 1988, Saima Anjum, 16, was visiting her fiancé,

²²¹ Ahmadi told us that the police had arrested her because she had refused to lease one of her rooms to a local police officer, and the two other women had been arrested when they came to rent the same room.

²²² *The Herald Annual*, January 1992, p. 52.

Mehboob-ur Rehman. When she returned home she was confronted by a group of uniformed policemen who took her to the Landhi police station and tried to get her to admit to a theft. They told her that her fiance was a smuggler and that she was involved with him.

Saima was produced before a magistrate and remanded to police custody for ten days. Four male police (three constables and one officer) beat her with leather straps. They made her lie on her back on a bench with her hands tied over her head and beat her on the soles of her feet. At one point, she was made to sit on the floor with her hands tied. Some police came into the room and used obscene language. They stuffed a cloth into her mouth and first the officer and then the two constables raped her and forced chilies into her vagina. After that, she confessed to the theft. Saima told us that when she told a female constable about the rape, the officer slapped her and said "do you dare to blame our officers."

Saima was in Karachi Central Jail for almost six months before human rights attorneys took up her case, and it was almost two years after that before she was released on bail.²²³ No charge has ever been registered against the police officials.

Marie Therese Santos

In December 1989, Marie Therese Santos, a Portuguese woman, and Saman Sharif, a resident of Karachi with whom she had been traveling, were arrested by customs police at the Karachi airport who reported discovering 2,250 grams of heroin in her suitcase. She was served notice of her charge in English, which she could not read. She told us that she was taken to the customs office where she was beaten and one policeman raped her. She spent 15 days in the lock-up and was then transferred to Karachi Central Jail. Before her trial she never saw her lawyer, who had been paid for by her co-defendant's sister. She was sentenced to four years imprisonment and transferred to Larkana Jail for women convicts. Marie Therese Santos appealed her conviction in August 1991. The Karachi High Court made no mention of the alleged rape and affirmed her conviction. To our knowledge, no legal action was ever taken to investigate or prosecute her rape allegations.

We have also learned of two cases of rape of women involving the police that were reported soon after our visit to Pakistan:

²²³ Originally bail was set at 150,000 rupees; her attorney managed to get it reduced by the Court to 50,000 rupees, roughly 200 U.S. dollars.

Kursheed Begum

On November 19, 1991, Kursheed Begum, the wife of a low-level Pakistan People's Party (PPP) activist who had been imprisoned on charges of being involved in a Karachi bomb blast, was allegedly kidnapped and raped in police custody. According to her testimony, after attending one of her husband's court hearings in the special court, Kursheed was picked up by three policemen in a police van and taken to the Korangi police station where a police Inspector tore off her clothes and raped her. She complained of the rape, but no charges were filed against the officers. The case has recently been taken up by the Karachi-based Lawyers for Human Rights and Legal Aid who requested the Karachi High Court to order the long overdue registration of a FIR charging the officers.²²⁴

Veena Hayaat

On November 27, 1991, Veena Hayaat, a personal friend of PPP leader Benazir Bhutto, reportedly was beaten and gang-raped in her home by five men acting on orders from local government officials. According to Hayaat's testimony, the men "just went berserk. They were like animals" and she was "savagely beaten and molested for 12 hours." Two of the men raped her repeatedly. They said to her they were acting on the orders of "higher-ups."²²⁵

Unlike the case of Kursheed Begum, Veena Hayaat's case attracted immediate national attention. She charged that the President's son-in-law, Irfanullah Marwat, home advisor to the chief minister of Sindh, was behind the incident. The Sindh government requested that the Chief Justice of the Sindh High Court appoint a judge to investigate. According to retired Supreme Court Justice Dorab Patel, who heads the Pakistan Commission on Human Rights, the creation of this tribunal was "almost unprecedented," particularly given that "there is no right of appeal against the finding of this tribunal."²²⁶ The family, who said they lacked confidence in the independence of the judiciary, refused to cooperate with the inquiry. Instead, they resorted to a traditional custom of calling a village meeting (*jirga*) to hear the case.

²²⁴ *The Herald Annual*, January 1992, p. 39.

²²⁵ Rebana Hakim, "The Politics of Rape," *Newsline*, December 1991, p. 39.

²²⁶ Hidayat Shah, "Cry in the Wilderness," *Newsline*, January 1992, p. 101.

The *jirga* pronounced death sentences against the accused.²²⁷

Both the *jirga* and the special judicial inquiry were irregular criminal justice measures, neither of which met the basic requirements for a proper criminal investigation. The family's refusal to cooperate made it impossible to clear up inconsistencies in the record, and the judge overseeing the inquiry denounced the police investigation as suffering from "culpable omission and negligence."²²⁸ Nonetheless, the inquiry was completed on December 24, 1991, and found Murwat innocent of all charges. No other criminal investigation is being pursued.

By all accounts, the number of reported cases of police rape grossly understates the actual rate of abuse. As the prison interviews and cases described above indicate, women detainees are often at the mercy of the police, unaware of their basic rights, and have little hope of freely exercising their rights without fear of retribution against themselves and/or their families. Moreover, women risk ostracism if they allege sexual abuse by police. The U.S. State Department notes that police abuse of women in Pakistan "is often unreported due to societal taboos, police intimidation and family pressure...women are often ostracized by their family and friends and barred from their homes."²²⁹

Finally, it is of particular concern that a woman can expect little help from the criminal justice system if she brings a rape complaint against the police. The *Hudood* Ordinances, both in law and in application, act as a significant deterrent to reporting custodial rape. Moreover, as described in Section V of this report on the response of the judiciary, charges of custodial rape rarely result in criminal punishment of the accused officers, even in cases such as some of those described above in which there is strong evidence of rape.

B. Treatment of Women in Prison

1. Prison Rules

²²⁷ *The Herald Annual*, January 1992, pp. 38-42.

²²⁸ *Ibid.*

²²⁹ *Department of State 1991 Country Reports*, p. 1550.

Pakistan's prison rules -- with notable exceptions -- generally conform to the UN Standard Minimum Rules for the Treatment of Prisoners (SMR).²³⁰ Under the rules, the prison Superintendent is required to inform all prisoners at the time of admission how long they have to appeal their conviction, and to render all assistance necessary to allow prisoners to appeal.²³¹ However, neither the SMR nor the prison rules require prison officials to monitor how long pre-trial prisoners have been incarcerated or to do anything about the status of their cases.

Every woman admitted to prison must be examined by a woman warden within 24 hours of admission,²³² under the direction of the medical officer of the prison, to discover unexplained injuries.²³³ If any injuries are discovered they must be reported to the district magistrate and to the police.²³⁴ Women prisoners may not be fettered²³⁵ and are allowed to keep certain items of jewelry and cosmetics with them in prison.

All women prisoners serving sentences of two months or more and all juvenile girls must be transferred to a woman's prison on

²³⁰ The United Nations Standard Minimum Rules were promulgated in 1955 by the United Nations Economic and Social Council. They are not *per se* legally binding on states but they are widely regarded as an important statement of civilized standards for the treatment of the incarcerated to which every state should adhere and to which it is possible for every state to adhere. Moreover, certain of the rules are restatements of customary international law or of international obligations stemming from other legally binding instruments, such as the prohibition against ill-treatment found in the Torture Convention and other international instruments.

²³¹ Prison Rules, 1977, Chapter 5, Rules 90-94.

²³² *Ibid.*, Chapter 3, Rules 18 and 21.

²³³ *Ibid.*, Chapter 3, Rule 19. Medical facilities for women prisoners are generally poor. According to advocates Asma Jahangir and Hina Jilani, "a lady doctor is not available in any of the jails in Punjab, except Multan. In ordinary jails, where a large number of [female] under-trials are imprisoned, no female doctor is available." *A Divine Sanction?*, p. 137.

²³⁴ *Ibid.*, Chapter 3, Rule 20.

²³⁵ *Ibid.*, Chapter 7, Rule 175(v).

conviction.²³⁶ Women prisoners must be kept separate from male prisoners at all times.²³⁷ The general rules about separation of pre-trial prisoners establish that under-trial prisoners may be separated at the Superintendent's discretion,²³⁸ while another rule says under-trial and convicted prisoners must be segregated.²³⁹ A third rule says women awaiting trial must always be kept separate from women convicts.²⁴⁰ The SMR provides that pretrial and convicted prisoners must be kept apart,²⁴¹ as does the Torture Convention.

Women are allowed to keep their children with them until the child reaches age three, when the child is supposed to be given to the woman's family or put in an institution.²⁴²

²³⁶ Ibid., Chapter 7, Rule 154(ii) and Chapter 12, Rule 292.

²³⁷ Ibid., Chapter 7, Rule 184 and Chapter 9, Rule 231.

²³⁸ Ibid., Chapter 9, Rule 235.

²³⁹ Ibid., Chapter 15, Rule 383.

²⁴⁰ Ibid., Chapter 13, Rule 309.

²⁴¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Rule 8.

²⁴² Prison Rules, 1977, Chapter 13, Rules 326-327.

The SMR require pre- and post-natal care, but says nothing about whether children should remain with their mothers beyond nursing years or what should happen to the children if they do not remain in prison. The SMR do suggest that when

nursing infants are allowed to remain with their mothers, the prison should have a nursery where the babies can be placed when not in their mother's care.

2. Prison Conditions

The purpose of our mission was not to assess prison conditions *per se*, but to examine abuse of women by police officials, particularly in police lock-ups. However, available information, interviews with local monitors and our own observations indicate that prison conditions in Pakistan are generally poor. According to the 1990 report of the Human Rights Commission of Pakistan:

overcrowding, unhygienic accommodation, unsatisfactory diets, degrading punishments, unlawful solitary confinement, tyrannical behavior of warders, molestation of women prisoners, confinement of babies with convicted mothers, and the spread of drug abuse were major complaints.

The prison administration in Pakistan classifies prison facilities according to a three-tiered class system. According to the U.S. State

Department, the lower class or class "C" cells, "which generally hold the common criminals, suspected terrorists and low-level political workers -- are the worst. Conditions in 'B' and 'A' are better, with the latter reserved for prominent persons."²⁴³

The Human Rights Commission of Pakistan reports physical and sexual abuse of female prisoners by prison officials. However, there are fewer reported cases of sexual abuse of women in prison than in police lock-ups. One of the major reasons for reduced sexual violence in prisons is that women prisoners are routinely guarded by female prison guards. This speaks volumes about the need of the Pakistani government to implement the law requiring the presence of female constables and officers in police lock-ups.

Other prison rules concerning women are routinely violated. For example, the prison rule requiring immediate medical examinations of in-coming female detainees is rarely followed.²⁴⁴ This increases the likelihood that custodial violence will pass undetected by state authorities and contributes to the lack of protection for women victims of such violence.

According to several former prisoners we interviewed, pre-trial and convicted women prisoners are often kept together. A report by the Karachi-based Lawyers for Human Rights and Legal Aid (LHRLA) found that "all women are placed together in one cell. As a result, first time offenders...are strongly influenced by hardened criminals."

Overcrowding is common in all Pakistani prisons and is suffered by all prisoners. Women face a particular problem because the Pakistani prison system was not designed to accommodate a large female prison population and, prior to the passage of the *Hudood Ordinances*, did not have one. Since the Ordinances' passage, the female prison population has increased steadily. According to a 1991 study of women in prison, "women are housed in overcrowded and unsanitary conditions."²⁴⁵

²⁴³ *Department of State 1991 Country Reports*, p. 1552.

²⁴⁴ A set of recommendations on prison reform proposed by a committee established under Prime Minister Benazir Bhutto, which was dissolved with her government, included a recommendation that "one lady doctor for each women's jail should be appointed immediately." See *HRCF 1990 Report*, p. 14.

²⁴⁵ Nausheen Ahmad, "Criminal Abuse of Women by Law Enforcing Agencies" (unpublished, 1991), p. 6.

Pregnant women are not provided medical attention or special food in prison. According to the LHRLA study cited above, five pregnant women were imprisoned in the Karachi Central Jail in October 1991. At the same time, the jail held 21 children from ages two-and-a-half months to eight years. Four of these children had never seen life outside the prison because there was no one else to care for them.

Under the prison rules, the Deputy Commissioner of each district is supposed to visit jails located in his area at least once a month to inspect the facilities and determine whether the inmates have any complaints or are suffering any abuse. However, according to the LHRLA, "the Commissioners never bother to visit the jails." On July 18, 1990, the Chief Justice of the Sindh High Court directed sessions judges to visit the prisons every three months to inquire about the problems faced by the prisoners.²⁴⁶ To our knowledge, this directive has yet to be carried out. The Jail Reform Committee, before it was dissolved with the Bhutto government in 1990, and several national human and women's rights groups, have called for a complete overhaul of the prison rules, including improved protections for women.

3. Prolonged Detention Without Trial

The most common violation suffered by women in prison is lengthy detention without trial. Like overcrowding, this is a problem that affects all prisoners in Pakistan. However, women are particularly vulnerable to prolonged detention because of the difficulty they have in securing bail, surety and release. These problems are exacerbated by the degree to which women prisoners lack adequate legal counsel.

Crimes in Pakistan are divided intoailable and non-ailable offenses.²⁴⁷ Although bail "must" be granted as a matter of right for crimes classified asailable, the accused must still furnish a satisfactory bond or surety (see below).

Hudood offenses are defined as non-ailable. If a person is charged

²⁴⁶ Jail Officials Violating Laws, *Sindh Express*, July 19, 1990.

²⁴⁷ Criminal Procedure Code, 1898, section 4(b).

with a non-bailable offense, then bail "may" be granted²⁴⁸ unless there are "reasonable grounds for believing that he has been guilty of an offense punishable by death."²⁴⁹ The court has discretionary power to release women in all circumstances. Section 497 of the Criminal Procedure Code states that even in non-bailable offenses the court should be very lenient in giving bail to sick inmates, women and minors. However, local human rights monitors told us that these rules have not provided any meaningful relief.

There is also case law stating that even for non-bailable offenses bail should not be refused unless "reasonable grounds" are established by the court.²⁵⁰ Bail should also normally be allowed when the co-defendant was granted bail and the charges and evidence against both accused are similar.²⁵¹

Bail has two components: a bond for a certain sum of money that the accused furnishes, and the release of an accused into the custody of a surety, who may also be required to put up money as part of the promise to produce the accused at trial or whenever directed to do so by the court.²⁵²

It is impossible to determine from available statistics whether women are denied bail more frequently than men. It is clear, however, that the majority of women prisoners are unaware of their bail rights or of the court's considerable discretion in this regard. Our own interviews indicated that women rarely know of or exercise their right to seek bail. According to interviews with convicted women prisoners conducted in the Multan jail in 1988, 53 percent of the women had never applied for bail. Of the 47 percent who had applied, 68 percent had managed to get bail.²⁵³

When the courts exercise their discretion to grant bail, the bail

²⁴⁸ Ibid., section 497(1).

²⁴⁹ Ibid.

²⁵⁰ 349 Pakistan Legal Decisions (Sup. Ct) 1968; 371 Pakistan Law Journal (Sup. Ct.) 1976.

²⁵¹ *Abdul Salam*, 142 Supreme Court 1980.

²⁵² *Said Mian*, 318 Pakistan Law Journal (Sup. Ct.) 1980; *Khushi Mohammed*, 170 Pakistan Legal Decisions 1953.

²⁵³ *A Divine Sanction?*, p. 136.

amount is often prohibitively high for indigent defendants, despite Superior Courts rulings that bail should be set in accordance with the financial status of the accused. In most cases, according to local human rights attorneys, men can afford the bail that is set while women cannot. As a result, co-defendant males often go free while women remain in prison and often serve more time than they would have had they been convicted of the crime. The court's failure to take this basic economic inequity into account in the setting of bail amounts to the effective denial of bail for the vast majority of women prisoners who are not able to come up with amounts affordable by men.

Women prisoners' problems in obtaining bail are exacerbated by the court's tendency to require women prisoners in particular to secure surety for their release, usually by the woman's male relative or spouse. This is especially problematic for women because the majority detained under the *Hudood* Ordinances have been denounced by the same men whom the court ordinarily would require to provide surety. Either the men are unlikely to do so or the women are not eager to be released into their custody. Thus, the woman's detention is unfairly prolonged. In 1983, Nasim Akhtar had been granted bail by the court on the grounds that surety was provided by her father and another relative. Nasim refused to accept the surety because her father had registered the original complaint of *Zina* against her and she did not want to return to her family. Nasim's attorney filed a case in the Lahore High Court, which held that in principle surety should not be confused with the handing over of custody. However, the court refused to grant Nasim bail and stated:

Keeping in view the concept of the *Hudood* law it is in the fitness of things that her surety should not be a person who may later coerce her to lead an immoral life. It is therefore correct that her surety should be a person within the prohibited degree [related to her] or any such person who may not be related to her but is held in high esteem by the people of the locality where she lives.²⁵⁴

Even if surety is ultimately granted in such cases to a "respectable" person, not involved in the case, female detainees are unfairly forced to stay in prison until such a person is found and surety is obtained, while co-defendant men suffer no such restrictions. If the male

²⁵⁴ *Mst. Nasim Akhtar*, 1983, P.Cr.L.J. 199 (Lahore).

relatives do provide bail and surety, they can revoke it at any time and thus exercise powerful control over the woman.

According to the prison rules, all pregnancies in prison are supposed to be reported to the district magistrate for the purpose of securing release on bail for the woman.²⁵⁵ However, prison rules also provide for childbirth in prison²⁵⁶ and do not require that pregnant women be bailed.²⁵⁷ While there are no explicit exceptions under this section for pregnant women or nursing mothers, the courts are generally understood to have the power to free such prisoners on their own recognizance.

In general, we found that the courts fail to exercise their discretion in this area. In one case, investigated by the Human Rights Commission of Pakistan, the Lahore High Court ordered a woman who had been in jail for nearly a year to be released on personal surety. The woman had given birth to a child in prison and the baby was confined with its mother. She complained to the Lahore High Court that she had requested bail from the lower court several times and was repeatedly rejected. The High Court observed that it was the duty of the court to consider bail for every woman who nursed a baby or was pregnant. The court described the lower court's refusal of bail as "a painful and pitiable act" and stated that women in such situations do not have to file applications for bail and the lower courts were authorized to release such accused prisoners.²⁵⁸

In addition to the effective denial of bail, women prisoners' right of appeal often goes unexercised. Under the *Hudood* laws, convictions may be appealed as a matter of right.²⁵⁹ Moreover, under the prison

²⁵⁵ Prison Rules, 1977, Chapter 13, Rule 324.

²⁵⁶ *Ibid.*, Rules 322-325.

²⁵⁷ Prison rules also state that if a prisoner allows herself or himself to be sterilized, sentence can be reduced by one month. Such pressure is arbitrary because there is no legitimate reason why prisoners more than other persons should be offered an incentive by the state to curtail their reproductive capacity.

²⁵⁸ *HRCP 1990 Report*, p. 40. In February 1991, Justice Mohammed Munir Khan of the Lahore High Court ordered the release of 70 pregnant and nursing mothers in 14 jails in the Punjab, some on personal surety. To our knowledge, Punjab is the only province in Pakistan where such a ruling has been made.

²⁵⁹ *Zina Ordinance*, section 20(1).

rules, the prison Superintendent is required to inform all prisoners of the period for an appeal of sentence and to provide assistance in filing it.²⁶⁰ Yet studies of women prisoners reveal that nearly a third never appealed their conviction to the higher court. Approximately 13 percent of 90 women prisoners interviewed in 1988 had no idea whether or not an appeal had ever been filed on their behalf.²⁶¹

Under Pakistan's criminal law, the court is required to provide legal counsel at state expense in cases of culpable homicide amounting to murder. In other cases, courts can arrange with attorneys to give legal aid voluntarily. Human rights and legal aid attorney Zia Awan, who directs one of the few legal aid institutions in Pakistan, told us that 70 percent of all criminal cases are tried without the benefit of counsel.²⁶² He noted that women prisoners in particular suffer from the lack of counsel because, whether pre-trial or convicted, they face innumerable legal difficulties and, more often than men, lack the necessary financial resources to retain attorneys. Without the benefit of counsel, and given that the vast majority of women prisoners are both poor and illiterate, it is unlikely that they will be able to overcome obstacles to equal justice.

A 1987 study cited above of women prisoners in the Multan jail in the Punjab found that most of the women had never seen their lawyers and had no idea what the lawyers were doing to help them. Thirty percent said their main worry in prison was the lack of proper legal representation. A 1988 study of 90 women charged with *Hudood* offenses, found that 62 percent had no legal assistance. Of those who had lawyers, 44 percent had never met their attorneys.²⁶³

It is important to note that in many cases, given the high rate of acquittal in *Hudood* cases, women prisoners are punished by lengthy pre-trial detention for a crime they did not commit and, in some cases, for a crime that was committed against them, but which they could not prove. It is in these terrible circumstances that they must endure

²⁶⁰ Prison Rules, 1977, Chapter 5, Rule 90.

²⁶¹ *A Divine Sanction?*, pp. 136-137.

²⁶² Interview with Zia Awan, October 1991. See also "70 Percent Criminal Cases Without Lawyers," *Daily News*, June 11, 1991.

²⁶³ *A Divine Sanction?*, p. 136.

physical and sexual abuse by police officers, and poor prison conditions.

V. RESPONSE OF THE JUDICIARY

A. General Comments

According to the 1990 annual report of the Human Rights Commission of Pakistan (HRCP), "although action is initiated against many policemen for abusing their powers, the process is not taken to its logical conclusion."²⁶⁴ Similarly, the U.S. State Department reports that "police accused of abuse are seldom punished; they are generally released on bail or quietly transferred to another district."²⁶⁵ We are unaware of a single case on custodial rape or sexual abuse that ended in criminal penalties for the accused officers. As noted by the HRCP, custodial rape "thrives...because its perpetrator fears no retribution."²⁶⁶

Some members of the judiciary, particularly at its higher levels, have recognized the epidemic of police violence against women and tried to curb it. However, these positive steps have been largely undercut by the government's failures to investigate and punish police abuse of power, to promote and strengthen an independent judiciary, to eliminate laws and practices that discriminate against women, and to fulfill international obligations to guarantee all citizens equality before and equal protection of the law.

B. The Police Police Themselves

Several laws and procedures apply to police officers who breach their duties or commit criminal acts. Internal procedures for disciplining police officers are found in the Police Rules. The grounds for punishment under these rules are inefficiency, misconduct, corruption and subversive activity. Prescribed punishments are largely administrative, the most stringent being dismissal. The decision whether to proceed under the Police Rules is wholly discretionary and rests with the accused's commanding officer. The Police Rules require the Deputy Inspector General to review all internal cases in which an officer was punished to see whether criminal prosecution is

²⁶⁴ *HRCP 1990 Report*, p. 32.

²⁶⁵ *Department of State 1991 Country Reports*, p. 1551.

²⁶⁶ Aziz Siddiqui, "A Collective Crime," *Newsline*, January 1992, p. 105.

"desirable."²⁶⁷ This decision is also discretionary. If an officer is charged with a criminal offense, she or he must be suspended from duty during the trial.

The Police Act, adopted in 1861, provides for prosecution of police. Section 29 sets out the duties of police officers and specifies penalties for neglect of duty. For example, failure to register a FIR as required is considered neglect of duty and is punishable under Section 29 by no more than a fine equal to three months' pay or three months' imprisonment or both.

Neither the Police Rules nor the Police Act are exclusive remedies for police misconduct. Courts have held that an assault by a police officer on a person who was not in the officer's custody is punishable under the Penal Code, not under the Police Act.²⁶⁸ Other provisions of the Police Rules say the officer may be punished under both the Police Rules and the criminal law because the sanctions are different in nature: administrative in one case, penal in the other.

The decision whether to prosecute abusive police officers lies with the police themselves. Although police must register criminal charges brought to their attention, even if those charges are against other police officers, the only sanction for failing to do so is an administrative penalty. Police superintendents, and assistant and deputy superintendents, serve as public prosecutors for all trials in Sessions (lower) courts in their districts,²⁶⁹ which is where most *Hudood* cases are heard.²⁷⁰ Officers who are designated as prosecutors form the Prosecution Agency of the police district.²⁷¹ No independent body

²⁶⁷ Police Rules, 1934, Chapter XVI Rule 16-13.

²⁶⁸ See M. Farani, *Police Laws Manual* (1989), pp. 18-19.

²⁶⁹ Criminal Procedure Code, 1898, Section 492; Police Rules, 1934, Chapter XXVII, Rule 27-4.

²⁷⁰ Criminal Procedure Code, 1898, sections 28 and 29; Criminal Procedure Code (Amendment) Ordinance X, 1979, Article 2, row 1, column 8 (substituted second schedule of crimes --"Offenses Against other Laws").

²⁷¹ Police Rules, 1934, Chapter XXVII, Rule 27-14. This rule describes the "prosecuting agency" of the police department as "such number of gazetted officers, upper and lower subordinates as may, from time to time, be sanctioned by the provincial government and the Inspector General of police." Prosecuting inspectors and sub-inspectors can only prosecute cases that are being inquired into or tried by a magistrate. Superintendent-level officers prosecute all cases from their respective

reviews allegations of police misconduct toward civilians, nor is there any mechanism independent of the police to lodge disciplinary or criminal charges against police officers. This means that the police can commit abuses and those abuses can be overlooked by other officers with virtual impunity.

I.A. Rehman, Executive Director of the Human Rights Commission of Pakistan (HRCP), told us that the cornerstone of police impunity in cases of both custodial violence and more general violence against women is that police are "the detaining, investigating and prosecuting authorities."²⁷² Cases in which police are implicated are often hushed up. In known cases of police abuse, like the Veena Hayat case described above, police have conducted inadequate investigations, filed inaccurate FIRs, refused to produce witnesses, and withheld vital information. Police have also been known to threaten lawyers who take up cases of police violence and speak out on behalf of victims of such abuse.²⁷³ Human rights and legal aid organizations have urged the total separation of the police and prosecutorial function, but with no success.

C. The Structure of the Judiciary

In theory, the Pakistani judiciary should provide a check on police impunity in cases involving violence against women in police custody. The higher courts, which have a degree of structural independence from the executive branch, do exercise this oversight function to some extent. However, the lower courts (where most cases involving women detainees originate and conclude) are closely linked with the executive and are known to be influenced by police and other pressures. In addition, judicial independence at all levels in Pakistan has been steadily diminished by the development of parallel religious and

districts that are set for trial in Sessions court, which is where *Hudood* cases are tried. There is also a system of "government pleaders" or public prosecutors who are not police officers. Complainants also have the option to retain a private attorney to accompany the government prosecutor in conducting the case.

²⁷² Interview with I.A. Rehman, November 1991.

²⁷³ The Human Rights Commission of Pakistan reports several cases of intimidation of lawyers by administrative agencies during 1990. In one case, two lawyers were threatened by police for taking up the cases of people subjected to police violence during a protest demonstration. See *HRCP 1990 Report*, p. 19.

speedy trial courts directly linked to the executive. To understand the profound impact that these developments have had on women, it is necessary to describe them further in some detail.

1. The Civil and Religious Court Systems

The structure of the Pakistani court system is established in the Constitution.²⁷⁴ At the lowest level are the Magistrates or Sessions Courts, which have original jurisdiction to hear criminal cases.²⁷⁵

²⁷⁴ Pakistan's current Constitution was enacted in 1973. In 1979, General Zia imposed martial law (it had been imposed several times before), suspended the Constitution and, during the period of suspension, substantially changed it. He amended it to include, among other things, the Federal *Shariat* Courts, enhanced presidential power, including the sole power to appoint *Shariat* Court judges, and a prohibition on High Court review of martial-law court judgments. He also promulgated numerous laws by ordinance, including the *Hudood* ordinances. With the passage of the Eighth Amendment in 1985, Zia made all these changes unreviewable by any court, revived the Constitution, and returned power to a civilian government. Therefore, the current Constitution contains many provisions that were added outside the regular process for constitutional amendment and are exempted from judicial review.

²⁷⁵ Through the Criminal Procedures Act, the legislature defined four classes of criminal courts -- Courts of Session and Magistrates of the first, second and third class -- and conferred powers on the provincial governments to set up those courts and appoint judges to sit on them. Each province is divided into sessions divisions and each division consists of one or more judicial districts. In every district, the provincial government appoints a Magistrate of the first class to be the District Magistrate (DM). In addition to purely judicial power, the DM exercises some direct authority over the police. The DM has "general control and direction" over the police district in which the DM sits and must inspect police stations pursuant to this authority. In addition, the DM may direct the Superintendent of Police "to inquire into any allegation of misconduct or neglect of duty on the part of any subordinate enrolled police officer." The DM may hear cases arising out of such violations.

The essential difference between the Magistrates and Sessions Courts is the length or severity of the sentences each is allowed to impose. The Sessions Court can impose capital punishment. In the case of rape or fornication under the *Hudood*, only the High Court or the Sessions Court can hear the case because of the severity of the penalties. If a *Zina* or *Zina-bil-jabr* case is heard in the Sessions Court and the penalty is death, the sentence must be confirmed by the High Court.

Convictions or sentences may be appealed to the High Court for the territorial district in which the criminal case was heard.²⁷⁶ In addition, any person can petition the High Court to review whether someone is being held unlawfully in custody.²⁷⁷ This provision is especially important in cases of custodial violence, as it gives a constitutional right to, for example, a human rights group, to petition the court to review the case of an individual who has been arrested or imprisoned. As noted in the previous section, this power has also been used by human rights attorneys to petition the High Court to initiate investigations into allegations of police abuse of women in custody.

Appeals from *Hudood* criminal convictions are the exclusive province of the Federal *Shariat* Court (FSC), the jurisdiction of which is concurrent with and in certain respects exceeds that of the High Court (see below).²⁷⁸ Appeals from the High Courts and the FSCs in criminal cases may be taken to the Supreme Court, but FSC appeals may only be heard by the Islamic *Shariat* Bench of the Supreme Court.

The Supreme Court reviews discretionary appeals and appeals as of right from both the High Courts and the Federal *Shariat* Courts.²⁷⁹ It has original jurisdiction to enforce fundamental rights if it decides that the issue is of "public importance."²⁸⁰ The Supreme Court also serves as the court of final review from all High Court sentences of life imprisonment or death and all "substantial questions of law as to the

²⁷⁶ Generally appeals, except in High Court trials, lie both on matters of fact as well as law. Part VII, Article 199(1)(c) of the Constitution allows for the issuance of a writ against an order or judgement not in accordance with the law.

²⁷⁷ Constitution, Part VII, Article 199B(i).

²⁷⁸ Under General Zia, the Constitution (Amendment) Order of 1980 established the Federal *Shariat* Courts (FSCs) as separate courts. The provisions of the Constitution that define and govern the FSCs contain two essential elements. First, Article 203A states that the provisions of the order shall have effect notwithstanding anything contained in the Constitution. Second, the purview of the FSCs explicitly excludes the Constitution, Muslim Personal Law, or any law relating to the procedure of any court or tribunal or, until 1990, any fiscal law.

²⁷⁹ An appeal as of right is one on which the appellate court must rule, whereas discretionary appeals are within the power of the appellate court to refuse to consider.

²⁸⁰ Constitution, Part VII, Article 184.

interpretation of the Constitution.²⁸¹ All such appeals are of right; all other decisions of the High Court are reviewed only at the Supreme Court's discretion.²⁸²

2. Diminishing Judicial Independence

Article 175(3) of the Constitution provides for the separation of the judiciary from the executive within a period of fourteen years. That period expired in 1987, but the independence of the judiciary in Pakistan continues to be compromised at all levels. There is no better example than the lower courts, where the provincial governments have the power to establish the Sessions Courts, appoint all the Sessions judges and district magistrates, direct any "two or more magistrates to sit together as a bench," confer additional powers on magistrates, and withdraw any or all of the powers conferred by the Criminal Procedure Code on any magistrate or sessions judge.²⁸³

As noted above, in cases of violence against women in police custody, the lower courts have been known to sacrifice even what minimal independence they possess to the demands of police or other official pressures.²⁸⁴ According to HRCP Director I.A. Rehman, "magistrates are afraid of the police. This is because they work for the executive and not for the judicial branch. There is no hope at present of separating these two powers. The government will not allow it." In the

²⁸¹ Ibid., Article 185.

²⁸² Ibid., Article 185(3).

²⁸³ Criminal Procedure Code, 1898, sections 9, 12, 10, 37 and 15. For a detailed discussion of Pakistan's judicial system, see International Commission of Jurists, *Pakistan: Human Rights After Martial Law* (Geneva, 1987) (hereinafter International Commission of Jurists, *Pakistan*).

²⁸⁴ The U.S. State Department reports that "magistrates and police, under pressure to achieve high conviction rates, persuade persons in custody to plead guilty without informing them of the consequences. Politically influential persons also attempt to influence magistrates' decisions and have used various forms of pressure, including threat of transfer, to do so. Magistrates also perform a whole variety of administrative functions for the provincial government, which allows them to devote less time to their judicial duties." *Department of State 1991 Country Reports*, pp. 1553-4.

case of Aasia Ayub, described above, the magistrate who ordered the official inquiry into the case that concluded she had been tortured was transferred by the provincial government to another district when he refused to grant bail to the accused officers.

High Court judges are regarded as more independent of the executive because they are required to have had longer service in the judiciary, and their increased experience and authority is said to shield them from local political pressure. However, although High Court judges often decide important cases in opposition to the government,²⁸⁵ they, too, are subject to the whims of the executive branch.

High Court judges are appointed by the President of Pakistan, in consultation with the Chief Justice of the Supreme Court and the provincial governor of the province in which the High Court sits.²⁸⁶ There is no advise and consent provision empowering the legislature to take part in the confirmation of judicial nominees. Under amendments to the Constitution made just prior to the lifting of martial law in 1985, the President can appoint High Court judges to the position of Chief Justice to the Supreme Court without regard to seniority. Moreover, the President is empowered to transfer High Court judges to other districts for two years, and if any judge does not accept the transfer, he is deemed to have retired. Similarly, the President is empowered to appoint a High Court judge to the FSC, and if the judge does not accept, he, too, is deemed to have retired.²⁸⁷ Thus, as noted by the International Commission of Jurists in a study of Pakistan's judiciary, "the executive retains the power to punish or reward members of the judiciary."²⁸⁸

²⁸⁵ The U.S. State Department reports that "the high courts in particular have exhibited a marked degree of independence, deciding a number of cases against the government. There continued to be concern however that the judiciary's independence is not complete, particularly at levels below the highest courts." *Department of State 1991 Country Reports*, p. 1553.

²⁸⁶ Constitution, Article 177. High Court judges must be at least 40 and no more than 62-years-old. In addition, candidates must either (1) have practiced before one of the High Courts for ten years; (2) have ten years in the civil service and three years as a District Judge; or (3) have been a judge in another court for ten years.

²⁸⁷ *Ibid.*, Articles 196, 200 and 203C.

²⁸⁸ International Commission of Jurists, *Pakistan*, p. 56.

The High Court's independence is further eroded by its subservience to the revisional powers of the Federal *Shariat* Court. As originally conceived in the early years of martial law, the FSC was to be composed of eight Muslim judges who were qualified to sit as High Court judges. Through an amendment in 1981, the FSC now consists of a Chief Justice, qualified for either the Supreme or High Court, not more than four judges who are qualified to be High Court judges, and not more than three *ulama* who are religious leaders with little specialized legal training but who are well-versed in Islamic law.

The FSC's jurisdiction exceeds that of the High Court because, unlike the latter, it has "revisional" powers. It can, either on its own or in response to a citizen's petition, review any provision of Pakistani law to determine "whether or not any law or provision of law is repugnant to the Injunctions of Islam, as contained in the Holy Quran and Sunnah of the Holy Prophet."²⁸⁹ If it finds the law repugnant, the FSC can declare the law invalid and force the legislature either to amend it or to let it lapse.²⁹⁰

In addition, the FSC can call for and examine the record of any criminal case decided under the *Hudood* laws and change any finding or sentence.²⁹¹ This includes the ability to change an acquittal to a conviction without creating a double jeopardy problem.²⁹² The High Courts have no reciprocal role with respect to the judgments of the FSC.²⁹³ This arrangement, in effect, gives the FSC sweeping and barely reviewable revisional powers. These include the power of self-review,²⁹⁴ granted to the FSC pursuant to an amendment introduced

²⁸⁹ Constitution, Part VII, Article 203D(1).

²⁹⁰ As noted in section three of this report, the FSC recently exercised its revisional jurisdiction to declare the government's power to punish or pardon persons accused of murder, attempted murder or grave bodily injury to be inconsistent with the teaching of Islam. Accordingly, the relevant Penal Code provisions were accordingly replaced with laws providing for retribution (*Qisas*) by the victim or his heirs or compensation (*Diyat*) by the accused.

²⁹¹ Constitution, Part VII, Article 203D.

²⁹² *Ibid.*, Article 203D(2). Double jeopardy is the term for the prohibition against trying someone twice for the same crime.

²⁹³ *Ibid.*, Article 203E(9).

²⁹⁴ *Ibid.*

by General Zia following an FSC decision that met with opposition from Pakistan's Islamic leaders. The FSC has the legal authority to alter its own decisions and, as described below, this power has provided an incentive to the government to try to influence it.

The degree of government control over the FSC and its potential implications for women were made clear in a 1981 FSC ruling in which three of the five judges initially held that the punishment of stoning to death prescribed by the *Hudood* ordinances was un-Islamic.²⁹⁵ Islamic leaders throughout the country protested the decision. The government lodged an appeal with the *Shariat* Bench of the Supreme Court and introduced a constitutional amendment that granted the FSC power to review its own judgments. Before the government's appeal was heard, the FSC bench was reconstituted by the government, retaining only one judge from the previous bench. One of the new judges had already given his opinion on the case in an *amicus curiae* brief supporting stoning to death as consistent with Islam. The newly constituted court, now in a position to review the previous court's finding, reversed the earlier decision and held that the sentence of death by stoning was Islamic.²⁹⁶ The effect of the creation of the Federal *Shariat* Courts has been to erode further judicial independence in Pakistan by creating a parallel system that weakens the jurisdiction of the civil courts and renders the judiciary more vulnerable to government influence. In 1990, the Federal *Shariat* Court handed down a decision making any statement against the prophet subject to the death penalty.

Although the Supreme Court has been known to protest erosion of fundamental rights by successive governments,²⁹⁷ it, too, is compromised. The Supreme Court has the power to transfer cases from one High Court to any other High Court; and the power to review its own decisions.²⁹⁸ Again, like the FSC, this power of self-review provides an incentive to the government to try to influence the court which seriously jeopardizes its independence, and that of the lower courts, since Supreme Court decisions are binding precedent on

²⁹⁵ *Hazoor Baksh*, PLD 1981 FSC 145.

²⁹⁶ International Commission of Jurists, *Pakistan*, p. 63.

²⁹⁷ See Section II(A) in this report.

²⁹⁸ Constitution, Part VII, Articles 186A and 188.

all other courts in Pakistan concerning matters of law.²⁹⁹ The High Courts' decisions are in turn binding on the lower courts.³⁰⁰ However, the FSC's decisions are binding on all High Courts as well as on the courts that are subordinate to the High Courts.³⁰¹

Moreover, the Supreme Court has been subjected to direct government interference.³⁰² In 1981, for example, as described in Section II(A) of this report, Supreme Court justices were compelled to take a loyalty oath to the martial law government or be deemed to have retired. More recently, the HRCP reports that on October 10, 1991, the president exercised his unrestricted power to revoke an acting judicial appointment without explanation.³⁰³ Acting Justice Memon had served as the Advocate-General of the Sindh High Court Bench in Karachi. When all judges were required to take a fresh oath of office following the promulgation of the Provisional Constitutional Order by Zia-ul-Haq, Mr. Memon like some other judges was not invited to take the oath and thus was removed from the bench. He was recommended for appointment as a Superior Court judge in early 1990 -- during the tenure of Benazir Bhutto -- but according to the HRCP "as a consequence of differences between the Prime Minister and the President he was appointed only as an acting judge." Then, on October 10, Memon's appointment was revoked. Many local jurists believe he was removed from the bench for having been the nominee of the

²⁹⁹ Ibid., Article 189.

³⁰⁰ Ibid., Article 201.

³⁰¹ Ibid., Article 203G.

³⁰² The Chief Justice of the Supreme Court is appointed directly by the president. All other Supreme Court justices are appointed by the president after consultation with the Chief Justice. Supreme Court Justices must be citizens of Pakistan and either have had at least five years experience as a High Court judge or 15 years experience as a High Court advocate. Mandatory retirement age is 65. The president can also appoint an acting Chief Justice or temporary Supreme Court Justice to fill vacancies or absences. These appointees are removable at will by the president.

³⁰³ The International Commission of Jurists (ICJ) notes the appointment of acting judges is inconsistent with international principles of judicial independence. According to the ICJ, during marital law, the government frequently appointed *ad hoc* or acting judges without making the appointment permanent. See International Commission of Jurists, *Pakistan*, p. 59.

previous ruling party.³⁰⁴ The independence of the court is not strengthened by the presence of the *Shariat* Bench consisting of three Muslim Supreme Court judges and not more than two *ulama* "to be appointed by the president."³⁰⁵ The president has the power to appoint or modify the term of all the members of the *Shariat* Bench and can introduce legally-unqualified religious leaders to sit as judges.

According to the International Commission of Jurists:

The problem with the establishment of separate religious-based courts, which have jurisdiction over civil laws and enactments and are able to be controlled by the executive is that they can be easily manipulated to approve and endorse government policy, while discriminating against groups who do not belong to the majority religious sect....[This] is a dangerous innovation, particularly as they are not required to have any formal legal qualifications and the judgments of both *Shariat* Act Courts [Federal and Supreme] are not justiciable by any of the civil courts...³⁰⁶

a. Special Courts for Speedy Trial

The independent functioning of the judiciary has been further jeopardized by the creation of speedy courts that, as explained below, operate independently of the civil and religious courts and are convened and constituted entirely by the federal or provincial governments. There are now three separate speedy courts in Pakistan, which results in considerable jurisdictional and legal imprecision and contributes to the confusion that permeates the entire judicial system.

The Suppression of Terrorist Activities Act, amended by ordinance twice in 1990, established a tier of special courts "for the purposes of suppressing acts of sabotage, subversion and terrorism and to provide for speedy trials of offenses committed in furtherance of or in connection with such acts."³⁰⁷ It empowers the provincial governments

³⁰⁴ *HRCF 1990 Report*, p. 19.

³⁰⁵ *See generally* International Commission of Jurists, *Pakistan*.

³⁰⁶ *Ibid.*, p. 62.

³⁰⁷ Suppression of Terrorist Activities (Special Courts) Act, 1975, Preamble.

to constitute as many special courts as necessary consisting of persons qualified to sit as high court judges or persons who have served at least three years as a sessions judge. Police investigations of cases before the special courts must be completed within 14 days. Bail rights are severely restricted. Appeals are to a High Court bench of no fewer than two judges and must take place within three months.³⁰⁸

In 1991, the government adopted the Twelfth Amendment to the Constitution.³⁰⁹ This provided for the creation of two additional sets of special courts that were later instituted by ordinance. The Special Courts for Speedy Trial Ordinance XXV, 1991, established special courts for the trial of various criminal offenses, including offenses that "in the opinion of the government [are] gruesome, brutal and sensational in character or shocking to public morality or [have] led to public outrage or created panic or an atmosphere of fear or anxiety amongst the public or a section thereof."³¹⁰ The Speedy Trial Ordinance placed several restrictions on judicial power and on the rights of defendants, particularly reductions in the time that a case can be adjourned and in which an appeal must be filed. Cases are referred to these courts by order of the provincial government. Each court consists of one person qualified as a judge of the High Court.

According to a November 1991 report by Amnesty International (AI), the Special Courts for Speedy Trials "do not conform to the minimum standards for fair trial contained in international human rights instruments. Some of the procedures as laid down in the ordinance are *a priori* unfair, while others have the potential to be applied in a way that would severely prejudice the accused."³¹¹ The Speedy Courts began operating on August 31, 1991. By September 3,

³⁰⁸ For a detailed discussion of these Special Courts, see *HRCP 1990 Report*.

³⁰⁹ This amendment adds Article 212-B to Pakistan's Constitution and will be in effect for three years from the date of adoption, after which it will be automatically repealed.

³¹⁰ Speedy Trials Ordinance, Section 2. An earlier version of this ordinance was introduced in 1990 under the Speedy Trial Ordinance promulgated by then President Ishaq Khan. For a full discussion of this earlier version which is very similar to the 1991 Ordinance, see Lawyers Committee for Human Rights, *Special Courts in Pakistan, International Legal Concerns* (September 1990).

³¹¹ Amnesty International, *Pakistan: Special Courts for Speedy Trial* (November 1991), p. 1.

45 cases had already been referred to these courts by the "special cell" of the Ministry of Law, Justice and Parliamentary Affairs.³¹² The first decision of a Speedy Court sentenced to death a man accused of raping and murdering a young girl after a trial that took three days. In addition to the death sentence, the accused was sentenced to receive 60 lashes, a fine and 37 years of rigorous imprisonment.³¹³ As of October 1991, AI had received reports of nearly 20 death sentences imposed by the Special Courts since they began operating.

A second set of Speedy Trial Courts were introduced by the Terrorist Affected Areas (Special Court) Ordinance XXIV of 1991.³¹⁴ However, at the time of this report's publication, no area of Pakistan had been declared a terrorist-affected area; accordingly Speedy Courts had not been established under this ordinance.

Under both speedy trial regimes adopted pursuant to the Twelfth

³¹² Ibid., p. 5.

³¹³ A second Twelfth Amendment court case that attracted considerable attention in the United States involved two U.S. citizens sentenced to amputation for offenses under the *Hudood* Ordinances. The two Americans were acquitted on appeal to the Special Appellate Bench, raising questions about the jurisdiction of the appellate courts since *Hudood* appeals are normally within the exclusive jurisdiction of the *Shariat* Bench of the Supreme Court.

³¹⁴ Under this Ordinance, the federal government is empowered to declare any area a "terrorist affected area." The determination whether an area is terrorist affected rests solely with the government. The Ordinance also gives unprecedented powers to magistrates, police, and civil armed forces to arrest a person who has committed or is suspected of having committed a cognizable offense; to enter and search houses without warrant; and to use force "to the extent of causing death" against a person harboring criminals or violating other specified laws. A person who is caught bearing arms in an affected area or who is apprehended in circumstances "which tend to raise reasonable suspicions that he has committed such an offense" is presumed guilty unless he can prove his innocence.

The special courts that function under the Terrorist Affected Areas Ordinance have exclusive jurisdiction to deal with offenses included in that schedule. However, unlike the other speedy courts, they can also adjudicate offenses not spelled out in the schedule attached to the Ordinance. Moreover, unlike the speedy trial or special courts described above, these special courts can be presided over by an additional sessions judge or a district magistrate. This constitutes one of the first occasions in Pakistan's history that a district magistrate, who is a federal civil servant, has been empowered to preside over judicial tribunals adjudicating cases that involve crimes against the state and attract serious penalties.

Amendment, cases pending in other courts can be transferred from the regular courts to the Speedy Courts at the discretion of the government. Appeals from the Speedy Courts are to a Special Appellate Court presided over by a person qualified to be a judge of the High Court and appointed by the government.³¹⁵ Appeals by a convicted person can be made within up to seven days, whereas government appeals of an acquittal can occur within thirty days. All appeals must be decided within seven days. The decision of the Special Appellate Court is final, which eliminates the possibility, guaranteed to persons tried in the regular courts, of appeal to the High Court and the Supreme Court.³¹⁶

On their face, all three of these special court provisions violate the fundamental rights to due process, equal protection of the law and the presumption of innocence guaranteed by the Constitution of Pakistan and customary international law. Judicial independence is compromised because the decision whether to refer a case to these courts rests solely with the provincial governments; the time to investigate, prepare and decide cases is unduly limited; the right to appeal is unfairly circumscribed and bail is denied unless the court is convinced from preliminary evidence that the accused is innocent.³¹⁷ Moreover, many of the crimes listed in the schedules attached to the various acts and ordinances overlap, creating an opportunity for the government to choose the judicial forum most likely to achieve its desired ends.

b. The *Shariat* Act 1991

The adoption of the Twelfth Amendment and the new Special

³¹⁵ Appeals on murder cases must be heard by at least two such judges.

³¹⁶ The 12th Amendment states that "notwithstanding anything contained in the Constitution, no court shall exercise any jurisdiction whatsoever in relation to any proceedings before, or order or sentence by a Special Court or a Supreme Appellate Court..." Amnesty International points out that this "significantly curtails the jurisdiction of the High and Supreme Courts to examine whether a miscarriage of justice has occurred in the Special Courts for Speedy Trial."

³¹⁷ The Speedy Trial courts grant bail sparingly. In the Special Courts for both Terrorist Affected Areas and the Suppression of Terrorist Activities, bail may not be granted if there are reasonable grounds for believing that a defendant is guilty of a scheduled or other criminal offense.

Courts Ordinances occurred in the context of broader changes in the constitutional and institutional structures of Pakistan introduced by the *Shariat Act*, which was prepared by Prime Minister Sharif and adopted by the Senate in June 1991.³¹⁸ The 1991 *Shariat Act* resurrected an ordinance originally introduced in 1985 by General Zia, the purpose of which was to establish *Shariat* as the supreme law of the land in Pakistan. Important sections of the *Shariat Act* provide that:

- * The *Shariat*...shall be the supreme law of Pakistan, provided that the political system and present form of government shall not be affected.³¹⁹
- * The State shall enact laws to protect the ideology, solidarity and integrity of Pakistan as an Islamic state.³²⁰
- * [A] just social order shall be established insuring...inexpensive and speedy justice...through an independent Islamic system of justice.³²¹

Pakistan, as discussed in the background section of this report, was originally conceived as a Muslim country, but not as a theocracy.³²² Early Constitutions, including the 1973 Constitution which (with amendments) is still in effect today, carefully balanced a government "in accordance with the teachings and requirements of Islam" with secular government and civil authority. With General Zia's Islamization campaign -- which brought, among other things, the

³¹⁸ In 1988, General Zia promulgated the *Shariat Ordinance* which sought to establish Islam as the supreme law of the land. Although the Ordinance expired after four months, the Sharif government reintroduced it as the *Shariat Act* in 1991. The controversial bill was adopted by the National Assembly on May 16 with only 138 of the Assembly's 237 members present and only 109 voting. It was later adopted by the Senate and approved by the president in June 1991.

³¹⁹ Enforcement of *Shariat Act*, 1991, Act X of 1991, section 3 (hereinafter *Shariat Act*).

³²⁰ *Ibid.*, section 16.

³²¹ *Ibid.*, section 22(a).

³²² See History Section above.

Hudood Ordinances, the religious courts and a constitutional amendment making Islamic guidelines a substantive part of the Constitution³²³ – some analysts feared a tilt towards theocracy. However, even General Zia restricted the power of the religious authorities, making the decisions of the Federal *Shariat* Court subject to review by the Supreme Court and, until June 1990, exempting the Constitution, Muslim personal law, and economic and administrative laws from the FSC's purview.³²⁴ If the Sharif government's *Shariat* Act is fully applied it could eliminate these restraints, with potentially disastrous consequences for the survival of civil law in Pakistan.

The 1991 *Shariat* Act is essentially a statement of principles. At the time of our visit in November, the Act's exact implications were unclear. Most human rights and women's rights advocates with whom we spoke expressed great concern about its potentially corrosive effect, not only on the independence of the judiciary, but also on Pakistan's fledgling parliamentary form of government. According to human rights attorney Hina Jilani:

The *Shariat* Bill goes much further [than General Zia's original ordinance] in eroding the basic political institutions of the country. What the Senate is proposing is the enactment of a law which would change the basic structure of the state and would make the Constitution of Pakistan redundant. The provisions of the bill undermine the sovereignty of the people of Pakistan as enshrined in the Constitution and transfer that sovereignty to a group of mullahs acting through the judicial system....Under the system visualized by the *Shariat* Bill the judiciary will usurp the power of Parliament to make laws. The interpretation of the *Shariat* by the judiciary will have the force of law in matters which have never been considered by the legislature.³²⁵

³²³ See Constitution, Article 2(a), which became part of the Constitution by virtue of the Restoration of the Constitution Order (Presidential Order 14 of 1985), discussed in the historical background section of this report. These guidelines had previously been part of the Constitution's preamble.

³²⁴ See Makhdoom Ali Khan, ed., *Constitution of the Islamic Republic of Pakistan 1973* (as amended through March 1988), Article 203B and footnotes.

³²⁵ Hina Jilani, "The Shariat Bill: Blow to National Solidarity," *Slogan*, 1991, p. 16.

However, in the absence of a constitutional amendment establishing *Shariat* as the supreme law of the land, some local observers with whom we spoke dismissed the Act as a political maneuver by the Sharif government to pacify fundamentalist pressures without effecting any real change in the country's legal or political structure.

Several recent decisions by the Federal *Shariat* Court and one by the Lahore High Court suggest that the concerns of the human rights community about the potential implications of the *Shariat* Act are well-founded. When the limits on the Federal *Shariat* Court's purview expired in June 1990, the FSC began reviewing many laws for their conformity to Islam.³²⁶ For example, in a December 1990 decision, the FSC held that monetary interest (*riba*) was un-Islamic and, effective June 1992, struck down laws allowing interest on bank accounts and all interest-based contracts.³²⁷

Article 2-A of the Constitution provides that the state may exercise authority only within the guidelines prescribed by Islam and that it is the state's duty to enable Muslims to act in accordance with Islam. In October 1991, the Lahore High Court ruled that under Article 2-A of the Constitution, which is cited in the preamble to the 1991 *Shariat* Act, Islam not the Constitution is Pakistan's supreme law. Several Pakistani jurists believe this decision implicitly struck down many articles of the Constitution, and effectively allows the courts not only to interpret the law but also to annul laws deemed inconsistent with Islam. Despite the existence of the FSC, the High Court held that it, too, had the power to enforce Islam, raising potential jurisdictional conflicts similar to those posed by the Speedy Courts. To add to the confusion, the Act makes no explicit provision for how judicial review of the legislation will occur in light of *Shariat*. It provides only that: (a) if more than one

³²⁶ In a volley of decisions after the 1990 deadline passed, the FSC declared several laws relating to a vast range of social, legal and economic issues to be against the injunctions of Islam. Chief among these are laws relating to the Powers Immunities and Privileges Act of the NWFP, various sections of the Criminal Procedure Code relating to *Qisas* and *Diyat*, and 22 enactments concerning interest (*riba*) in economic regulations. For a full discussion of these changes, see Syed Talat Hussain, "Courting Trouble," *Newsline*, January 1992, pp. 107-108.

³²⁷ The government could appeal the FSC's decision to the Supreme Court, but according to local analysts, it does not want to risk alienating its conservative religious base by challenging the FSC's authority. However, the decision is being appealed by the recently privatized Muslim Commercial Bank.

interpretation is possible, the one consistent with Islamic principles and jurisprudence shall be adopted by the court; and (b) when two or more interpretations are equally possible, the interpretation that advances the principles and policy of Islamic provisions of the Constitution shall be adopted by the court.³²⁸

Pakistan's current judicial system, for all its flaws, is not entirely lacking in independence, nor is it utterly devoid of the procedural and substantive protections normally associated with a healthy judiciary. However, the Pakistani government's failure to separate the executive and the judiciary and thus its retention of undue influence over the judicial branch; its creation of parallel religious courts appointed by the executive with increasing influence over the entire legal system; and its establishment of Speedy Courts that lack fundamental fair-trial protections have taken a profound toll on the judicial system's integrity and its ability to function properly. The *Shariat* Act potentially threatens the entire democratic system by removing law-making power from the legislature and entrusting it to a religious judiciary that is not representative.

The steady erosion of Pakistan's justice system puts all citizens of Pakistan at risk. However, women are in greater jeopardy because the flawed and increasingly corrupt justice system, rather than protecting them from social biases, reinforces discrimination against women in law and in practice.

D. Discriminatory Police and Judicial Practices

1. Police and Lower Courts

Discrimination against women begins at the police level and continues on up through the superior judiciary. As noted in the section of this report on women in custody, police have both participated in and routinely failed to combat violence against women in custody. They also have often exhibited discriminatory behavior toward female victims of gender-specific abuse by private parties. In November 1991, the Inspector General of Police of Punjab, who is responsible for investigating reports of police abuse, told human rights attorneys concerned with rising rates of custodial rape that "in 95 percent of the rape cases the women themselves are at fault." A superintendent of police, Shamim Khan, when asked about rising rates of abduction of

³²⁸ *Shariat* Act, sections 4(a) and (b).

women in Pakistan, stated that "in fact many women are the abductors. Women can easily entice and kidnap, you see."³²⁹

The bias reflected in such attitudes is particularly disturbing because, as noted above, police are the "detaining, investigating and prosecuting authorities." Discriminatory attitudes towards women by the police not only contribute to the failure of the police to police themselves, but also to their willingness to prosecute women who have committed no offense. In theory, such abuses should be checked by the magistrates, who have the authority to order investigations into and to adjudicate cases of police abuse, or by the Sessions Courts, which are the courts of original jurisdiction in *Hudood* cases. Unfortunately, discriminatory practices by Sessions judges and magistrates are also common.

According to human rights attorney Zia Awan, Sessions judges rule on *Hudood* cases against women even when the police investigations do not meet legal requirements. For example, *Hudood* cases require evidence by witnesses; yet in 90 percent of the cases there are no eyewitnesses and in some cases there are no witnesses at all.³³⁰ Yet, the cases are still brought to trial. In part, the judges hear the cases because both they and the police are eager to show high conviction rates.³³¹ Awan, a lawyer who frequently defends women charged with *Hudood*, believes judges have breached their duty to protect women and are thus allowing women to be accused at random.

Even in cases in which no charge has been filed against a woman, judges, like the police, often suspect that if a woman was abducted or raped she must have been behaving inappropriately to begin with and is in some way complicit in the offense.³³² It is common for magistrates

³²⁹ SP Shamim Khan, interview with *Newsline*, September 1989.

³³⁰ Deneb S. Sadiq, "When The Law Is Abused," *Dawn*, October 20, 1989.

³³¹ Zia Awan, "Violations of Citizens Fundamental Rights," *Dawn*, September 14, 1990.

³³² Attorneys Jahangir and Jilani describe a 1985 case in which Saif-ur-Rehman was accused of abducting Irshad Begum and having illicit relations with her. The trial court convicted the accused and the victim of abduction. Although on appeal the FSC acquitted Irshad Begum, "as she could hardly have abducted or committed illicit sex on herself," they reduced Saif-ur-Rehman's sentence. The court admonished the law-enforcing agencies for not charging women as consenting partners to such crimes in general. *A Divine Sanction?*, p. 95.

to confine women victims of abduction or rape in private detention facilities indefinitely, although they have committed no offense. The courts have even been known to confine women simply because they are women and "cannot" be allowed to walk the streets freely.

During our visit to Pakistan, we interviewed several women who were charged with no offense but who had been remanded by the courts to a private detention facility, Darulaman in Lahore, for an indefinite period. Fifty-nine women were registered at Darulaman, 39 of whom had been sent there by the local magistrate or High Court to await the outcome of rape or abduction cases. The remainder were there voluntarily; most were awaiting the outcome of divorce cases lodged by them. They had nowhere else to go.

Although Darulaman is a private facility, it functions like a prison. It is patrolled by armed guards and locked at all times. The women there told us that they are locked in their cells, which are barred, at 5:00 p.m. every day and are allowed only one phone call a week. Some complained of beatings by the warden.

Judges perceive such private confinement as a form of "protective custody" for women, that is subsidized by private philanthropy. In fact, it amounts to illegal and often prolonged detention of innocent women who are charged a daily fee for the accommodations. If the women were charged with an offense, they should by law have been released on bail or imprisoned pending trial, with corresponding rights to know the charge against them and to receive a fair trial. If they were not accused, they should be free. Judges do not detain men in private facilities.

When we asked why the women who had not been charged could not be released immediately, Darulaman administrators replied: "these girls just could not be allowed to walk around freely. Society does not allow this."³³³ The administrators said the average stay for a woman in Darulaman was one to three years. For those women whose status remains unresolved for longer periods, Darulaman "tries to find husbands for them." According to human rights lawyer Hina Jilani who accompanied us to the facility:

Rape and abduction of women are viewed by society and the courts essentially as property disputes. The women are held in Darulaman like damaged goods until they can be properly disposed of, either back to their parents, to a husband or, in

³³³ Interview with Darulaman Administrator, October 1991.

some cases, to jail. In the mind of society and of the court the option of individual liberty for women does not exist. They think they are doing the women a favor by confining them here.³³⁴

In one 1980 case, in the early days of Zia's Islamization campaign, a Sessions Court confined a girl to Darulaman in connection with an abduction charge lodged by her father, after she ran away from an abusive husband whom she had been forced to marry by her father. In confining the girl, the judge said that "ill behaved married women should be detained until they repent their misdeeds." The High Court reversed the lower court's decision, saying that it was "based on an unsound and illegal approach which is likely to create great resentment in the female population...against the introduction of Islamic code."³³⁵

We interviewed several women in the Darulaman facility who were confined there against their will. We also interviewed others, who had arrived at the facility voluntarily, wanted to leave, but had no other place to go and no money to pay their accumulated fees:

- * Naseem was confined to Darulaman by the Lahore High Court because she married an older man against the wishes of her parents. Her parents filed a *habeas corpus* petition in the High Court requesting the husband to produce her. Naseem told the court that she had married of her own free will. Nonetheless, the court confined her to Darulaman for two-and-a-half years to prevent her from returning to her husband until she reached 17, the age of legal majority.
- * Two sisters, 18 and 15, were confined to Darulaman by a magistrate following abduction charges lodged by the girls' parents against the 18-year-old's husband. According to the girl, her family had forced her to marry the man, then changed their minds and lodged a case of abduction against him. He was imprisoned and she was confined by the magistrate to Darulaman with her younger sister, who did not want to leave her side pending the case's outcome. At the time of our interview, the girls

³³⁴ Interview with Hina Jilani, October 1991.

³³⁵ *A Divine Sanction?*, p. 93.

had been in Darulaman for five weeks. They were eager to be released.

- * Samina Amir was confined to Darulaman by the Lahore High Court because she refused to return to her parents after they had filed an abduction charge against her. She had been in Darulaman for two weeks.
- * Farznan, 20, ran away from her parents because they sought to force her to marry against her will. A couple found her alone in the street in Lahore and brought her to Darulaman where she had been for eight months when we interviewed her. The High Court remanded her there because she refused to go back to her parents. She wanted to leave, but had yet to appear before a magistrate to seek her release and had no place to go. She had no lawyer.
- * Mukhtara, age 25 - 30, had been in an arranged marriage for eight years with a man she did not love. Her parents did not want her to seek a divorce. Her cousin helped her escape to Lahore and get a lawyer to obtain a divorce. She got the divorce, but in the meantime her parents filed an abduction charge against the cousin. Mukhtara appeared before the district magistrate saying that she had gone with the cousin of her own free will. When we met her in Darulaman, she did not want to leave because she had no place to go and she was afraid her parents would force her to return to her husband. She had been in Darulaman for four months.
- * A 22-year-old woman had been married at age 12 by her parents to a man she did not like and who abused her. Eventually she went to a district court and filed for a divorce. She asked the court to send her to Darulaman pending the outcome of the divorce case as she had nowhere else to go. She had been in Darulaman for six months.

In December 1991, a Lahore-based human rights organization filed *habeas corpus* writs in the Lahore High Court on behalf of all the women in Darulaman who were detained against their will. Fifteen were released. However, while the individual petitions were successful, the cases had no effect on the underlying problem of detention in private facilities of women accused of no offense. As of March 1992, there were 38 women in Darulaman, two of whom were sent there by order of the Lahore High Court. Pakistani human rights

organizations are concerned that the institution continues to operate and that the magistrates and High Courts are directing confinement of women in it, in blatant contradiction of the law. Human rights attorneys have decided to file a constitutional petition against the parent organization of Darulaman, Anjuman Himayat-e-Islam, protesting the involuntary confinement of women.

As these cases demonstrate, women's subordinate status has become so deeply imbedded in Pakistani society that even the illegal confinement of innocent women for prolonged periods can be portrayed, and is widely accepted, as "protection" by the courts and as "philanthropy" by private agencies. The view that women do not have the same basic rights as men has become so ingrained that attempts by women to exercise individual liberties -- such as choosing to marry or not as they wish -- are often viewed by the courts as the commission of or complicity in a criminal offense, even when no evidence of an offense exists. This acceptance and perpetuation of the subordinate status of women permeates the entire judicial system of Pakistan.

2. Superior and Speedy Courts

Both the civil and religious superior courts have systematically discriminated against women, both as victim and accused. A study of domestic murder conducted in 1987 found that the superior courts treat men who kill their wives with greater leniency than they do women who kill their husbands. In imposing lesser sentences on the men, courts rely on Section 300 of the Pakistani Penal Code, which states that culpable homicide will not be considered murder if "the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of a person who gave the provocation." This ground for mitigation of sentence is rarely applied to women.

According to preliminary research in this area, most cases of "grave and sudden provocation" involve a man who has killed his wife because of marital infidelity. In the clearest examples, the husband has found his wife in a compromising position with another man. However, the Pakistani courts have also been willing to apply the "grave and sudden provocation" exception on the basis of very little evidence and then drastically reduce the accused's sentence. In one 1985 case, the accused suspected his wife was "not of good morals" and murdered her. Without finding any specific act of provocation, the court nonetheless applied the "grave and sudden provocation" exception to the murder and reduced his sentence from life to three

years imprisonment.

In a 1989 case, the accused killed his wife and was sentenced by the lower court to life in prison. On appeal, he argued that he had discovered her in an adulterous act. The High Court found that this was not true, partly because the woman was fully dressed when she was killed. Nonetheless, the court concluded:

The appellant had two children from his deceased wife and when he took the extreme step of taking her life by giving her repeated knife blows to different parts of her body, she must have done something to enrage him to that extent.

The court reduced the accused's life sentence to 10 years imprisonment.³³⁶ Similar attitudes have surfaced in the High Court's treatment of rape cases, for which it has jurisdiction to hear only bail requests. In an interview about the effect of the *Hudood* laws on women rape victims, the Chief Justice of the Lahore High Court told us that if a woman engages in illicit sex and becomes pregnant "she comes forward and lodges a rape complaint to get out of it."³³⁷ In a 1986 case, a police officer accused of rape was granted bail by the regional high court on the grounds that the victim was of "easy virtue" (she was married and her medical report showed her to have engaged in "habitual" sex).

Nowhere are the odds against women obtaining justice more evident than in *Hudood* cases, which are tried by Sessions Courts and appealed to the *Shariat* Courts. In these cases, gender-biased attitudes combine with statutory discrimination to eliminate any hope for equal protection of the law. In one 1982 *Hudood* case, the Federal *Shariat* Court stated that "women should not complain of inequality. Under Islam it was the holy duty of the wife to obey and respect her husband." In a 1985 appeal of a rape conviction under *Hudood*, the FSC wrote:

Normally people in our social set-up are unwilling to take cases of rape to the courts because of the belief that publicity in the

³³⁶ In 1984, the Supreme Court of Pakistan held that mere suspicion of adultery is not adequate grounds for "grave and sudden provocation," but nonetheless the provision continues to be applied by the lower courts in wife-murder cases.

³³⁷ Interview with Chief Justice Mehboob Ahmed, October 1991.

cases will attract and would affect the reputation and honor of the family and more particularly the woman. However, wherever resort to the courts is unavoidable for any reason, a general possibility exists that even though the girl was a willing party to the occurrence, it would hardly be admitted or conceded. In fact, it is not uncommon that a woman who was a willing party acts as a ravished woman.³³⁸

As pointed out by Jahangir and Jilani, "following this argument, consent can be presumed even where the initial act and intention of the culprit may be of rape."³³⁹

A 1987 report by the International Commission of Jurists documents several *Hudood* cases in which lower court rape convictions were overturned by the FSC on the grounds that the woman apparently consented to the crime.³⁴⁰ In one case, the trial court convicted the accused of rape but the Federal *Shariat* Court found the victim had consented and reduced the sentence to a charge of fornication, although in the opinion of the Supreme Court the FSC had no cogent reason for doing so.³⁴¹ As noted in the section of this report on women in custody, the Supreme Court has attempted to offset some of the FSC's more biased decisions.³⁴² However, its effect has been

³³⁸ *M. Asghar*, NLR 1985 SD 514.

³³⁹ *A Divine Sanction?*, p. 96.

³⁴⁰ International Commission of Jurists, *Pakistan*, p. 130.

³⁴¹ *Ghulam Sarwar v. The State*, Pakistan Law Journal 147 Supreme Court.

³⁴² A 1983 petition challenged the appointment of women as judges or magistrates on the grounds, among others, that women judges do not wear the veil (*pardah*); that no women were appointed during the time of the Holy Prophet; and that the evidence of women is worth half that of a man...and thus the judgment of a woman cannot be equivalent to that of a man. The FSC dismissed the petition as meritless and ruled that men and women are equal under the Quran and that there is no justification for restricting the appointment of women judges. In relation to the evidence of women being excluded in certain cases, the court went so far as to say that "the view that women cannot appear as witnesses in matters of *Hudood* and *Qisas* cases is only a juristic view and is not based on either the Quran or Hadith [sayings of the Prophet]." For a more detailed discussion of this case, see International Commission of Jurists, *Pakistan*, p. 133.

piecemeal and has done little to alter the pattern of discrimination that pervades the criminal justice system.

Increasing public and media pressure on the Sharif government to address the issue of custodial rape and the regular courts' failure adequately to deal with the problem led the Prime Minister to refer at least one case of police abuse of a woman in custody to the Speedy Trial Courts created pursuant to the Twelfth Amendment. The Aasia Ayub case, discussed in Section IV above, attracted so much national attention that Prime Minister Sharif had it removed from the regular courts -- where Aasia's attorney had filed a High Court writ to compel the police to register a FIR in the case of alleged sexual torture by police -- to the speedy trial courts. The case amply illustrates the odds women face in attempting to obtain equal justice in crimes of police violence against them.

Aasia was taken into police custody on suspicion of theft on the night of September 3, 1991. She was held overnight in the station and reportedly sexually tortured. She told us that the police stripped her, manipulated her genitals, and threatened to insert chillies into her vagina. The police refused to register a FIR against the officers implicated in the case, who included the officer in charge of the police station in which the alleged abuse occurred. Aasia herself was never formally charged with theft.

In the meantime, a judicial inquiry initiated by the local magistrate concluded that torture had taken place and a FIR against the officers was filed on that basis. However, the FIR did not include Aasia's allegations of sexual torture. It did include the non-bailable offense of criminal intimidation that causes personal injury; however, the accused officers were immediately released on bail. Aasia's attorney then filed a high court writ requesting that the FIR be amended and Prime Minister Sharif shifted the case to the Speedy Court.

The state prosecuted the Speedy Trial case with Aasia's attorney acting as an advocate. Although the FIR was amended and the non-bailable offense of abuse of police power was added to the charges, this charge was eventually dropped and the officers remained at liberty throughout the proceedings. Aasia told us that local officers had been putting constant pressure on her and her family to withdraw the case. Ultimately, the officers were charged with illegal confinement of a woman in a police station (a violation of police rules, not of

the Penal Code) and with outraging the modesty of a woman.

The trial concluded on December 4, 1991. The Speedy Court's final judgment "honorably acquitted" the police officers on the grounds that there was no medical evidence to prove torture which, in any case, had never been explicitly included in the FIR. Moreover, the court accepted the argument that Aasia had invented the torture story to defend herself against charges of theft, even though no formal theft charges were ever filed. In addition, the defense attorney argued that Aasia's condition resulted from ongoing mental illness, although the initial report from the state hospital stated that her condition resulted from torture. During testimony, the hospital's psychiatrist retracted the claim that Aasia's condition resulted from torture. Finally, although the judgment accepted that Aasia had been detained overnight in the police station, the court did not address this violation. In fact, the officers were honorably acquitted and reportedly are up for promotion.³⁴³ Aasia is considering an appeal to the Special Appellate Court.

As noted above, the Speedy Courts violate basic fair-trial guarantees and therefore, are not an acceptable alternative to the existing court structure, despite its flaws. Moreover, the Speedy Court's treatment of Aasia's case replicated the discriminatory attitudes against women that are common to the entire system. This problem was compounded by the lack of police cooperation and the accelerated trial schedule, which left Aasia's attorney with little hope of adequately preparing the case.

In summary, women can expect little by way of equal treatment from the criminal justice system and have ample reason to suspect that the law as well as the police and judges are biased against them. A 1987 study of women in detention found that 92 percent said they had no faith in the police, while 83 percent had no faith in the judicial system.³⁴⁴

In the context of the discriminatory practices outlined in this chapter by police and civil and religious courts at all levels, it is little wonder that police abuse of women in custody is rarely prosecuted or

³⁴³ Ayesha Kahn and Sameena Nazir, "Above the Law," *Newsline*, January 1992, pp. 93-96.

³⁴⁴ *Multan Jail*, pp. 73-75.

punished. Certain gender-neutral procedural impediments, most notably the lack of an independent entity to police the police and the steady erosion of judicial independence, also discourage such prosecution.

To some extent, the High Courts appear to have begun to take notice of rising custodial violence against women and of the urgent need to address the problem. The Chief Justice of the Lahore High Court told us that the High Court increasingly "takes cognizance of custodial violence cases which the police will not register and has registered very many cases against police for abuses against women in their jurisdiction." He said that the underlying problem is the lack of independence from the executive at the lower level of the judiciary, and the lack of "real interest by the government in enforcing human rights."³⁴⁵

However, according to the Human Rights Commission of Pakistan, the High Courts' *suo moto* actions "result only in the initiation of internal departmental inquiries within the police, not in criminal prosecution of the police officers."³⁴⁶ Thus, for example, in the custodial rape case of 60-year-old Ahmedi Begum and two other women described above, the High Court took *suo moto* notice of the case, but only ordered an internal police inquiry into the allegations. The officers were temporarily suspended during the inquiry but no criminal charges were ever filed, even though the inquiry concluded that the women had been repeatedly and brutally raped. As noted by human rights attorney Hina Jilani, "in the past the courts have been lenient with police rape cases, which is why the police have come to this level of abuse. The only possible solution is strict and systematic punishment by the judiciary of police who abuse women and police authority in this way."³⁴⁷

Women's rights advocates fear that, rather than seeking to improve the legal situation for women, the government's passage of the *Shariat* Act of 1991 will only make matters worse. Although the Act explicitly provides that "notwithstanding anything contained in this Act, the rights of women as guaranteed by the Constitution shall not be affected," women are concerned that the constitutional guarantees of

³⁴⁵ Interview with Chief Justice Ahmed, October 1991.

³⁴⁶ Interview with I.A. Rehman, November 1991.

³⁴⁷ Interview with Hina Jilani, November 1991.

equality for women, already eroded by the passage of the *Hudood Ordinances* and the Evidence Code (*Qanun-e-Shahadat*), will now be entirely superseded by the relegation of women to lesser status under Islamic law. The Women's Action Forum released a statement opposing the Act on the grounds that it "takes the country closer to theocracy and strengthens a handful of anti-democratic obscurantist forces who have always taken a position against women."³⁴⁸

In particular, women's rights activists are concerned about threats to basic rights that they had achieved under the Muslim Family Laws Ordinance in 1961. This law, which is described in detail in section one of this report, along with economic matters, previously fell outside the purview of the Federal *Shariat* Courts. Women are concerned that, as with monetary interest, the family laws will be reviewed by the FSC and ordered to be brought into conformity with Islam. These concerns are heightened by the fact that, because the Muslim Family Law is not part of the Constitution, it is not protected by the *Shariat* Act's caveat exempting constitutionally guaranteed women's rights from the Act's purview. Women are also concerned about gender-specific restrictions that are likely to emerge to govern dress, the field of education, and participation in public life, and that may serve to entrench further the subordinate civil and political status of women in Pakistan.

Thus, it appears that rather than moving toward shielding the judiciary from the influence of special interests, the government is promoting judicial vulnerability to the whims of the executive and to the influence of religious norms that manifestly discriminate against women. Moreover, gender-biased laws remain on the books in Pakistan and discriminatory behavior by the police and the lower and superior judiciary, whether religious or civil, is commonplace. The government allows these practices and the resulting systematic failure of the courts to provide women with equal justice in Pakistan to go un-denounced.

³⁴⁸ Women Living Under Muslim Laws, "WAF Rejects Shariat Bill," *Special Bulletin on the Erosion of the Judiciary and Human Rights Legislation* (January 1992), p. 7.

VI. THE FLESH TRADE: BANGLADESHI WOMEN IN PAKISTANI JAILS

A. General Comments

A 1991 study by the National Council for Social Welfare in Pakistan estimates that 100 to 150 Bangladeshi women and girls are brought into Pakistan every month and many are sold against their will into prostitution, marriage or domestic servitude.³⁴⁹ The average age of the female victims is 15.³⁵⁰ The majority have been lured from Bangladesh to Pakistan by promises of jobs, better pay and a better life. Some women have simply been abducted and, frequently, drugged. The traffickers include both women and men. Their victims are brought by bus and train through India to Pakistan, or in many cases, having been transported to India and walk across the border into Pakistan.³⁵¹ They often end up in brothels in Bangladeshi *paras* (slums) in Karachi, although as their numbers have risen they have been found in small towns throughout Pakistan.³⁵²

They are held under terrible conditions. According to a recent report submitted to the United Nations Working Group on Contemporary Forms of Slavery, "ill-treatment, constant work and sexual harassment are their common experience and rape is not unusual."³⁵³ The pimps use threats of exposing the women's status as

³⁴⁹ National Council for Social Welfare survey cited in "Promises of Decent Living Lure BD Women to Come to Pakistan," *Dawn*, November 2, 1991, p. 7.

³⁵⁰ Beena Sarwar, "Victimizing the Victims," *The Weekend Post*, November 15, 1991.

³⁵¹ See Lawyers for Human Rights and Legal Aid (LHRLA), *The Flesh Trade: Report on Women's and Children's Trafficking in Pakistan* (Karachi, 1991) (hereinafter LHRLA, *The Flesh Trade*).

³⁵² Macsoon Hussain, *Contemporary Forms of Slavery in Pakistan* (unpublished report, 1991), p. 6.

³⁵³ *Submission of the Anti-Slavery Society to the United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Working group on Contemporary Forms of Slavery, Sixteenth Session* (Geneva, 1990), p. 2 (hereinafter *Anti-Slavery Society Submission*).

illegal immigrants or denouncing them under the *Hudood* laws to compel them to provide desired services. Those who resist are beaten, or worse.³⁵⁴

Trafficking of Bangladeshi women into Pakistan for the purposes of domestic or sexual slavery has been going on for 10 to 15 years.³⁵⁵ It received considerable international attention through an interview by the Washington-based National Public Radio (NPR) with an 11- or 12-year-old Bangladeshi trafficking victim, Fatima; along with 31 other Bangladeshi women, she was discovered in Karachi Central Jail (KCJ). Fatima was kidnapped from her village in Bangladesh, compelled to walk to Pakistan, brought to Karachi, and forced into domestic service in a prostitution den, where she said she was repeatedly beaten by the pimp. She was arrested during a police sweep and, before being placed in KCJ where she was interviewed by NPR, she spent two weeks in a police lock-up in Karachi where she was allegedly beaten repeatedly by the police officers. According to a 1990 report of the Geneva-based Anti-Slavery Society, Fatima was bailed out of the KCJ by a known female trafficker in women and has not been seen since.³⁵⁶

In the early days of this growing female slave trade, when the number of victims was smaller and the phenomenon less well-known, the sale of women and girls used to be blatantly advertised. Public auctions were held primarily in the Karachi slums. A Bangladeshi journalist who witnessed one such auction described it this way:

At night, girls were being brought to the slum and [the] auction took place indoors. There was no bidding as such because there was always an understanding between the procurers and the customers before the auction. Usually the younger and more beautiful girls were sold quickly and at higher prices. The

³⁵⁴ Bhagwandas, "Bengali Women: Paradise Lost?" *Tuesday Review*, January 29 - February 4, 1991. Bhagwandas interviewed several women who were detained in an August 1990 police raid on a brothel in Karachi. One of the women told him, "All the women in the den were forced to live in sin. None of them including me were spared. First the den keeper's men used me and then later other men used to come." She told the reporter that any girl who dared to resist was badly beaten, so that she had to give in to the demands of the operators.

³⁵⁵ *The Daily Star*, an English language daily in Dhaka, Bangladesh, editorial, September 1, 1991.

³⁵⁶ *Anti-Slavery Society Submission*, p. 2.

unmarried and virgin girls were sold for 15,000 - 20,000 taka [1 U.S. dollar = 33.20 Taka]. Also a group of 10 - 20 girls was sold together for 50,000 to 200,000 taka to brothel owners and pimps....Some girls were kept aside before the auction to be taken separately to hotels for wealthy buyers who were given the opportunity to inspect the girls individually. Men from the villages also came to seek wives....A Punjabi man gave 10,000 taka for an ordinary Bangladeshi girl. The auction ended. Those who were sold went with the buyers. The rest returned to the place they came from. Everyone remained silent. It seemed that the girls were helpless and speechless.³⁵⁷

Since the early days, trafficking in women between Bangladesh and Pakistan has increased³⁵⁸ and, as public attention has been drawn to the problem, the practice of selling women has become more clandestine. In Karachi's teeming Bangladeshi slums,³⁵⁹ agents acting on behalf of pimps now keep the women and girls in dens and quietly trade them from these hostels.³⁶⁰

A 1991 British Broadcasting Company (BBC) documentary focusing on trafficking in women in Pakistan interviewed a former Pakistani pimp who said there were anywhere from 150 to 200 girls in

³⁵⁷ Muhammad Ali, "Trafficking in Women, Part II," *The Weekly Detective* (Dhaka, Bangladesh, October 21, 1983).

³⁵⁸ According to social worker Abdul Sattar Edhi, who runs the largest refuge for Bangladeshi women in Pakistan, two years ago 15 to 20 women crossed the borders each month. The number has now sharply risen to 150 to 200.

³⁵⁹ For example, the Bangladeshi *para* near Ayesha Manzil comprises 30 to 40,000 Pakistani Bangladeshis. It reportedly lacks all basic amenities, including electricity, water, gas and sewers. There are only two taps of water and a well in this densely populated area.

³⁶⁰ A recent report by the Lawyers for Human Rights and Legal Aid (LHRLA) notes that "the girls, women and children are brought to Karachi and are kept in the dens of these *touts* [pimps] whose wives and daughters help them in keeping a hawk's eye on these women. They are not given proper food and are overcrowded in a small room. During their stay in the den, their duties are distributed, like cooking, washing, laundry etc. They are abused and underfed. In the meantime the pimps arrange buyers for these girls." LHRLA, *The Flesh Trade*, p. 7.

every den in the slum in which he operated.³⁶¹ The BBC also interviewed a notorious local pimp, Bachuu, who, though denying he was a pimp, admitted to keeping 8 to 9 Bangladeshi girl "tenants" in his house at any given time.³⁶² According to a recent report prepared by the Karachi-based Lawyers for Human Rights and Legal Aid (LHRLA), over 200,000 Bangladeshi women are currently in Pakistan as a result of trafficking,³⁶³ yet it remains a "hidden" problem.

Rather than continuing to auction the girls publicly, the pimps have taken to marrying them off, sometimes to the pimps themselves. This protects both the pimps and their clients from being charged under the *Hudood* laws, which, as noted, penalize, among other things, sex outside of marriage and can carry long prison terms and severe corporal punishment. In an interview with a local Karachi daily, an infamous pimp, Sher Khan, who denied selling girls but was lately arrested for running a brothel, said:

I assist in the arrangements of a girl's marriage. It is a good deed. I collect the money from the bridegroom's parents and pay it to the girl's parents. The *maulvi* (priest) pronounces *nikah* (marriage) and a simple ceremony takes place.³⁶⁴

Bangladeshi women who have been picked up during police raids of prostitution dens or who have escaped after being sold report that they were "married" rather than sold and that the exchange of money between the pimp and the buyer took the form of dowry. A 1988 story in a Karachi daily documents the sale of a Bangladeshi woman in which a *qazi* (Islamic judge) charged 500 rupees (U.S. \$19) to "marry" the girl to her buyer. Reportedly, these "husbands" often buy the girls and then sell them again at a small profit.

At current prices and depending on the virginity, beauty and health of the girls and women, a sale can bring anywhere from U.S.

³⁶¹ British Broadcasting Company, *The Flesh Trade* (television documentary released June 28, 1991).

³⁶² Ibid.

³⁶³ LHRLA, *The Flesh Trade*, p. 46.

³⁶⁴ Cited in Zulqarnin Shahid and Bushra Jabbar Khan, "The Slave Trade," *Mag*, August 1990, p. 57.

\$800 to U.S. \$1,600.³⁶⁵ As noted in a 1991 study of trafficking:

[T]he lot of these women has been reduced to being a full-time commodity which, whenever desired can be bought, sold selected and rejected, used, misused or abused and disposed of at the slightest behest. For a minimal sum, they can be owned or disowned. Not much is the price one has to pay to have her. But such is the price they have to pay for their survival.³⁶⁶

Both the Pakistani and Bangladeshi governments have ratified the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Any Practices Similar to Slavery, and thus have undertaken to suppress slavery in all its forms. As discussed at the close of this section, both governments are well aware of the rising flesh trade between their two countries, yet neither has done much about it. According to the U.S. State Department, "the government of Pakistan with the help of the government of Bangladesh took steps in 1990 to document and repatriate some of the women, but the problem remains largely unsolved."³⁶⁷

In fact, rather than protecting the women and girls by arresting those accountable for their illegal sale and abuse, the Pakistani government is imprisoning the women and girls while allowing most brokers and pimps to go free. According to the National Welfare Survey, 1,400 Bangladeshi women and girls are currently in prison in Pakistan, ostensibly for entering the country illegally or for offenses under the *Hudood* Ordinances.³⁶⁸ According to the Lawyers for Human

³⁶⁵ According to a Pakistani journalist who investigated the flesh trade in 1988, this represents a significant increase in price. In 1988, the going rate was 30,000 to 50,000 rupees, and before that the price was 5,000 to 10,000. For additional details on this apparent price increase, see "Victimizing the Victim," *Weekend Post*, November 15, 1991.

³⁶⁶ Shahid and Khan, p. 19.

³⁶⁷ U.S. Department of State, *Country Reports on Human Rights Practices for 1991* (published February 1992), p. 1561 (hereinafter *Department of State 1991 Country Reports*).

³⁶⁸ The Human Rights Commission of Pakistan's 1990 report notes, "There were hundreds of Bangladeshi women in Pakistani jails, smuggled in by agents. They were subsequently arrested by police the placed under detention in jails....They were booked for illegal entry under the Foreigner's Act and the *Hudood* Ordinance," *Dawn*,

Rights and Legal Aid (LHRLA), in November 1991, there were 80 such women and girls in Karachi Central Jail, many of whom are pregnant or have children or infants who live with them in prison.

In many cases, Bangladeshi women arrested by police suffer prolonged detention, usually because of a lack of counsel or inadequate financial or personal resources to provide bail or surety. In many other cases, like Fatima's described above, the women are simply bailed out by the pimps and returned to the dens. Meanwhile, the pimps go free. To our knowledge, while pimps involved in the sale of Bangladeshi women and girls have been arrested by the police, not one has ever been prosecuted and punished by the government for trafficking in women or for the abuses commonly associated with this practice. As noted by one local observer, the Pakistani government rather than dealing with the causes of the problem, seems bent on "victimizing the victims."³⁶⁹

B. Cases

We interviewed several Bangladeshi women in Lahore and Karachi who had been brought to Pakistan by traffickers and ended up being imprisoned, either on *Hudood* charges or for violations of Pakistan's immigration law. We interviewed these women after they had been released from prison. In a Lahore case, the woman was awaiting the outcome of a *Hudood* case that had been lodged against her by her buyer from whom she had escaped. In Karachi, three young Bangladeshi women were in a local welfare center hoping to be repatriated to Bangladesh.

We interviewed Shamim Akhtar, 20, in Lahore. She was from Dhaka, Bangladesh. She told us that several men abducted her from outside her aunt's home in Dhaka and took her by train to New Delhi, India. She believes she was given drugs, since she was unconscious for the entire trip. From New Delhi they took a bus to an unknown place, got off and started walking to Pakistan. It took them 15 days. There were five men with her who she believes were from Pakistan. At the border, there was a police station with two other Bangladeshi women in it. The men spoke to the police but she did not understand what

November 2, 1991, p. 69.

³⁶⁹ Advocate Nausheen Ahmed, cited in "Victimizing the Victims," *The Weekend Post*, November 15, 1991.

they said. They passed over the border.

Eventually, they made their way to a tailor shop in Sadikabad, Punjab, Pakistan. The men kept Shamim locked up in a room there for about 15 days, until they found a buyer. She was taken to the buyer's house and made to put her thumb print on a blank piece of paper which later turned out to be a marriage certificate. Shamim was with the buyer at his farm for over a year. One night, the mother of the buyer told Shamim that he had sold her to somebody else. She left the house that night and tried to commit suicide by attempting to drown herself in a stream. A passerby saved her and took her back to his house in Sadikabad.

She married the uncle of the man who rescued her and spent one year in Multan with him. Her buyer's brother discovered she was still alive and tried to get money from them, but they refused. He then went to his brother and told him that Shamim was still alive. In the meantime, Shamim and her husband moved to Lahore. In August of that year, police came to her house in Lahore with her contract of marriage to the buyer, saying that she had been married twice. They took her and her husband to the police station and charged them with adultery under the *Hudood* Ordinances. They were jailed for three months. They both obtained bail and ultimately they were acquitted of the *Zina* charge. However, the buyer has filed a suit for restitution of conjugal rights, while Shamim has filed a counter-suit for nullification of marriage: both cases are still proceeding.³⁷⁰

We also interviewed several Bangladeshi women at the Edhi Center in Karachi. The Center was founded by Abdul Sattar Edhi, a well-known Pakistani social worker and philanthropist. Edhi has frequently supplied bail and surety for women accused under the *Hudood* Ordinances, and the Edhi Home is the largest refuge for Bangladeshi women in Pakistan. As of October 1991, there were 80 Bangladeshi women and girls in the Edhi Center in Karachi and another 46 in the Edhi Lahore Center.

We interviewed Neelofar at the Edhi Center in Karachi. She told us that she had been working at a mill in Chittagong, Bangladesh, when a woman advised her that she could earn much more money in Bombay. The next day the woman took her and her younger sister, Jasmeen, to meet a man who turned out to be a *dalal* (pimp). Both sisters were told by the pimp that they would receive jobs as domestic servants. They went from Chittagong to Jessore, Bangladesh by bus, took a train to

³⁷⁰ Interview with Shamim Akhtar, Lahore, October 1991.

India and then walked across the border to Pakistan. It took them a month to reach Karachi. Altogether there were more than 20 women in the group and four younger girls. In Karachi, they were brought to the pimp Bachuu's house in Ayesha Manzil. Women who complained or tried to return home were beaten, although Neelofar said she was not beaten. Men came to the house to buy the women. There were 40 to 50 women there.

The police raided the pimp's house after Neelofar had been there for ten days. She was kept in the police lock-up for four days, and then taken before a magistrate and transferred to the Karachi Central Jail. She was charged with illegal immigration. All the Bangladeshi women were kept together in the prison. One man was arrested in the raid, but not the pimp. The pimps used to come to the jail to tell the women that only the pimps could get them bail. While they were in prison, other Bangladeshi women were also brought there under arrest.

Rabia and Raheema were arrested in the same police raid. Raheema had been brought by her aunt to Lahore. A man came to the house where they were staying and, while her aunt was out, took her to Ayesha Manzil in Karachi with another group of women that included Rabia and Neelofar. None of the women in this group had been sold before the police raid.³⁷¹

The 1991 report by Lawyers for Human Rights and Legal Aid on trafficking in women and children in Pakistan documents 13 cases of Bangladeshi women and girls who were brought to Pakistan against their will and sold into prostitution or marriage. The interviews with the women and girls contain only general information, since the researchers "tried not to disturb them too much as this was not an interrogation."³⁷² Nonetheless, the victim's stories suggest a pattern of illegal inducement, transport, abuse, sale and forced sexual and domestic servitude of women, in some cases with police complicity, in violation of Pakistan's international obligations under the anti-slavery conventions described above.

C. The Role of Law-Enforcing Agencies

There is some indication since 1990 that the Pakistani police have begun to crack down on the trafficking dens. According to newspaper

³⁷¹ LHRLA, *The Flesh Trade*, p. 10.

³⁷² *Ibid.*

reports, on August 16, 1990 the Gulberg police in Karachi arrested 16 Bangladeshi women and 16 men in a raid on a known prostitution den near Ayesha Manzil. All 32 were charged under the *Hudood Ordinances*. On April 2, 1991, Karachi police arrested 49 Bangladeshi girls and 18 agents. The women and men were charged with prostitution and illegal immigration.

In general, however, these police raids appear to be few and far between. Moreover, they prove ineffective, since the pimps are rarely arrested and thus are free to continue business as usual. According to local observers, the police are paid off to leave the pimps alone and, most of the time, the girls as well.³⁷³ When the police do arrest the girls, they are then paid to allow the pimps access to the women while they are in custody, so that the pimps can attempt to persuade the women to be bailed out by them and return to the brothels. The Anti-Slavery Society has also found that "traffickers with the full cooperation of the prison authorities are allowed to visit the women."³⁷⁴

In one case documented in the LHRLA report, 24-year-old Rahena was picked up by two agents in Bangladesh and smuggled with about 30 other Bangladeshi women and 25 to 30 men into Pakistan, where they were taken to Ayesha Manzil. Rahena told LHRLA that she was sexually abused by the pimp, Sher Khan. One night the police raided the den and arrested them all. Rahena says that the pimps visited her several times in prison and told her they are the only ones who can secure her bail and release. She remains in jail.

In another case documented in the report, 29-year-old Pyara Bibi and her mother were brought to Karachi by an agent who promised that they would earn a lot of money. They went with him and traveled in a bus with several other women to the border, which they crossed at night. They reached Lahore and were sent by train to Karachi, where they were taken to Ayesha Manzil. Pyara Bibi said she was sexually abused by the pimp and his brother. One night they were arrested in a police raid. Not long after their arrest, pimps visited them in jail. According to LHRLA, Pyara Bibi and her mother have been released

³⁷³ According to interviews with the Bengali women detained in the August 1990 raid, the police "are in connivance with the traffickers, pocketing money from the sale of women and sending the women to prison when the amount of the bribe does not satisfy them." See "Rescued Slaves Handed Back to Masters," *Dawn*, January 10, 1991.

³⁷⁴ *Anti-Slavery Society Submission*, p. 2.

on bail and have not been seen since.

As these cases suggest, it is not uncommon for pimps to have access to the Bangladeshi women and girls after their arrest. LHRLA director Zia Awan told us that the pimps have more access to his clients than he does. He explained that the pimps often paid off the police to obtain access to the girls. Of the sixteen Bangladeshi women arrested in the August 1990 raid, 3 were released by the police to their "patrons." Of the eighty Bangladeshi women in Karachi Central Jail at the end of 1991, Awan estimates that by February 1992, 30 had already been released by the police to the pimps. Once freed, and without any assistance from the Pakistani government, the women feel they have no other place to go. The only other alternative is to be bailed out by the private Edhi Center, a small facility with meager resources.

As discussed in Section IV of this report, police frequently detain Pakistani women illegally and for long periods in police lock-ups. This appears to be a common practice with Bangladeshi women as well. In addition, there have been several reports of police abuse of Bangladeshi women and girls in their custody, although these allegations are not well-documented. Fatima (see above) reported that she had been detained for two weeks by police in a lock-up and badly beaten before she was taken to Karachi Central Jail. A 1990 newspaper report on trafficking in women alleges that the police operating in the Bangladeshi slums often violate the police rules and illegally detain Bangladeshi women overnight or longer in police lock-ups.³⁷⁵ On September 21, 1991, Agence France-Presse reported a case of three Bangladeshi women arrested in a police raid in Karachi who were later raped in police custody.

Although there is little documentation of the abuse that Bangladeshi women encounter in police custody, one thing is clear: the women and girls, not the pimps, are bearing the brunt of the police raids, since, as noted, the women and girls are arrested and held for prolonged periods while the pimps and their agents generally remain free. In the cases of Neelofar, Rabia and Raheema described above, one man was arrested along with the girls, but he was not the pimp. In both the August 1990 and January 1991 police raids, some men were arrested with the girls, but these were the lower-level agents and not the pimps. The infamous Karachi pimp, Sher Khan, reportedly was arrested before the January raid, but to our knowledge he has not been prosecuted and punished and, unlike many of the women arrested in

³⁷⁵ Shahid and Khan, p. 19.

his dens, is free on bail.

The discriminatory enforcement of Pakistan's prostitution laws has disastrous consequences for the Bangladeshi women, but a deeper problem lies in the misconception of the underlying crime itself. Though in some cases the Bangladeshi women picked-up in police raids may be willing participants in prostitution, their stories point to a consistent pattern of compulsion that often takes the form of physical and sexual violence. In such cases, by arresting the women and girls and charging them with *Hudood* offenses, the police are penalizing the victim and, in effect, absolving the criminal.

The Karachi police officer, Dig Javed Iqbal, who led the August 2 raid on a prostitution den in Karachi filled with approximately 49 Bangladeshi women, told reporters that the police raided the hostel because they had heard that the local pimp "had smuggled some Bangladeshi girls into the country for the purposes of prostitution." When asked by reporters why the women and girls should be arrested if they had been trapped by the flesh trade, the officer replied, "since they had given their consent, they were involved in the racket."³⁷⁶

The police presumption that the Bangladeshi women and girls consent to prostitution -- despite ample evidence to the contrary -- results in charges under the *Hudood* Ordinances against the women and girls. Local human rights attorney Zia Awan, who often acts on behalf of accused Bangladeshi women, believes that charging the women with illicit sex has the effect of turning the criminal justice system on its head.

Moreover, charging women and girls with *Hudood* offenses has the effect of making it nearly impossible for them to serve as witnesses against den operators for the crimes of trafficking, physical and sexual abuse and, in many cases, illegal confinement. This significantly reduces the likelihood that such abuses will ever be eliminated -- even when, as in the August 1990 raid mentioned above, lower level agents are also arrested and charged under *Hudood*. As noted by Awan:

Prosecution of Bangladeshi women and girls for *Hudood* offenses turns the witnesses to a crime into the accused. It serves to protect and shield the big fish, the real culprits, even if the small fries, the local procurers, are brought to book. During detention the pimps are generally allowed to meet the women and girls; they are left at the mercy of the pimps and traffickers.

³⁷⁶ Quoted in "Dreams of Better Life Turn Into Nightmare," *Dawn*, April 3, 1991.

If the women are acquitted, which happens often because of weaknesses in the prosecution's case, they are forced to revert back to the flesh trade. Above all such trials and even convictions do not help to end trafficking in women, which continues to flourish. It might treat the symptom, but it does not cure the disease.³⁷⁷

In the August 1990 raid all the women and agents were released for lack of evidence after having been charged with *Hudood* offenses. No other criminal prosecution was pursued. A recent report by a Pakistani sociologist, *Contemporary Forms of Slavery in Pakistan*, suggests that "there are reasons to believe that a weak case against the den operators is deliberate by police, who stand much to gain from continued trafficking."³⁷⁸

Even if, as many local observers note, the Bangladeshi women often are acquitted of *Hudood* offenses, they often spend prolonged periods in pre-trial detention, like the majority of Pakistani women prisoners. Particularly in the case of women who are charged with illegal immigration under the Foreigners Act, for which the minimum sentences are shorter than those provided under *Hudood*, this pre-trial detention reportedly often exceeds the likely sentence by as much as one to three years.³⁷⁹

In sum, trafficking of Bangladeshi women into Pakistan is a thriving and growing business. The police are clearly aware of the business, but they disproportionately and unfairly penalize the women and girl victims, perversely presume their consent to forced prostitution and arranged marriages, subject them to prolonged and often illegal detention, and fail adequately to punish the criminals. Despite these obvious injustices, and the disastrous consequences for the women and girl victims, the Pakistani and Bangladeshi governments have done little to address the problem. An editorial in a Bangladeshi daily characterized the two governments' response as one

³⁷⁷ "Special Laws to Handle White Slave Trade Demanded," *The News*, April 5, 1991.

³⁷⁸ Hussain, p. 6.

³⁷⁹ Advocate Nausheen Ahmed, quoted in "Victimising the Victims," *The Weekend Post*, November 15, 1991.

of "bottomless indifference."³⁸⁰

D. The Response of the Governments

As noted, both the Pakistani and Bangladeshi governments have adopted the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. The language of both Conventions, though general and imposing a duty on state parties to abide by its provisions only "progressively and as soon as possible," does bind them to prevent, suppress and eliminate slavery in all its forms. The 1956 Supplementary Convention requires state parties to criminalize "the act of enslaving another or inducing another to give himself [sic] or a dependent into slavery,"³⁸¹ as well as slave trading, that is, the act of "conveying slaves from one country to another by whatever means."³⁸²

Bangladesh and Pakistan are also signatories to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others which, unlike the earlier Convention, frames its prohibitions in terms of the specific purpose behind the trafficking: "the gratification of the passions of another."³⁸³ While the Convention's language does not explicitly require state parties to make such behavior a crime, it does bind them to punish it. Parties to the Convention agree to punish any person who prostitutes another (irrespective of consent), anyone who runs a brothel, and anyone who abets any of those acts.³⁸⁴

The Trafficking Convention takes into account the trans-national nature of the problem. The criminal laws enacted because of the Convention are supposed to apply equally to the state's citizens as well

³⁸⁰ *The Daily Star*, September 1, 1991.

³⁸¹ 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Article 6 (hereinafter Supplementary Convention).

³⁸² *Ibid.*, Article 3.

³⁸³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Article 1 (hereinafter Trafficking Convention).

³⁸⁴ *Ibid.*, Articles 1, 2, 3 and 6.

as aliens present in the state's territory.³⁸⁵ In addition, states must "adopt or maintain such measures as required...to check the traffic in persons...for the purposes of prostitution."³⁸⁶ Finally, states agree to repatriate victims of international trafficking and to provide temporary care and maintenance until repatriation takes place.³⁸⁷ While the Convention requires a state party to pay for repatriation at least to the frontier of the victim's country of origin,³⁸⁸ unfortunately it only requires repatriation "after agreement is reached with the state of destination."³⁸⁹

It is beyond the scope of this report to assess the Bangladeshi government's compliance with its international obligations to suppress trafficking in women. A review of available material suggests that the Bangladeshi government has taken some measures to arrest traffickers operating within its own borders.³⁹⁰ However, the government has made little consistent effort to assist the Bangladeshi women and girls already in Pakistan.

The BBC Documentary, "The Flesh Trade," includes an interview with the Bangladeshi High Commissioner in Pakistan, who stated that to his knowledge only one Bangladeshi woman had been reported to his Commission and she had been immediately repatriated. The BBC reporter took the High Commissioner to the Edhi center where he met

³⁸⁵ Ibid., Article 5. The Convention also allows the use of foreign prostitution convictions in prosecutions within the state and it regards prostitution and pandering as extraditable offenses.

³⁸⁶ Ibid., Article 17. This included making "such regulations as are necessary" to protect immigrants, in particular women and children, and all persons in transit.

³⁸⁷ Ibid., Article 19.

³⁸⁸ Ibid., Article 19(2).

³⁸⁹ Ibid.

³⁹⁰ According to newspaper reports in Bangladesh dailies on August 9, 1991, Bangladesh Federal Police rescued 75 persons, including women and children, at a border area with India and arrested four traffickers. On August 13, Bangladesh Federal Police reportedly arrested two traffickers in a border village who "confessed they were members of an international women trafficking" group. On August 23, the Federal Police rescued 15 women and 30 children as they were being smuggled across the border to India and detained three traffickers.

with the many Bangladeshi women and girls staying there. They pleaded with him to send them home and he agreed to do so. However, according to Zia Awan, since the High Commissioner's visit, not a single Bangladeshi women has been repatriated.³⁹¹

The response of the Pakistani government has hardly been better. On April 10, 1991, soon after the April 2 police raid described above, Pakistan's Interior Minister, Chaudry Shujaat Hussain, announced that the Ministry of Interior had asked the provincial governments and border authorities to tighten security to guard against illegal entry, and had proposed to enhance the punishment for illegal entry.³⁹² However, to our knowledge, the government has made little visible effort to punish the traffickers; nor has it adopted any measures to check the traffic in persons, provided facilities for the many victims of trafficking who languish in prison, or made lasting arrangements for their repatriation.

In fact, Pakistani officials have largely ignored the problem of trafficking in women, although they can hardly claim to be unaware of it. They should be well-informed, given regular reports in the Pakistani press on the issue; exposés by the U.S.-based National Public Radio and the BBC (both of which were repeatedly broadcast in Pakistan); detailed reports by reputable national non-governmental organizations, including the National Social Welfare Agency, The Human Rights Commission of Pakistan, and Lawyers for Human Rights and legal Aid; and several national and regional conferences on trafficking designed to improve the regional governments' response. Nonetheless, in a recent public address in Washington, Pakistan's Ambassador to the United States, Abida Hussain, stated:

When a woman whose family has been left behind in Bangladesh arrives in Pakistan, what happens to her may not be very kind, but I am not aware of any organized trafficking going on.³⁹³

³⁹¹ Beena Sarwar, "Victimizing the Victims," *The Weekend Post*, November 15, 1991.

³⁹² "Provinces Asked to Check Infiltration of Bangladeshi," *The News*, April 10, 1991.

³⁹³ Ambassador Abida Hussain, Address at the Asia Society, February 1992.

The reasons for the Pakistani government's passive response to the problem of trafficking in women are no doubt complex.³⁹⁴ However, as with their Pakistani women counterparts in prison, Bangladeshi immigrant women have little, or perhaps even less, reason to expect fair treatment from the criminal justice system. Not only are the police pre-disposed unfairly -- and, most likely, corruptly - - to judge them, and to presume their consent to abuses committed against them while excusing the offenses committed by their abusers, but in the absence of any family or financial means, these women are extremely unlikely to be able to wrest the protections from the system they are due as a matter of right under both domestic and international law.

³⁹⁴ The repatriation issue is particularly controversial because officials in both countries fear that raising it might exacerbate tensions over a second, unrelated repatriation issue concerning the "Biharis" of Bangladesh -- a minority community of about 250,000 which has demanded to be repatriated to Pakistan since 1972. The Biharis remained loyal to Pakistan during the war in which Bangladesh seceded. However, long-standing tensions among Pakistan's other ethnic groups have made Pakistani officials wary of settling the Biharis in Pakistan. Negotiations between the governments have ended in stalemate.

VII. U.S. POLICY

In the cold war politics that shaped U.S. foreign policy in South Asia in the 1950s, Pakistan was identified early on as an important strategic ally of the United States and a buffer against Soviet influence in the region. To that end, U.S. policy has been concerned primarily with supporting Pakistan as a military power in South Asia. Concern for human rights has never figured prominently in the relationship between the two countries. Women's rights, though mentioned in the State Department's *Country Reports on Human Rights Practices for 1991*, have otherwise been all but ignored.

Shortly after its emergence as an independent nation, Pakistan was included in two military alliances³⁹⁵ created by the U.S. to "contain Communism." Under these alliances, between 1954 and 1965 the U.S. provided Pakistan with \$750 million worth of arms, which amounted to over 80 percent of Pakistan's weapons at the height of the U.S. supply program.³⁹⁶ Arms assistance declined after the Indo-Pakistan war of 1965, but a pro-Pakistan policy reemerged when Pakistan agreed to act as an intermediary during the Kissinger negotiations for President Nixon's historic visit to China.

When civil war broke out between East and West Pakistan in 1971, the Nixon administration was reluctant to halt arms shipments to Pakistan for fear of disturbing Kissinger's China meetings. However, as reports of large-scale atrocities by West Pakistani troops against Bangladeshi civilians in East Pakistan reached the United States, outraged members of Congress³⁹⁷ halted the weapons shipments. In December, India, having first signed a treaty of friendship with the Soviet Union, entered the war, and three weeks later Pakistan forces in the east surrendered.

³⁹⁵ These were CENTO (Central Treaty Organization) and SEATO (Southeast Asia Treaty Organization). Pakistan claimed it was the United States' "most allied ally."

³⁹⁶ See Lloyd I. Rudolph and Susanne Hoeber Rudolph, "The Coordination of Complexity in South Asia," in Lloyd I. Rudolph and Susanne Hoeber Rudolph, eds., *The Regional Imperative* (Atlantic Highlands, N.J.: Humanities Press, 1974), p. 52. As Stephen P. Cohen observes, "Pakistan would not have become a serious military power without U.S. assistance." Stephen P. Cohen, "South Asia and U.S. Military Policy," in *Ibid.*, p. 104.

³⁹⁷ Senators Church of Idaho and Kennedy of Massachusetts took the lead in opposing the administration's policy toward Pakistan during the war. See Stanley Wolpert, *A New History of India* (New York: Oxford University Press, 1982), p. 388.

After the war between Pakistan and Bangladesh, the United States resumed economic aid to Pakistan, but Congressional opposition stalled full resumption of military aid.³⁹⁸ In 1973, the United States lifted the embargo only for sales of non-lethal military equipment to Pakistan. In May 1974, India carried out its first test of a nuclear weapon. Concern about a possible nuclear arms race in the subcontinent, and about human rights violations committed under General Zia's martial law regime, led the Carter administration to continue the arms embargo.

In 1978, a year after Zia seized power, civil war broke out in Afghanistan. The war, which intensified following the Soviet invasion in December 1979, drove some three million refugees into Pakistan. Zia's support for the Afghan resistance made him a critical ally for the Reagan administration, which was determined to oust the Soviets from Afghanistan. The arms embargo was lifted, and over the next ten years the United States collaborated with Pakistan in providing the Afghan rebels with \$2 to \$3 billion worth of arms and supplies.³⁹⁹ In 1981, the

³⁹⁸ According to Gerald Heeger, "A GAO report in February 1972, confirm[ed] the shipment of \$4 million in military equipment to Pakistan after March 25, 1971, the alleged cut-off date for such shipments, and the Administration's admission that Jordan had transferred American-supplied jet aircraft to Pakistan during the war (a violation of the Foreign Assistance Act) renewed Congressional resistance to any possible resumption of military supplies to Pakistan." Gerald A. Heeger, "After the 'Tilt': The Making of U.S. Foreign Policy Towards Pakistan, 1972-1974," in Lloyd I. Rudolph and Susanne Hoeber Rudolph, eds., *The Regional Imperative* (Atlantic Highlands, N.J.: Humanities Press, 1974), p. 132.

³⁹⁹ The precise amount of covert aid that was supplied is not known. According to James Rupert, an assistant foreign editor of the *Washington Post* who has covered the Afghan war since 1985, aid to the resistance increased dramatically after 1981: "The United States was at first not so generous. The CIA, apparently unconvinced that the *mujahidin* could really win the war, resisted a large covert aid program. But congressional supporters of the *mujahidin* pushed the Reagan administration to enlarge the program from a reported level of \$50 million in FY 1981 to \$630 million in FY 1987. United States officials cited over the years in the *Washington Post*, the *New York Times* and other media gave figures for the annual military aid allocations that, totaled from FY 1980 through FY 1989, equaled about \$2.8 billion ... This does not include more than \$150 million in food, surplus (non-lethal) Defense Department equipment, and transportation assistance given the guerrillas and their supporters under a program administered by the U.S. Agency for International Development." See James Rupert, "Afghanistan's Slide Toward Civil War," *World Policy Journal*, Vol. VI, No. 4 (Fall 1989), pp. 759-785, fn. 1.

United States approved a \$3.2 billion six-year aid package in economic and military assistance. In 1986 the package was increased to \$4.02 billion for the next six years. During this period, Pakistan ranked as one of the top four recipients of U.S. aid. Because of Pakistan's strategic role in the Afghan conflict, Reagan administration officials ignored reports of widespread human rights abuses committed by the Zia regime and by Afghan resistance forces based in Pakistan.⁴⁰⁰

With the Soviet withdrawal from Afghanistan and the winding down of the war, Pakistan's strategic importance to the United States has diminished. Growing concern in the United States about Pakistan's nuclear weapons capability has dominated relations between the two countries, culminating in the suspension of all U.S. economic and military aid to Pakistan on October 1, 1990.⁴⁰¹ Since then, the United States has obtained Pakistan's support for a regional agreement on nuclear proliferation.

However, despite these indications of continued U.S. leverage, the United States has seldom used that influence to press Pakistan publicly to address human rights concerns. For example, at February 1991 hearings before the House Subcommittee on Human Rights and International Organizations, then Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter appeared to be more concerned with not offending an important United States ally -- particularly one that was supporting United States policy in the Gulf War -- than with raising serious concerns about the erosion of women's rights in Pakistan. While acknowledging that "the *Hudood* Ordinances violate international human rights standards against nondiscrimination and equal justice," he tried to rationalize them as "within the cultural, religious, legal norms" of Pakistani society. When asked about the new *Shariat* legislation introduced by Prime Minister Sharif, Schifter dismissed the potentially serious implications of the

⁴⁰⁰ For a further discussion of U.S. policy toward the Afghan resistance, see Asia Watch, *Afghanistan, the Forgotten War* (New York, 1991).

⁴⁰¹ Under the Pressler Amendment, the administration is required to certify that Pakistan does not possess a nuclear weapon before assistance can go forward. In 1990, that certification did not take place, resulting in an automatic suspension of all aid. However, according to a report in the *Washington Post*, the Bush administration continued to issue licenses for more than \$100 million in commercial sales of military equipment, in apparent violation of the aid cutoff. See Steve Coll and David Hoffman, "Shipments to Pakistan Questioned," *Washington Post*, March 7, 1992.

bill, particularly for women and for the independence of the judiciary in general, by characterizing it as "more moderate" than previous bills. Schifter should have used the opportunity of the hearing to express U.S. concern about laws and practices that have contributed to gross violations of women's rights in Pakistan.

The administration has appropriately expressed concern about other human rights abuses in Pakistan, particularly about attacks on PPP activists and the press in Sindh. These statements are welcome, but they might have carried more weight had they been coupled with a call for thorough investigations and prosecutions of police officers who engage in the abuse of women in their custody. Unfortunately, Secretary Schifter's assessment of the factors relevant to Pakistan's human rights problems -- including "poorly paid and trained police forces and poverty" -- reads instead as an attempt to excuse the Pakistani government for its failure to take action against police forces that routinely violate human rights.

Members of Congress have raised concerns about human rights in Pakistan, most recently in January 1992 when the Chairs of the House Armed Services Committee, the House Foreign Affairs Committee, the House Select Committee on Intelligence and the House Subcommittee on Asian and Pacific Affairs sent a letter to President Bush urging him to address the "pressing issues of human rights and democratic development" -- including executive encroachments on the independence of the judiciary and attacks on political opposition figures and the press -- that have become "obstacles to positive relations" between the United States and Pakistan.

At a time when Pakistan is seeking to improve relations with the United States, the Bush administration should make it clear that renewed ties will depend on real reforms in Pakistan's criminal justice system to bring human rights abuses to an end. Any resumption of U.S. military aid to Pakistan should be conditioned on specific improvements in human rights, including at least the following:

- * The repeal or reform of the *Hudood* Ordinances to eliminate discrimination on the basis of gender and to abolish cruel and inhuman punishments;
- * Prosecution of police who have engaged in abuse of detainees;
- * Taking steps to strengthen the independence of the judiciary and protect the right of due process; and

* Prosecutions of persons involved in the trafficking of women.

The U.S. Ambassador to Pakistan should publicly condemn the abuse of women in police custody and press the Pakistani authorities to investigate all reports of such abuse and prosecute those responsible. Embassy staff should meet regularly with representatives of human rights groups who have documented cases of abuse. The Ambassador should also condemn the trafficking in women and urge Pakistan to investigate vigorously the involvement of police or other state agents in the practice, and prosecute all involved in the illegal transport of women and girls for sexual or domestic servitude.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. In General

This report has documented state-sanctioned violence against women and sex-discrimination by law enforcement authorities in Pakistan. We find that more than 70 percent of women in police custody in Pakistan are subjected to sexual or physical violence; that not a single officer has been criminally punished for such abuse; that the majority of women detainees do not belong in prison in the first place and are there under Islamic penal laws that discriminate against them in law and in practice; and that once in prison, women stand little chance of combatting custodial violence or of obtaining even the most basic protections due them under law.

Asia Watch and the Women's Rights Project, both divisions of Human Rights Watch, call on the government of Pakistan to denounce publicly the sexual abuse of women by state agents as grave and intolerable human rights violations. We urge the government to prosecute criminally officers who engage in sexual or physical abuse of women in custody and to guarantee women equality before and equal protection of the law.

We call on the government to repeal the *Hudood* Ordinances. In so doing, we reiterate that Human Rights Watch does not oppose laws based on religion *per se* as long as human rights are respected and the principle of equality before the law is upheld. The *Hudood* Ordinances clearly conflict with these rights and principles overtly and as applied. They prescribe punishments that are cruel and inhuman under international law. Also, they discriminate overtly on the basis of gender and are applied by police and judiciary in a discriminatory manner, often resulting in the wrongful detention and prosecution of women.

Pending outright repeal of the *Hudood* Ordinances, we call on Pakistan to suspend their application until a number of basic human rights conditions can be met. These include guaranteeing:

- * the full equality of women before the law;
- * the right of women to testify and present evidence in court;
- * the right of women to have their testimony given equal weight to that of men;

- * the removal of all state-imposed deterrents to the reporting of rape (including marital and statutory rape), among them threats of criminal prosecution and police intimidation of complainants and witnesses;
- * the abolition of the *Hudood* punishments of flogging, amputation and stoning.

B. Police and Penal Reforms

The epidemic of unpunished police violence against women in custody reflects the discriminatory behavior toward women by the police and demonstrates their inability to police themselves.

1. Enforcement of Police Rules: We call on the Pakistani government to enforce the laws and rules pertaining to the detention of women in police custody, including:

- * the rule requiring that a first information report (FIR) be filed immediately and a copy of the FIR be provided to the accused woman;
- * the rule requiring presentation of detainees before a magistrate within 24 hours;
- * the prohibition of the incarceration of women overnight in police lock-ups; and
- * the rule that women detainees may be interrogated only by female officers and guarded by female prison guards.

We call on the Pakistani government to ensure that women who allege rape, or other sexual or physical abuse, should be guaranteed immediate medical examination by the physician of her choice. Indigent women should be provided with such medical services free of charge. Medical facilities generally (that is, not only state medical facilities) and licensed private physicians should be able to provide testimony and present physical evidence in court regarding physical and sexual abuse.

We call on the government to enforce those administrative and criminal sanctions that penalize the failure of the police to implement these laws and regulations.

We also encourage the government to remove all gender-discriminatory obstacles to the advancement of women in the police force and to support and expand the work of women police cells within the force by increasing the number of those cells and empowering them to investigate cases in which women are victims.

2. Separate Police and Prosecutorial Functions: To enhance the likelihood that police abuse of women in custody will be investigated and prosecuted in good faith, we urge the Pakistani government:

- * to separate the police and prosecutorial functions; and
- * to strengthen the capacity of state prosecutors to investigate and prosecute sexual and physical abuse of women in police custody and other abuses of police power, including police corruption and intimidation of complainants and witnesses.

3. Police Training: Police should be trained to recognize the criminality of violence against women and to eliminate custodial violence.

C. Prison Conditions

The purpose of our mission to Pakistan was not to assess prison conditions generally, but to examine abuse of women by police officers, particularly in police lock-ups. Yet, it was impossible not to note that prison conditions in Pakistan are generally poor.

1. Standard Minimum Rules: We call on the government to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and to:

- * eliminate the class-based system of allocating prison accommodations;
- * provide adequate food, water, health care, sanitation and accommodations and ensure that these services are not limited or withdrawn as a form of punishment;
- * separate pre-trial and convicted prisoners;
- * require prison wardens to inform prison inmates about the status

of their cases and about the period in which appeals must be filed;

- * enforce the rule requiring a female warden to examine all women prisoners within 24 hours of their admission to the prison and to report any injuries to the district magistrate; and
- * provide pre- and post-natal care for pregnant women, and provide nursery facilities for infants.

Pakistan should require Deputy Commissioners of each region to fulfill their obligation to visit prisons on a regular basis to hear inmates' complaints and to investigate abuses. Access to a female physician should be guaranteed in women's prisons.

D. Judicial Reform

The judiciary of Pakistan -- with notable exceptions -- has failed to recognize the gravity of police abuse of women in custody and has failed to punish such abuse to the full extent of the law. The courts have been lenient to those responsible for crimes of custodial violence and have been found to discriminate against female victims of physical and sexual abuse (whether inside or outside police custody). The Pakistani government has further reduced access to equal justice by adopting policies -- including the creation of parallel religious and speedy trial courts -- that erode judicial independence, violate basic principles of due process and weaken the jurisdiction of the secular courts.

1. Elimination of Impunity: We call on the Pakistani government to ensure that the judiciary gives high priority to eliminating impunity for crimes of custodial violence against women by making good-faith efforts to:

- * punish abusive police officers to the full extent of the law; and
- * administer the law without prejudice toward women.

2. Independence of the Judiciary: To strengthen the capacity of judges to administer the law fairly and to ensure the integrity of their decisions, the Pakistani government should:

- * separate the judicial and executive branches with particular

attention to the manner in which judges are appointed and assigned;

- * uphold the rule of law by ensuring that the judicial branch does not usurp the authority of the legislature to make law.

3. Due Process: We call on the Pakistani government to see to it that judges protect the basic rights of women to a fair trial and end practices that violate due process by:

- * providing every citizen with the option to choose a secular court and eliminating the power of the religious courts to revise the decisions of the secular courts; and
- * eliminating the Speedy Trial Courts and strengthening the capacity of the regular judicial bodies to adjudicate cases in a timely manner.

4. Arbitrary or Illegal Detention: The judiciary should exercise its authority to guarantee that women are not arbitrarily or illegally detained by:

- * ending the practice of detaining women who have not been formally charged. The use of private facilities for this purpose should be ended;
- * ensuring that a finding of probable cause for arrest is made in a timely manner so as to reduce wrongful prosecution, particularly for *Hudood* offenses;
- * enforcing the law requiring that all prisoners should be produced in court before remand to police custody; and
- * ensuring that women are informed of the charges against them and of their right to legal representation, appeal and bail.

5. Bail: Judges should exercise their discretion to set bail in accordance with the financial means of the accused. They should remove all gender-discriminatory obstacles to bail by:

- * recognizing the subordinate economic status of women in Pakistan and women's resulting inability to meet bail that men can afford;

- * eliminating the reliance on the woman's male relative or spouse to provide surety and end the common practice of only releasing women into the custody of male relatives; and
- * not failing to exercise their discretion in considering bail for pregnant and nursing women.

6. Judicial Training: Judges should receive instruction about the narrow limits of the "grave and sudden provocation" defense, particularly with regard to spousal murder, and respect those limits. Judges should also receive training on the criminality of violence against women and gender discrimination.

E. Trafficking in Women

The Pakistani government has ratified the Convention for the Suppression of Trafficking in Persons, yet traffickers bring between 100 and 150 women into Pakistan every month and the government has failed to prosecute the traffickers and failed to assist the victims.

We urge the Pakistani government to uphold its international obligations to eliminate trafficking and make every effort to:

- * prosecute vigorously those involved in the illegal transport and sale of women and girls for sexual or domestic servitude;
- * punish the sexual and physical abuse of victims of trafficking;
- * investigate and prosecute police officers or other state agents implicated in trafficking or in the failure to investigate and arrest traffickers;
- * refrain from prosecuting victims of trafficking; and
- * provide safe haven for victims of trafficking victims and help arrange their repatriation to their country of origin.

F. Legal and Social Assistance

One of the main obstacles confronting women seeking to report custodial violence or attempting to secure their basic due process

rights is that most are not informed of their rights. Accordingly, they are in a poor position to fight for their rights and lack the financial means to secure legal representation. This seriously reduces women's access to equal justice.

- * We urge the Pakistani government to make every effort to provide free legal assistance to indigent women and men.
- * We also encourage the government to increase the number of public shelters to provide safe haven to victims of sexual or physical abuse, who may not be able to return to their families, and for the imprisoned women's children, who have no place to go while their mothers are detained.

G. International Law

Pakistan has yet to ratify the international agreements for the protection of human rights that establish clear obligations to eliminate violence against women and gender discrimination.

To demonstrate its commitment to end custodial violence against women and to ensure women's rights to equality before the law and equal protection of the law, we urge the Pakistani government to:

- * ratify the international agreements that protect women's human rights such as the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Discrimination Against Women; and
- * support the work of local women's and human rights groups in their efforts to monitor violations of human rights suffered by women, as well as the work of such international agencies as the United Nations Commission on the Status of Women and the U.N. Committee on the Elimination of Discrimination Against Women.