

Scarred for life: The impact of the Acid Control and Acid Crime Prevention Act of 2010 on addressing violence against women in Pakistan

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ABSTRACT

This article uses the Pakistani Acid Control and Acid Crime Prevention Act of 2010 (Act of 2010) as an example to discuss the use of *ad hoc* legislation on issues of violence against women in Pakistan. From 2008 to 2011, the Aurat Foundation reported that 158 acid attacks occurred in Pakistan. While one remedy for the victims of acid attacks may be to see their attackers punished, a lasting remedy would be to ensure this type of horrific attack does not happen to anyone else. This article examines the effect of the Act of 2010 on addressing acid attacks as well as its place in the effort to curb violence against women in Pakistan. The danger of legislation in response to specific crime, such as the Act of 2010, is that even if the legislation's goal of prevention is realized, it serves only a small percentage of victims of violence against women by addressing a single type of attack. Since *ad hoc* legislation may lack sufficient development or comprehensiveness to handle the issue, the legislation can fail those it is intended to serve, thereby losing an opportunity to address problems that contribute to violence against women overall. This article argues that, despite its good intentions and limited success, the Act of 2010 falls short of its preventative goal by relying on deterrence, which does not address the range of factors that feed violence against women and which also creates barriers for women who try to pursue justice. Thus, the Act of 2010 falls short of adequately protecting victims of acid attacks and, perhaps more important, misses the chance to effectuate broad-based systemic change that would benefit all women. Therefore, a more comprehensive bill, tailored with barriers to addressing violence against women in mind, should be passed.

Keywords: violence against women, Pakistan, acid attack

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INTRODUCTION

The use of acidic chemicals, a unique and terribly damaging tool in the hands of perpetrators of violence against women, is a growing concern in Pakistan.¹ Efforts to raise awareness include the 2012 Academy Award Winner for Best Documentary (Short Subject), *Saving Face*, which helped shed light on the issue of acid attacks.² Acid attacks are a particularly brutal form of violence: when a victim is doused with acid, the “[a]cid dissolves flesh and bone and can completely destroy facial features such as the nose and eyes.”³ While it leaves permanent physical scars that can affect the victim socially and economically, it also leaves a devastating emotional scar.⁴ And while acid attacks may seem to represent only a small portion of violent acts against women (between 2008–2011, 158 acid attacks were reported in Pakistan),⁵ it must be remembered that the number of attacks given here is only a record of the attacks actually reported.

The Pakistani Government officially acknowledged acid attacks as a separate crime in 2011. On December 12, 2011, the Pakistani Senate unanimously passed the Acid Control and Acid Crime Prevention Act of 2010 (“Act of 2010”), which first went through the National Assembly, to criminalize acid attacks.⁶ On December 26, 2011, the President of Pakistan approved the Act, to become the Criminal Law (Second Amendment) Act, 2011 which goes further than an earlier version of the Act by sentencing convicted attackers to jail for their entire life, or for an imprisonment range with a set minimum of fourteen years and a fine of one million rupees (\$9, 411.76).⁷

The so-called Act of 2010 provides an excellent opportunity to exam how *ad hoc* legislation affects issues of violence against women. This paper will examine the effect the Act has had on addressing acid crime as well as its place in the effort to curb violence against women in Pakistan. While one remedy for the victims of acid attacks may be to see their attackers punished, a lasting remedy would be to ensure this type of horrific attack does not happen to others. The danger of legislation in response to a specific crime, such as the Acid Control and Acid Crime Prevention Act, is that even if the legislation’s goal of prevention is realized,⁸ it serves only a small percentage of victims of violence

¹See trailer for HBO documentary, *Saving Face* (HBO 2012), <http://savingfacefilm.com/> (last visited April 5, 2014). The author recognizes that acid attacks may happen against males as well as females, but the focus of this paper is on the impact of legislation on issues of violence against women by using acid attacks perpetrated against women in Pakistan as an example.

²*Id.*

³Hooma Shah, *Brutality by Acid: Utilizing Bangladesh as a Model to Fight Acid Violence in Pakistan*, 26 WIS. INT’L L.J. 1172, 1173 (2009) (citing Leela Jacinto, *Acid Attacks: A Brutal Crime of Passion, Victims of Acid Attacks Battle to Beat the System* (ABC News television broadcast Sept. 3, 2003)) (citation omitted).

⁴See *id.* at 1174.

⁵Nasreen Azhar, Aurat Publication And Information Service Foundation Annual Report 2011, Violence Against Women In Pakistan: A Qualitative Review Of Statistics 2011, at 8 (July 2012) (Table-1: Number & Percentage of Cases of VAW in Pakistan during 2008–2011) (available at <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/Violence%20Against%20Women%20Annual%20Report%202011.pdf>).

⁶*Pakistan: Women-specific bills passed: Fourteen-year jail term for acid-throwers*, PEACEWOMEN, http://www.peacewom.org/news_article.php?id=4418&type=news (last visited Apr. 5, 2014), *Acid Control and Acid Crime Prevention Act* (an earlier version of the finalized Act), available at <http://bolobhi.org/wp-content/uploads/2012/02/Acid-Control-and-Acid-Crime-Prevention-Act-2010.pdf> (last visited Oct. 14, 2013). U.S. STATE DEPT., COUNTRY REPORTS ON HUMAN RIGHTS PROTECTION FOR 2013, PAKISTAN 51 (2013), available at <http://www.state.gov/documents/organization/220614.pdf> (last visited Apr. 27, 2014) (the U.S. State Dep’t referred to the Act of 2010 as the “Acid Control and Acid Crime Practice Bill”). At the time of submission, the author was aware of a so called Comprehensive Acid and Burn Crime Bill (2012) making its way through the Pakistani system. However, this “comprehensive” bill does not appear to have been passed and implemented by Provinces or Parliament. In fact, a bill by the same name has only just been tabled again in 2014. Therefore this author does not hypothesize on the possible effectiveness of a “comprehensive” bill or its ramification, but focuses solely on the law as it stands now, how it can be improved, and what should be taken into consideration before any further acid legislation is finalized. The author sees any chance to improve upon the current Act as a positive step. See Myra Imran, *949 cases of acid attack reported from 2003 to 2007*, THE NEWS INTERNATIONAL (Apr. 15, 2014), <http://www.thenews.com.pk/Todays-News-6-244246-949-cases-of-acid-attack-reported-from-2003-to-2007> [hereinafter *949 cases*]; Myra Imran, *Around 50 cases of acid burn reported since January*, THE NEWS INTERNATIONAL (July 16, 2013), <http://www.thenews.com.pk/Todays-News-5-190129-Around-50-cases-of-acid-burn-reported-since-January>.

⁷Criminal Law (Second Amendment) Act, 2011, No. F. 24(9) of 2011, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Dec. 28, 2011, available at www.na.gov.pk/uploads/documents/1329729326_678.pdf (inserting § 336B into PAK. PENAL CODE 1860 and amending Schedule II in the PAK. CODE CRIM. PROC. 1898); See *Currency Converter*, XE.COM, <http://www.xe.com/ucc/convert/?Amount=1000000&From=PKR&To=USD> (last visited Oct. 14, 2013) (Converting Pakistani rupee to the U.S. dollar). *Acid Control and Acid Crime Prevention Act*, *supra* note 6 (showing that an earlier version of the bill to be presented to the National Assembly contained no minimum sentence and the fine was 500,000 rupees).

⁸See *infra* Section Two: *A problem in drafting: A failure to take into account system wide barriers and Changes to the Penal Code: The danger in relying on deterrence* for an explanation on the Act’s objectives.

against women by only addressing one type of attack. Because *ad hoc* legislation may lack the development or comprehensiveness in terms of coverage, remedy, and enforcement to handle the issues, the legislation can fail those victims it is intended to serve; in doing so, it wastes an opportunity to address problems that contribute to violence against women as a whole.

This paper argues that if Pakistan continues addressing violence against women with *ad hoc* legislation, such legislation needs to be more fully developed. Furthermore, this paper puts forth that *ad hoc* legislation, if properly drafted, can be effective in not only addressing the specific crime it is targeting, but other forms of violence against women as well because it would address problems that contribute to violence against women as a whole. While the Act of 2010 was well-intentioned and has resulted in some success, the Act of 2010 falls short of its preventative goal by relying on deterrence without addressing the issues that both feed violence against women and create barriers facing women who try to pursue justice. Thus, the Act of 2010 fails to adequately protect victims of acid attacks and loses a chance to effect change that would benefit women as a whole. Therefore, a more comprehensive bill, tailored with barriers to addressing violence against women in mind, should be passed.

This paper will be examining acid crime law in Pakistan as it stands now, the environment in which it operates, and how the law can be improved. First, this paper will discuss the legal system of Pakistan and the difficulties Pakistani women face in the legal system. Next, the paper will address the failure of the Act of 2010 to take into account the acceptance of violence against women in the country, and the Act's failure to address the resulting barriers. Then, the paper will explore the dangers of relying on deterrence alone. Next, the paper will examine the limited success of the Act of 2010. Finally, the paper will conclude by arguing that a more comprehensive acid control act, which covers a greater number of victims and addresses important structural barriers (which would also help women who are subjected to other forms of violence), should be passed in order to serve the women of Pakistan.

1. THE ACID CONTROL AND ACID CRIME PREVENTION ACT OF 2010: WORKING IN A HOSTILE LEGAL ENVIRONMENT

The Act of 2010 was introduced in a legal system that can be described as hostile to eliminating violence against women. As will be discussed, women in Pakistan encounter numerous obstacles when attempting to remedy gender-based violence. Those women facing the devastating effects of an acid attack can then be abandoned by the very legal system that is supposed to enforce legislation designed to protect victims of violence—even in countries that have taken legislative action addressing issues like violence against women, there is a danger that such action will be useless due to a lack of support from entities such as law enforcement and the judicial system, which can leave women with little to no recourse.⁹

Pakistan, as demonstrated by the Act of 2010, has used an *ad hoc* approach to address violence against women; this approach may be the current best option given the legal, cultural, and religious barriers that will be discussed. Nevertheless, Pakistan needs to further develop this approach to address the barriers or such legislation will have little to no effect.

The legal situation: The shortcomings inherent in the founding of Pakistan's Islamic legal system that curtail an adequate legal response to violence against women

To understand the unique issues female victims face in the Pakistani legal system, it is important to examine the history of the country's legal system. In Pakistan, “[g]ender-based subordination and oppression of women are further institutionalized through the structuring and functioning of the legal system. While religion and culture work together to perpetuate violence, the law reflects this cultural acceptance.”¹⁰ Before Pakistan was recognized as a sovereign entity, the move to be governed by Islamic law was underway within the Muslim community of British India in order to, as it has been noted, set themselves apart from the Hindu community and create a distinct identity for the Muslims.¹¹

⁹Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. INT'L L. REV. 57, 58–59 (2007).

¹⁰*Id.* at 76 (citations omitted).

¹¹Martin Lau, *Sharia and National Law in Pakistan, in Sharia Incorporated: A Comparative Overview Of The Legal Systems Of Twelve Muslim Countries In Past And Present* 373, 386 (Jan M. Otto ed., 2010).

In 1937, the Muslim Personal Law Application Act was passed.¹² This act allowed Muslims, who lived in what was previously known as British India, to abide by a set of family laws that were Islamic.¹³

In August of 1947, Pakistan became an independent state.¹⁴ Instead of immediately becoming an Islamic State governed by Islamic law, Pakistan continued to rely on the colonial legal structure.¹⁵ There was also an internal division as to the form the judicial structure would take.¹⁶ The 1956 and 1962 Constitutions of Pakistan made reference to Islam but, as one scholar observed, some of its Islamic provisions were made useless because courts were prevented from enforcing those provisions.¹⁷ The 1973 Constitution is still in force today, but it has been amended numerous times.¹⁸ The current Constitution clearly notes that Islam is the State religion and that Pakistan is an Islamic Republic.¹⁹ As will be discussed throughout this article, the application of religious doctrine can impact the ability of countries, such as Pakistan, to handle issues such as violence against women, and as one scholar observed, when it comes to the role of Islamic law in society, multiple viewpoints exist as to the application of religion, ranging from abandoning religious law to returning to traditional applications of religious law.²⁰ By adopting Islam as the State religion in Pakistan, and taking the approaches that will be discussed, the applicable religious laws have limited the legal options for women subjected to violence and created additional barriers, especially in view of the possible extremist interpretation of the law.

Legal approaches to violence against women in Pakistan

It has been noted that in Pakistan, violence against women has, and can be, handled through the Qisas and Diyat Act of 1990, a body of “Islamic criminal laws dealing with murder, attempted murder, and the crime of causing bodily ‘hurt.’”²¹ Judges in Pakistan have the authority to use *Qisas* (retribution) or *Diyat* (compensation) in sentencing offenders, but it has been noted that the State can no longer take action in the matter if, before the sentence is carried out, the victim pardons his or her attacker, or pursues *Qisas*.²² As will be discussed primarily in Section Two (*Failure of the Act of 2010 to address social norms that fuel violence against women and Changes to the Penal Code: The danger in relying on deterrence*), this can be a problem for women since the family has tremendous influence on individual decision-making in a woman’s life and the family may, instead of choosing a method of relief that satisfies the victim’s need for justice, settle for a result that the family deems acceptable due, perhaps, in some situations, to the idea of family honor or because of monetary considerations.

In addition, women may find themselves powerless to prevent or stop the abuse where society and the law enable it. In countries such as Pakistan, where it has been noted that women are often considered property, it compounds the situation and makes it an even more difficult environment to speak out in, especially when, as will be discussed, various interpretations of Islamic law can be applied.²³ According to *Criminal Law of Islam*, “The Islamic Sharia provides for the right of a husband to admonish his wife in matters wherein Allah makes obedience of husband obligatory for her,”²⁴ and that “Imam Ahmed holds that a husband will not be required to tender explanation for striking his wife,” unless he strikes her for reasons other than correction.²⁵ Admonishment is supposed to be limited to “scourging lightly,” but interpretation of Islamic law leads to debate as to what the punishment for exceeding “scourging lightly” can be.²⁶ It has been noted that there is debate as to whether the law can

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 387.

¹⁵*Id.* at 388.

¹⁶*Id.*

¹⁷*Id.* at 392–93 (discussing how the provisions regarding laws being in harmony with Islam were not to be enforced by a court, but would be implemented based on the recommendations or advice of a board (later a council with regards to the 1962 Constitution), which the legislative bodies could ignore, and how some references to Islam were shortened or omitted later on).

¹⁸*Id.* at 407.

¹⁹*Id.* at 408.

²⁰John Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* Preface X (2d ed. 2001).

²¹Adams, *supra* note 9, at 77 (citation omitted).

²²*Id.* at 77-78.

²³*See id.* at 74-80 (discussing the effects of culture and religion on the law and enforcement of the law in Pakistan).

²⁴Abdul Qadir Oudah Shaheed, *Criminal Law of Islam* Vol. II 231 (1987).

²⁵*Id.* at 234.

²⁶“Scourge” means punishment after a wife’s disobedience and is supposed to be limited so not to cause “grave” injury. *Id.* at 234-36; *see also* MUHAMMAD VALIBHAI MERCHANT, A BOOK OF QURANIC LAWS 4:34, at 122–23 (1991) (uses Rev. Rodwell

hold a husband responsible for “grievous” injury that may occur as a result of punishment.²⁷ Some have extended the premise of “scourging lightly” so far as to say that:

[i]f a husband strikes his wife for the purpose of correction and such corporal punishment results in her death or loss of any organ, he will be under no obligation to pay any penalty provided that the corrective action is taken within the limits prescribed by law and that such action is generally regarded as a corrective measure.²⁸

As will be discussed, the ability to inject personal bias and interpretation into judicial opinions is a concern in cases where an issue is being reviewed by an Islamic court.²⁹ This situation can lead to vastly different outcomes, and without being able to anticipate a successful outcome, it is plausible that women would be less likely to report violence, or could be more easily intimidated by an abuser into silence. In addition to the declaration of Islam as the State religion in Pakistan’s Constitution, which was noted above, another codification of Islamic law came about as a result of the Repugnancy Clause of 1962 that requires all laws be in conformity with Islam.³⁰ This in itself has presented unique challenges for addressing violence against women through the legal system because, as it will be discussed, it can limit the ability of a victim to obtain relief.

The legal system: A major roadblock to combating violence against women

It has been noted that the introduction of Islamic law into legal systems has raised issues of legal doctrine versus the actual application of such doctrine, and Pakistan appears to be no exception.³¹ An earlier version of the Act of 2010 begins by declaring that the “Constitution recognizes the fundamental rights of women and children to security of life and liberty, and dignity of persons.”³² While it notes these critical issues, it does not address the reality of the position of women within Pakistan’s legal system. Pakistan tries to elevate the position of women by safeguarding certain protections by listing them within the Constitution.³³ However, it must be recognized that, while certain

Footnote continued

translation) (noting the Quran’s response on “how to deal with a refractory woman,” and see footnote 1 on page 123 where Merchant comments that scourge refers to “light punishment”).

²⁷SHAHEED, *supra* note 24, at 235-36.

²⁸*Id.* at 236 (noting this is the position of Imams Malik and Ahmed).

²⁹See Shah, *supra* note 3, at 1178.

³⁰*E.g.*, Jennifer T. Sudduth, *CEDAW’S Flaws: A Critical Analysis of Why CEDAW is Failing to Protect a Woman’s Right to Education in Pakistan*, 38 J.L. & EDUC. 563, 569-70 (2009).

³¹See Esposito, *supra* note 20.

³²*Acid Control and Acid Crime Prevention Act*, *supra* note 6 (even though this version is an earlier version of the act, and not the final version as signed by the President which officially changed the Penal Code and Code of Criminal Procedure, the author believes that examining an earlier version provides an additional insight into the drafting and thought process behind the act, and an ability to critique such processes).

³³CONST. ISLAMIC REPUBLIC PAKISTAN, available at <http://www.pakistani.org/pakistan/constitution/> (last visited Apr. 5, 2014)

Equality of citizens: art.25 (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children; Non-discrimination in respect of access to public places: art. 26 (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children; Safeguard against discrimination in services: art. 27 (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth: Provided that, for a period not exceeding 1[forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan: Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex. (2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority; Promotion of local Government institutions:

art. 32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women; Parochial and other similar prejudices to be discouraged: art. 33. The State shall discourage parochial, racial, tribal sectarian and provincial prejudices among the citizens; Full participation of women in national life: art. 34. Steps shall be taken to ensure full participation of women in all spheres of national life; Protection of family, etc. art. 35. The State shall protect the marriage, the family, the mother and the child; National Assembly: art. 51(3) There shall be three hundred and thirty-two seats of the members in the National Assembly, including seats reserved for women and non-Muslims.

protections are guaranteed in the Constitution, Pakistan is governed by “tribal codes, Islamic law, Indo-British law, and customary traditions.”³⁴ Pakistan’s judiciary is composed of “(1) the Supreme Court and (2) the Federal Sharia Court and the Sharia Appellate Bench.”³⁵ There are also tribal courts (*Jirgas*), and while *Jirgas* are legal authorities, Pakistan’s Constitution prevents interfering or having authority in legal matters in the area overseen by *Jirgas*, unless the Parliament grants permission.³⁶

Islamic law is known as *Shari’a*.³⁷ As one scholar noted, *Shari’a* “courts were installed within the Pakistani judiciary for the purpose of determining whether a law or court decision is contrary to Islamic principles.”³⁸ Furthermore, in carrying out their duties, these courts have the power to examine the proceedings in secular courts.³⁹ Another scholar points out that the *Shari’a* courts have also been enabled to examine statute books and impact new legislation.⁴⁰

It has been noted that while the Federal Shariat Court (FSC) should not be able to examine the Pakistani Constitution or procedural laws, this limitation is not enforced.⁴¹ One example of the growing power of the FSC is in the area of family law where one scholar commented that the family laws applied by the secular courts appear to be going by the wayside, and what would be left is the Islamic law applied by the FSC,⁴² which could present a problem for women because of, as discussed throughout this article, varying interpretations and implementation of religious law. Additionally, the FSC has also launched attacks against certain acts that Pakistan has taken to protect women, such as the 2006 Protection of Women Act:

In 2010, the Federal Shariat Court of Pakistan declared several of the provisions in the 2006 Act unconstitutional and sought to reinstate provisions of the Hudood Ordinances such as the requirement that “women who have been raped... produce four witnesses to support [their] testimony – and the reestablishment of the right of police to arrest women on a charge of adultery on the basis of their report of rape.” While the Court has no legal authority to overturn the provisions of the 2006 Act, the decision itself is an example of the ongoing discrimination against women at high levels of governance – an important factor when analyzing the continued violence against women in Pakistan.⁴³

A main concern surrounding the *Shari’a* courts, as one scholar noted, is that judges are not always experts in Islamic law and instead apply their own interpretations.⁴⁴ This is dangerous because the resulting judgments can reflect a “judge’s [own] social and gender bias.”⁴⁵ The situation can be especially concerning for women in Pakistan when there is the potential for *Shari’a* judges to substitute their own possibly biased perspective. One example of this problem can be illustrated by a verse of the Holy Qur’an, which reads: “(Husbands) are the protectors [a]nd maintainers of their (wives) [b]ecause Allah has given the one more (strength) [t]han the other, and because [t]hey support them from their means.”⁴⁶ Extremists have been known to “use this verse to justify ‘male dominance and the subjugation and marginalization of women.’”⁴⁷ The problem is further compounded by the fact that it has been noted *Shari’a* is considered to be “superior” to secular law, and therefore any secular law that is seen to be in conflict with *Shari’a* will be considered invalid,⁴⁸ which could allow biased interpretations, or an extremist’s interpretation, to supersede secular law. This could lead to the biases

³⁴Shah, *supra* note 3, at 1177 (citation omitted).

³⁵*Id.* at 1176.

³⁶*E.g. id.* at 1179.

³⁷*E.g.,* Sudduth, *supra* note 30 at 570.

³⁸Shah, *supra* note 3, at 1176 (citation omitted).

³⁹*E.g. id.* at 1177–78.

⁴⁰Martin Lau, *The Islamization of Laws in Pakistan: Impact of the Independence of the Judiciary*, in THE RULE OF LAW IN THE MIDDLE EAST AND THE ISLAMIC WORLD: HUMAN RIGHTS AND THE JUDICIAL PROCESS 150, 151 (Eugene Cotran & Mai Yamani, eds. 2000).

⁴¹*Id.* at 152.

⁴²*Id.*

⁴³Rebecca Rittenhouse, *Pakistan’s Failure to Protect Women From Violence: The Case of Mukhtar Mai* 2, HUMAN RIGHTS FOUNDATION (2012) available at http://humanrightsfoundation.org/uploads/HRF_Pakistan_legal_report_Mukhtar_Mai.pdf (last visited Apr. 5, 2014) (alteration in original) (citation omitted).

⁴⁴Shah, *supra* note 3, at 1178.

⁴⁵*Id.* (citation omitted)

⁴⁶Sudduth, *supra* note 30, at 571 (alteration in original) (*quoting* THE MEANING OF THE HOLY QUR’AN, Surah An-Nisa 4:34 (Abdullah Yusuf Ali trans., new rev. 9th ed. 1997)) (citation omitted).

⁴⁷*Id.* at 571 (*quoting* L. Elizabeth Chamblee, Note, *Rhetoric or Rights? When Culture and Religion Bar Girls’ Right to Education*, 44 VA. J. INT’L L. 1073, 1108 (2004)).

⁴⁸*Id.* at 570–71.

and interpretations becoming ingrained into the structural systems in Pakistan, further complicating women's position in society and possibly limiting avenues to relief from violence.

The position of women in the legal system is made more difficult in the rural areas by the presence of the *Jirgas* because, as one scholar points out, *Jirga* council members require no legal training.⁴⁹ As mentioned in Section One, the Constitution of Pakistan prohibits interference by the Supreme Courts in *Jirga* jurisdictions, and the police have no authority there unless Parliament makes an exception. As one scholar describes, such was the case of Mukhtar Mai, who was gang raped after a tribal council found it to be appropriate retribution when the woman's brother was wrongly accused of an affair and "disgraced" the tribe.⁵⁰ Initially, law enforcement did not act, but when news reached the media the police finally intervened to address the matter.⁵¹

This represents a major enforcement issue for the Acid Control and Acid Crime Prevention Act because acid attacks occur primarily in rural Pakistan, where tribal law is usually enforced.⁵² In 2011, there were reports of 32 cases of acid attacks in the Punjab area alone.⁵³ The earlier version of the Act of 2010 had no provision to make the Act of 2010 enforceable in the tribal areas, nor does the Act as signed by the President.⁵⁴ Because of this gap, women in the tribal areas where acid attacks are more prevalent do not even have the opportunity to be protected by the Act of 2010.

2. A FAILURE AT PREVENTION: THE ACT OF 2010'S FAILURE TO ADDRESS SYSTEM WIDE BARRIERS

As previously noted, religious and cultural acceptance can continue the cycle of violence against women.⁵⁵ In Pakistan this is especially true, and the failure to address such issues and rely on deterrence is why the Acid Control and Acid Crime Prevention Act will likely fail at its main goal of prevention. Furthermore, drafting legislation such as the Acid Control and Acid Crime Prevention Act without taking into account these system-wide barriers will not alleviate the problem of violence against women.

A problem in drafting: A failure to take into account system wide barriers

An earlier version of the Act of 2010 described the reasons and objectives for its passage. It claimed that acid attacks are becoming more common because there is no "proper legislation on this subject."⁵⁶ However, acid crime is likely on the rise not solely as a result of a lack of deterrence, but because of the acceptance of violence against women in the country. As discussed earlier, religious and legal structures have "institutionalized" an acceptance of violence against women.⁵⁷ This ends up bolstering the sexist societal and cultural structures that affect the women of Pakistan every day.

Failure of the Act of 2010 to address social norms that fuel violence against women

In Pakistan, women can have very little say in their own lives, which is illustrated in part by the fact that a woman's destiny is first controlled by her father, and then by her husband and in-laws.⁵⁸ According to the U.S. State Department, in 2013,

[w]omen who tried to report abuse faced serious challenges. Police and judges were sometimes reluctant to take action in domestic violence cases, viewing them as family problems.... Authorities usually returned abused women to their abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were hesitant to report abuse due to fear of dishonoring the family.⁵⁹

⁴⁹Shah, *supra* note 3, at 1180.

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.* at 1181.

⁵³Azhar, *supra* note 5, at 11.

⁵⁴*Acid Control and Acid Crime Prevention Act, supra* note 6; Criminal Law (Second Amendment) Act, 2011, *supra* note 7.

⁵⁵Adams, *supra* note 9, at 76.

⁵⁶*Acid Control and Acid Crime Prevention Act, supra* note 6, at 4: Statement of Objects and Reasons.

⁵⁷Adams, *supra* note 9, at 76.

⁵⁸Sudduth, *supra* note 30, at 564.

⁵⁹U.S. STATE DEPT., *supra* note 6, at 48.

Due to such social norms, victims can end up being powerless in their pursuit of justice.

Pakistan's societal structure also serves to bar potential avenues for reducing the incidence of violence against women. The Pakistani Constitution guarantees the right of all to an education.⁶⁰ However, in agreeing to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), "the [reservation] for Islamic [S]hari'a directly affect[s] the female child's education by socializing her in a culture and religion based on inequality."⁶¹ For the women in Pakistan, an equal education could be an essential tool for combating violence against women because "as female education improves... 'female citizens become more politically active and aware of their rights.'"⁶² This leads to empowerment.⁶³ If these societal issues were somehow addressed in legislation, this could possibly help to chip away at the barriers to addressing violence against women.

The challenges of law enforcement and the failure of the Act of 2010 to overcome them

Even when laws such as the Act of 2010 are passed to protect women, these laws will have little effect without the support of law enforcement, and acid crime will continue.⁶⁴ In Pakistan, women may find law enforcement reluctant to act because, as one scholar noted, there is a belief held by some of the police officers that violence against women is "sanctioned by the law and the culture."⁶⁵ When a woman is able to file charges with the police, she can still find her report mishandled or inaccurately recorded.⁶⁶ The difficulties women face are "further aggravated by the fact that the majority of police officials do not possess the requisite training to effectively deal with gender specific violence."⁶⁷

Pakistan could have followed the Bangladesh model to deal with police-enforcement issues. As one scholar notes, within the provisions of Bangladesh's version of the Act of 2010, there is an Acid Crime Control Tribunal that has the power to investigate police officers that it believes acted inappropriately regarding acid crimes,⁶⁸ which could be a useful policy for Pakistan to employ since this policy could provide an incentive for police officers to take reports of acid crime seriously. Instead, with all of the barriers facing acid crime victims in Pakistan and all the problems addressing violence against women in the country, the Act of 2010 failed to alleviate any of these issues when it just amended the Pakistani Penal Code to rely on a theory of deterrence.

Changes to the Penal Code: The danger in relying on deterrence

The addition of section 336B to the Pakistan Penal Code 1860 defines the punishment for acid crimes.⁶⁹ The Act of 2010 relies on a theory of deterrence as threats of a significant jail sentence and a hefty fine are likely meant to reduce the number of acid attacks.⁷⁰ However, a reduction in the perceived frequency of acid attacks may actually be a reduction in reporting because there are now

⁶⁰PAKISTAN CONST. art. 37, available at <http://www.pakistani.org/pakistan/constitution/part2.ch2.html> (last visited Apr. 5, 2014).

⁶¹Sudduth, *supra* note 30, at 576–77 (alteration in original) (quoting Chamblee, *supra* note 47, at 1084).

⁶²*Id.* at 565 (quoting David Montero, *Pakistani Girls' Schools in Radicals' Sights*, CHRISTIAN SCI. MONITOR, May 31, 2007, at 6).

⁶³*See id.* at 564–65, 572–573.

⁶⁴*See e.g.*, Shah, *supra* note 3, at 1182–83 (arguing that law enforcement has a "crucial role in the apprehension and successful prosecution of the perpetrators of acid violence").

⁶⁵Adams, *supra* note 9, at 79 (citation omitted).

⁶⁶Shah, *supra* note 3, at 1183.

⁶⁷*Id.* at 1182 (citation omitted).

⁶⁸*Id.* at 1192.

⁶⁹Criminal Law (Second Amendment) Act, 2011, *supra* note 7 ("Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.").

⁷⁰"General deterrence" is defined as "[a] goal of criminal law generally, or of a specific conviction and sentence, to discourage people from committing crimes." BLACK'S LAW DICTIONARY 480 (8th ed. 2004). *See generally* Jessica Leinwand, *Punishing Horrific Crime: Reconciling International Prosecution With National Sentencing Practices*, 40 COLUM. HUM. RTS. L. REV. 799, 808 (2009) ("As is the case with retributive justifications, deterrent and condemnation-based objectives rest on certain assumptions about the manner in which sentences are determined. Selectivity and proportionality are worthy concerns, as deterrence is difficult if only a handful of perpetrators stand trial, or if some persons are punished more leniently than others."). The assertion that Pakistan is relying on deterrence is re-enforced by the fact that the minimum fine from an earlier version of the Act was increased in the finalized version, and a minimum jail sentence was established. *See* Criminal Law (Second Amendment) Act, 2011, *supra* note 7; *Acid Control and Acid Crime Prevention Act*, *supra* note 6.

added incentives to intimidate or silence a victim since the consequences of conviction for an acid attack are dire.

The Act of 2010 would have to be strictly enforced for the community to realize that there has been a mentality change within the system.⁷¹ Additionally, addressing violence against women in a piecemeal fashion, without addressing or alleviating the barriers to ending violence against women, likely reduces the possibility that society will believe that an overall mentality shift has occurred. Therefore, society is neither likely to change nor will perpetrators be deterred because they likely will not take the threat of prosecution or hefty sentencing seriously.⁷² In fact, the Act of 2010 further codifies potential problems that victims already face by making the Act of 2010 susceptible to *Qisas* and *Diyat*.

An early version of the Act of 2010 declared “whereas it is expedient to institutionalize measures which prevent and protect women and children from acid crimes and for matters connected therewith or incidental thereto; it is hereby enacted as follows.”⁷³ The Act of 2010 “institutionalizes measures” by codifying acid attacks as a crime through the addition of section 336A to the Pakistan Penal Code 1860, as signed by the President.⁷⁴ By allowing acid crime to be categorized as “causing hurt,” acid crimes could be dealt with through *Qisas* and *Diyat*.⁷⁵ As mentioned earlier in Section One, this could potentially prevent criminals from being prosecuted if the State is unable to intervene. Even when charges are successfully brought against an attacker, it has been noted that since women are usually not given a voice in the process, the family, which may be influenced due to monetary considerations, dictates the result.⁷⁶ This can result in a woman being at the mercy of her family, as families have been illustrated throughout this article to have tremendous influence over women and thus the criminal justice process: the family essentially decides what a woman’s suffering is worth.

By its focus on deterrence, the Act of 2010 is relying on society to correct itself, while at the same time overlooking the measures society uses to perpetuate the cultural acceptance of violence against women. The changes to the Penal Code, which could possibly allow the use of alternative processes such as *Qisas* and *Diyat*, illustrate the failure to acknowledge these options as barriers to ending violence against women, and the cultural acceptance of violence against women in the legal system. Despite the above-mentioned issues, the limited success of the Act of 2010 should be recognized.

3. A SIGN OF LIMITED SUCCESS: GOVERNMENT INVOLVEMENT AND COMMUNITY PARTNERSHIP

The fact that Pakistan is taking some initial steps to address the issue can be viewed as a success. In addition, the U.S. State Department has observed that, the Government of Pakistan has developed shelters to provide victims of violence with services such as medical treatment and counseling.⁷⁷ In the case of acid violence, the documentary *Saving Face* notes that even prior to the enactment of the new legislation, women took an active role in addressing acid violence. For example, a female attorney, Ms. Sakar Abbass, fought for one of the acid attack victims depicted in the film; and female politician, Ms. Marvi Memon, played a crucial role in advocating for the Acid Control and Acid Crime Prevention Act and getting it introduced in the National Assembly.⁷⁸ Furthermore, convictions for acid attacks have reportedly increased from six percent of reported cases to eighteen percent, and it has also been reported that in regards to acid attacks, the police are making strides to properly register “FIRs” under the right law.⁷⁹

⁷¹See generally, Leinwand, *supra* note 70.

⁷²See generally, *id.*; Black’s Law Dictionary, *supra* note 70.

⁷³*Acid Control and Acid Crime Prevention Act*, *supra* note 6 (this purpose was not specifically stated in the Criminal Law (Second Amendment) Act, 2011).

⁷⁴Criminal Law (Second Amendment) Act, 2011, *supra* note 7 (inserting §336A into the PAK. PENAL CODE 1860):

Whoever voluntarily causes hurt by means of fire or by any heated substance, or by means of any poison or any corrosive substance or acid, or by means of any explosive or arsenic substance or by means of any substance which is deleterious to the human body to come into contact with, to inhale, to swallow, or to receive into the shall be called to have caused hurt by dangerous substance.

⁷⁵See Adams, *supra* note 9, at 77.

⁷⁶Shah, *supra* note 3, at 1189-90 (noting that the family may not follow a victim’s desire to see her attacker prosecuted or consult her with regards to a compensation package, and that a guardian could waive *Qisas*).

⁷⁷U.S. STATE DEPT., *supra* note 6, at 48.

⁷⁸*Saving Face Synopsis*, <http://savingfacefilm.com/about/synopsis> (last accessed Apr. 5, 2014); *Acid Control and Acid Crime Prevention Act*, *supra* note 6. See also *Pakistan: Women-Specific Bills Passed: Fourteen-Year Jail Term for Acid-Throwers*, *supra* note 6.

⁷⁹*Tough Law Sees Acid Attack Conviction Rate Triple in Pakistan*, ACID SURVIVORS TRUST INTERNATIONAL <http://www.acidviolence.org/index.php/news/tough-law-sees-acid-attack-conviction-rate-triple-in-pakistan/> (last accessed Apr. 5, 2014); 949 cases, *supra* note 6 (referring to a report shared by Chairperson of the Acid Survivors Foundation that claims in

CONCLUSION

To prevent acid attacks, Pakistan has to address more aggressively the structural systems that perpetuate violence against women rather than rely on ineffective legislation. Although the 2013 statistics on acid attacks have not yet been released by the Aurat Foundation, it is unlikely that Pakistan will see a significant decrease in acid attacks by relying solely on the deterrence provisions of the Act of 2010; it should be noted that the Aurat Foundation reported acid attacks nearly doubled in 2012, with 83 cases being reported, which represents an approximate 89 percent increase in violence against women cases between 2010 and 2012.⁸⁰ As mentioned in Section Two, for deterrence to have the possibility of working, potential perpetrators would have to believe an actual mentality shift had occurred concerning the norm of accepting violence against women. Yet, even if numbers do decrease, and there is a claim that deterrence has been effective, deterrence may be providing the illusion that legislation is effective; in actuality, reporting rates may have decreased, or perpetrators may have shifted to using another tool that has yet to be criminalized. The current legislation is not an effective tool to prevent acid attacks because it fails to address the cultural acceptance of violence against women seen in the legal system, societal norms, and law enforcement.

Taking an *ad hoc* approach to violence against women does not necessarily put Pakistan at a disadvantage. In countries such as Pakistan, which has strong institutional impediments to addressing violence against women, *ad hoc* legislation may be an effective option to both chip away at those barriers and change the mindset of the country. While addressing a specific tool of violence, doing so could also improve the overall situation of Pakistani women. However, doing so will require that legislation be tailored that is mindful of the specific barriers to violence against women. This will encourage passage of comprehensive legislation that can effectively target acts of violence against women as well as the other factors that promote such violence.

Pakistan has numerous options available to accomplish this. First, the Pakistani government needs an active plan to monitor and improve enforcement because of the previously noted law enforcement barriers to addressing violence against women. Training is needed for the police to understand how to address and react to violence against women, and to understand all potential legal remedies and rules. Pakistan may also want to consider Bangladesh's Tribunal model, which was previously mentioned, or establishing something similar in order to have recourse against police who do not enforce the law or protect women.

Most important, legislative attempts to address violence against women, such as the Act of 2010, must include tribal areas. Otherwise, a portion of the population is left unprotected. For the judiciary, requiring any Shari'a court judge to be an expert in Islamic jurisprudence could lead to a reduction in personal interpretations and judgments that reflect biases. In addition, while visible changes to the government and legal structures can lead to a shift in societal norms, the Pakistani government can take additional steps to assist in the transition by continuing to strengthen the services noted by the U.S. State Department and by developing programs that foster a culture of non-violence.

By enacting a broader legislative scheme, the Pakistani government can pass laws that effectively combat issues such as acid attacks, as well as alleviate violence against women in the country as a whole. Comprehensive legislation that is finalized with the barriers to addressing violence against women taken into account would represent a significant change in the structural consciousness that

Footnote continued

2013, 71 percent of FIRs were registered correctly. Furthermore, the article notes the report highlights an increase in reporting, which is then equated to a trend in a break down of some of the barriers to addressing violence against women. However, it is not made clear by the article if this increase in reporting can be definitively or solely tied to a structural change where people now feel comfortable coming forward. An increase in reporting could be the result of other factors. For example, it could be possible that if an increase in the overall number of acid attacks occurred, some sort of increase in successful reporting may be observed).

⁸⁰Rakhshinda Perveen, Aurat Publication and Information Service Foundation Annual Report 2012, Beyond Denial: Violence Against Women in Pakistan, a Qualitative Review of Reported Incidents 53 (May 2013) (Table 47: Reported Cases of VAW (2008-2012)) (available at www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/Annual%20Report%202012%20VAW%20pdf.pdf) (Aurat Foundation website last accessed April 27, 2014 to check what statistics have been released) (the author acknowledges that an increase in reported cases could indicate a variety of things, such as an increase in the overall number of attacks, victims feeling more comfortable coming forward, police properly registering information (which, as previously noted, appears to be occurring), or a combination thereof).

could have a larger impact and a significant trickle-down effect, which, if dealt with appropriately, could lead to an impressive reduction in violence against women overall and could end horrendous crimes such as acid attacks.⁸¹

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⁸¹See generally ESPOSITO, *supra* note 20.