

WOMEN IN NORTHERN PAKISTAN - PROTECTED BY TRIBE, TERRITORY OR TALIBAN?

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I. INTRODUCTION

The human rights of women anywhere in the world are at particular risk because of historical failures to recognise them and because of women's inherent difficulties in ensuring them themselves. However, women in Northern Pakistan¹ are exceptionally vulnerable to abuse due to the pervasive culture in the area, the failure of the state to enforce the rights due to them and the current militant crisis. This study aims to discuss the scope and application of women's rights under customary, state and Taliban law and to suggest new, cooperative methods of improving the access women in Northern Pakistan have to exercise and enjoy their rights.² While there may not be an objective global standard of women's human rights, various human rights charters³ have identified certain rights which enjoy at least nominal acceptance and it is these which will be used as the markers to guide the study.

II. THE DENIAL OF RIGHTS

First to be addressed are political rights. Women in Northern Pakistan do not enjoy the full range of political rights to which they are entitled. In a characteristically patriarchal country it is not surprising that women face difficulties participating in the political sphere. In Northern Pakistan, an area that holds even closer to the patriarchal ideal, the obstacles women face are virtually impenetrable. Despite the fact that

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¹ For the purposes of this study Northern Pakistan will denote Khyber Pakhtunkhwa (formerly known as the North-West Frontier Province, NWFP), the Federally Administered Tribal Areas (the FATA) and Gilgit-Baltistan (formerly known as the Northern Areas). It should be noted that federal law has no application in the FATA (see Article 246/247 Pakistani Constitution).

² Figures correct as of December 2009.

³ E.g. UDHR 1948, ICCPR 1996, ICESCR 1996.

women of the area have previously proved themselves willing⁴ and able⁵ political actors and have even led campaigns at times,⁶ many men actively discourage women from political involvement as they believe it undermines their control. Furthermore, expressing an opinion is considered highly inappropriate for women and therefore both voting and standing for election are strongly objected to. Voting is considered ‘an act of rebellion’⁷ which men believe they must prevent and ‘have the right to enforce...by violence’.⁸ Dr Simin Mehmud Jan, a female candidate for the Peshawar assembly from the Pakistan Muslim League (PML-Q) attributes her defeat in the election to customary law, saying; the area is ‘ingrained with *Pukhtunwali*, and not yet ready to accept a woman as their political representative’.⁹ *Pukhtunwali* is the strict social code of the Pashtun people, the largest people group in Northern Pakistan. Cultural identity and behavioural codes are integral to the Pashtun, and many of the other ethnic groups in the area¹⁰ and although there have been political changes and urban development ‘the base cultural norms and beliefs remain the same’.¹¹ This code of honour includes the vital precepts of *badal* - revenge, which is often disproportionate;¹² *nang* - honour, which is considered of vital importance to possess;¹³ *melmastia* - hospitality, which must be shown to anyone that asks for it, including enemies (an important point in the current conflict where members of the Taliban may seek refuge in local tribesmen’s houses); *nanawatee* - supplication, where an enemy may ask for forgiveness from their victim; *yaghistan* - land of rebellion, which is an expression of their fierce desire to remain lawless and under the

⁴ SWA Shah, *Muslim League in NWFP* (Royal Book Company, Karachi 1992) 142.

⁵ *ibid.*

⁶ *ibid.* 143.

⁷ Amnesty International, ‘Respect, Protect, Fulfil – Women’s Human Rights State Responsibility for Abuses by “non-state actors”’ IOR 50/001/2000 (September 2000) 10.

⁸ *ibid.*

⁹ SM Jan, PML-Q candidate; Cf. A Yusufzai, ‘Rights-Pakistan: Women Push For Political Space In Patriarchy’ (7 March 2008) Inter Press Service News Agency <<http://ipsnews.net/news.asp?idnews=41496>> accessed 21 October 2010.

¹⁰ B Grima, *Secrets From the Field* (OUP, Oxford 2004) vii.

¹¹ *ibid.* ix.

¹² A Ahmed, *Millenium and Charisma Among Pathans: A Critical Essay in Social Anthropology* (Routledge and Kegan Paul, London 1976) 57.

¹³ *ibid.* 75.

command of no other; and the *jirga* – a tribal council of elders, whose decisions are binding upon the community. Adherence to the code is of paramount significance and is considered more important than loyalty even to one's own family.¹⁴ Although Ahmed believes that exposure to central authority will serve to dilute Pashtun values,¹⁵ Synnott among others, has found that although *Pukhtunwali* has been 'seriously eroded in recent decades, the code's obligations remain relevant today.'¹⁶

The Alliance for Protection of Human Rights (APHR) has called for an investigation into the agreement some candidates in the 2002 election had signed refusing women the right to vote in several districts of Northern Pakistan.¹⁷ However, the state has not intervened effectively to guarantee the franchise is protected.¹⁸ Although they purport to offer women equality by granting them seats in the National Assembly, the proportions granted are far from equal. Out of 342 seats in the National Assembly only 60 are reserved for women. Women comprise 47 percent of the population of KP and the FATA¹⁹ and yet are only constitutionally guaranteed 18 percent of the seats in KP²⁰ and are granted no representation from the FATA at all.²¹ This means that in the entirety of Northern Pakistan only 8 women are constitutionally guaranteed election to enable them to effect change in the laws which apply to them. Furthermore, those attempting to stand for election face considerable danger; at least one female candidate has been killed in the

¹⁴ A Ahmed, *Pukhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society* (Routledge and Kegan Paul, London 1980) 91.

¹⁵ Ahmed (n 12) 79.

¹⁶ H Synnott, *Transforming Pakistan: Ways Out of Instability* (The International Institute for Strategic Studies, Routledge, London 2009) 115; Private conversations with senior Pakistani officials, December 2007, 107.

¹⁷ SM Jan (n 9); Cf. A Yusufzai (n 9).

¹⁸ Asian Centre for Human Rights, 'Pakistan: the Land of Religious Apartheid and Jackboot Justice' (Delhi 2007) <<http://www.achrweb.org/reports/Pakistan/Pakistan-CERD2007.pdf>> accessed 21 October 2010.

¹⁹ A Yusufzai (n 9).

²⁰ Population Census Organisation <http://www.statpak.gov.pk/depts/pco/statistics/pop_by_province/pop_by_province.html> accessed 21 October 2010.

²¹ Although the FATA now have 12 seats in the National Assembly, none of them are reserved for women. Moreover, as federal law has no application in the FATA, one may argue what benefit *any* seats in the National Assembly are. Khyber Pakhtunkhwa has 8 seats reserved for women out of a total of 43 seats. (see National Assembly of Pakistan, <<http://www.na.gov.pk>> accessed 21 October 2010).

attempt.²² In the 2001 elections, women in Mardan and Swabi were threatened by tribesmen with dire consequences if they stood for election or even voted.²³ The authorities did nothing to intervene, with the result that virtually no women contributed to those elections.²⁴ Although petitions were filed in the Peshawar High Court to ask the court to consider the election void, no action has since been taken.²⁵ It has also been found that some men have actually abused the positions reserved for women by forcing their wives to stand for election, and ruling by proxy in their place.²⁶ This is a gross abuse of the few political rights women are granted and one which all parties involved should be doing more to prevent. The state's failure to recognise and ensure women's rights here is made clear from the fact that even the few who were able to secure seats in the former NWFP Assembly were explicitly told they did not belong there but were only given them 'in dispensation'.²⁷

Amartya Sen, a prominent Indian economist and philosopher and winner of the Nobel Memorial Prize in Economics for his work on welfare economics, has argued that political rights are important not just for the 'fulfilment' of rights but also the 'formulation' of rights²⁸ and are vital to allow women to determine their own life-desires. However, it appears that in Northern Pakistan customary law, state law and strict ideological forces combine to deny women this opportunity. The government *has* stepped in to an extent by opening the franchise, at least in theory, to all. However, it remains to be seen what the current political climate will hold for the future of women's political participation. It appears from the pattern of the last few years, since the resurgence of the Taliban, that the more power the militants gain, and the greater the disruption in the area due to army operations, the less political freedom women will enjoy.

²² Amnesty International, 'Pakistan: Insufficient Protection of Women' (April 2002) 13.

²³ Aurat Foundation, 'Gross violations of women's electoral rights in Swabi, Mardan and Dir, NWFP' (2001).

²⁴ Amnesty International (n 22).

²⁵ *ibid* 14.

²⁶ *ibid*.

²⁷ National Commission on the Status of Women, Pakistan, 'Annual Report' (2007) <www.ncsw.gov.pk> accessed 21 October 2010, 37.

²⁸ A Sen, 'Freedoms and Needs' (1994) *The New Republic* 31, 38.

One issue which seriously inhibits women's political influence is their preclusion from owning land, which has been described as 'the main source of economic and political power'.²⁹ The ancient tribal custom of *rivaj*³⁰ allowed only males members of the community to own land. However, after initial unsuccessful attempts to move from *rivaj* to Shariah, or Islamic law,³¹ which accords women a small portion of land, the Islamic model has come to be more widely accepted.³² Despite a tendency, especially in the West, to fault customary law, it ought to be noted that the approach in the state system is far from favourable. The Pakistani Constitution guarantees women the right to property in conformance with Islam and is stipulated in part by the West Pakistan Land Revenue Act 1967. However, the complexities of this legislation allow women's rights to easily be evaded³³ and in practice many families still deny women the right to own or inherit land.

The second area of deprivation for women is with respect to economic and employment rights. Most human rights conventions demand equal rights for women both *to* employment and *within* employment. However, in Northern Pakistan, and in the FATA especially, equal rights to employment are very difficult to uphold as 'there are few livelihood opportunities available to the people',³⁴ whether male *or* female. Furthermore, women in Northern Pakistan are widely discouraged from working. Those in urban areas do have slightly greater opportunities. One study found the numbers of men and women working in urban areas to be almost equal.³⁵ In rural areas, however, this is not the case.³⁶ A study conducted in the Hazara District found there were no women *at all* working in technical institutions where over 500

²⁹ F Barth, *Political Leadership Among Swat Pathans* (The Athlone Press 1965) 24

³⁰ Cf. Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger* (Oxford University Press, Karachi 2008) 250

³¹ Government of the NWFP, 'Supplementary Report of Dir-Swat Land Disputes Enquiry Commission', Part II, (Swat), Vol.3, Home, Tribal Affairs and Local Government Department, 2-3.

³² A Ahmed, *Resistance and Control in Pakistan* (Revised edn Routledge, London 1991) 319.

³³ National Commission on the Status of Women (n 27) 63.

³⁴ Asian Centre for Human Rights (n 18) 48.

³⁵ M Akram and MA Jadoon, *Socio-Economic Statistics of Hazara District* (Institute of Development Studies NWFP Agricultural University, Peshawar 1988) 193, Table 5.

³⁶ *ibid.*

men were employed.³⁷ The Pakistan Medical Research Council (PMRC), a governmental body undertaking a study in a rural area of what was NWFP, found that women had 'no role in family income generation'.³⁸

In regard to state efforts to ensure women's rights to employment, the case of a joint government-NGO programme between the Pakistan Medical Research Council and the All-Pakistan Women's Association is illuminating. Together the two organisations established a village educational and economic programme to train women to read and sew. The programme had been set up after local women themselves asked for help in learning both literacy and income-generating skills. With the cooperation of both the organisations and the village elders, one local woman was trained in order to implement the programme. It was welcomed by those in the local area as well as the provincial government and proved a success. However, after two years the woman who had led it moved to the city and no one was found by the villagers or the government to replace her.³⁹ Although there may be many reasons why the programme was not resurrected, the fact remains that women's education and employment in Northern Pakistan does not seem to be a priority of the Pakistani government.

There is evidence that development in the area is helping to increase the number of women in employment.⁴⁰ This increase is likely to continue 'particularly if the present pace of penetration is maintained'.⁴¹ However, it could easily be argued that this structural change is the result of natural modernisation from increased outside influence and not to successful governmental attempts to increase the access women have to employment.

Furthermore, the rise of Islamic fundamentalist thinking has led to stricter attitudes towards women working. Those who are perceived to be working for a Western organisation are especially at risk. On 2 July 2000, leaders of Tehrik-e-Nafaz-e-Shariat-e-Muhammadi (TNSM - the Movement for the Enforcement of Islamic Law), a militant group whose

³⁷ *ibid* Table 73.

³⁸ Pakistan Medical Research Council, 'Impact of Health Service Provision on Mothers and Infants in a Rural Village in North West Frontier Province, Pakistan' (1998) *Public Health Nutrition*, 1(1), 51-59, 57.

³⁹ Pakistan Medical Research Council (1998) 57.

⁴⁰ Cf. Ahmed (n 14) 355.

⁴¹ Ahmed (n 14) 355.

aim is to enforce strict Islamic law in Pakistan, gave their followers a mandate to forcibly marry any woman involved in an NGO.⁴² Their main target was the NGO *Khwendo Kor* which seeks to help educate and empower women through running community-based schools. NGO staff received threats and were twice attacked with grenades in 2001 and subsequently were forced to suspend their work for a time.⁴³ Another women's NGO, the Aurat Foundation, also felt the increasing insecurity in June 2000 after tribal elders announced that they 'promoted obscenity in the guise of human rights'⁴⁴ and ought to be banned. On 30 March 2001, a human rights worker in Mardan was attacked for running an NGO for women's welfare and employing women.⁴⁵ Such counterproductive attitudes from both tribal elders and militant groups seriously impede women's access to employment.

In regard to equal rights for women *within* employment, customary law does not provide for this, most likely because women are not generally expected to work. Federal law does not discriminate against women and in fact sets high goals for equal treatment in the Constitution.⁴⁶ However, without enforceability and opportunity these principles are likely to remain ineffectual.⁴⁷ While Article 27 of the Constitution allows certain posts to be reserved for members of either sex, in *Naseem Firdous v Punjab Small Industries Corporation PLD 1995 Lab 584* it was shown that it could in fact be used to *deny* women posts. On 18 July 2001, the government ratified the International Labour Organization (ILO) Equal Remuneration Convention, 1951 on equal pay for men and women. However, without adequate employment opportunities this is unlikely to prove as beneficial as it may initially sound. Furthermore, since the dawn of more militant politics, the government has not ensured that women continue to be granted their full rights. When the Muttahida Majlis-e Amal (MMA), a religious-

⁴² Amnesty International (n 22) 15.

⁴³ *ibid* 15.

⁴⁴ *ibid* 16.

⁴⁵ *ibid*.

⁴⁶ See Pakistani Constitution 1973, Article 34, 35, 37 and 38.

⁴⁷ H Stokke and A Tostensen (eds), *Human Rights in Development* (Kluwer Law International/Nordic Human Rights Publications The Hague/Oslo, 1999) 266; S Sardar Ali *Gender and Human Rights in Islam and International Law* (Kluwer Law International 2000).

political party, elected as part of a coalition in the NWFP Assembly in 2002, started forcing women working in international NGOs to wear the Afghan *burqa* and prohibited some women from working outright the central government failed to prevent these abuses of their rights.⁴⁸ With the increase of Taliban influence in the area, the plight of women is expected to deteriorate.

The government have however taken some positive steps. On 4 January 2009 the government approved the decision to extend the Benazir Income Support Programme (BISP) to the FATA, despite Taliban threats to kill women receiving the aid.⁴⁹ Members of the National Assembly (MNAs) had previously blocked the BISP due to misconceptions about how it would be distributed. However, Ms Farzana Raja, Chairperson of the Benazir Income Support Programme, assured them that women would not have to leave the home to receive the aid, it would be delivered to their door, likening it to the Taliban-accepted *zakat* system of redistributive funds.⁵⁰ In this way, tribal concerns were satisfactorily met and 3.5 million households now receive Rs1000 per month, provided directly to the women of the home.⁵¹ This is an excellent example of societal, state and Taliban concerns all being taken into consideration and an outcome being determined that both meets these concerns and benefits women. The BISP should allow women to help contribute to the economic status of their families without violating the cultural and religious practices of their communities. However, it does not grant them the full economic freedoms they are due. Martha Nussbaum, an American philosopher and advocate of women's rights, argues that 'we need to ask not just what family members feel about their situations, zbut what they are actually able to do and to be.'⁵² If women are keen to learn and work such rights should be granted to them. At present neither the tribal nor the state system, and certainly not the Taliban, are willing to provide them with a

⁴⁸ M Marsden, 'Women, Politics and Islamism in Northern Pakistan' (2008) 42 *Modern Asian Studies* 405.

⁴⁹ SI Raza, 'BISP to be Launched for Fata Women' *Dawn* (Islamabad 5 January 2009) <<http://www.dawn.com/2009/01/05/top8.htm>> accessed 21 October 2010.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² M Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, New York 2000) 65.

full enjoyment of their rights.

In regards to education, the socio-religious culture in Northern Pakistan has systematically denied women their full educational rights. A woman's life, according to Pakistani society, is restricted to the traditional capacities of daughter, wife and mother, for which education is deemed unnecessary. In fact, it often proves counterproductive in fulfilling these requirements as educated women are considered 'hardly acceptable as wives'.⁵³ Some people in the area maintain that customary law forbids the education of women,⁵⁴ while others view education as 'a futile pastime'.⁵⁵ At best, education is viewed with 'indifference, even ill-concealed contempt...as deviation from the [cultural]...model of behaviour'⁵⁶ and also with great suspicion as an unwelcome Western- or state-led institution, bringing with it 'a certain 'Pakistanization' of values'.⁵⁷ There is a sentiment common among people in Northern Pakistan that they are a separate nation, strongly opposed to state 'invasion' into their way of life. As Pashtun nationalist leader, Khan Abdul Wali Khan expressed in 1972; 'I have been a Pashtun for six thousand years, a Muslim for thirteen hundred years, and a Pakistani for twenty-five'.⁵⁸ Hence, loyalty is felt among many to be due first to their tribal elders and laws, then to Shariat and only finally, begrudgingly, to the state of Pakistan.

School attendance is therefore not high among girls *or* boys, especially in the more remote areas. However, for girls it is especially low.⁵⁹ Although more of an effort is made to educate boys,⁶⁰ 'the necessity of an education for girls is even less understandable for the parents in this society'.⁶¹ As the National Commission on the Status of Women reported in 2007, 'female education has suffered most due to perceived opportunity costs and the feudal disdain for equality and

⁵³ W Manig, *Stability and Change in Rural Institutions in North Pakistan* (Alano, Göttingen 1991) 55.

⁵⁴ Ahmed (n 14) 325.

⁵⁵ *ibid.*

⁵⁶ Ahmed (n 12) 28.

⁵⁷ Ahmed (n 14) 322.

⁵⁸ Cf. I Hilton, 'The Pashtun Code' *The New Yorker* (3 December 2001) 59.

⁵⁹ Manig (n 53) 54.

⁶⁰ Grima (n 10) 18.

⁶¹ Manig (n 53) 55.

gender related issues.⁶² Khalid Ashraf also found school attendance highly gender-imbalanced, with only 2 percent of girls in the FATA aged 5-9 in school compared to 19.2 percent of boys.⁶³ The availability of schools among the genders also remains unequal,⁶⁴ particularly as the opening of a girls' school has 'wide-ranging political implications in the Tribal Areas.'⁶⁵ Ahmed, who himself opened the first two girls' schools in Orakzai in 1977, found the lack of female teachers 'acute'⁶⁶ as they were extremely reluctant to work in such a hostile and dangerous environment.⁶⁷ Furthermore, Manig found the withdrawal rates of girls from school to be 'striking'⁶⁸ and due to the expense. Parents are not willing to spend the money needed for school on their daughters and at the same time lose a vital source of labour from the home.

More recently, education has begun to be 'slowly but generally accepted... [especially] in the areas more exposed to outside influences'.⁶⁹ Nonetheless, girls' schools that *are* operating in the area continue to find it hard to maintain state standards as the tribes continue to exert their own authority and methodology.⁷⁰ Manig predicts that since 'many parents do not recognise the value of schooling'⁷¹ the situation is unlikely to change soon.⁷²

Despite the obvious barriers to recognising women's educational rights posed by customary law, the state cannot expect to take no responsibility themselves. Ordinary people in Northern Pakistan or NGOs working in the area are not able to tackle the educational deficit alone, the government must recognise its own responsibility and put in place educational programmes which will ensure the standard of education women receive is raised. For example, although the Alliance

⁶² National Commission on the Status of Women (n 27) 43.

⁶³ K Ashraf, *Tribal People of West Pakistan: A Demographic Study of a Selected Population* (The Board of Economic Enquiry, North-West Frontier, Peshawar University, Peshawar, 1962) Table 12.

⁶⁴ Grima (n 10) 55.

⁶⁵ Ahmed (n 14).

⁶⁶ *ibid* 324.

⁶⁷ *ibid*.

⁶⁸ Manig (n 53) 55.

⁶⁹ Ahmed (n 14) 319.

⁷⁰ *ibid* 323.

⁷¹ Manig (n 53) 55.

⁷² *ibid*.

for the Protection of Human Rights, a civil rights movement, protested in the province of *Punjab* against educational standards, ‘it has not protested against denial of rights to women by extremists in the Talibanised parts of the NWFP and Fata’.⁷³ Undoubtedly there are risks for those attempting to educate women in such a volatile environment but this only reiterates the need for state assistance. In 1990, the Supreme Court held in *Shirin Munir v Government of the Punjab* PLD 1990 SC 295 that admission to co-educational establishments had to be equally accessible to women. While this established an encouraging precedent, such decisions are not enough to effect change, positive action must be taken. As Ahmed stresses, ‘there should be education...people should be protected by the law, as no poor or powerless man can survive here.’⁷⁴

Government involvement in Khyber Pakhtunkhwa has certainly improved literacy, however, and enabled considerably higher rates than those found in the lawless FATA.⁷⁵ The current literacy rate in Khyber Pakhtunkhwa is 18.82 percent for women.⁷⁶ In the FATA it is only 3.00 percent; the lowest regional rate in the whole of Pakistan. However, KP’s 18.82 percent is considerably lower than the national average of 32.02 percent. According to Nasser Yousaf, a political correspondent, these pitiful levels substantiate claims that even though the government had had knowledge of the poor literacy rates in the area for several years those vital statistics ‘were made little use of.’⁷⁷ Certainly, Northern Pakistan has been marginalized in regard to education.

Nonetheless, the governmental presence in the area, refusing to give way to the anti-educational views promulgated by the Taliban, is vital in the current crisis, where the educational prospects for girls have seriously deteriorated. Since the resurgence of the Taliban, over 350 schools have been demolished, their teachers killed and students forbidden from attending.⁷⁸ Two female teachers in Bajaur were shot

⁷³ ‘NGOs’ Indiscreet Silence on Women’s Plight’ *Dawn* (6 August 2008) <<http://www.dawn.com/2008/08/06/fea.htm>> accessed 21 October 2010.

⁷⁴ Ahmed (n 14) 355.

⁷⁵ Manig (n 53) Table 6.

⁷⁶ Government of Federally Administered Tribal Areas <<http://www.fata.gov.pk/index.php?link=9>> accessed 21 October 2010.

⁷⁷ N Yousaf, ‘Educating the Frontier’ *Dawn* (9 November 2009) <<http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/11-educating-the-frontier---il--03>> accessed 21 October 2010.

⁷⁸ See n 73; ‘Schools Reopen in Swat, Lower Dir’ *Dawn* (2 August 2009).

dead on 4 November 2009, despite high security in the area.⁷⁹ Incidents such as this continue to occur. Sufi Mohammad, a Taliban leader and founder of the TSNM, was released from prison in April 2008 in return for signing an agreement not to destroy girls' schools. He broke it almost immediately⁸⁰ and formally renounced peace in April 2009 due to his frustration with the government not implementing Shariat courts quickly enough. The Khyber Pakhtunkhwa Education Minister Qazi Asad has claimed that all schools have now reopened and are in the process of being rebuilt. However, attendance has been poor and many that *are* open are being held in tents, with continued dangers for those flouting Taliban law.⁸¹ Recently there have been concerns that militants may have used poisonous gases to prevent girls from attending school, as has been seen previously in Afghan schools. Although the cause of the girls' collapse in one school has not yet been conclusively identified, several girls were hospitalised after poisonous gas was found in the area.⁸² Manig, among others, believes that with the rise of Islamic *madrassas*, where education is heavily weighted towards Arabic and Islamic studies, these destructive policies will only continue to spread.⁸³ However, tribal leaders do not appear to fully support the Taliban's stance on women's education. Shuja Nawaj, a political analyst, conducted an interview with 23 Maliks, or community leaders, from North Waziristan. They specifically asked for additional schooling for girls, destroyed schools to be rebuilt and more female doctors to be provided.⁸⁴

In regard to women's access to health care, challenges have been presented by cultural views, the government's apparent lack of concern and the stringent position of the Taliban towards women's health. The general standard of health in Northern Pakistan is considerably worse than in other areas of the country. The doctor-population ratio in the FATA is six times lower than Pakistan's national ratio and health conditions rise in direct proportion to the availability of government

⁷⁹ A Khan, 'Militants Kill Two Women Teachers in Bajaur' *Dawn* (5 November 2009).

⁸⁰ *ibid* 33.

⁸¹ See n 78.

⁸² R Norton-Taylor, 'Poppy Harvest Quiets Fighting' *Guardian Weekly* (30 April 2010).

⁸³ Manig (n 53) 53.

⁸⁴ S Nawaz, 'FATA: A Most Dangerous Place: Meeting the Challenges of Militancy and Terror in the Federally Administered Tribal Areas of Pakistan' *Centre for Strategic and International Studies* (7 January 2009) 30.

health provision in the area.⁸⁵ The Pakistan Medical Research Council found malnutrition in women and children in KP to be widespread.⁸⁶ They have advised local government legislators that raising the educational standards of women would 'improve economic growth of the family and the community and promote good health'.⁸⁷ In Hazara district some government-run health initiatives did prove successful, especially those concerning family planning and basic health care.⁸⁸ However, it is clear that more involvement by the government is needed; the burden to amend this cannot be placed solely on local tribes because without proper education and funding they do not have the power to provide healthcare for their own people. Amnesty International have repeatedly argued that the state authorities are required to take more responsibility for the health of women in Northern Pakistan, stepping in where the local people are unable.⁸⁹ The government have highlighted both health and education as special areas of concern in the 18th Amendment to the Constitution,⁹⁰ passed on 19th April 2010. However, clear strategies have yet to be actualised.

Furthermore, both the Taliban and some traditional Mullahs, or religious leaders, have exacerbated the situation by actively preventing women from studying to become doctors or working as doctors. Even the state-sponsored Council of Islamic Ideology has forbidden women from seeing a male doctor. Due to the considerable influence they possess⁹¹ these combined factors suffice to deprive millions of women of essential health care.⁹²

One of the main areas in which women's social and cultural rights are repressed is within marriage. In Northern Pakistan women are not viewed as separate, autonomous individuals but are seen by many as economic assets. As such, a woman's marriage is 'nothing but a bargain

⁸⁵ Asian Centre for Human Rights (n 18) 48; Government of Federally Administered Areas, <<http://www.fata.gov.pk/index.php?link=9>> accessed 21 October 2010.

⁸⁶ Pakistan Medical Research Council (n 38) 51.

⁸⁷ *ibid* 58.

⁸⁸ Akram (n 35) Table 4.

⁸⁹ Amnesty International (n 7) 6.

⁹⁰ 'Senate Approves 18th Amendment Bill' *Dawn* (16 April 2010).

⁹¹ *Asia Times* (23 August 2001).

⁹² Amnesty International (n 22) 5; *Dawn* (4 August 2001).

between two families',⁹³ which is often contracted for political ends and alliances.⁹⁴ A bride can be 'sold' by her family in exchange for cash, cattle or even in exchange for a bride or bridegroom from the other family. In fact, one study found that only 20 percent of marriages had taken place without *any* exchange of money, goods or other people.⁹⁵ The custom of paying a bride price, although 'slowly but steadily losing hold',⁹⁶ is still common in the tribal areas. Among religious minorities the treatment of women is even worse. Discrimination, forced conversions and forced marriages are common.⁹⁷ Christian women are the 'least likely to obtain state protection'.⁹⁸

Furthermore, women are also seen as being receptacles of the family honour and are often used as pawns in the attempt to maintain honour in the community. For example, although 'society disapproves of keeping a daughter at home after she is fifteen or sixteen',⁹⁹ it is considered highly degrading to give one's daughter to someone of a lower social status. Therefore, they will refuse to do so even if marriage options are few. In order to counter this possibility, many mothers 'book' brides at birth. This 'ordering' of a bride is accepted by society as 'tantamount to the formal engagement'.¹⁰⁰ This places further restrictions on women's marital freedoms as a violation of the agreement will very often be avenged by the aggrieved family by way of murdering the bride or a male relative of hers. Revenge or *badal* can also be invoked as punishment for a man's crime by forcibly marrying a woman from that man's family. Such women are often treated terribly by their new relatives.¹⁰¹

Since women are generally viewed as merely a commodity in Northern Pakistan, this has led some to participate in an illegal trade in women. These women are often refugees from Afghanistan, who tend to have less male protection, or are women from poor families in districts

⁹³ Ashraf (63) 52.

⁹⁴ Barth (29) 107.

⁹⁵ Ashraf (n 63) 52.

⁹⁶ Ahmed (n 14) 284.

⁹⁷ Asian Centre for Human Rights (n 18).

⁹⁸ Amnesty International (n 22) 44.

⁹⁹ Ahmed (n 14) 249.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid* 256.

such as Chitral, whose parents are grateful for the profit they fetch. Some are sold as cheap slaves to Punjabi households but others are used to fuel the national and even international sex trade.¹⁰² While NGOs have been working to rescue girls caught in this web,¹⁰³ governmental organisations do not seem to have made any attempt to do so. *The Frontier Post*, an English-language Peshawar newspaper, published the names of human traffickers in Khyber Pakhtunkhwa in November 1994 but no action has since been taken and Amnesty International found ‘considerable evidence that at least at the local level, the authorities know about and connive with the trade in women’.¹⁰⁴ Even Members of the National Assembly (MNAs) have directly taken part in the promulgation of these practices. Mir Hazar Khan Bijarani, of the Pakistan People’s Party gave away five young girls in *vami*, which is the giving of a girl in marriage by way of compensation. Another MP, Israrullah Zehri, allowed three teenage girls to be buried alive for choosing their own husbands. The Government, instead of condemning these acts, appointed them as Cabinet ministers.¹⁰⁵ Federal law permits a woman to marry a man without her guardian’s consent, however it is widely considered as tantamount to fornication. When Sher Bano attempted to have her elopement upheld by the Peshawar High Court on 6 August 1997, she was murdered by her brother just outside the court.¹⁰⁶ On the rare occasion that such a case reaches a court, it has been found that the lower courts remain ‘seeped in these cruel customs’¹⁰⁷ and supportive of the practice.¹⁰⁸ However, the higher judiciary have taken up some cases *suo-moto*. In *Gulzarani v Amir Baksh* (1997) the Supreme Court held that a woman who had been sold into marriage had the right to an annulment.¹⁰⁹ However, the judges who have handed down decisions

¹⁰² Marsden (n 48) 423.

¹⁰³ *ibid* 424.

¹⁰⁴ Amnesty International, ‘Pakistan: Women in Pakistan, Disadvantaged and Denied their Rights’ ASA 33/023/1995 (December 1995) 4.

¹⁰⁵ N Iqbar, ‘SC Orders Arrest of Jirga Members: Handing Over of Minor Girls to Victim’s Family’ *Dawn* (16 August 2007).

¹⁰⁶ Amnesty International (September 1999) 6.

¹⁰⁷ ‘Women Protection Act No Help to Swara Victims’ *Dawn* (16 February 2007).

¹⁰⁸ United Nations, ‘Good Practices in Legislation to Address Harmful Practices Against Women in Pakistan’, expert paper prepared by S Bokhari, Progressive Women’s Association of Pakistan (Islamabad 22 May 2009).

¹⁰⁹ See Pakistani Constitution, Articles 2A and 11.

such as this one have to be cautious; some judges considered too activist have been threatened or replaced and those who remain have become fearful of interfering.¹¹⁰

Another way in which women can be traded is by *swara*, whereby a woman is given in marriage in order to repay a man's debt. For example, in Sukkur in 2000, when 6-year old Asma's family failed to repay a debt they owed another man, Asma was forcibly married to him, a 60-year-old man. Despite Asma being no more than an infant, the marriage was immediately consummated.¹¹¹ Although this practice has been made a cognizable offence in section 310 of the Pakistan Penal Code by the Criminal Law Amendment Act 2004 and was outlawed for use by *jirgas* by the Peshawar High Court in November 2000, *swara* continues to this day.¹¹² In Mardan and Swabi alone 60 cases of *swara* were reported between May and August 2006.¹¹³

In customary law weddings also differ from the Islamic model stipulated in federal law, in that the wedding takes place *after* the girl is taken to the groom's house. This makes it much harder for her to refuse her consent.¹¹⁴ However, there is one tribal marital practice which seems to be more beneficial for women. Although both Islam and Pakistani state law allow for polygamy (according to many religious scholars), polygamy in Northern Pakistan is extremely rare.¹¹⁵ According to customary law, a man *is* permitted to remarry if his wife is barren¹¹⁶ but, in general, monogamy is the norm. This provides women with a better outlook than under state law, whereby a man, if he is Muslim, may take up to four wives without being required to prove he has sufficient resources to support them all and treat them equally.

These conditions may suggest that women ought not to marry, however, in Northern Pakistani society a woman *must* be married in order to take her rightful place in the community.¹¹⁷ Furthermore, there

¹¹⁰ See *Ali Nawaz Gardezi v Muhammad Yousuf* (1963) PLD SC 51; *R v Secretary of State for the Home Department, ex parte Ghulam Fatima* [1984] 3 WLR 659; 2 All ER 458.

¹¹¹ Amnesty International (n 22) 22.

¹¹² S Bokhari (n 108).

¹¹³ 'Women Protection Act No Help to Swara Victims' *Dawn* (16 February 2007).

¹¹⁴ Ahmed (n 14) 250.

¹¹⁵ Manig (n 53) 52.

¹¹⁶ Ahmed (n 14) 251.

¹¹⁷ Grima (n 10) 12.

is no question of a woman returning to her own family once she is married without the express permission of her husband.¹¹⁸ This makes women extremely vulnerable to domestic abuse. They cannot safely object to, or escape from, their treatment and those attempting to do so are often silenced. The Inspector General of Sindh Police, Aftab Nabi, does not seem to have understood fully the difficult situation women find themselves in when he declared in May 2001 that he ‘deplored that women did not report all cases of domestic violence’.¹¹⁹

Moreover, since a marriage is seen as a transfer of property, divorce is ‘a social impossibility’.¹²⁰ Those attempting to divorce their husbands are often killed. The divorce rights under state law are far more extensive.¹²¹ Unfortunately the attitudes of the community in practice often override the protection afforded by law. The case of Samia Sarwar, the daughter of the director of Peshawar’s Chamber of Commerce, is a cruel example. Samia was abused by her husband and as such was legally entitled to a divorce under Pakistani law. However, she was shot dead before the hearing outside her lawyers’ office in April 1999. Public opinion was overwhelmingly supportive of her murder and to this date no attempt has been made by the state to arrest her killers, though their identity is well-known. Once again, one can clearly see that justice cannot be divorced from politics in Northern Pakistan, and that very often influence wins against the truth.

Aside from the injustices suffered *within* marriage, women who are not validly married are exposed to grave dangers. The offence of *karu-kari*, or adultery carries a fine of death both in customary and Islamic law and it is widely considered acceptable throughout Pakistan for individuals to take the punishment of adulterers into their own hands. These honour killings are such a part of Pakistani society that they occur not just in the tribal areas but all over Pakistan and even in Pakistani communities in the diaspora.¹²² However, it is especially serious in Northern Pakistan where ‘the concept of women as a commodity, not human beings endowed with dignity and rights equal to those of men, is

¹¹⁸ Grima (n 10) 48.

¹¹⁹ Amnesty International (n 22) 39.

¹²⁰ Ahmed (n 14) 250.

¹²¹ See *Naseem Akhtar v Muhammad Rafique* (2006) PLD SC 293.

¹²² See *R v Shakeela Naz* LTL 23/3/2000.

deeply rooted in tribal culture.¹²³ A man whose female relative has been charged with committing adultery must prove his ability to protect the honour of his family to the community by killing the woman who 'defiles' it.¹²⁴ Although sometimes the decision to kill comes from a tribal *jirga*, such as in the case of Jamilla Lal below, it is also implicit that a man may kill a woman who dares dishonour his name without the need for such a verdict. The slightest suspicion of extra-marital relations will often lead to immediate action by the community without waiting for evidence to support the allegations.¹²⁵ As has already been noted, honour is of utmost importance in this society¹²⁶ and male relatives of the unmarried woman will use any method to defend it.¹²⁷ In the case of Jamilla Lal, a 16-year-old mentally disabled girl was raped several times by a clerk of the NWFP local government in March 1999. The police took *him* into protective custody but handed over the girl to her tribe. They decided that in order to restore the tribe's honour, she must be shot. She was dragged out and shot in front of a *jirga*.¹²⁸ Not only did the state representative violate her basic rights, he also failed to prevent the customary system from taking her life. In this situation, one can clearly see that neither system can hope to purport that they are doing all they can to uphold the rights of women. In the past, tribal rulers advocated the ancient nose-cutting practice.¹²⁹ However, this has now changed from mutilation to death. Those few women who are not killed become 'socially ostracised and vulnerable to attack'.¹³⁰ Some are forced to beg,¹³¹ others become slaves, while some actually *ask* to be 'sheltered' in

¹²³ TS Khan, 'Chained to Custom' *The Review* (4-10 March 1999) 9.

¹²⁴ Amnesty International, 'Pakistan: Violence against women in the name of honour' ASA 33/017/1999 (September 1999) 5.

¹²⁵ *ibid* 2.

¹²⁶ JW Frembgen, 'Honour, Shame, and Bodily Mutilation. Cutting off the Nose Among Tribal Societies in Pakistan' (2006) 16 *Journal of the Royal Asiatic Society* 243, 248.

¹²⁷ Amnesty International (n 124) 2.

¹²⁸ *ibid* 8.

¹²⁹ Sultan-i-Rome (n 30) 186-7 - this is still widespread; AS Zadran, *Socio-economic and legal-political Processes in a Pashtun village, Southeastern Afghanistan*, (State University of New York at Buffalo, 1977) 259.

¹³⁰ *R v Immigration Appeal Tribunal and Another ex parte Shah; Islam v Secretary of State* [1999] UKHL 20.

¹³¹ Amnesty International (n 124) 6.

prison on a false charge.¹³²

The situation for women under state law, however, does not offer much more protection. The government in fact has had a history of enacting legislation which has proved extremely damaging to women, especially during the years of military dictatorship. The iniquitous Hudood Ordinances of 1979 are one example, the most damaging of which being the Zina Ordinance. Promulgated in the name of Islam, it became a tool of oppression¹³³ used against women rather than their abusers. Women were imprisoned in a legal trap whereby men were not brought to justice and women suffered in their place.¹³⁴ Many in society did not oppose these laws and even staged large-scale demonstrations whenever changes were proposed. Only after years of protests by women's groups did President Musharraf make the first serious attempt at reform, deeming the *Zina Ordinance* contrary to both constitutional and international human rights.¹³⁵ The *Protection of Women (Criminal Laws Amendment) Act* was finally passed in 2006¹³⁶ which afforded greater protection to women. This did not repeal the *Zina Ordinance* but, 'did much to address the many injustices and hardships caused by [it]'.¹³⁷

Another appalling provision still in force is that of *qisas* and *diyat*. *Qisas* - retaliation for murder by killing the murderer, and *diyat* - blood money, became law after *Gul Hasan Khan v Government of Pakistan and Another* PLD 1980 Pesh 1¹³⁸ and can be used as an alternative to imprisonment for those convicted of murder. In practice this means 80 percent of murderers can avoid punishment simply by paying blood money to the victim's family.¹³⁹ However, in honour killings the perpetrators were inevitably excused until the Criminal Law

¹³² *Dawn* (16 April 2001); Amnesty International (n 124) 54.

¹³³ M Lau 'Twenty-Five Years of Hudood Ordinances: A Review' (2007) 64 *Washington and Lee Law Review* 1291.

¹³⁴ See *Safia Bibi v The State* PLD 1985 FSC 120; *Pakistan v Hazoor Bakhsb* (1983) PLD FSC 2250.

¹³⁵ MK Masud, *Hudood Ordinance 1979 (Pakistan): An Interim Brief Report* (2006) 126-66; Cf. Lau (n 133).

¹³⁶ Lau (n 133).

¹³⁷ M Lau, 'The Quiet Evolution: Islam and women's rights in Pakistan' *IIAS Newsletter*, No. 49 (Autumn 2008) <http://www.iias.nl/nl/49/IIAS_NL49_0607.pdf>.

¹³⁸ Criminal Law (Amendment) Act 1997.

¹³⁹ Lau (n 137).

(Amendment) Act 2004 removed this lacuna.¹⁴⁰

Furthermore, the police force in Pakistan is notorious for its corruption and police openly ignore honour killings, even accepting bribes to let it go unpunished. Amnesty International has reported that they ‘almost invariably take the man’s side...and rarely prosecute’.¹⁴¹ Judges also do not condemn it because they adhere to the traditional codes which allow it. Amnesty International has repeatedly reported that ‘Pakistan’s judges, particularly at the lower level of the judiciary, tend to reinforce discriminatory customary norms rather than securing constitutionally secured gender equality.’¹⁴² The Lahore High Court ruled in 1998 that ‘in our society nobody forgives a person who marries his sister or daughter without the consent of parents or near relatives.’¹⁴³ Chitral’s Shariat judge has been especially hard-line in his approach. He decreed that any woman venturing outside automatically voided her marriage and could therefore be forcibly married to any man.¹⁴⁴ After the dangerous provision in the PPC of allowing men to claim their acts were committed due to ‘grave and sudden provocation’¹⁴⁵ was repealed, judges reintroduced by their own interpretation of the law. For example, when Muhammad Younis killed his wife, the judges concluded that ‘she must have done something unusual to enrage him to that extent.’¹⁴⁶ The few cases that do reach the government’s attention are soon forgotten, blending back into ‘the general and overwhelming indifference towards women’s issues’.¹⁴⁷

One particularly distressing problem affecting women in Pakistan is the unbridled use of domestic violence against women. The National Commission for the Status of Women has attributed the continued problems to male-dominated police and law enforcement

¹⁴⁰ T Wasti, *The Introduction and Application of Shariat in the Law of Culpable Homicide in Pakistan* (Brill, Leiden 2008).

¹⁴¹ Amnesty International (n 124) 2.

¹⁴² *ibid* 14.

¹⁴³ *Mohammad Riaz and Mohammad Feroze v the State*, Lahore High Court, 1998 quoted in Amnesty International ‘Pakistan: Honour killings of girls and women’ ASA 33/18/99.

¹⁴⁴ Marsden (n 48) 420.

¹⁴⁵ Section 300(1) Pakistan Penal Code.

¹⁴⁶ *Mubammad Younis v the State* (1989) Pcr LJ 1747.

¹⁴⁷ Amnesty International (n 22) 3.

institutions¹⁴⁸ and the fact remains that the perpetrators of domestic violence remain largely uninhibited and undeterred. As Chairperson of the NCSW, Dr Shaheen Sardar Ali, revealed in February 2001; ‘it has been established that the state, which usually shows little hesitation in interfering in private affairs will not intervene in this.’¹⁴⁹ The Commission of Inquiry for Women has recommended that domestic violence legislation be enacted¹⁵⁰ yet nothing was done following their recommendations. In recent months, the government have made attempts to enact pro-women legislation on domestic violence and employment rights.¹⁵¹ However, once again ‘political expediency won the day’¹⁵² and these efforts petered out.¹⁵³ This once again reveals the government’s continued reluctance to take women’s rights seriously.¹⁵⁴ Kamilla Hyat maintains that the government *does* see the need for change but has not shown enough initiative to actuate it.¹⁵⁵

One positive step in regard to domestic violence has been taken however. This was the amending of section 174A of the Criminal Procedure Code in November 2001 to help protect burn victims. Previously, the evidence of the women burned, often in fires lit to hurt or kill them by their husband or his family, was often not given credence. However, under the new section 174A the dying statement of a burn victim recorded by a medical officer or magistrate will be accepted in court as a valid declaration. This is in order to help increase the collection and preservation of evidence in cases. The medical or police officer on duty must immediately report a serious burn case to the nearest magistrate who should then register a case.

Although the government might be eager to place the blame for such terrible treatment of women on tribal practices,¹⁵⁶ their persistence

¹⁴⁸ *ibid* 11.

¹⁴⁹ *The Friday Times* (23 February 2001).

¹⁵⁰ Amnesty International (n 7) 11.

¹⁵¹ Domestic Violence (Prevention and Protection) Act 2009; Protection against Harassment of Women at the Workplace Act 2009; Criminal Law (Amendment) Act 2009.

¹⁵² I. A. Rehman, ‘Fata Priorities’ *Dawn* (25 June 2009).

¹⁵³ Z. Mustafa, ‘Mystery of the Women’s Bill’ *Dawn* (25 November 2009).

¹⁵⁴ I. A. Rehman, ‘Bias Against Women’ *Dawn* (26 November 2009).

¹⁵⁵ K Hyat, ‘Human Rights Commission of Pakistan’ *The Guardian* (29 January 2001).

¹⁵⁶ Government Hand-Out (July 2000).

in treating these crimes with impunity will only serve to allow the practices to continue. General Musharraf announced in April 2000, that 'the government of Pakistan vigorously condemns the practice of so-called honour killings'¹⁵⁷ and argued that they were not supported by either religion or law. However, much more than a public denouncement is needed. The government must take steps to prevent honour killings from occurring.¹⁵⁸ The Governor of the former NWFP told a women's delegation in 2000 that he was prepared to act strictly against perpetrators of honour crimes after the Jamila Lal case, however he also said that he could and would not interfere in entrenched tribal traditions.¹⁵⁹ However, Pakistan ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1996, Article 5 of which reads:

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

The United Nations General Assembly had also in 1993 adopted the Declaration on the Elimination of Violence against Women which urges states not to 'invoke custom, tradition or religious consideration to avoid their obligation'. Pakistan however, persists in doing just this. Lord Steyn has held that 'women in Pakistan are unprotected by state and public authorities if a suspicion of adultery falls on them...discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the state.'¹⁶⁰ Lord Hoffmann reiterated how 'government attempts to improve the position of women had made little headway against strongly entrenched cultural and religious attitudes...laws which

¹⁵⁷ General Musharraf, Prime Minister of Pakistan, speaking at the Convention on Human Rights and Human Dignity, April 2000.

¹⁵⁸ Amnesty International (n 124), 2.

¹⁵⁹ *ibid* 27.

¹⁶⁰ *R v Immigration Appeal Tribunal and Another ex parte Shah; Islam v Secretary of State* [1999] UKHL 20.

discriminated against women and carried severe penalties remained upon the statute book.¹⁶¹ Therefore, it is clear to see that the federal authorities are not fulfilling their obligations under international law to prevent social reality from denying individuals their rights.

III. THE BARRIERS TO CHANGE

Looking at the evidence of the widespread denial of women's rights in Northern Pakistan the barriers to change seem virtually insurmountable. Socio-cultural values, governmental inability or reluctance to effect change and strict ideological-religious forces all combine to create powerful obstacles to the advance of women's rights.

Customary law in many ways works to devalue and oppress women and the tribal elders who uphold it seem unlikely to lead efforts to alter this in the near future.¹⁶² However, ethnographers such as Jürgen Frembgen and Benedicte Grima have found that despite the gross atrocities perpetrated against women, women actually assent to this honour structure and work to uphold it.¹⁶³ One woman Aysha, albeit an elite educated woman, explained; 'we don't want change; we are honestly satisfied with the way things are'.¹⁶⁴ There is a sense of security and status in adhering to the tribal laws which 'far outweighs...her individual progressive transformation, which could result in expulsion from the group'.¹⁶⁵ In Northern Pakistan 'a woman's identity lies entirely in her men folk',¹⁶⁶ there is no alternative, independent identity available to women. Therefore, maintaining one's place in the social structure is of vital importance. However, it reiterates once again how the responsibility for ensuring women's rights cannot be left to women alone but must be taken by those in positions of power.

The government of Pakistan, while having made great strides in some areas for women's rights, also seems to prove an encumbrance to effective change at times. For example, when Basanti, a Sikh woman, was forcibly converted to Islam and married to one of her husband's killers, the government did not intervene as they feared the reaction of the tribal

¹⁶¹ *ibid.*

¹⁶² Grima (n 10) 43.

¹⁶³ Frembgen (n 126) 256; Grima (n 10) 40.

¹⁶⁴ Grima (n 10) 42.

¹⁶⁵ *ibid.* 43.

¹⁶⁶ *ibid.* 88.

authorities.¹⁶⁷ One could argue that a large and relatively powerful state such as Pakistan need not harbour fear of tribal authorities and ought to be able to enforce federal law over all of its territory. However, such an argument assumes a state-central, Western approach to government and is perhaps not appropriate for developing states or those with significantly diverse people groups such as Pakistan. Therefore, while government action, or inaction, in regard to women's rights certainly remains a great obstacle to change, the difficulties they face must not be underestimated.

There is insufficient room here to fully examine the impact of the conflict currently taking place in the Afghan-Pakistan border area. However, it is clear that as the Taliban have increased in power and authority in the area,¹⁶⁸ the rights of ordinary people in Northern Pakistan have deteriorated further.¹⁶⁹ This is particularly true for women, 'whose rights the Taleban systematically deny'.¹⁷⁰ Traditional mistrust of outsiders has heightened, and the Taliban have made threats and attacks against NGOs, making it much harder for them to continue their vital work in the area. Furthermore, a harsh law has been imposed by the TSNM, which includes a 'parallel justice system'.¹⁷¹ In 2009, the TSNM threatened to kill all lawyers and judges who refused to stop working under the state judicial system.¹⁷² In some areas *burqas* have been enforced by the Taliban as well as edicts prohibiting women from leaving the house without a male relative.¹⁷³

Some place the blame for the entire insurgency on the government's apparent abandonment of the area for so many years.¹⁷⁴ Sam Zarifi, Amnesty International's Asia-Pacific director had

¹⁶⁷ SA Rittenberg, *The Independence Movement in India's North West Frontier Province 1901-1947* (Columbia University, 1977) 364; SWA Shah, *Muslim League in NWFP* (Royal Book Company, Karachi 1992) 134-35.

¹⁶⁸ Amnesty International, 'Pakistanis Abused by Taleban Speak Out' (23 April 2009).

¹⁶⁹ Amnesty International, 'Pakistani Government Must Protect Swat Valley Citizens' (12 February 2009).

¹⁷⁰ *ibid.*

¹⁷¹ Amnesty International (n 169).

¹⁷² *ibid.*

¹⁷³ *ibid.*

¹⁷⁴ FATA Additional Chief Secretary Habibullah Khan at Human Rights Commission of Pakistan briefing; Cf. 'Fata Additional Chief Secretary Habibullah Khan in Swat, Fata insurgency "a national issue"' *Dawn* (18 February 2009).

complained; ‘the Pakistani government is fiddling as the North West Frontier Province burns and residents are left at the mercy of the Taliban’.¹⁷⁵ This was in response to the state police and army efforts, which have not been appreciated by the people,¹⁷⁶ and have been argued to be in breach of the government’s international obligations.¹⁷⁷ Some have even described the deployment of the army in the FATA in 2004 as ‘the greatest policy error made in the region since independence’.¹⁷⁸

Asma Jahangir, a prominent women’s rights lawyer, has asked for dialogue with the insurgents in order to try to find a way to implement Shariah law without compromising the rights of the people.¹⁷⁹ However, the state’s actions in the current situation seem only to be causing more discord, with human rights being put second place to state security. The consequence of this has been that ‘the tribal society has been reshaped around the militants, who succeeded where the government and the traditional institutions had failed.’¹⁸⁰ The Herald, an established political magazine in Pakistan, critically evaluated the various impediments to change after one particularly horrific attack on seven Christian women saying; ‘[s]ocial conventions, power relations on the ground and the legal system will, in all probability, conspire to ensure that these victims will never get justice’.¹⁸¹ The barriers in the way of changing the way women are treated therefore are great, and one may wonder whether any solution can be found.

IV. THE WAY FORWARD

In view of the obstacles presented which prevent the full enjoyment of women’s rights, a way forward will undeniably be extremely difficult to achieve. Rehman acknowledges that there are still ‘many miles to go to

¹⁷⁵ Amnesty International (n 168).

¹⁷⁶ *ibid.*

¹⁷⁷ Amnesty International, ‘Pakistan, Human rights ignored in the “war on terror”’, Executive Summary, <<http://www.amnestyusa.org/document.php?lang=e&id=ENGASA330352006>> accessed 21 October 2010.

¹⁷⁸ Synnott (n 16) private conversations with senior Pakistani officials (December 2007) 115.

¹⁷⁹ ‘Fata Additional Chief Secretary Habibullah Khan in Swat, Fata insurgency “a national issue”’ *Dawn* (18 Feb, 2009).

¹⁸⁰ Nawaz (n 84) 27.

¹⁸¹ *The Herald*, June 2000.

counter the legacy of centuries-old patriarchy in our society'.¹⁸² However, as no one party has been able to offer adequate protection to women a new strategy must be developed. Several theories have been projected by different scholars yet it remains to be seen whether any of them prove suitable.

One option would be to allow customary law to enjoy unqualified precedence in Northern Pakistan. This would certainly be welcomed by many. However, as we have seen, this often sidelines or actively discriminates against women. Another option would be to allow federal law to have absolute supremacy over the area. Some may bemoan the loss of the diverse and ancient traditions that would be lost in this way. However, Nussbaum argues that outsiders cannot comment fairly on the traditions they regard as beautiful because they have 'never had to live in the world they constructed.'¹⁸³ This option will, in any case, almost certainly not be accepted by the majority of the people and its enforcement would therefore entail too great an undertaking for the state. One strategy has been successfully advocated by another group of scholars including Ayelet Shachar, Martha Nussbaum and Catharine MacKinnon. They suggest an engagement between the different legal systems, retaining their vital aspects yet recognising the indivisibility of women's rights. Shachar explains that 'the hope is that since "we are all multiculturalists now"¹⁸⁴ we can explore ways in which state law can be rendered sufficiently pluralistic'¹⁸⁵ and can strike a balance between individual and community rights. She argues that the state-led system better protects group members, but in doing so fails to accommodate their *nomos*,¹⁸⁶ whereas the group-led model protects the culture but allows individuals, especially women, to be harmed by the application of traditional practices not sanctioned by the state.¹⁸⁷

Let us examine this further. If this third approach were to be applied critics are concerned that communities will lose the 'social

¹⁸² Rehman (n 152).

¹⁸³ Nussbaum (n 52) 46.

¹⁸⁴ N Glazer, *We Are All Multiculturalists Now* (Harvard University Press, Cambridge 1997).

¹⁸⁵ A Shachar, *Multicultural Jurisdictions* (CUP, Cambridge 2000) 1.

¹⁸⁶ Cf. R Cover, 'The Supreme Court, 1982 Term-Foreword: Nomos and Narrative' (1984) 97 *Harvard Law Review* 4.

¹⁸⁷ Shachar (n 185) 13.

glue'¹⁸⁸ which holds their members together. In order to counter this possibility, Will Klymicka has suggested the use of 'differentiated citizenship rights'.¹⁸⁹ These allow societies to retain some autonomy in matters of self-definition. However, they must not be allowed to systematically mistreat women. As Shachar has argued, 'the paradox of multicultural vulnerability'¹⁹⁰ has let women's rights be abused by the community's wishes for independence. Brian Barry has argued that a bipartite system will always lead to the denial of individual rights and hence we must abandon multiculturalism entirely and project one system as the default.¹⁹¹ Therefore, women who wish to remain within their *nomos* must *necessarily* relinquish their rights for the benefit of the rest of the community.¹⁹² Shachar acknowledges this challenge¹⁹³ but believes it can be a tenable solution by proposing joint governance - enhancing external protections and reducing internal restrictions.¹⁹⁴ Joint governance establishes a horizontal power-sharing structure with interactions between the different actors which should allow citizens to hold rights under both systems which do not conflict with each other. In the light of international law and increasing demands for self-determination she maintains that 'no single authority can expect to be the sole source of legal norms and institutions affecting its members'.¹⁹⁵ This may be true, however in the socio-legal arena that exists in Pakistan, which grants a great deal of norm-making power to religious and societal values, it may face grave obstacles in acceptance. Aristotle believed that 'in general, people seek not the way of their ancestors, but the good.'¹⁹⁶ Nussbaum also believes that Northern Pakistan can and will come to accept the intrusion of normative concepts from outside their society.¹⁹⁷ It is true that Northern Pakistan adopted the legal concepts of Islam and

¹⁸⁸ *ibid* 1.

¹⁸⁹ W Klymicka, *Multicultural Citizenship* (OUP, Oxford 1995).

¹⁹⁰ *ibid* 3.

¹⁹¹ Cf. B Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Polity Press, Cambridge 2001).

¹⁹² Cf. Shachar (n 185) 6.

¹⁹³ *ibid* 5.

¹⁹⁴ *ibid* 8.

¹⁹⁵ *ibid* 15.

¹⁹⁶ Aristotle, *Politics*, (1269a) 3, 4.

¹⁹⁷ Nussbaum (n 52) 48.

incorporated them into their own customary systems. However, this was some centuries ago and took some time to become entrenched in the legal practice of the area. New concepts would likely take several more centuries to be so endorsed.

Nonetheless, it *is* imperative to earnestly ask whether cultural integrity or justice is more important, and if justice, whose. Silvie Bovarnick has advocated the view that “‘justice’ is not universal”¹⁹⁸ and urges that we respect diversity, even at the price of condoning cultural practices that abuse certain group members. However, this confused cultural relativism with mere tolerance of diversity.¹⁹⁹ Diversity is not what we must aim to protect above all else. The rights of individuals ought to override other concerns.

Therefore, whatever solution is advanced must involve *some* devolution of power in order to protect vulnerable women by dismantling the local power hierarchies that currently oppress them.²⁰⁰ However, governmental authorities may not be allowed simply to impose their *own* standard. Nussbaum argues that the paternalist state shows ‘too little respect for people’s freedoms’.²⁰¹ She says women who *wish* to follow the traditional ideal must be free to do so. Therefore we must impose only ‘universals that are facilitative not tyrannical’.²⁰² This begins to delve into the realm of political theory and how involved the state ought to be in the intimacies of the lives of its citizens. Robert Wolff has commented that ‘one of the questions which political philosophy must answer is whether there is any limit to the range of affairs over which a just state has authority.’²⁰³ Rousseau believed the minority group ought to cede absolute authority to the state, while John Locke thought absolute command ought to extend only to matters which it is *proper* for the state to control. However, this is not a clear delineation. The question remains as to what *is* proper for the state to exercise authority over. Nussbaum argues that it is the state’s privilege to determine which

¹⁹⁸ S Bovarnick, ‘Universal Human Rights and Non-Western Normative Systems: A Comparative Analysis of Violence Against Women in Mexico and Pakistan’ (2007) 33 *Review of International Studies* 59, 74.

¹⁹⁹ Cf. Nussbaum (n 52) 9.

²⁰⁰ Cf. Shachar (n 185) 15.

²⁰¹ Nussbaum (n 52) 51.

²⁰² *ibid* 59.

²⁰³ RP Wolff, *In Defence of Anarchism* (University of California Press, Berkeley 1970) 4.

groups may be allowed to self-regulate.²⁰⁴ However, such wresting of control would very likely be unacceptable in Northern Pakistan where opposition to *any* state involvement is fervent.

Many claim that problems in Pakistan today stem from issues associated with its independence from India and its establishment as a homeland for Muslims of the subcontinent. Synnott echoes this sentiment by saying; ‘Pakistan has had difficulty in forging a national identity ever since its inception, with ethnic and regional identities proving powerful countervailing forces.’²⁰⁵ This has implications for the future as although some argue that governmental failure to control the tribal belt is due to a lack of will, others have said that ‘control of the FATA is probably impossible within the sort of timescale envisaged.’²⁰⁶ The area may in fact be more hostile to outside influence now that many of those fighting in the region believe they are part of a war against Western values, including state-central politics. Furthermore, Wolff’s examination of the ‘prescriptive force of tradition’²⁰⁷ reveals that its strength is such that even its negative aspects fail to dissuade them of its superiority.²⁰⁸ Bovarnick, however, believes that this only illustrates ‘the difficulties but not impossibilities’ of applying a universal system.²⁰⁹ Such assertions can only be determined conclusively by experimentation. Therefore, ‘pragmatism may serve Pakistan better than idealism.’²¹⁰ The great divides between the people of Northern Pakistan and its government cannot be eliminated by any one act of the state.

I. A. Rehman, a leading human rights advocate and founder of the Pakistan-India Peoples’ Forum for Peace and Democracy, believes that a charter of rights alongside full governmental support ‘may still help in winning over these vigorously and foolishly excluded people.’²¹¹ Synnott, however, maintains that past efforts to increase the input Northern Pakistanis have in governmental affairs which affect them have

²⁰⁴ Nussbaum (n 52).

²⁰⁵ Synnott (n 16).

²⁰⁶ *ibid.*

²⁰⁷ Wolff (n 203) 5.

²⁰⁸ *ibid.*

²⁰⁹ Bovarnick (n 198) 61.

²¹⁰ Rehman (n 152).

²¹¹ *ibid.*

proved 'controversial and even destabilising'.²¹² When President Musharraf extended local representative assemblies to the FATA the move was rejected as 'an attempt to undermine traditional power structures'.²¹³ However, on the other hand, without government support rights can still be denied to women. In Khyber Pakhtunkhwa, when commissions and the magistracy, which many of the local people resented, were abolished this only served to destabilise law and order and made disaster relief harder to distribute. Prime Minister Yousuf Raza Gilani called for suggestions on governance of the tribal area but subsequently ignored all the recommendations that were made.²¹⁴ As Ismail Khan from the Dawn newspaper laments, 'for three decades... [Northern Pakistan] bore the brunt of wars in the fight against terrorism and extremism. But who is there to put it on the map in the so-called Friends of Pakistan moots? Peshawar is an orphan city with so many leaders claiming to be its father but no one willing to adopt it!!!'²¹⁵

What is clear is that women's rights will not be ensured by 'a victory of arms'.²¹⁶ Force could be used but would not bring lasting change. Change in communities such as those in Northern Pakistan only arrives slowly and with at least tentative support of the people. The values which the tribal people hold dear may have to be held up to the standard of human rights as set out in various declarations and critically examined to determine whether they best serve the community and allow each member the freedoms they are due. Similarly, the Pakistani legislature will need to declare issues of women's rights 'non-negotiable values'²¹⁷ and work in close relationship with tribal leaders to discover a way for them to be appropriately implemented. It is evident that increased involvement by federal authorities is necessary in order to help counteract the immense social problems of underdevelopment, poverty, entrenched ways of life and powerful militant forces. These problems

²¹² Synnott (n 16) 113.

²¹³ *ibid.*

²¹⁴ K Aziz, 'Extending Stability to Pakistani Tribal Areas' (2008) Regional Institute of Policy Research and Training, Peshawar, paper presented to a conference on 'Pakistan's Federally Administered Tribal Areas: Options for a more Coordinated Policy Approach' (Wilton Park 6-8 November 2008) 7.

²¹⁵ I Khan, 'The Tale of an Orphan City' *Dawn* (7 March 2010).

²¹⁶ Rehman (n 152).

²¹⁷ N Ashraf, 'Embrace of Civilisations' *Dawn* (16 November 2009).

seriously inhibit Northern Pakistani people's ability to increase the standard of living and ensure that each individual receives the rights they are due. As women face even greater hardships they will require further attention from the government. The Pakistani state is undoubtedly already doing much to fight the Taliban insurgency and its efforts are undeniably for the benefit of the people. However, one must insist that the rights of individuals not be sidelined in the interest of state security. This study has demonstrated that women's rights in Northern Pakistan are highly susceptible to abuse. Nevertheless, with careful deliberation and the co-operation of tribal leaders, federal authorities and fundamental groups, it is anticipated that an approach may be found which would ensure that the rights women are owed are upheld.