
SHARIA LAW IN U.S. COURTS: A NECESSARY MEASURE TO PROTECT MUSLIM WOMEN

ABSTRACT

Over 5,000 women per year are victims of honor killings around the world. Pakistan alone often reports 1,000 of these victims. Violence against women is everywhere, but under legal systems influenced or controlled by Sharia law, propagated notions of female inferiority and gender inequality cause women to be victims of violence at higher rates.

In the United States, jurisprudence has failed to address unique cultural issues perpetuated by Sharia-law legal systems. Specifically, U.S. asylum law has not been consistently extended to include women in the United States who cannot return home for fear of imminent honor-based violence.

This Note calls upon U.S. courts to use Sharia law as a guide when hearing asylum law cases and in other areas of law in which U.S. courts can better serve Muslim Americans. Additionally, this Note calls for a consistently applied definition of a qualifying “particular social group” in U.S. asylum law which encompasses women who fear imminent honor-based violence.

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I. INTRODUCTION

Violence against women is a perpetual issue around the world. While some of the violence is attributable to unhealthy relationships, violence against women (VAW) is rampant throughout non-Western parts of the world where governments and legal systems perpetuate notions of patriarchy and female insubordination.¹ Specifically, violence under Sharia-law legal systems is perpetuated by “[p]atterns of control, psychological [abuse], and physical abuse” which fortify male roles centered on guardianship combined with policing female conduct and a lack of legislation protecting women from these practices.²

1. See *infra* Parts II, III.

2. Tzili Mor, *Feminist Rule of Law Reform and Health Impact of Legal Systems Premised on Women as Communal Gauges of Honor*, 44 U. BALT. L. REV. 237, 264, 267 (2015). It should be noted here that this Note focuses on cultural practices based on traditional interpretations of Sharia law but is not a blanket statement on what Sharia law says. In fact, neither the Qur’an nor the Sunna, off of which Sharia law is based, advocate for violence against women. Rather, the patriarchal cultures which have

In the United States, VAW among Muslim communities is a taboo subject in part due to fear that objections could be viewed as stereotyping or stigmatizing a religion. This reluctance is exacerbated by years of marginalizing Muslims in the wake of the 9/11 attack. As a result of the political and cultural climate within the United States, Muslim victims of intimate violence lack the types of protections afforded domestic-violence victims. Further, asylum seekers in the United States who would be victims of culture-based VAW if forced to return to their home countries should be granted protection as members of a “particular social group” in the United States because of the gender-based practices that uniquely threaten women in Sharia-law nations.

In Parts II and III, this Note provides an analysis of Sharia law and the unique threat women face under Sharia-law legal systems. This Note also highlights major differences between legal systems under Sharia law and Western law in Part IV, specifically analyzing gender (in)equality. After discussing the unique threat to women in Sharia-law nations, this Note analyzes the role the U.S. legal system can play—but currently does not—in protecting women around the globe, specifically through interpretations and application of U.S. asylum law. Part V discusses the presence of culture-based violence in the United States and the use of Sharia law in U.S. courts. Lastly, this Note culminates in the analysis of U.S. asylum law, focusing on the inconsistent circuit court decisions when handling asylum claims and defining a qualifying particular social group. This Note calls for U.S. courts to recognize women who know they will fall victim to honor violence as a qualifying particular social group in order to serve the purposes of asylum law and protect women who have a well-founded fear of honor-based violence. The Note discusses issues of gender-based persecution in asylum law and calls for courts to follow our Western allies such as Canada, Great Britain, and Australia in extending protection to women by determining gender is a qualifying social group in an asylum claim.

II. VIOLENCE AGAINST WOMEN (VAW) SHARIA LAW AND GENDER

Sharia law is the moral code and religious law of Islam.³ It guides all aspects of Muslim life and is derived primarily from the Qur’an and the

developed over centuries, not Sharia law or the Islamic faith, uniquely threaten women. *See infra* notes 22, 29 and accompanying text.

3. Toni Johnson & Mohammed Aly Sergie, *Islam: Governing Under Sharia*, COUNCIL ON FOREIGN REL. (July 25, 2014), <http://www.cfr.org/religion/islam-governing-under-sharia/p8034>.

Sunna.⁴ The Qur'an is the religious text of Islam, believed to be a revelation from God, whom Muslims call Allah.⁵ The Sunna is "the body of traditional social and legal custom and practice of the Islamic community" as established by traditional ancestors.⁶ Sharia law and the nations in which it is applied to the legal system have a perspective on gender-based violence that currently conflicts with international human rights law.⁷

The impact of Sharia law on the domestic law of Muslim countries varies throughout the world.⁸ Countries including Saudi Arabia, Kuwait, Bahrain, Yemen, and the United Arab Emirates have declared Sharia law

4. *Id.*

5. *Qur'an*, ENCYCLOPEDIA BRITANNICA, INC., <https://www.britannica.com/topic/Quran> (last visited Mar. 19, 2017).

6. *Sunnah*, ENCYCLOPEDIA BRITANNICA, INC., <https://www.britannica.com/topic/Sunnah> (last visited Oct. 30, 2016).

7. Article 5 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which is one of the leading international documents furthering gender equality, requires signatory nations "[t]o 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 sexes or on stereotyped roles for men and women." United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW], <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. In contrast, gender equality in many Sharia-law nations falls short of this standard, despite a country's status as a signatory nation. *See, e.g.*, Fahd Bin Abdulaziz Al-Saud, *Basic Law of Governance*, EMBASSY OF KINGDOM OF SAUDI ARABIA (Mar. 1, 1992), <https://www.saudiembassy.net/basic-law-governance> [hereinafter *Basic Law of Governance*]. Article 8 of the Kingdom of Saudi Arabia's Basic Law of Governance calls for equality under Sharia principles, not true equality. *Id.* Out of 193 UN member states, only 6 have not ratified CEDAW, 3 of which are Sharia-law nations—Iran, Somalia, and Sudan. *Ratification Status for CEDAW—Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en (last visited Feb. 8, 2017) [hereinafter *Ratification Status for CEDAW*]. Other notable countries falling short include Afghanistan and Lebanon, both of which are highlighted in the Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences for failing to adequately address honor violence. Rashida Manjoo (Special Rapporteur), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶¶ 95–96, U.N. Doc. A/HRC/20/16 (May 23, 2012) [hereinafter *VAW Causes and Consequences*].

8. Aaron W. Hughes, *Why Is Islam So Different in Different Countries?*, CONVERSATION (Feb. 18, 2016), <https://theconversation.com/why-is-islam-so-different-in-different-countries-51804>.

as “a source, or the source, of the law.”⁹ Similarly, countries such as Pakistan, Iran, and Iraq have forbidden enacting any legislation antithetical to Islam.¹⁰

In contrast to the systems with a strong Sharia-law influence, mixed systems are the most common in Muslim-majority countries.¹¹ In most of these countries, Sharia covers family law, while secular courts cover everything else.¹² This type of mixed system is present in Algeria, Comoros, Djibouti, Gambia, Libya, Morocco, Somalia, Bangladesh, Brunei, Gaza Strip, Jordan, Lebanon, Malaysia, Oman, and Syria.¹³ Alternately, some Muslim countries, including Tajikistan, Chad, and Senegal, have declared their government to be secular.¹⁴ In these countries, Sharia law may be prevalent in local customs but has no official control over legislation.¹⁵

Notable differences in gender equality can be seen in countries with a strong Sharia-law influence. Sharia-law nations filled 13 of the last 29 spots on the World Economic Forum’s Global Gender Gap Index in 2015.¹⁶ Out of 145 countries, Kuwait ranked the highest of Sharia-law nations at spot 117.¹⁷ Falling below that were the United Arab Emirates (119), Bahrain (123), Saudi Arabia (134), Iran (141), Pakistan (144), and Yemen (145).¹⁸

9. Johnson & Sergie, *supra* note 3. Article 1 of the Basic Law of Governance of the Kingdom of Saudi Arabia states: “The kingdom of Saudi Arabia is a sovereign Arab Islamic state. Its religion is Islam, and its constitution is the Holy Qur’an and the prophet’s (peace be upon him) Sunnah (traditions).” *Basic Law of Governance, supra* note 7.

10. Johnson & Sergie, *supra* note 3. Article 2 of the Constitution of the Islamic Republic of Pakistan declares Islam to be the official religion. PAKISTAN CONST. art. 2. Article 31 states the government shall take steps necessary “to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.” PAKISTAN CONST. art. 31(1).

11. Omar Sacirbey, *Sharia Law in the USA 101: A Guide to What It Is and Why States Want to Ban It*, HUFFINGTON POST (July 29, 2013), http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html.

12. *Id.*

13. *Id.*

14. Johnson & Sergie, *supra* note 3.

15. *Id.*

16. See WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 2015, at 8–9 (2015), <http://www3.weforum.org/docs/GGGR2015/cover.pdf>.

17. *See id.*

18. *Id.*; see also Erik Sherman, *This Is How Oppressed Women Are in Saudi Arabia*, FORTUNE (Mar. 17, 2016), <http://fortune.com/2016/03/17/this-is-how-oppressed-women->

Moreover, even out of the mixed Sharia-law nations, Bangladesh ranked the highest at only 64, with several falling below Kuwait's ranking of 117.¹⁹

Domestic violence and VAW remain prevalent issues under Sharia law. The culture and custom dictated by Sharia law obscures the multiple faces of domestic violence by providing for male superiority and female subordination.²⁰ Sharia law perpetuates the notion that a female is a male's property, often being manifested in domestic legislation which requires all females to have a male guardian to make decisions for them.²¹

Activists and policymakers have deliberated to what extent Sharia law actually creates an unsafe atmosphere for women. This is because the Qur'an does not specifically call for violence against women, but there are many cultural practices under Sharia law which place women in a subordinate position.²² A conservative interpretation of the Qur'an, which is pervasive in the Middle East, marginalizes women and establishes them as "second-class citizens."²³ This perception ultimately causes women to fall victim to

are-in-saudi-arabia.

19. See WORLD ECON. FORUM, *supra* note 16, at 8–9.

20. See Mor, *supra* note 2, at 264.

21. See, e.g., Hala Al-Dosari, Opinion, *Saudi Male-Guardianship Laws Treat Women as Second-Class Citizens*, GUARDIAN (Oct. 7, 2016), <https://www.theguardian.com/commentisfree/2016/oct/07/saudi-arabia-women-rights-activists-petition-king>; Kristine Beckerle, *Boxed In: Women and Saudi Arabia's Male Guardianship System*, HUM. RTS. WATCH (July 16, 2016), <https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi-arabias-male-guardianship-system> (explaining Saudi Arabia's male guardianship laws as one of many nations to have implemented such policies).

22. See Manar Waheed, Note, *Domestic Violence in Pakistan: The Tension Between Intervention & Sovereign Autonomy in Human Rights Law*, 29 BROOK. J. INT'L L. 937, 942 (2004) (noting Islam is both a religion and a culture and while the religion "does not permit violence towards one's spouse," abuse is a problem sanctioned by multiple influences, including the law, and Pakistani law does allow "perpetrators of domestic violence [to] go virtually unpunished").

23. See 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, 567–68 (2009) ("Pakistani women are still treated as second-class citizens . . ."); Cyra Akila Choudhury, *(Mis)Appropriated Liberty: Identity, Gender Justice, and Muslim Personal Law Reform in India*, 17 COLUM. J. GENDER & L. 45, 46 (2008) ("[T]raditionalists within Muslim communities in India seek to universalize and ossify interpretations and practices of Islam that maintain women's status as second-class members with far fewer rights than men."); Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws*, 23 PENN ST. INT'L L. REV. 251, 252 (2004) (noting the tension that "exists when the state silently condones actions that deprive some

violence in the private sphere.²⁴ Further, in 76 countries worldwide, there are no legal or cultural protections for women against domestic violence.²⁵ In these countries, and even in many where there are legislated protections, the law protects women in name only as men face little to no repercussions for abusing their wives or other females.²⁶ Largely, legislative bodies in Islamic countries have not taken a stance against violence against women, and thus many forms of gender-based violence continue to occur throughout the Muslim world.²⁷

III. CULTURAL PRACTICES OF VIOLENCE AGAINST WOMEN

A number of traditional practices stemming from Islam pose a unique threat toward women. While many of these practices do not exclusively target women, women make up a disproportionate number of victims.²⁸ The most dangerous practices include honor killings and acid attacks or burnings.²⁹ Further, atrocious acts of violence indisputably occur in the

citizens of their basic rights, thus relegating them to a second-class citizenship”).

24. Waheed, *supra* note 22, at 942 (“Abuse is a social problem which is ‘sanctioned and controlled through culture, religious beliefs, law, and the norms of friendship, kinship, and neighborhood groups.’”) (quoting MARY JOE FRUG, *WOMEN AND THE LAW* 151 (1st ed. 1992)).

25. See U.N. STATISTICS DIV., *THE WORLD’S WOMEN 2015: TRENDS AND STATISTICS* 28, 160 (2015), https://unstats.un.org/unsd/gender/downloads/WorldsWomen2015_chapter6_t.pdf (indicating 119 out of a total 195 countries in the world have passed domestic violence laws).

26. See *id.* at 160.

27. See, e.g., Waheed, *supra* note 22, at 942 (“The failure of [Pakistani] state institutions leaves these survivors without any source of domestic recourse.”).

28. CYNTHIA HELBA ET AL., U.S. DEP’T OF JUSTICE, *REPORT ON EXPLORATORY STUDY INTO HONOR VIOLENCE MEASUREMENTS METHODS* § 1.3 (2014), <https://www.ncjrs.gov/pdffiles1/bjs/grants/248879.pdf> (noting women make up 93 percent of all honor victims). Victims of these acts also include members of the homosexual community and non-Muslims. See, e.g., *id.* § 3.1.

29. Honor violence is neither unique to Islam nor is it mentioned in the Qur’an. Hillary Mayell, *Thousands of Women Killed for Family “Honor”*, NAT’L GEOGRAPHIC NEWS (Feb. 12, 2002), http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html. But see *Israeli Arab Jailed for 16 Years over ‘Honor Killing’ of his Sister*, U.S.A. TODAY (Mar. 5, 2008), http://usatoday30.usatoday.com/news/world/2008-03-05-3431513917_x.htm (noting the acceptance of honor violence as part of the Muslim culture). Rather, honor violence is a practice committed around the world in patriarchal societies that revolve around notions of familial honor. See Mayell, *supra*. Numbers are highest in the Middle East, North Africa, and Southeast Asia, in part because conservative Islamic communities rely significantly on notions of honor and male domination. Compare RABEEA HADI, *AURAT PUBL’N & INFO. SERV. FOUND.*,

largest numbers in the Middle East, but they are not unique to this area of the world.³⁰ Honor killings have been reported around the world, including the United States, Canada, and Great Britain.³¹

A. Honor Killings

Female honor killings, or other honor violence that does not result in death, occur when women or girls are attacked by family members because their behavior is perceived to have dishonored their family.³² These killings are perpetuated by a strong cultural adhesion to the notion of honor as a “barometer[] of familial worth.”³³ Honor is held by the male but is affected by the actions of any female family member.³⁴ The cultural stigma attached to honor supports acts of violence against the offending female to reinstate the lost honor.³⁵ This practice remains prevalent due to the continued interpretation of Islamic teachings that women are subordinate, coupled with the “[simultaneous] regard [for] women as moral standard bearers, upon whom the family’s honor rests.”³⁶ Much of the violence against women is argued to be justified by the Islamic doctrine of *qisas*, a retribution

VIOLENCE AGAINST WOMEN (VAW) ANNUAL REPORT 2014, at 2 (2015), <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/VAW%202014.pdf> (noting that over 700 honor killings were reported in Pakistan in 2014), and Katherine Zoepf, *A Dishonorable Affair*, N.Y. TIMES MAG. (Sept. 23, 2007), <http://www.nytimes.com/2007/09/23/magazine/23wwln-syria-t.html> (highlighting notions of honor and male domination that are imputed on young boys starting when they are children), and *Pakistan Events of 2016*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2017/country-chapters/pakistan> (last visited June 10, 2018) (“Pakistani human rights NGOs estimate that there are about 1,000 ‘honor killings’ every year.”), with HELBA ET AL., *supra* note 28, § 1.3 (noting researchers’ estimates that only about 23 to 27 women are killed by honor killings per year in the United States).

30. See, e.g., *Honour Killings by Region*, HONOUR BASED VIOLENCE AWARENESS NETWORK, <http://hbv-awareness.com/regions/> (last visited Apr. 7, 2018).

31. *VAW Causes and Consequences*, *supra* note 7, ¶¶ 43–44 (highlighting honor violence as a global issue); *Honor Killings: A Global View*, NPR, <http://www.npr.org/news/graphics/2009/jan/honor-killings/> (last visited Apr. 7, 2018).

32. John Alan Cohan, *Honor Killings and the Cultural Defense*, 40 CAL. W. INT’L L.J. 177, 179 (2010) (citing Mazna Hussain, Note, “Take My Riches, Give Me Justice”: A Contextual Analysis of Pakistan’s Honor Crimes Legislation, 29 HARV. J.L. & GENDER 223, 225–26 (2006)).

33. Johanna Bond, *Honor as Property*, 23 COLUM. J. GENDER & L. 202, 205 (2012).

34. *Id.* at 205, 207.

35. *Id.* at 207.

36. Cohan, *supra* note 32, at 181.

doctrine.³⁷ Under this Qur'anic practice, some honor killings are “*an eye for an eye*.”³⁸

Additionally, the Arab honor code, *purda*, links a man's honor to the actions of female family members.³⁹ “In these cultures, ‘the ideal of masculinity is underpinned by a notion of “honour”—of an individual man, or a family or a community—and is fundamentally connected to policing female behaviour and sexuality.’”⁴⁰ This link of a man's honor to a female's actions intensifies the pressure men feel to protect themselves and their families, which leads to drastic and violent outcomes.⁴¹ A female may be killed for a variety of behaviors, ranging from talking to an unrelated male to engaging in sexual relations outside of marriage, falling victim to rape, or acting inappropriately in public.⁴² In some cases, punishment may occur simply based on the suspicion of a transgression.⁴³ Whether the offense in question has actually occurred, honor killings are based on public perception of familial honor.⁴⁴ Gossip and false rumors bring the same level of disgrace to the family as when the offense is actually committed.⁴⁵ However, once a family decides that its honor has been tarnished, society recognizes the only way to restore honor is through the death of the offending female family

37. The *Qisas* and *Diyat* Code was implemented in Pakistan in 1997, codifying the doctrine of retributive killing. It allows a victim to determine whether to forgive an offender, require the offender be similarly hurt, or provide monetary compensation for the harm done. Waheed, *supra* note 22, at 960–61.

38. Cohan, *supra* note 32, at 215. In the Pakistani criminal code, the *Qisas* and *Diyat* Ordinance defines *qisas* as “an eye for an eye,” and *diyat* as “‘blood money,’ meaning the monetary retribution to the surviving family for the loss of the victim.” Waheed, *supra* note 22, at 960 n.166.

39. Cohan, *supra* note 32, at 185.

40. *Id.* (quoting Radhika Coomaraswamy, *Preface* to ‘HONOUR’: CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN, at xi, xi (Lynn Welchman & Sara Hossain eds., 2005)).

41. *Id.*

42. See Bond, *supra* note 33, at 214–18 (detailing reasons for honor violence).

43. *Id.* at 218 (noting some victims are simply “falsely accused of transgressing . . . social barriers”); Waheed, *supra* note 22, at 946.

44. Cohan, *supra* note 32, at 196 (“Only the public perception of honor matters . . .”) (quoting Rachel A. Ruane, Comment, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT’L L. REV. 1523, 1532 (2000)).

45. *Id.*; Waheed, *supra* note 22, at 946 (“Therefore, any disobedience or even rumor of disobedience is enough to dishonor a man and killing that symbol of disobedience will restore a man's honor.”).

member.⁴⁶ Unlike cultures with stronger notions of gender equality, there is no alternate path to restore honor.⁴⁷ Honor killings have become a social regularity that activists fear legal systems under Sharia law cannot reach.⁴⁸

Swara is another expression of an honor crime in which “a minor girl is sacrificed [through marriage] to the family of a victim as retribution or compensation in a dispute.”⁴⁹ This act perpetuates the perceived disposability of girls.⁵⁰ Practiced predominantly in the North-West Frontier Province of Pakistan, it is a community-sanctioned and community-based crime focused on bringing peace and justice to a community.⁵¹

Honor killings are not unique to Islam or the Middle East,⁵² but this region of the world continually reports shockingly high numbers. The Aurat Foundation, a women’s rights group in Pakistan, reported over 700 cases of honor killings in Pakistan in 2014, and other human rights groups estimate there are actually over 1,000 honor killings per year in Pakistan.⁵³ This number is rising with the Human Rights Commission of Pakistan reporting

46. Cohan, *supra* note 32, at 194.

47. *See id.*

48. Sharia-law legal systems do little to protect women from falling victim to honor violence, mostly due to lack of enforcement. *See, e.g.,* Salman Masood, *Pakistan Toughens Laws on Rape and ‘Honor Killings’ of Women*, N.Y. TIMES (Oct. 6, 2016), http://www.nytimes.com/2016/10/07/world/asia/pakistan-toughens-laws-on-rape-and-honor-killings-of-women.html?_r=0 (highlighting changes in Pakistani domestic law closing a loophole that previously allowed perpetrators to avoid prosecution). A similar loophole or general lack of enforcement is present in many Muslim nations, allowing offenders to escape prosecution. Provisions may also exist in the penal code allowing for “passion” to be a defense. Radhika Coomaraswamy (Special Rapporteur), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 2001/49*, ¶ 35, U.N. Doc. E/CN.4/2002/83 (Jan 31., 2002) (stating that defending honor remains a legitimate defense “in the Penal Codes of Peru, Bangladesh, Argentina, Ecuador, Egypt, Guatemala, Iran, Israel, Jordan, Syria, Lebanon, Turkey, the West Bank and Venezuela.”).

49. Rangita de Silva de Alwis, *Domestic Violence Lawmaking in Asia: Some Innovative Trends in Feminist Lawmaking*, 29 UCLA PAC. BASIN L.J. 176, 182 (2012). *Swara* most commonly refers to the practice of handing over “a young woman as a bride [] in compensation and as a bridge to peace between warring families or clans.” John Braithwaite & Ali Gohar, *Restorative Justice, Policing and Insurgency: Learning from Pakistan*, 48 LAW & SOC’Y REV. 531, 545 (2014).

50. *See supra* note 21 and accompanying text.

51. De Silva de Alwis, *supra* note 49, at 182.

52. *E.g.,* Nesheiwat, *supra* note 23, at 256.

53. HADI, *supra* note 29, at 24; *Pakistan Events of 2016*, *supra* note 29.

869 honor-related attacks in 2013 and 1,100 in 2015.⁵⁴ Pakistan is not a phenomenon—the United Nations Population Fund estimates this cultural tradition kills more than 5,000 women per year worldwide.⁵⁵ Further, these numbers are far lower than reality because honor killings often go unreported.⁵⁶

1. Domestic Legislation on Honor Killings

Many Islamic countries have outlawed honor killings, including Pakistan.⁵⁷ Notwithstanding these prohibitions, both cultural and legal issues still exist, failing to bring an end to honor violence.⁵⁸ In Pakistan, honor killings were made punishable by the 2004 Criminal Law (Amendment) Act.⁵⁹ Unfortunately, loopholes in the law based on the Islamic principle of *qisas* provided space for offenders to evade punishment, and this law was largely ineffective.⁶⁰ Under *qisas*, familial forgiveness was satisfactory and

54. *Pakistan Honour Killings on the Rise, Report Reveals*, BBC NEWS (Apr. 1, 2016), <http://www.bbc.com/news/world-asia-35943732>.

55. U.N. SEC'Y-GEN.'S UNITE CAMPAIGN TO END VIOLENCE AGAINST WOMEN, VIOLENCE AGAINST WOMEN 2 (2011), http://www.un.org/en/women/endviolence/pdf/pressmaterials/unite_the_situation_en.pdf.

56. *See Pakistan Honour Killings on the Rise, Report Reveals*, *supra* note 54.

57. Pakistan first outlawed honor killings in 2004 with the Criminal Law (Amendment) Act, 2004. Act XLV of 1860, PAK. PENAL CODE (1860), § 299, *amended by* Criminal Law (Amendment) Act, 2004, No. 1 of 2005 (Pak.), www.na.gov.pk/uploads/documents/1321335436_690.pdf. Another example is Jordan, which has criminalized murder, but also provides eligibility for sentence reductions if a man commits honor violence under certain circumstances. Nesheiwat, *supra* note 23, at 274–75.

58. *See* Nesheiwat, *supra* note 23, at 255 (“The Jordanian courts have misinterpreted the Criminal Code to expand the scope of defenses awarded to the male perpetrators of Honor Crimes. In doing so, the courts have disregarded the original intention of the legislature and have eroded the peoples trust in the law’s ability to provide protection to injured females.”); Waheed, *supra* note 22, *passim* (noting Pakistan’s unwillingness and inability to protect women from such violence or enforce laws against perpetrators throughout the article).

59. Act XLV of 1860, PAK. PENAL CODE (1860), § 299, *amended by* Criminal Law (Amendment) Act, 2004, No. 1 of 2005 (Pak.), www.na.gov.pk/uploads/documents/1321335436_690.pdf.

60. *Id.* (adding language which disabled an offender of honor violence from acting as a *wali* and forgiving himself, but continuing to provide for an offender who has been forgiven by the victim’s family to avoid prosecution); Zahra Ullah, *Is Pakistan Finally Doing Something About ‘Honor Killings’?*, CNN (July 26, 2016), <http://www.cnn.com/2016/07/25/asia/pakistan-honor-killing-bill>.

eliminated the need for legal action.⁶¹ Perpetrators of honor killings are usually family members, and prior to legislation passed in 2016, they were able to escape prosecution due to a law that upheld *qisas*.⁶² Saad Rasoon, a Pakistani lawyer educated at Harvard Law School, explained these cases stating, “Under Pakistani laws, in line with Quranic practices, the accused can be forgiven by the relatives of the deceased. They can forgive or accept blood money. So it becomes really easy for a brother to kill his sister and then be forgiven by the parents for committing the crime.”⁶³

The honor killing of social-media star Qandeel Baloch in July 2016 refocused international attention on this issue. Murdered by her brother for being “too Westernized,” her death sparked outrage in Pakistan and globally.⁶⁴ Pakistan’s legislature responded by considering and passing a bill to close a loophole in Pakistani law that allowed offenders to go free if they received familial forgiveness.⁶⁵ Despite initial attention and proactivity, the bill was not voted on until October 2016, when it passed resoundingly.⁶⁶ It gained additional support from Pakistani clerics who have recently declared honor killings to be “un-Islamic,” reversing declarations made in 1999.⁶⁷ After a negative response to statements made in May 2016 asserting that it may be appropriate in some situations under Islamic law for men to “lightly

61. See Saeed Shah & Niharika Mandhana, *Killing in the Name: South Asia’s Badge of Dishonor*, WALL ST. J. (July 18, 2016), <http://www.wsj.com/articles/killing-in-the-name-south-asias-badge-of-dishonor-1468861581>.

62. *Id.*

63. Ismaeel Naar, *Qandeel Baloch Murder: The Tussle Between Pakistan’s Law and ‘Honor’*, AL ARABIYA ENG. (July 19, 2016), <http://english.alarabiya.net/en/perspective/features/2016/07/19/Qandeel-Baloch-murder-The-tussle-between-law-and-honor.html>.

64. See Malaka Gharib, *‘Honor Killings’ Are a Global Problem—And Often Invisible*, NPR (July 19, 2016), <https://www.npr.org/sections/goatsandsoda/2016/07/19/486607329/honor-killings-are-a-global-problem-and-often-invisible>; Juliet Perry & Sophia Saifi, *Brother of Pakistan’s Qandeel Baloch: I’m ‘Proud’ of Strangling My Sister*, CNN (July 19, 2016), <http://www.cnn.com/2016/07/18/asia/pakistan-qandeel-baloch-brother-confession>; *Qandeel Baloch: Murdered Pakistan Celebrity’s Parents Speak of Pain*, BBC NEWS (July 21, 2016), <http://www.bbc.com/news/world-asia-36858317>.

65. Andrew Marszal, *Pakistan Closes Legal Loophole that Allowed Honour Killings to Go Unpunished*, TELEGRAPH (Oct. 6, 2016), <http://www.telegraph.co.uk/news/2016/10/06/pakistan-closes-legal-loophole-that-allowed-honour-killings-to-g>.

“[B]ecause more than 80 per cent of honour killings in Pakistan are carried out by a relation, in most cases it meant the family was effectively forgiving itself.” *Id.*

66. Masood, *supra* note 48. The bill also set a mandatory 25-year sentence for those accused of rape and required all rape cases be decided within three months. *Id.*

67. M Ilyas Khan, *Pakistan ‘Honour’ Killing: Why Clerics’ Call May Fall on Deaf Ears*, BBC NEWS (June 15, 2016), <http://www.bbc.com/news/world-asia-36542285>.

beat their wives,” and following a slew of honor killings, members of the Council of Islamic Ideology (CII) stated: “[A]dultery, obscenity and immodesty are grave sins and Islam prescribes harsh punishments for them, it does not allow an individual to act in an extra-judicial manner.”⁶⁸ Rather, it is up to the courts to determine a person’s innocence or guilt in such matters.⁶⁹ The new bill closed the *qisas* loophole, and all honor killings offenders will now receive mandatory life in prison.⁷⁰ Sadly, even with the bill and the clerics’ support, activists fear honor killings will continue to occur at startling numbers due to their pervasiveness in society.

B. Acid Attacks

Acid attacks are another traditional practice of violence against women. These occur when one individual, usually male, throws acid⁷¹ on another individual, usually female, as punishment for “embarrassing the Islamic faith.”⁷² At a minimum, acid attacks cause lifelong scarring and often disfigurement.⁷³ In the worst cases, acid attacks are fatal.⁷⁴ Whereas honor killings predominantly occur when male family members sense the female has dishonored the family, acid burnings occur when a women is perceived to be acting or dressing immodestly or in such a way as to embarrass the

68. *Id.*

69. *Id.*

70. Jon Boone, *Pakistan Makes ‘Honour Killings’ Punishable by Mandatory Prison Time*, GUARDIAN (Oct. 6, 2016), <https://www.theguardian.com/world/2016/oct/06/pakistan-honor-killing-law-prison-sentence>. It remains possible for an offender to avoid capital punishment with family forgiveness, but mandatory life in prison is the required sentence under the new bill. *Id.* A life sentence under Pakistani law is equal to a minimum of 12.5 years in jail. Marszal, *supra* note 65.

71. Most commonly, perpetrators will use sulfuric or nitric acid, which is sold in Pakistan for as little as 20 rupees—currently about 19 U.S. cents. Hooma Shah, Note, *Brutality by Acid: Utilizing Bangladesh as a Model to Fight Acid Violence in Pakistan*, 26 WIS. INT’L L.J. 1172, 1173 (2009). These types of acid are corrosive enough to dissolve wood or metal and reportedly cause the sensation of “being on fire.” *Id.*

72. Like honor killings, acid attacks also target women seen as violating an Islamic practice, members of the homosexual community, and non-Muslims. See HELBA ET AL., *supra* note 28, §§ 1.2 n.3, 3.1. Also like honor killings, this form of violence is not unique to the Muslim world. Faheem Younus, *Don’t Throw Acid on Islam’s Face*, HUFFINGTON POST (Nov. 5, 2012), http://www.huffingtonpost.com/faheem-younus/acid-attacks-are-not-islam_b_1856007.html.

73. *About Us*, ACID SURVIVORS TR. INT’L, <http://www.acidviolence.org/about-us.html> (last visited Apr. 8, 2018) (“[Attackers often target] the face to disfigure, maim and blind.”).

74. *See id.*

Islamic faith.⁷⁵ Although the majority of acid burnings occur in public, husbands also use this method to punish their wives for some indiscretion by throwing acid on their wives while they are sleeping or doing a household task.⁷⁶ Bangladesh, a country with a mixed Sharia law system, has consistently reported the highest number of acid attacks against women, but attacks are prevalent throughout the Middle East.⁷⁷

1. Domestic Legislation on Acid Attacks

As with honor killings, a considerable failure to prosecute offenders exists. An estimate by the Progressive Women's Association in Pakistan reported 7,000 acid attacks between 1994 and 2008 in Pakistan.⁷⁸ The group reported that only two percent of these were successfully prosecuted.⁷⁹ In 2011, Pakistan implemented new legislation criminalizing acid burning and making it punishable by up to a life sentence in jail, with a "minimum of fourteen years and a fine of one million rupees."⁸⁰ Prior to 2011, it was not a punishable offense. Since the passage of the law in 2011, the number of attacks has actually increased—from 44 cases in 2011 to 65 case in 2014—largely due to a lack of enforcement.⁸¹ Islamabad-based Acid Survivors Foundation recently told the *Los Angeles Times* it is estimated as many as 200 acid attacks occur in Pakistan each year.⁸² Seventy percent of victims are

75. Denis MacEoin, *Acid Attacks on Women in Iran*, GATESTONE INST. (Nov. 4, 2014), <https://www.gatestoneinstitute.org/4840/iran-acid-attacks> (“[G]overnment propaganda and the content of the trials stress that [acid attacks] are the fault of women who flaunt their female attractions, let a single strand of hair fall loose, or dance to stimulating music, driving innocent men to rape or disfigure them.”).

76. See Waheed, *supra* note 22, at 941 (detailing the story of Fakhra Yunas, a Pakistani woman whose husband threw acid on her while she was napping).

77. De Silva de Alwis, *supra* note 49, at 181 n.6.

78. Mikaela Conley, *Acid Attack Victim Fakhra Yunus Commits Suicide*, ABC NEWS (Mar. 28, 2012), <http://abcnews.go.com/Health/victim-acid-attack-commits-suicide/story?id=16011971>.

79. *Id.*; see also Shah, *supra* note 71, at 1174 (citing Juliette Terzieff, *Pakistan's Acid-Attack Victims Press for Justice*, WOMEN'S ENEWS (July 13, 2004), <https://womensenews.org/2004/07/pakistans-acid-attack-victims-press-justice>) (“It is estimated that in Pakistan less than five percent of those who commit acid crimes are convicted.”).

80. Emily von Werlhof, Note, *Scarred for Life: The Impact of the Acid Control and Acid Crime Prevention Act of 2010 on Addressing Violence Against Women in Pakistan*, INT'L REV. L., no. 4, 2013, at 2–3.

81. HADI, *supra* note 29, at 2, 36.

82. Alex Rodriguez, *Oscars 2012: Pakistani Filmmaker Wins for Documentary on*

women or girls.⁸³

Trends are similar in Iran, where acid burnings are a capital offense.⁸⁴ Despite the severity of the punishment, in October 2014, 14 girls in Ishafan were reportedly attacked as a group of men terrorized the city, inciting fear in women whenever they stepped foot outside their door.⁸⁵ The group responsible for these attacks is believed to be Ansar-e-Hezbollah, “a gangsterish organization affiliated with the Supreme Leader, Ayatollah Khamenei.”⁸⁶ Some call them “morality patrols,” and their string of attacks throughout the city was reportedly designed to punish females whose hijabs were improperly adjusted and showing too much of their face or hair.⁸⁷

Ansar-e-Hezbollah is just one of many militant groups whose members take enforcement of the moral code into their own hands.⁸⁸ Women fear persecution not only from government-deployed Gashte Ershad (so-called “morality police”),⁸⁹ but also from private individuals acting extrajudicially as “custodians of morality.”⁹⁰ In 2014, Iran passed a “morality bill” allowing members of society to individually act to ensure adherence to the moral code.⁹¹ Despite verbal resistance from President Rouhani, women can be confronted on the streets and publicly criticized or even physically attacked

Acid Attacks, L.A. TIMES (Feb. 27, 2012), http://latimesblogs.latimes.com/world_now/2012/02/pakistani-filmmakers-oscar-casts-spotlight-on-acid-attacks.html.

83. *Id.*

84. MacEoin, *supra* note 75.

85. *Id.*

86. *Id.*

87. IranWire, *Acid Attacks on Women Spread Terror in Iran*, DAILY BEAST (Oct. 18, 2014), <http://www.thedailybeast.com/articles/2014/10/18/acid-attacks-on-women-spread-terror-in-iran.html>.

88. See Peter Kenyon, *Springtime in Iran Means the ‘Morality Police’ Are Out in Force*, NPR (May 3, 2016), <http://www.npr.org/sections/parallels/2016/05/03/476511439/springtime-in-iran-means-the-morality-police-are-out-in-force>.

89. Babak Dehghanpisheh, *Rising Acid Attacks Raise Fears About ‘Morality Patrols’ in Iran*, HUFFINGTON POST (Nov. 5, 2014), http://www.huffingtonpost.com/2014/11/05/iran-acid-attacks_n_6105544.html. A trend exists in many major cities in Iran for groups of Gashte Ershad, the “guidance patrol,” to be deployed by the government each year as summer temperatures settle in, to ensure adherence to the moral code. Kenyon, *supra* note 88. In May 2016, Tehran police deployed 7,000 Gashte Ershad to monitor the capital’s city streets. *Id.* President Rouhani has come under recent attack for continued use of such troops, and although he has shown some willingness to stop using these tactics, he has yet to take formal action. *Id.*

90. See Dehghanpisheh, *supra* note 89.

91. *Id.*

for failing to adhere to tenets of the Islamic faith.⁹²

IV. COMPARING SHARIA LAW AND WESTERN LEGAL SYSTEMS

A. A Look at Domestic Legal Systems

This Part highlights some of the major differences between Western and Sharia law to help identify why women have a subordinate role in society and are thus perpetual victims of persecution. The Sharia-law provisions discussed in this Part typically take the form of domestic legislation within a Sharia-law nation. Although there are varying interpretations of Sharia law, the many different Sharia-law provisions exemplify that one thing remains constant across the Muslim world: The propagation of the notion females are “second-class citizens.”⁹³ Where Sharia law promulgates perceptions of gender inequality, Western law has steadily moved toward enforcing gender equality in all areas of life. Below are some examples of Iranian laws that further gender inequality.

- Article 21 of Iran’s Constitution states: “The government must ensure the rights of women in all respects, in conformity with Islamic criteria”⁹⁴
- Article 638 of the Islamic Penal Code of Iran makes appearing in public without a hijab punishable by a prison term of up to two months.⁹⁵

92. President Rouhani reacted to Parliament’s action by saying, “Iranian women are Muslim women of virtue who are all supporting hijab. So a few people in this country should not consider themselves custodians of morality.” *Id.* Faraz Sanei, Iran researcher for Human Rights Watch said, “The Rouhani Administration is clearly on the record as being very skeptical of Ansar-e-Hezbollah and enforcing of morality laws by vigilante groups.” *Id.*

93. See Sudduth, *supra* note 23, at 567–68 (“Pakistani women are still treated as second-class citizens”); Choudhury, *supra* note 23, at 46 (“[T]raditionalists within Muslim communities in India seek to universalize and ossify interpretations and practices of Islam that maintain women’s status as second-class members with far fewer rights than men.”); Nesheiwat, *supra* note 23, at 252 (noting the tension that exists “when the state silently condones actions that deprive some citizens of their basic rights, thus relegating them to a second-class citizenship”).

94. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 21, https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en. This is not a call for gender equality, but rather an affirmation women will be treated according to Islamic law tenets. *Id.*

95. MAJMU’AH QAVANINI JAZAI [ISLAMIC PENAL CODE OF IRAN] 1996, art. 638.

- Article 115 of Iran’s Constitution has been interpreted to limit presidential candidates to men.⁹⁶
- Article 300 of the Islamic Penal Code of Iran states that the *diye*, or “blood money,” of a Muslim woman is half of the *diye* of a Muslim man.⁹⁷ This provision essentially indicates a belief that a woman’s life is worth only half of a man’s life.
- Article 1105 of the Civil Code of the Islamic Republic of Iran designates the man as the legal head of the family.⁹⁸
- Article 1117 of the Civil Code of the Islamic Republic of Iran allows a man to ban his wife from any technical profession.⁹⁹
- Article 1133 of the Civil Code of the Islamic Republic of Iran is one of many discussing divorce laws. This particular provision allows a man to divorce his wife whenever he so chooses and requires no notice.¹⁰⁰

In addition to these laws, women in Muslim-majority nations face severe discrimination in the workforce and child custody.¹⁰¹ The Civil Code of the Islamic Republic of Iran gives sole guardianship of the child to the

96. See QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 115, https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en; *Iran Rejects Women Presidential Hopefuls*, AL JAZEERA (May 17, 2013), <https://www.aljazeera.com/news/middleeast/2013/05/201351754634102939.html> (“[Iran’s Constitution] says the president will be elected from religious-political men, or ‘rijal,’ a plural for man in Arabic . . .”).

97. MAJMU’AH QAVANINI JAZAI [ISLAMIC PENAL CODE OF IRAN] 1996, art. 300. *Diye* or *diyat* is a sum of money that serves as a financial punishment ordered by a judge, sometimes referred to as “blood money.” *Id.* art. 15.

98. QANUNI MADANI [CIVIL CODE OF THE ISLAMIC REPUBLIC OF IRAN] 1995, art. 1105.

99. *Id.* art. 1117. Similarly, Saudi guardianship laws require male approval before a female can pursue any profession. *Saudi Arabia: Male Guardianship Boxes Women In*, HUM. RTS. WATCH (July 16, 2016), <https://www.hrw.org/news/2016/07/16/saudi-arabia-male-guardianship-boxes-women>.

100. QANUNI MADANI [CIVIL CODE OF THE ISLAMIC REPUBLIC OF IRAN] 1995, art. 1133. Women may only seek divorce under certain circumstances outlined in the civil code. See, e.g., *id.* art. 1129–1130. New laws in Iran make it harder for a man to ask for a divorce without mutual consent. See AFP, *Iran Changes Law to Make Divorce Harder*, DAILY MAIL (July 12, 2015), <http://www.dailymail.co.uk/wires/afp/article-3158119/Iran-changes-law-make-divorce-harder.html>.

101. *Women’s Rights in Iran*, HUM. RTS. WATCH (Oct. 28, 2015), <https://www.hrw.org/news/2015/10/28/womens-rights-iran>.

father, not both parents equally.¹⁰² An Iranian woman who marries a foreign man cannot pass on her nationality or Iranian citizenship to the child.¹⁰³ Women, including young schoolgirls, are required to wear hijabs in public so as not to showcase their beauty.¹⁰⁴ Additionally, a woman are not allowed to leave the country without her husband's permission.¹⁰⁵

In 2016, Iran's legislature amended a law restricting the number of hours per week a woman could work based on certain home and family responsibilities.¹⁰⁶ This new law reflects a fear of a breakdown of the family structure throughout Iran as it substantially reduces the number of working hours for 4.3 million women currently employed¹⁰⁷ and dampens prospects for those looking to enter the job market.¹⁰⁸ Conservative supporters of such legislation emphasize the importance of a mother being home with young or disabled children.¹⁰⁹ Liberal activists, in contrast, argue a woman's career should not be hampered by family responsibilities.¹¹⁰ This bill is expected to have an adverse effect on the workforce; because under the law, employers are required to pay women for 44 hours of work per week, although women to whom the law applies are only allowed to work 36 hours.¹¹¹ This has chilled continued employment of women.¹¹² A women's rights advocate in Tehran told the International Campaign for Human Rights: "In Iran employers find

102. QANUNI MADANI [CIVIL CODE OF THE ISLAMIC REPUBLIC OF IRAN] 1995, art. 1180.

103. REG'L OFFICE FOR THE MIDDLE E. & N. AFR., UNICEF, IRAN: MENA GENDER EQUALITY PROFILE 2 (2011), <https://www.unicef.org/gender/files/Iran-Gender-Eqaulity-Profile-2011.pdf> [hereinafter UNICEF].

104. *See Women's Rights in Iran*, *supra* note 101.

105. *Id.*; Kaveh Taheri, *Iranian Women Still Denied Fundamental Rights*, HUFFINGTON POST (Apr. 4, 2016), http://www.huffingtonpost.com/kaveh-taheri/iranian-women-still-denied_b_9607430.html.

106. *New Law Reduces Employment Prospects for Women in Iran*, CTR. FOR HUM. RTS. IRAN (July 14, 2016), <https://www.iranhumanrights.org/2016/07/bill-to-reduce-the-working-hours-of-women>. The law applies specifically to women who have children with disabilities, children under the age of six, or other family members who are sick and in need of care. *Id.*

107. *Id.*; *New Iranian Bill Aims to Keep Women Out of Workforce*, CTR. FOR HUM. RTS. IRAN (June 6, 2016), <https://www.iranhumanrights.org/2016/06/bill-to-reduction-of-working-hours-of-women>.

108. *New Law Reduces Employment Prospects for Women in Iran*, *supra* note 106.

109. *New Iranian Bill Aims to Keep Women Out of Workforce*, *supra* note 107.

110. *Id.*

111. *Id.*

112. *See id.*

a thousand ways to avoid paying the wages of full-time workers while getting rid of workers with impunity. Without changing the behavior of employers, this law will only make conditions more difficult for employed women.”¹¹³

Regulations in other Muslim countries may vary, but most laws are similar to Iranian law and are consistently applied throughout the Muslim world. Women are required to wear conservative dress, which usually means covering their hair and refraining from showing hair or skin.¹¹⁴ In Saudi Arabia, women were not given the right to drive a car until 2017.¹¹⁵ “[W]omen should accept simple things,” wrote Talal Alrahbi, a Saudi journalist for Arab News.¹¹⁶ Only 15 percent of Saudi women are employed, and it was not until 2013 that women could become lawyers.¹¹⁷ Women across the Muslim world require a male guardian to make decisions for them, and they are prohibited from traveling without their guardian’s permission.¹¹⁸

113. *New Law Reduces Employment Prospects for Women in Iran*, *supra* note 106.

114. *Six Things Women in Saudi Arabia Still Cannot Do*, WEEK (June 5, 2018), <http://www.theweek.co.uk/60339/things-women-cant-do-in-saudi-arabia>. This is not true in Pakistan, where women can generally choose what they wear as long as it is modest. There is no requirement to cover their hair or face. Ishrat Ansari, *No Dress Codes for Pakistani Women*, EXPRESS TRIB. (May 22, 2014), <http://tribune.com.pk/story/711490/no-dress-codes-for-pakistani-women>.

115. *E.g., Saudi Arabia Driving Ban on Women to Be Lifted*, BBC NEWS (Sept. 27, 2017), <http://www.bbc.com/news/world-middle-east-41408195> (“Until now, only men were allowed licences and women who drove in public risked being arrested and fined.”). The decision was hit with backlash from conservative voices who criticized the government of “bending the verses of Sharia.” *Id.* Saudi Arabia still has major progressive steps it can take to further integrate women into the workforce. See Jason Rezaian, *Saudi Women Will Soon Be Able to Drive. Will They Be Able to Fly, Too?*, WASH. POST (Jan. 26, 2018), https://www.washingtonpost.com/news/worldviews/wp/2018/01/26/saudi-women-will-soon-be-able-to-drive-will-they-be-able-to-fly-too/?utm_term=.7f8484bc31a5 (noting women have not yet been welcomed into the aviation industry and describing Saudi Arabia’s long-term vision for a modernized and diversified economy by 2030). The decision spurred the hashtag “I am my own guardian,” although the decree signed by King Salman bin Abdulaziz Al Saud clarified the right as one still restrained by Islamic law. See *Saudi Arabia Driving Ban on Women to Be Lifted*, *supra* note 115; *Saudi Arabia to Allow Women to Drive*, AL JAZEERA (Sept. 27, 2017), <https://www.aljazeera.com/news/2017/09/saudi-arabia-women-drive-170926190857109.html>.

116. Talal Alharbi, *Role Saudi Women Can Play*, ARAB NEWS (Sept. 1, 2014), www.arabnews.com/columns/news/623406.

117. Sherman, *supra* note 18.

118. May Bulman, *The Cartoon that Shows How Ridiculous Saudi Laws Are for Women*, INDEPENDENT (July 18, 2016), <http://www.independent.co.uk/news/world/middle-east/thousands-of-people-share-cartoon-showing-how-ridiculous-saudi-laws->

When comparing the large percentage of laws creating second-class citizenship for females to the minimal number of laws protecting women from domestic violence, the difference is startling. Iran has no specific law criminalizing domestic violence.¹¹⁹ Additionally, the Islamic Penal Code of Iran allows a man to kill his wife for adultery.¹²⁰ The government-sanctioned punishment for adultery is death by stoning.¹²¹ The nation of Pakistan has not taken any legal action against domestic violence although bills have been passed locally.¹²² Previous attempts at national legislation have failed as conservative clerics call these measures “anti-Islamic.”¹²³

B. Sharia Law Within the International Legal Framework

Gender equality has been an issue in the international community for decades. Countries have come together to create international documents calling for state action to create a domestic environment which protects women from patriarchal values.¹²⁴ The most notable documents are the 1948 Universal Declaration of Human Rights,¹²⁵ the 1979 Convention on the Elimination of Discrimination Against Women (CEDAW),¹²⁶ the 1993 Declaration on the Elimination of Violence against Women (DEVAW),¹²⁷ and the 1993 Vienna Declaration and Programme of Action on Human

are-for-women-a7142081.html.

119. UNICEF, *supra* note 103.

120. *Id.*

121. *Id.*

122. The Women’s Protection Act passed in the Punjab province in February 2016 but received immediate criticism from more than 30 religious groups across the nation. M Ilyas Khan, *Why Is a Pakistani Bill to Protect Women Unpopular?*, BBC NEWS (Mar. 17, 2016), <http://www.bbc.com/news/world-asia-35811180>.

123. See Siobhan Fenton, *Anti-Domestic Violence Law to Protect Women Is Un-Islamic, Pakistani Advisory Group Rules*, INDEPENDENT (Mar. 4, 2016), <http://www.independent.co.uk/news/world/asia/bill-protecting-women-against-domestic-violence-is-un-islamic-pakistani-advisory-group-rules-a6911161.html>. Critics of the bill fear such measures will upset the patriarchal balance and have called the measure “an attempt to make Pakistan a Western colony again.” *Id.*

124. See *infra* notes 126–30.

125. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights], <http://www.un.org/en/universal-declaration-human-rights/index.html>.

126. CEDAW, *supra* note 7.

127. G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993) [hereinafter DEVAW].

Rights.¹²⁸ Additional recommendations and observations have been passed since 2000 which have strongly called for banning practices which perpetuate gender inequality.¹²⁹ In total, the international community has deepened its commitment to gender equality and ending VAW around the world.

In contrast, international law first called for gender equality with the 1948 Universal Declaration of Human Rights.¹³⁰ Since then, numerous treaties have been passed and ratified by a majority of countries, including Sharia-law nations, attempting to create gender equality under the law and in society.¹³¹ The most notable charter has been CEDAW, passed in 1979.¹³² This remains the leading convention on women's rights and emphasizes the importance that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."¹³³ CEDAW is one of the first treaties to recognize violence and abuse in a private setting.¹³⁴ It describes "the definition of discrimination against women and the rights of women and the states responsibility to guarantee those rights."¹³⁵ This initiative has provided a blueprint for laws that address discrimination against women in all spheres of life¹³⁶ for the 189 countries¹³⁷ who have

128. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc A/CONF.157/23 (June 25, 1993) [hereinafter *Vienna Declaration*].

129. Convention on the Rights of the Child, Nov. 20, 1989, preamble, 1577 U.N.T.S. 3; G.A. Res. A/S-23/3 (Nov. 16, 2000); S.C. Res. 1820, ¶ 4, (June 19, 2008); Rep. of the Comm. Against Torture, Concluding Observations of the Comm. Against Torture: Jordan, at ¶ 20, U.N. Doc. CAT/C/JOR/CO/2 (May 25, 2010) [hereinafter *Concluding Observations of the Comm. Against Torture: Jordan*]; *UNHCR Age, Gender, and Diversity Policy: Working with People and Communities for Equality and Protection*, UNHCR (June 1, 2011) [hereinafter *UNHCR Age, Gender, and Diversity Policy*], <http://www.unhcr.org/4e7757449.html>.

130. Universal Declaration of Human Rights, *supra* note 125.

131. See Darlene Prescott, *Gender Equality Attempts Through the Decades*, INT'L MODELS PROJECT ON WOMEN'S RTS. (June 6, 2012), www.impowr.org/journal/gender-equality-attempts-through-decades.

132. CEDAW, *supra* note 7.

133. *Id.*

134. De Silva de Alwis, *supra* note 49, at 189.

135. *Id.* at 178 n.3.

136. *See id.* at 189.

137. *Ratification Status for CEDAW*, *supra* note 7. Pakistan ratified in 1996, Saudi Arabia in 2000, and Iran has neither signed nor ratified CEDAW. *Id.* The United States has signed but not ratified CEDAW. *Id.*

ratified¹³⁸ CEDAW. The first two articles call for all nations, regardless of their respective sources of law, to evaluate the role of women in society and in the family and to implement legislation adhering to this perspective.¹³⁹ CEDAW directly attacks cultural prejudices in Article 5: “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 inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹⁴⁰ The responsibility placed on states is heightened in Article 16, which obligates states to remove discriminatory laws and practices against women.¹⁴¹ Its explicit dictation of state responsibility is considerable: states are responsible “for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”¹⁴² Further, the CEDAW Committee was the first to condemn honor violence through its calls for eradication of gender-based violence and discrimination.¹⁴³ The 1992 General Recommendation on Violence Against Women urged states to revise legislation and “remove the defence of honour in regard to the assault or murder of a female family member.”¹⁴⁴

This convention was followed almost 15 years later by the 1993 Declaration on the Elimination of Violence Against Women (DEVAW).¹⁴⁵

138. When a party signs a treaty, it is indicating its initial willingness to endorse the treaty. A country is legally bound by a treaty when it ratifies the document. Most countries must undergo a domestic approval process before ratifying a treaty. *Convention on the Rights of the Child: Signature, Ratification, and Accession*, UNICEF, http://www.unicef.org/crc/index_30207.html (last updated May 19, 2014).

139. Article 1, which defines discrimination, brings under its umbrella violence against women in the private sphere, most notably the family. CEDAW, *supra* note 7. Article 2 addresses violence against women by any person, organization, or enterprise and calls on all public authorities and institutions to “act in conformity with this obligation.” *Id.*

140. *Id.*

141. De Silva de Alwis, *supra* note 49, at 189 (citing Rep. of the Comm. on the Elimination of Discrimination Against Women on Its Eleventh Session, at 4, U.N. Doc. A/47/38 (Feb. 1, 1992)).

142. *Id.* at 191 (quoting Rep. of the Comm. on the Elimination of Discrimination Against Women on Its Eleventh Session, at 2, U.N. Doc. A/47/38 (Feb. 1, 1992)).

143. CEDAW, *supra* note 7; de Silva de Alwis, *supra* note 49, at 189.

144. Mor, *supra* note 2, at 275 (citing Rep. of the Comm. on the Elimination of Discrimination Against Women on Its Eleventh Session, at 6, U.N. Doc. A/47/38 (Feb. 1, 1992)).

145. DEVAW, *supra* note 127.

The DEVAW “is the first international declaration to hold the State responsible and accountable for atrocities against women.”¹⁴⁶ It adopts a broad and expansive definition of violence:

Any gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in the family, such as battering, sexual abuse or female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.¹⁴⁷

The 1993 Vienna Declaration and Programme of Action on Human Rights affirmed, “Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice . . . are incompatible with the dignity and worth of the human person, and must be eliminated.”¹⁴⁸

The international community (IC) progressed immensely in 2000 when it “explicitly urged governments” to take necessary steps to address honor violence.¹⁴⁹ The IC took another large leap forward in 2008 when it universally recognized gender-based violence as a human rights violation.¹⁵⁰ In 2008, the United Nations Security Council voted unanimously “that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.”¹⁵¹ Regrettably, naming sexual violence a war crime failed to cover acts of violence committed in a private sphere, notably marital or familial violence.

In 2010, the Committee Against Torture, one of the treaty-monitoring

146. De Silva de Alwis, *supra* note 49, at 188.

147. *Id.* (citing DEVAW, *supra* note 127).

148. *Vienna Declaration*, *supra* note 128.

149. Mor, *supra* note 2, at 271 (citing Convention on the Rights of the Child, *supra* note 129; G.A. Res. A/S-23/3 (Nov. 16, 2000)). The document called upon governments to develop and fully implement measures “to eradicate harmful customary or traditional practices, including . . . honour crimes,” identifying such violence as a violation of “human rights and fundamental freedoms.” *Id.* at 271 n.192 (quoting G.A. Res. A/S-23/3 (Nov. 16, 2000)).

150. Aimee Heitz, Note, *Providing a Pathway to Asylum: Re-Interpreting “Social Group” to Include Gender*, 23 *IND. INT’L & COMP. L. REV.* 213, 216 (2013) (citing S.C. Res. 1820, *supra* note 129, ¶ 4; *UNHCR Age, Gender, and Diversity Policy*, *supra* note 129).

151. S.C. Res. 1820, *supra* note 129, ¶ 4.

bodies, regrettably reported honor violence and other serious forms of VAW are not punished as severely as other violent crimes.¹⁵² This results in part from the failure of many Middle Eastern nations to pass appropriate legislation effectively deterring such behavior and in part from the failure of Western nations to sufficiently condemn those nations whose disapproval of such acts is legislated but unenforced.¹⁵³

V. CONSIDERING SHARIA LAW AND GENDER ROLES IN WESTERN COURTS

The dramatic differences between legal systems and cultural practices and their effect on female health and safety should lead policymakers to question whether and how Western courts should consider these unique issues. Islamic law has played a role in U.S. courts in significant areas including family law and asylum law.¹⁵⁴

This Part provides information on the current state of Sharia law in U.S. culture and courts, analyzing honor violence in the United States, anti-Sharia law legislation, and family law issues. Lastly, this Note discusses asylum law claims in the United States and calls for the U.S. legal system to extend protection to women who face an imminent threat of honor-based violence if they are forced to leave the United States and return to their home country.¹⁵⁵ Inconsistency currently exists among the circuit courts in defining a “particular social group.”¹⁵⁶ This Note argues asylum law should be expanded to encompass women who face gender-based persecution, and by doing so, the United States will join a handful of its allies who have already extended such protection.¹⁵⁷

152. Mor, *supra* note 2, at 275 (citing Concluding Observations of the Comm. Against Torture: Jordan, *supra* note 129).

153. See, e.g., Nesheiwat, *supra* note 23, at 255 (noting Jordanian “courts have disregarded” the purpose of laws designed to curb honor crimes).

154. Notable cases include: Sarhan v. Holder, 658 F.3d 649, 655 (7th Cir. 2011) (“Women facing honor killings in Jordan are no less cohesive than [previously recognized social] groups and no more able to shed the stigmatizing characteristics that render them victims.”); Gomez v. I.N.S., 947 F.2d 660, 664 (2d Cir. 1991) (requiring members of a particular social group to have a “closely affiliated relationship” and be “recognizable and discrete”); *In re Acosta*, 19 I. & N. Dec. 211, 223 (BIA 1985) (requiring a group to have an “immutable characteristic”), *overruled in part by In re Mogharrabi*, 19 I. & N. 439 (BIA 1987).

155. See *infra* Part V.A.

156. See *infra* Part V.B.

157. See *infra* Part V.C.

A. *The State of Honor Violence in the United States*

“Honor violence is a crime without a name in the United States.”¹⁵⁸ Despite the public perception that honor violence only happens outside U.S. borders, about 23 to 27 women in the United States are killed annually in honor killings.¹⁵⁹

In one of the most notable stories, two teenage sisters—Amina and Sarah Said—were shot to death by their Egyptian father, Yaser Said, in Irving, Texas.¹⁶⁰ Sarah, 18 years old, had rejected an arranged marriage set up by her father with a much older man.¹⁶¹ Amina, 17 years old, had a Western boyfriend.¹⁶² They were running away from a lifetime of physical abuse at the hands of Yaser.¹⁶³ The girls were found shot 11 times in the back of their father’s taxi, abandoned in a hotel parking lot.¹⁶⁴ Yaser was charged with capital punishment, as there is no charge giving credence to honor-driven violence.¹⁶⁵

Just years later, Faleh Almaleki was sentenced to 34 years in prison for the honor murder of his daughter in 2011.¹⁶⁶ The daughter, Noor, had left an arranged marriage to an older cousin in Iraq.¹⁶⁷ In Faleh’s perspective, Noor had committed the ultimate betrayal by straying from his grasp.¹⁶⁸ Enraged,

158. Stella Dawson, *Two Girls Murdered in Texas Taxi: Were They Honor Killings?*, REUTERS (June 18, 2015), <http://www.reuters.com/article/us-violence-women-honourkillings-idUSKBN0OY2UK20150618>.

159. HELBA ET AL., *supra* note 28, § 1.3.

160. Phyllis Chesler, Opinion, *Arrest Mother as Accomplice in Texas Honor Killing*, FOX NEWS (May 30, 2012), <http://www.foxnews.com/opinion/2012/05/30/arrest-mother-as-accomplice-in-texas-honor-killing.html>.

161. *Id.*

162. *Id.*

163. *Id.*

164. Dawson, *supra* note 158.

165. *Id.* Yaser remains at large and is on the FBI’s Ten Most Wanted list. *Yaser Abdel Said, FBI’S TOP 10 MOST WANTED*, <https://www.fbi.gov/wanted/topten/yaser-abdel-said> (last visited Apr. 24, 2018).

166. Paul Rubin, *Honor Killing Dad Gets 34 Years in Prison at Emotional Hearing*, PHOENIX NEW TIMES (Apr. 15, 2011), <http://www.phoenixnewtimes.com/news/honor-killing-dad-gets-34-years-in-prison-at-emotional-hearing-6645798>.

167. Paul Rubin, *How a Muslim Woman Was “Honor-Killed” by Her Father Because He Believed She Was Too Americanized*, PHX. NEW TIMES (Apr. 1, 2010), <http://www.phoenixnewtimes.com/news/how-a-muslim-woman-was-honor-killed-by-her-father-because-he-believed-she-was-too-americanized-6445842>.

168. *Id.*

Faleh followed Noor to the local Department of Economic Security office, where she was helping translate paperwork for a friend.¹⁶⁹ When Noor went to return to her vehicle, Faleh, waiting in the parking lot, ran her over with her jeep, leaving her unconscious and with several sustained injuries.¹⁷⁰ Noor died soon after.¹⁷¹

Unfortunately, due to a lack of training on the sensitivities associated with this type of violence, there are repeated problems with investigating these crimes. Farhana Qazi, former U.S. government analyst and senior fellow at the Center for Advanced Studies on Terrorism, said: “Cases of honor killings and/or violence in the U.S. are often unreported because of the shame it can cause to the victim and the victim’s family”¹⁷² Further, Qazi commented, “Also, because victims are often young women, they may feel that reporting the crime to authorities will draw too much attention to the family committing the crime.”¹⁷³ Further, it may be difficult for law enforcement to conclusively link the crime to a religious motivation.¹⁷⁴ A 2011 study by the Tahirih Justice Center reported, “3,000 known or suspected cases of forced marriage in the United States in the prior two years.”¹⁷⁵ While this is not necessarily a recognized form of domestic violence, it is a religiously-based practice that directly interferes with a U.S. fundamental substantive right—the right to choose who to marry¹⁷⁶—this and similarly related practices, such as Swara, can threaten the safety and health of young girls often forced to marry older men.¹⁷⁷

169. Nadya Labi, *An American Honor Killing: One Victim’s Story*, TIME (Feb. 25, 2011), <http://content.time.com/time/nation/article/0,8599,2055445,00.html>.

170. *Id.*

171. *Id.*

172. Hollie McKay, *Honor Killing in America: DOJ Report Says Growing Problem Is Hidden in Stats*, FOX NEWS (Nov. 10, 2015), <http://www.foxnews.com/us/2015/11/10/honor-killing-in-us-justice-department-mulls-guidelines-as-grim-toll-rises.html>.

173. *Id.*

174. *Id.*

175. Aayan Hirsi Ali, *Honor Killings in America*, ATLANTIC (Apr. 30, 2015), <http://www.theatlantic.com/politics/archive/2015/04/honor-killings-in-america/391760>.

176. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015).

177. *See* Catherine Pearson, *Child Marriage Is ‘A Major Psychological Trauma,’ New Study Says*, HUFFINGTON POST (Aug. 30, 2011), http://www.huffingtonpost.com/2011/08/30/child-marriage-psychological-effects_n_941958.html (“With a 41 percent increased risk of mental disorder, child marriage should be considered a major psychological trauma.”); Nisha Varia, *Ending Child Marriage: Meeting the Global Development Goals’ Promise to Girls*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2016/ending-child-marriage> (last visited Apr. 24, 2018) (detailing the risk to the

Aayan Hirsi, survivor of honor violence and founder of the AHA Foundation, described the extreme difficulties with linking a religious motivation to a crime of violence against a young girl:

Even when a woman or girl finds the courage to reach out for help, often our public services are unresponsive because service providers, law enforcement officers, teachers and health care professionals simply do not understand the distinctive nature of honor violence. Honor violence is communally sanctioned and often involves multiple perpetrators within the household or members of the community. Most Americans struggle to understand why a woman or girl exhibiting typical American behavior should be subjected to violence and abuse. Some Americans feel nervous about distinguishing between honor violence and other forms of domestic abuse for fear of giving offense. Some apply different standards to immigrant communities, as if harming a daughter or sister can ever be condoned as part of a cultural tradition.¹⁷⁸

This forces law enforcement to walk a thin line between demeaning Islam by linking the religion to horrific acts of violence or simply calling the act a murder and potentially losing the ability to address a growing cultural issue.¹⁷⁹

Many people in the United States today seem more worried about being labeled ‘bigoted’ or ‘racist’ for speaking out against harmful traditional practices such as honor violence than about the practices themselves. In my view, that is downright immoral. Simply stated, there is no honor in honor violence. It is criminal.¹⁸⁰

Law enforcement concerned with “creating a category of crime that seems to target a certain culture or religion” may be exhibiting noble intentions.¹⁸¹

health, education, and physical safety of child brides). Forced marriage in the United States affects all ages, including young girls and women. *Uncovering the Problem of Forced Marriage in the U.S.*, PBS (Sept. 14, 2016), <https://www.pbs.org/newshour/show/uncovering-problem-forced-marriage-u-s>.

178. Ali, *supra* note 175. The AHA Foundation is a leading organization in raising awareness of and fighting to end honor violence in the United States. *About Us*, AHA FOUND., <http://www.theahafoundation.org/about-us/> (last visited Jan. 4, 2017). Aayan Hirsi Ali emigrated from Somalia as a young girl and was herself a victim of culturally and religiously motivated violence. Ali, *supra* note 175.

179. McKay, *supra* note 172.

180. Ali, *supra* note 175.

181. Julia Dahl, “Honor Killing” Under Growing Scrutiny in the U.S., CBS NEWS

However, ultimately, the issue of male domination must be addressed, as it is the root of the issue.¹⁸² Experts say the matter of honor killings in the United States requires a “different approach” in how they are investigated to manage a growing cultural issue with religiously motivated, gender-based violence, especially as immigration rates from the Middle East and Western Asia rise.¹⁸³ To best protect young women threatened by their home situation, law enforcement and social services must be trained to understand that what sounds like outrageous claims by young girls to guidance counselors, teachers, or friends could be a very serious cry for help.¹⁸⁴

B. Sharia Law in the U.S. Courtroom

1. Legislative Attempts to Block Sharia Law in U.S. Courtrooms

Since the 9/11 terror attacks, the Muslim population has been increasingly marginalized in U.S. society, spreading fear of a “Muslim takeover” and shifting the U.S. cultural debate from focusing on multiculturalism to assimilation.¹⁸⁵ The role of Sharia law in the legal system is a hotly contested issue as conservatives have framed the use of Sharia law as a significant threat to national security.¹⁸⁶ In the years since the 9/11 terrorist attacks, state bills to ban Sharia law have been proposed in 20 states.¹⁸⁷ In February 2010, an Iowa bill proposed prohibiting judges from using “judicial precedent, case law, penumbras, or international law as a basis

(Apr. 5, 2012), <http://www.cbsnews.com/news/honor-killing-under-growing-scrutiny-in-the-us>.

182. *See id.*

183. McKay, *supra* note 172.

184. *See* Dahl, *supra* note 181. (“Now, when a girl goes to police or her school counselor and says, ‘My dad wants to kill me because a boy sent me flowers,’ to Western ears it sounds like she’s exaggerating,” explains AHA’s [Amanda] Parker. ‘But we have to leave our cultural assumptions at the door and take her seriously.’”).

185. Cyra Akila Choudhury, *Shari’ah Law as National Security Threat?*, 46 AKRON L. REV. 49, 50 (2013).

186. *Id.*

187. Aaron Fellmeth, *U.S. State Legislation to Limit Use of International and Foreign Law*, 106 AM. J. INT’L. L. 107, 109–10 (2012); *see, e.g.*, H.R. 597, 2011 Leg., Reg. Sess. (Ala. 2011); S. 62, 2011 Leg., Reg. Sess. (Ala. 2011); H.R. 2582, 50th Leg., 1st Reg. Sess. (Ariz. 2011); H.R.J. Res. 14, 84th Gen. Assemb., Reg. Sess. (Iowa 2011); H.R.J. Res. 31, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011). Fellmeth’s list contains: Alaska, Arkansas, Arizona, Florida, Georgia, Indiana, Iowa, Louisiana, Kansas, Missouri, Nebraska, New Jersey, South Carolina, South Dakota, Texas, and Utah. Fellmeth, *supra* note 187, at 109–10.

for rulings.”¹⁸⁸ That same month, a Utah house bill proposed prohibiting any foreign law, or any decision rendered by a foreign legal or governmental authority, if it would violate a person’s state or federal constitutional rights.¹⁸⁹ New Jersey passed a similar bill prohibiting judicial or administrative enforcement of any “foreign law” that violates state or federal constitutional rights but expanded upon what was seen in the Utah bill by requiring courts to refuse enforcement of a contractual forum-selection clause designating a foreign forum if enforcement would foreseeably “result in [a] violation of any rights guaranteed by” the New Jersey or federal constitution.¹⁹⁰ These bills approach Sharia law in one of two ways: by either specifically banning Sharia law or remaining facially neutral by prohibiting all foreign law.¹⁹¹ The laws directly attack the growing use of Sharia law, or national law from a country such as Saudi Arabia whose entire legal system is based on Sharia law, in an effort to “save our state” and bolster U.S. supremacy.¹⁹²

Perhaps the most divisive battle over a bill occurred in Oklahoma, where State Question 755 (SQ 755) passed with more than 70 percent of the

188. H.F. 2313, 83d Gen. Assemb., § 1 (Iowa 2010) (emphasis added). This was a thinly veiled attempt to ban Sharia law by requiring any judicial officer in Iowa to use only “the Constitution of the United States, the Constitution of the State of Iowa, and the Code of Iowa as the basis for any ruling issued by such judicial officer.” *Id.* Iowa again attempted to ban Sharia law with House File 135, but it did not pass. William Petroski, *Iowa Muslim Day at Capitol Will Combat Islamophobia*, DES MOINES REG. (Apr. 7, 2015), <http://www.desmoinesregister.com/story/news/politics/2015/04/07/iowa-muslim-capitol-statehouse/25412811>.

189. H.R. 296, 2010 Leg., Gen. Sess. (Utah 2010).

190. H.R. 3496, 214th Leg., 1st Sess. (N.J. 2010).

191. Bradford J. Kelley, Note, *Bad Moon Rising: The Sharia Law Bans*, 73 LA. L. REV. 601, 601 (2013).

192. *Id.* at 606. These laws are also known as “American Laws for American Courts” (ALAC) or “Save Our State” laws. *Id.* at 611, 614 (highlighting the key cases of *Saudi Basic Industry Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1 (Del. 2005), and *National Group for Communications and Computers v. Lucent Technologies Inc.*, 420 F. Supp. 2d 23 (S.D.N.Y. 2006), where U.S. courts looked to both Saudi legal principles and Sharia law as the source of Saudi law, an approach that sponsors of such legislation abhor); Kimberly Karseboom, Note, *Sharia Law and America: The Constitutionality of Prohibiting the Consideration of Sharia Law in American Courts*, 10 GEO. J. L. & PUB. POL’Y 663, 665 (2012) (discussing the so-called “Save Our State” initiative in Oklahoma). “A pair of such bills, equating Sharia with a criminal conspiracy to violently overthrow the U.S. government and Constitution, became law in Tennessee in June 2011.” Fellmeth, *supra* note 187, at 108 n.6.

vote but was struck down by the district court in *Awad v. Ziriax*.¹⁹³ SQ 755 subsection C read:

The Courts provided for in subsection A of this section, when exercising their judicial authority, shall uphold and adhere to the law as provided in the United States Constitution, the Oklahoma Constitution, the United States Code, federal regulations promulgated pursuant thereto, established common law, the Oklahoma Statutes and rules promulgated pursuant thereto, and if necessary the law of another state of the United States provided the law of the other state does not include Sharia Law, in making judicial decisions. The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia law. The provisions of this subsection shall apply to all cases before the respective courts, including, but not limited to, cases of first impression.¹⁹⁴

The court reasoned: “[A]ny state effort to prohibit Sharia Law’s use or consideration would require courts to determine its content; this in turn would cause unnecessary intrusion into an adherents’ religious beliefs and doctrines.”¹⁹⁵ The Tenth Circuit affirmed this decision.¹⁹⁶

The *Awad* decision highlights the main difference between Sharia-specific and facially neutral laws. Laws which ban all foreign law (ALAC laws) do not require the same religious inquiry as those which target Sharia law and therefore avoid any First Amendment issue.¹⁹⁷

2. Criticisms of Legislative Action

Arguments against anti-Sharia-law bills are generally twofold. First, critics argue these laws violate the First Amendment and freedom of religion (specifically the Establishment Clause).¹⁹⁸ Second, criticism centers on the

193. H.R.J. Res. 1056, 52d Leg., 2d Sess. (Okla. 2010), *invalidated by* *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) (finding there was no abuse of discretion by the federal district court in granting an injunction to prevent Oklahoma from certifying the result of an election on the proposed amendment).

194. *Awad*, 670 F.3d at 1132 (finding there was no abuse of discretion by the federal district court in granting an injunction to prevent Oklahoma from certifying the result of an election on the proposed amendment).

195. Kelley, *supra* note 191, at 613–14 (citing *Awad v. Ziriax*, 754 F. Supp. 2d 1298, 1308 (W.D. Okla. 2010)).

196. *Id.* at 614 (citing *Awad*, 670 F.3d at 1116).

197. *See id.*

198. *New Wave of Anti-Sharia Bills Betray Religious Freedom*, AMS. UNITED (Jan.

xenophobic and isolationist rhetoric that drive citizens to vote for this legislation.¹⁹⁹ Michael Helfand, associate professor at Pepperdine University School of Law, called this legislation “worrisome” noting, “The real worry is actually when we take this nonexistent threat seriously [and] start incorporating [it] into the legislation of various states We actually start potentially harming or actually undermining or making people more vulnerable.”²⁰⁰ Bills “such as Oklahoma’s Save Our State resolution and the Tennessee laws equating Sharia [law] with violent anti-Americanism,” and such isolation of a religion and culture has not been and will not be upheld in U.S. courts.²⁰¹

3. Family Law and Islamic Principles

In addition to constitutional conflicts, prohibiting the consideration of Islamic law in U.S. courts could jeopardize Muslim American citizens in family law, particularly in divorce proceedings for Muslim marriages.²⁰² The Council on Foreign Relations notes marital rights and divorce are two of the largest topics in Sharia law and come into conflict with Western international law on marital and divorce rights of both spouses.²⁰³ Islamic marriages operate differently than traditional U.S. marriages in a major way: while a U.S. marriage is more popularly viewed as a sacrament with religious and spiritual elements, an Islamic marriage is a contractual relationship.²⁰⁴ Each

13, 2017), <https://www.au.org/blogs/wall-of-separation/new-wave-of-anti-sharia-bills-betray-religious-freedom> (noting the same principle that negated Oklahoma’s initiative in *Awad v. Ziriax*—the Establishment Clause—also keeps courts from getting entangled in religion when interpreting or applying foreign laws).

199. *Id.*

200. Rachel Gebreyes, *The Unfortunate Consequences of Banning Sharia Law*, HUFFINGTON POST (Mar. 3, 2015), http://www.huffingtonpost.com/2015/03/03/consequences-of-banning-sharia-law_n_6790436.html (alterations in original).

201. See Fellmeth, *supra* note 187, at 117; see also *Awad v. Ziriax*, 754 F. Supp. 2d 1298, 1308 (W.D. Okla. 2010).

202. See Gebreyes, *supra* note 200.

203. See Johnson & Sergie, *supra* note 3; see also *How Sharia Marriages Can Hurt Women in the West*, ECONOMIST (Dec. 7 2017), <https://www.economist.com/news/international/21732105-differences-marital-law-provide-opportunity-unscrupulous-men-how-sharia-marriages>.

204. Nathan B. Oman, *How to Judge Shari’a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 UTAH L. REV. 287, 291. An Islamic marriage is entered into with the agreement of two parties, a minimum of two witnesses, and a guardian representing the virgin bride. *Id.* at 301–02. Unlike a marriage in the United States, which is dictated largely by Christian values, an Islamic marriage is not a

marriage contract has an essential element—the *mahr*—which is a foundation of the marital proceeding and any proceedings that would end the marriage, including death or divorce—although divorce is generally frowned upon in the Muslim culture.²⁰⁵ Because the *mahr* is fundamental, U.S. courts should be prepared to consider it when hearing a divorce of a Muslim couple.²⁰⁶

A *mahr* is a type of dowry from the husband to the wife upon marriage.²⁰⁷ It is the woman's right to receive this payment under the Qur'an, and it becomes her property upon consummation of the marriage which cannot be forcibly revoked.²⁰⁸ A bride usually receives her *mahr* payment in two allocations: half at the inception of the marriage and half upon dissolution of the marriage, which is generally the husband's death.²⁰⁹ However, in the case of divorce, the *mahr* may be a negotiable area a court must consider so as to treat both parties fairly.²¹⁰ Muslim marriages entered into under Sharia law should be subsequently dissolved under Sharia law, even in U.S. courts.

sacramental ritual, but rather the contract that negotiates the *mahr* and any other terms of the marriage. *Id.*; see also Abdur Rahman, *Marriage*, ISLAM'S WOMEN: JEWELS OF ISLAM, http://www.islamswomen.com/marriage/intro_to_marriage.php (last visited Apr. 12, 2018).

205. Oman, *supra* note 204, at 291.

206. *See id.*

207. *Mahr*, OXFORD DICTIONARY, <https://en.oxforddictionaries.com/definition/mahr> (last visited Jan. 1, 2017).

208. *See* Qur'an 4:4 (Shakir) ("And give the women their dowries as a free gift . . ."); Qur'an 4:24 ("Then as to those whom you profit by, give them their dowries as appointed . . ."); Qur'an 2:229 ("Divorce may be (pronounced) twice, then keep (them) in good fellowship or let (them) go with kindness; and it is not lawful for you to take any part of what you have given them, unless both fear that they cannot keep within the limits of Allah; then if you fear that they cannot keep within the limits of Allah, there is no blame on them for what she gives up to become free thereby. These are the limits of Allah, so do not exceed them and whoever exceeds the limits of Allah these it is that are the unjust.").

209. Oman, *supra* note 204, at 291.

210. *See id.* at 291, 311 (explaining a woman can make a claim to *mahr* in two ways: either enforce the *mahr* owed to her as a debt from her husband or as a debt that must be paid out of her husband's future wealth); Omar Sacirbey, *Muslim Divorces Without Shariah Can Get Tricky*, HUFFINGTON POST (Oct. 2, 2012), http://www.huffingtonpost.com/2012/10/02/muslim-divorces-sharia-law_n_1930921.html [hereinafter Sacirbey, *Muslim Divorces*].

4. Sharia Law in Great Britain

In contrast to the United States' fight to remove Sharia law in the court system, Great Britain has implemented a separate system for Sharia law by creating Sharia councils for dispute resolution.²¹¹ In 2008, the then-Archbishop of Canterbury suggested officially sanctioning Sharia law in Britain.²¹² His suggestion was met with public "uproar."²¹³ Despite this, it is estimated that 30 Sharia councils exist in the U.K. today.²¹⁴ These councils give recommendations and rulings to religious followers regarding private spheres of life.²¹⁵ Ultimately, British law controls, and the councils' decisions carry no legal weight.²¹⁶ However, the councils are viewed—by women—as carrying immense moral weight in the Muslim community.²¹⁷ This overwhelmingly includes a religious recognition of divorce.²¹⁸ In fact, 80 percent of cases handled by Sharia councils are matrimonial problems.²¹⁹ Women seek the power of the Sharia council because they believe their husband will hold the opinion of an Islamic religious leader much higher than the British government.²²⁰ One woman told a reporter her "husband would never have listened to a relationship counsellor. But a shaykh, an older man with Islamic knowledge, that he respects."²²¹ Another woman shared the same story with BBC News: "If I went to an English court [my

211. Myriam Francois-Cerrah, *Why Banning Sharia Courts Would Harm British Muslim Women*, TELEGRAPH (July 17, 2014), <http://www.telegraph.co.uk/women/womens-politics/10973009/Sharia-courts-ban-would-harm-British-Muslim-women.html>.

212. *Id.*

213. *Id.*

214. Oliver Wright, *Sharia Courts in UK Face Government Inquiry over Treatment of Women*, INDEPENDENT (May 26, 2016), <http://www.independent.co.uk/news/uk/politics/sharia-courts-in-uk-face-government-probe-over-treatment-of-women-a7049826.html>.

215. *See id.*; *About Us*, ISLAMIC SHARIA COUNCIL, <http://www.islamic-sharia.org/aboutus/> (last visited Feb. 8, 2017).

216. *About Us*, *supra* note 215 ("Civil marriages are dissolved by the British Courts and not by the Council."); Sally Kohn, *Trump Doesn't Understand What Sharia Is*, CNN (Aug. 25, 2016), <http://www.cnn.com/2016/08/25/opinions/trump-doesnt-understand-sharia-kohn>.

217. Jean Mackenzie & Adam Eley, *The UK Women Seeking Divorce Through Sharia Councils*, BBC NEWS (July 11, 2016), <http://www.bbc.com/news/uk-36587665>.

218. *About Us*, *supra* note 215; Wright, *supra* note 214.

219. *Services*, ISLAMIC SHARIA COUNCIL, <http://www.islamic-sharia.org/services/> (last visited Mar. 12, 2017).

220. *See* Mackenzie & Eley, *supra* note 217.

221. Francois-Cerrah, *supra* note 211.

ex-husband] would say, ‘Where is their right to decide about my life?’ Now he can’t say anything because the decision has been made using Sharia law, and we all believe in that.”²²² Because the scholars on these Sharia councils are widely regarded as carrying the moral and cultural weight, the British (Western) legal system is perceived to be lacking; the scholars’ influence and importance throughout the Muslim community is considerable and arguably vital to furthering gender equality.²²³ Khola Hasan, a scholar from the Islamic Sharia Council, defended the need for Sharia courts, saying the English legal system is not interested in certain matters that affect Muslim families.²²⁴ Hasan said, “English courts are not interested in religious marriages or religious divorces, so we are working alongside the English legal system and all we are doing is providing a religious aspect that English law does not provide”²²⁵

Even though all Sharia council decisions are answerable to the British legal system, some believe they do not truly follow British law.²²⁶ Despite the many women Sharia councils have helped to obtain divorces that their husbands recognize, Sharia councils have also come under extreme criticism, with many believing they are actually discriminating against women.²²⁷ Public officials such as Theresa May, the British Prime Minister, have continually supported Sharia councils while simultaneously expressing a fear of discriminatory practices.²²⁸ Sharia law clerics can be conservative, adhering to traditional principles.²²⁹ While their conservatism is very important to the influence they are able to wield, it can also further hinder a woman’s ability to find resolution.²³⁰ In one story, a Muslim woman in an abusive marriage sought a divorce.²³¹ Following traditional Muslim principles, the clerics, instead of protecting the woman and her child, allowed

222. Mackenzie & Eley, *supra* note 217.

223. *See id.*

224. *Sharia Courts Creating Dual Justice System in UK?*, RT NEWS (Jan. 9, 2016), <https://www.rt.com/uk/328366-uk-sharia-court-law>.

225. *Id.*

226. Kohn, *supra* note 216.

227. Wright, *supra* note 214.

228. Zoie O’Brien, *Theresa May Forced to Defend Views on Sharia Law as She Prepares to Enter No. 10*, EXPRESS (July 13, 2016), <http://www.express.co.uk/news/uk/688662/Theresa-May-Sharia-Law-inquiry-Prime-Minister-leader-conservative-party-downing-street>.

229. *See* Francois-Cerrah, *supra* note 211.

230. *See id.*

231. *Id.*

her to leave but demanded she leave her child with her abusive husband.²³² This decision was made despite the fact she notified the clerics of his criminal record.²³³ However, not all clerics are as conservative. The Islamic Sharia Council touts having clerics available from multiple interpretations of Islam and Sharia law so that all Muslim families may be served.²³⁴

One area in which women may continue to be discriminated against is inheritance. In 2014, the United Kingdom's independent and professional organization for solicitors, the Law Society, published guidelines that would allow solicitors to write Islamic wills excluding nonbelievers and denying women their equal shares of inheritance.²³⁵ Further, the guidelines noted male heirs may still receive double the amount inherited by a female heir of the same class,²³⁶ it is appropriate to prohibit non-Muslims from inheriting,²³⁷ and only Muslim marriages may be recognized for inheritance purposes.²³⁸

Paralleling a grown isolationist and anti-Muslim trend throughout many Western nations,²³⁹ there is a growing call for a ban on Sharia councils.²⁴⁰ Proponents of the ban argue the conservative practices in Islam only disempower women.²⁴¹ However, Muslim women argue a conflicting

232. *Id.*

233. *Id.*

234. *About Us, supra* note 215.

235. *Sharia Courts Creating Dual Justice System in UK?, supra* note 224.

236. *Id.*

237. *Id.*

238. *Id.*

239. See Brian Klaas & Marcel Dirsus, *The Isolationist Catastrophe of 'Brexit'*, L.A. TIMES (June 23, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-klaas-dirsus-leave-victory-in-britain-20160623-snap-story.html> (highlighting the roles of isolationism and xenophobic fears in the 2016 historic Brexit vote); Tal Kopan, *In Invoking 'America First,' Trump Stirs Memories of Pre-WWII Isolationist Movement*, CNN (Apr. 28, 2016), <http://www.cnn.com/2016/04/27/politics/donald-trump-america-first-nationalist-history/> (noting President Donald Trump's campaign rhetoric focusing on "putting 'America first,'" rhetoric generally associated with closed borders and anti-immigration policies).

240. A petition to ban all Sharia councils in the UK closed on January 22, 2017, and received 54,742 signatures. *Petition: Close Sharia Courts Set Up in the U.K. and Make Sharia Law Illegal in Britain*, UK GOV'T & PARLIAMENT, <https://petition.parliament.uk/petitions/160883> (last visited Apr. 12, 2018) (noting the government's official response: "Sharia councils are not courts in England and Wales. They cannot legally enforce any decision and most operate within the rule of national law. The Government has no plan to change that position.").

241. Francois-Cerrah, *supra* note 211.

position: they believe the Sharia councils actually empower them.²⁴² Sharia councils give Muslim women an avenue to a peaceful resolution with their husbands when seeking a divorce that the British legal system cannot provide.²⁴³ They are completely voluntary—no Muslim woman is required to seek out a Muslim cleric's opinion before or after turning to the British legal system.²⁴⁴ Further, they help close the cultural divide and save state resources.²⁴⁵

5. *Sharia Councils in the United States*

Sharia councils are, for now, the extent of any recognition of Sharia law in Britain.²⁴⁶ This would be a feasible option in the United States where some Imams²⁴⁷ currently refuse to issue divorce licenses until a civil court has finalized a divorce.²⁴⁸ Muslim Americans married under Sharia law understandably want their marriage dissolved under Sharia law, meaning they receive an Islamic divorce certificate from an Imam.²⁴⁹ Having official councils dedicated to hearing family situations under the bounds of U.S. law, like those in Great Britain, would relieve U.S. judges from having to know Sharia law, while also providing religious sensitivity to intimate situations. These councils would also help empower Muslim American women, just as they have empowered Muslim British women, whose husbands require religious guidance in ending a marriage.²⁵⁰

C. *Asylum Law: Conflicting Court Decisions Based upon a Failure to Consider Cultural Practices Under Sharia-Law Legal Systems*

Lastly, U.S. judges and immigration officials should give appropriate weight and credence to traditional practices which uniquely threaten women from Sharia-law nations. Many Muslim American women from these nations

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *About Us*, MUSLIM LAW (SHARIAH) COUNCIL UK, www.shariahouncil.org/about-us/ (last visited Apr. 3, 2018); see Francois-Cerrah, *supra* note 211.

247. An Imam is a Muslim religious leader. *Imam*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/imam> (last visited Apr. 12, 2018).

248. Sacirbey, *Muslim Divorces*, *supra* note 210.

249. *Id.*

250. See discussion *supra* Part V.B.4.

face an imminent threat of serious bodily harm, including death, because of their gender if they are not granted asylum in the United States.²⁵¹ The nature of “honor” in many conservative and traditional societies causes women to be strictly policed and harshly punished.²⁵² Currently, U.S. asylum law does not provide protection to women who face this imminent threat upon returning home because of the court’s interpretation of particular social group.²⁵³ This differs from other Western nations such as the United Kingdom, Canada, and Australia which have recognized and extended protection to women who will be harmed or killed if forced to return home.²⁵⁴ U.S. courts should grant the same recognition and protection.

1. *A Brief Overview of U.S. Asylum Law*

U.S. asylum and refugee law is controlled by the Immigration and Nationality Act, which closely follows the 1951 United Nations Convention Relating to the Status of Refugees.²⁵⁵ Article I(A)(2) of the convention defines a refugee as:

any person who . . . [a]s a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.²⁵⁶

The convention created an obligation on all signatory nations to protect any individual who fell within one of the five enumerated grounds: race, religion, nationality, member of a particular social group, or person holding a certain

251. Shira T. Shapiro, *She Can Do No Wrong: Recent Failures in America’s Immigration Courts to Provide Women Asylum from “Honor Crimes” Abroad*, 18 AM. U. J. GENDER SOC. POL’Y & L. 293, 295, 306 (2010).

252. See discussion *supra* Parts II–IV.

253. See discussion *infra* Part V.C.4.

254. See discussion *infra* Part V.C.3.

255. Stanley Dale Radtke, *Defining a Core Zone of Protection in Asylum Law: Refocusing the Analysis of Membership in a Particular Social Group to Utilize Both the Social Visibility and Group Immutability Component Approaches*, 10 J.L. & SOC. CHALLENGES 22, 27 (2008) (citing Convention Relating to the Status of Refugees art. I, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150).

256. Convention Relating to the Status of Refugees, *supra* note 255, art. I, ¶ A(2).

political opinion.²⁵⁷ An individual must fit into one of the categories to receive protection under asylum and refugee law.²⁵⁸ The convention, and its subsequent 1967 Protocol, neither specifically excludes nor ensures protection for gender-based violence.²⁵⁹ Rather, each signatory nation is given the individual power to interpret particular social group.²⁶⁰

The Refugee Act of 1980 was passed by the U.S. legislature to incorporate the 1951 convention's definition into U.S. law.²⁶¹ Since then, courts have interpreted the convention, the Protocol, and the Refugee Act to develop asylum jurisprudence. Unfortunately, there is no consensus on what constitutes a social group, with the circuit courts both using different analyses and coming to different conclusions.²⁶² The Board of Immigration Appeals has defined it as "a group whose members share 'common characteristics that members of the group either cannot change or should not be required to change because such characteristics are fundamental to their individual identities.'"²⁶³ A social group must "have particular and well-defined boundaries, and that it possess a recognized level of social visibility."²⁶⁴ Courts have not consistently applied this definition, often

257. *Id.* at introductory note. The United States did not ratify the 1951 Convention but was a signatory to the 1967 United Nations Protocol Relating to the Status of Refugees. Radtke, *supra* note 255, at 27. The 1967 Protocol maintained the definition of refugees set forth in 1951. *Id.*

258. Convention Relating to the Status of Refugees, *supra* note 255, at introductory note.

259. Marisa Silenzi Cianciarulo, *Batterers as Agents of the State: Challenging the Public/Private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 117, 140 (2012).

260. *See id.*; *see also* Convention Relating to the Status of Refugees, *supra* note 255, art. I, ¶ A(2).

261. Radtke, *supra* note 255, at 34. The Act did not include the requirement that an individual should be affected by acts occurring prior to 1951. *See* Refugee Act of 1980, Pub. L. No. 96-212, tit. II, § 201(a), 94 Stat. 102.

262. Radtke, *supra* note 255, at 37.

263. *Sarhan v. Holder*, 658 F.3d 649, 654 (7th Cir. 2011) (citing *Gatimi v. Holder*, 578 F.3d 611, 614 (7th Cir. 2009)).

264. Cianciarulo, *supra* note 259, at 142 (citing *In re S-E-G-*, 24 I. & N. Dec. 579, 582 (BIA 2008)). This definition is loosely from *In re Acosta*, where the Second Circuit required a particular social group to "share a common, immutable characteristic." *Id.* at 141 (citing *In re Acosta*, 19 I. & N. Dec. 211, 224-32 (BIA 1985), *overruled in part by In re Mogharrabi*, 19 I. & N. 439 (BIA 19787)). The Ninth Circuit subsequently expanded the requirements of this test in *Gomez v. I.N.S.* by adding members of a particular social group have a "closely affiliated relationship" and be "recognizable and discrete." *Id.* at 141 n.138 (citing *Gomez v. I.N.S.*, 947 F.2d 660, 664 (2d Cir. 1991)). The BIA based its

arguing honor violence targets individuals for a number of reasons, but not because of a qualifying immutable and readily visible characteristic.²⁶⁵ U.S. jurisprudence fails to classify gender as a protectable group of people, which leaves women subject to honor violence in their home country vulnerable when seeking asylum in the United States.²⁶⁶ This narrow interpretation has led the United States to differ from some of its greatest allies—Great Britain, Canada, and Australia—which have all found gender can be a satisfactory social group under asylum law.²⁶⁷

2. Procedural Outline of Immigration Cases

Asylum cases in the United States are first heard by an immigration court (IJ) but can be appealed to the Board of Immigration Appeals (BIA) and then to the respective federal circuit court.²⁶⁸ The federal court will generally review both the BIA's and the IJ's decisions.²⁶⁹ These decisions are reviewed *de novo*.²⁷⁰ The decisions will generally only be overturned "if the record compels a contrary result."²⁷¹ Both entities consider the power of the government over the perpetrator and the willingness of the government to enforce laws protecting women to be key considerations in their decision to grant asylum.²⁷² This requirement excludes a very real threat to women from consideration: threats from family members in the private sphere in a state which publicly condemns honor killing but fails to provide real protection when women have acted "dishonorably."²⁷³ It fails to account for persecution

definition off of these two cases. *Id.*

265. *Sarhan*, 658 F.3d at 655 (noting the BIA's analysis of the definition of social group was incorrect because the women targeted by persecution were not targeted because of a choice but rather because of a pre-existing and flawed moral code in Jordanian society).

266. See Bethany Lobo, *Women as a Particular Social Group: A Comparative Assessment of Gender Asylum Claims in the United States and United Kingdom*, 26 GEO. IMMIGR. L.J. 361, 362–63 (2012).

267. See discussion *infra* Part V.C.3.

268. See, e.g., Shapiro, *supra* note 251, at 304–06 (detailing applicant Zehra's appeals process in *Vellani v. U.S. Att'y Gen.*, 296 F. App'x 870, 872 (11th Cir. 2008)).

269. *Suradi v. Holder*, 437 F. App'x 549, 551 (9th Cir. 2011). *But see Sarhan*, 658 F.3d at 653–55 (declining to review the BIA's opinion separate from the IJ's analysis because the BIA agreed with the IJ and did not supply an independent opinion for review).

270. E.g., *Sarhan*, 658 F.3d at 653.

271. *Id.* at 654 (quoting *Brucaj v. Ashcroft*, 381 F.3d 602, 606 (7th Cir. 2004)).

272. Shapiro, *supra* note 251, at 301–02. The United Nations High Commissioner for Refugees applies a similar standard. *Id.* at 302.

273. See discussion *supra* Parts II–IV.

based on gender which is rampant around the world.²⁷⁴

3. *Asylum Law Around the World*

a. *Asylum law in Great Britain.* Jurisprudence in Great Britain is dominated by the Shah decision in the House of Lords which laid the foundation for years to come that “gender can define a ‘particular social group’” for asylum eligibility.²⁷⁵ In this case, two Pakistani women were granted asylum in Great Britain after successfully pleading they were victims of domestic violence after being forced to leave their home because they were falsely accused of adultery.²⁷⁶ If they returned to their home country, they argued they would be punished for sexual immorality, a crime at that time punishable by flogging or stoning to death.²⁷⁷ The House of Lords extended protection to the two women as members of a social group based on gender.²⁷⁸ This decision reflected a broader European trend that emerged following a 1980 European Parliament resolution “urging member states to recognize women refugee claimants who rejected the cultural, religious or social norms of their originating societies, as belonging to a ‘particular social group.’”²⁷⁹ The U.K. Border Agency defines particular social group as a group having “innate or immutable characteristics,” which includes “gender, age, marital status, religion, family and kinship, past economic status/class, occupational history, disability, sexual history, sexual orientation and ethnic, tribal, or clan affiliation.”²⁸⁰

b. *Asylum law in Canada.* Canadian refugee law includes protection

274. See Heitz, *supra* note 150, at 216 (“[S]tatistics indicate that violence against women is a universal phenomenon . . .”).

275. *Id.* at 227 (quoting Deborah E. Anker et al., *Defining “Particular Social Group” in Terms of Gender: The Shah Decision and U.S. Law*, 76 INTERPRETER RELEASES 1005, 1005 (1999)).

276. *Islam v. Sec’y of State for the Home Dep’t* [1999] 2 AC (HL) 629 (appeal taken from Eng.).

277. *Id.*

278. *Id.*

279. Melanie Randall, *Particularized Social Groups and Categorical Imperatives in Refugee Law: State Failures to Recognize Gender and the Legal Reception of Gender Persecution Claims in Canada, the United Kingdom, and the United States*, 23 AM. U. J. GENDER SOC. POL’Y & L. 529, 546 (2015) (citing Resolution on the Application of the Geneva Convention Relating to the Status of Refugees, 1984 O.J. (C127) 137)).

280. *Id.* at 547 (quoting U.K. VISAS & IMMIGR., HOME OFFICE, GENDER ISSUES IN

policies for gender-based persecution claims.²⁸¹ Canadian Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution states that “persecution resulting from certain circumstances of severe discrimination based on gender could be seen as reasonable grounds for persecution.”²⁸² The Supreme Court of Canada has also provided a definition of “persecution,” a term that is ambiguous under the 1951 convention.²⁸³ In the *Ward v. Canada (Minister of Employment and Immigration)* decision, persecution was defined as “sustained or systemic violation of basic human rights demonstrative of a failure of state protection.”²⁸⁴ Domestic violence has been recognized as a human rights violation, and legal systems controlled by Sharia law fail to truly provide protection for women from violence in the private sphere, bringing gender-based persecution within the confines of the 1951 convention.²⁸⁵ Canada has further developed refugee law to recognize rape and sexual assault as “largely gendered crimes” and not simply a common crime with no relation to gender.²⁸⁶

c. *Asylum law in Australia.* Lastly, Australia has also acknowledged the unique plight of women in many Sharia-law nations. Australia recognized gender can be a requisite social group by finding “women share both immutable and social characteristics which make them a recognizable social group.”²⁸⁷ The federal court hearing *Minister for Immigration and Multicultural Affairs v. Khawar* asked first “whether the failure of a country of nationality to provide protection against domestic violence to women, in circumstances where the motivation of the perpetrators of the violence is

THE ASYLUM CLAIM 11 (2011)). The guidelines created by the UK are one of few issued by member states of the European Union to guide decisionmakers in determining refugee claims. *Id.* at 546.

281. Heitz, *supra* note 150, at 224–25.

282. *Id.* at 225 (citing IMMIGR. & REFUGEE BD. OF CAN., COMPENDIUM OF DECISIONS: GUIDELINE 4 WOMEN REFUGEE CLAIMANTS FEARING GENDER-RELATED PERSECUTION (UPDATE) 13 (2003)).

283. Randall, *supra* note 279, at 535–36.

284. *Id.* at 536 (citing *Ward v. Canada*, [1993] 2 S.C.R. 689, 734 (Can.)).

285. *See id.*

286. *Id.* at 541.

287. Heitz, *supra* note 150, at 229 (citing COMM. ON IMMIGRATION & NATIONALITY LAW ASSOC. OF THE BAR OF N.Y.C., GENDER-RELATED ASYLUM CLAIMS AND THE SOCIAL GROUP CALCULUS: RECOGNIZING WOMEN AS A “PARTICULAR SOCIAL GROUP” *PER SE* 5 (2003), <http://www.nycbar.org/pdf/report/FINAL%20%20Gender%20Related%20Asylum%20Claims.pdf>).

private, can result in persecution of the kind referred to in Art 1A(2) of the [Refugee] Convention” and second, “whether women or, for the present purposes, women in Pakistan may constitute a particular social group within the meaning of the Convention.”²⁸⁸ Both questions were affirmatively answered, and the lack of police protection for women as a whole in Pakistan made this a satisfactory social group under Australian refugee law.²⁸⁹

4. Comparing International Asylum Jurisprudence to U.S. Jurisprudence

The United States lags behind other Western nations in protecting women around the globe seeking to escape otherwise imminent persecution. Without a seminal decision such as the *Islam v. Secretary of State for the Home Department* case in Great Britain,²⁹⁰ U.S. courts have grappled with the question of a qualifying social group in each asylum claim.²⁹¹ There are a handful of groundbreaking cases both granting and denying asylum, but largely, courts consider the individual facts of each case.²⁹² They do not always consider leading cases such as *In re Acosta*, which defined a particular social group as sharing a “common immutable characteristic” which could include “sex,”²⁹³ and *In re Kasinga*, which explicitly recognized gender could be a component of a particular social group.²⁹⁴ This method, however, has led to inconsistent decisions and a failure by U.S. courts to provide guidance on defining particular social group and applying the term consistently.²⁹⁵ Rather, there are currently four prevailing tests among the circuit courts for determining social group.

288. *Id.* at 230 (citing *Minister for Immigration & Multicultural Affairs v. Khawar* (2002) 210 CLR 1, 5–6 (Austl.)).

289. *Khawar*, 210 CLR at 7, 12–14; Heitz, *supra* note 150, at 229–30.

290. This case found gender can define a particular social group, extending protection to women who feared imminent bodily harm due to cultural practices if they were forced to return home. *Islam v. Sec’y of State for the Home Dep’t* [1999] 2 A.C. (HL) 629 (appeal taken from Eng.).

291. Randall, *supra* note 279, at 553.

292. *See id.* (discussing decisions addressing the particular social group issue and noting the issue would be addressed on a case-by-case basis).

293. *Id.*

294. *Id.* at 553–54 (citing *In re Kasinga*, 21 I. & N. Dec. 357, 377 (BIA 1996)).

295. *Compare Case #35*, CTR. GENDER & REFUGEE STUDIES, <https://cgrs.uchastings.edu/case/case-35> (last visited Apr. 25, 2018) (recognizing a woman’s right to asylum for fear of institutional domestic abuse), *with Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991) (denying an asylum application due to the applicant’s failure to establish that she qualified as a member of a protected group despite her demonstrated record of being raped and abused by militants).

The first test is the “associational test” from the Ninth Circuit’s *Sanchez-Trujillo v. INS* decision.²⁹⁶ In this case, the Ninth Circuit set forth four requirements for determining “eligibility for relief premised upon group membership:”

First, . . . whether the class of people identified . . . is cognizable as a “particular social group” Second, the petitioners must have established that they qualify as members of the group. Third, it must be determined whether the purported “social group” has in fact been targeted for persecution on account of the characteristics of the group members. Finally . . . whether such “special circumstances” are present to warrant us in regarding mere membership in that “social group” as constituting per se eligibility for asylum or prohibition of deportation.²⁹⁷

It then noted that a particular social group can be defined or identified as a “collection of people closely affiliated with one another.”²⁹⁸ It further stated that this group must have some “voluntary associational relationship . . . which imparts some common characteristic that is fundamental to their identity as a member of that . . . group.”²⁹⁹

This associational test analyzes a claim for evidence of a “cohesive, homogeneous group” and once excluded large demographic groups that would “naturally manifest a plethora of different lifestyles, varying interests, diverse cultures, and contrary political leanings.”³⁰⁰ However, there has been a push by the Ninth Circuit to broaden who may qualify as a particular social group by focusing on the particular characteristics perceived by the persecutor and not the many other characteristics a particular social group may not share.³⁰¹ This test could include women fearing imminent bodily harm in a Muslim-majority nation who likely face such a severe threat because of shared characteristics.

The second test is the “externally distinguishable test” from the Second

296. Radtke, *supra* note 255, at 38 (citing *Sanchez-Trujillo v. I.N.S.*, 801 F.2d 1571, 1574 (9th Cir. 1986) (requiring a “voluntary associational relationship” among members of a particular social group)).

297. *Sanchez-Trujillo*, 801 F.2d at 1574–75.

298. *Id.* at 1576.

299. *Id.*

300. *Id.* at 1577.

301. *Cordoba v. Holder*, 726 F.3d 1106, 1116 (9th Cir. 2013) (quoting *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1090, 1093–94 (9th Cir. 2013) (en banc)).

Circuit.³⁰² As applied in *Gomez v. INS*, this test, called the substantial evidence test by the court, looks for some recognizable characteristic that would identify an individual to the outside world as being a member of the purported group.³⁰³ “A particular social group is comprised of individuals who possess some fundamental characteristic in common which serves to distinguish them in the eyes of a persecutor—or in the eyes of the outside world in general.”³⁰⁴ In this case, the court rejected youth and gender as qualifying characteristics and further noted that defendant Gomez failed to present evidence that her history of being a young girl who was “repeatedly and systematically brutalized by particular attackers” did not suggest she was “more likely to be persecuted than any other young woman” and therefore could not assert a well-founded fear of persecution.³⁰⁵ This is different than women seeking protection from honor-based violence, as they are more likely than other women to be persecuted. In many cases, it is well-known throughout their community that they either acted immorally and then came to the United States or came to the United States and acted immorally.³⁰⁶ Thus, their identity alone would single them out as targets for honor-based violence if they were forced to return home.³⁰⁷

The third test is the First and Third Circuits’ “immutable characteristic test.”³⁰⁸ This test analyzes a claim for evidence of “characteristics that are essentially beyond the petitioner’s power to change.”³⁰⁹ In *Ananeh-Firempong v. INS*, the First Circuit granted asylum to a young woman after she presented evidence of harm against her family because of their political and financial status in Ghana.³¹⁰ The court indicated an asylum seeker would need to offer “reasonably specific information showing a real threat of individual persecution,” and this threat must be linked to some characteristic

302. Radtke, *supra* note 255, at 38. This is also called the *Acosta* test and analyzes whether the particular social group consists of persons who “share a common, immutable characteristic.” Cianciarulo, *supra* note 259, at 141–42 (citing *In re Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985), *overruled in part by In re Mogharrabi*, 19 I. & N. 439 (BIA 1987)).

303. *Gomez v. I.N.S.*, 947 F.2d 660, 664 (2d Cir. 1991).

304. *Id.*

305. *Id.*

306. *See, e.g., Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 873 (11th Cir. 2008).

307. *See id.*

308. *Fatin v. I.N.S.*, 12 F.3d 1233, 1239 (3d Cir. 1993); Radtke, *supra* note 255, at 38 (citing *Ananeh-Firempong v. I.N.S.*, 766 F.2d 621, 626 (1st Cir. 1985)).

309. *Ananeh-Firempong*, 766 F.2d at 626.

310. *Id.*

the individual cannot change.³¹¹

Lastly, the Eighth Circuit has applied the reasonable person standard, analyzing whether an asylum seeker has both an actual and an objectively reasonable fear of persecution.³¹² In *Menjivar v. INS*, the Eighth Circuit denied the petitioner's claim for asylum when he testified that subjectively he feared persecution, but also conceded that there was no objectively reasonable basis for his fear.³¹³ Under this test, a woman facing removal to a Sharia-law nation would likely be able to present sufficient evidence of an objectively reasonable fear of persecution if she had committed any act in the United States that would be seen as dishonorable in her home country.³¹⁴

Generally, these tests have all narrowly construed the category of social group to only those which are easily identifiable and do not include a large demographic. This interpretation is defensible because it seemingly has prevented a flood of asylum claims bogging down the courts.³¹⁵ Despite failure to state gender as an enumerated ground for persecution, these tests have, in certain cases, protected specific social groups including:

- women who are affiliated with men who believe in their right to dominate their women by force or violence (Guatemala, 1996);³¹⁶
- young women forced into marriage against their wishes (Guinea, 2011);³¹⁷
- women who are unable to leave their intimate relationships (Peru, 2005);³¹⁸
- women who fear they will be victims of female genital mutilation;³¹⁹

311. *Id.* at 626–27.

312. Shapiro, *supra* note 251, at 302 (citing *Menjivar v. I.N.S.*, 259 F.3d 940, 941 (8th Cir. 2001)).

313. *Menjivar*, 259 F.3d at 942.

314. *See id.* at 941 (quoting *Ghasemimehr v. I.N.S.*, 7 F.3d 1389, 1390 (8th Cir. 1993) (per curiam)).

315. *See Heitz, supra* note 150, at 215.

316. *In re R-A-*, 24 I. & N. Dec. 629, 629 (U.S. Att'y Gen. 2008); *see Case #35*, CTR. GENDER & REFUGEE STUDIES, <https://cgrs.uchastings.edu/case/case-35> (last visited Apr. 25, 2018).

317. *Case #283*, CTR. GENDER & REFUGEE STUDIES, <https://cgrs.uchastings.edu/case/case-283> (last visited Apr. 25, 2018).

318. *Case #3474*, CTR. GENDER & REFUGEE STUDIES, <https://cgrs.uchastings.edu/case/case-3474> (last visited June 10, 2018).

319. *Agbor v. Gonzales*, 487 F.3d 499, 502 (7th Cir. 2007).

- Christian women in Iran who do not wish to adhere to the Islamic female dress code;³²⁰
- Chinese women who face forced sterilization;³²¹ and
- women who are sold or forced into marriage and involuntary servitude.³²²

Additionally and most notably, in *Sarhan v. Holder* the Seventh Circuit found women facing honor killings qualify as a particular social group.³²³

These cases all described very specific categories, mostly because U.S. jurisprudence has failed to extend asylum protection to women who face persecution because of their gender, which has been found to be a qualifying characteristic in other nations.³²⁴ To date, U.S. courts have failed to find women with a “well-founded fear of domestic violence” belong to a qualifying social group under asylum law.³²⁵ Further, the courts have failed to consistently apply the Seventh Circuit’s finding in *Sarhan* to other similar cases where the underlying facts of fear of familial violence based on social constructs are the same as Disi’s.³²⁶

5. Jurisprudence Based on Local Cultural Practices

The circuit courts have also considered cases with personal testimony concerning the ability and willingness of local law enforcement to protect women from gender-based violence.³²⁷ These claims can be made as part of the asylum claim or brought under the Convention Against Torture (CAT).³²⁸ To succeed under the CAT, an application must show “only a

320. *Yadegar-Sargis v. I.N.S.*, 297 F.3d 596, 603 (7th Cir. 2002).

321. *Lin v. Ashcroft*, 385 F.3d 748, 752–53 (7th Cir. 2004).

322. *Qu v. Holder*, 618 F.3d 602, 607–08 (6th Cir. 2010).

323. *Sarhan v. Holder*, 658 F.3d 649, 655 (7th Cir. 2011).

324. *See id.* at 654 (considering the Board’s definition of social group).

325. *See Lobo*, *supra* note 266, at 379. Lobo notes an exception in U.S. courts for women attempting to avoid the traditional practice of female genital cutting (FGC), for which the United States began granting asylum for women in 1996. *See id.* at 385–89.

326. *See Sarhan*, 658 F.3d at 652.

327. *See, e.g., Suradi v. Holder*, 437 F. App’x 549, 550 (9th Cir. 2011).

328. The Convention Against Torture is more formally known as the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on December 10, 1984. It is part of U.S. law as part of Pub. L. No. 105-227, 112 Stat. 2681-821 (2012).

chance greater than fifty percent”³²⁹ that torture will be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”³³⁰ “Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.”³³¹ If an applicant for asylum can show her native government knows of the threat and fails to act, she may have a successful claim under the CAT and be granted asylum.³³² A woman seeking asylum can also try to prove the government will fail to protect her without invoking the CAT.³³³

Inconsistency exists among the circuit courts, including varying decisions out of the same circuit, when considering the native government’s role and how it impacts the threat facing the woman if she were forced to return home. The Ninth Circuit has granted asylum under CAT, but the Eleventh Circuit has not.³³⁴ The Seventh Circuit has decided cases inconsistently.³³⁵ The courts should create a consistent mechanism for determining claims under the CAT or for determining when sufficient evidence has been presented to show the native government will not protect women.

a. *Cases granting asylum based on local cultural practices and government inaction.* In the Ninth Circuit’s case *Suradi v. Holder*, Iman Khalil Suradi, a Jordanian woman, was granted asylum after bringing a claim under the CAT.³³⁶ She claimed it was more likely than not she would be killed in an honor killing if she returned to Jordan due to the “shame of her

329. *Suradi*, 437 F. App’x at 550 (citing *Hamoui v. Ashcroft*, 389 F.3d 821, 827 (9th Cir. 2004)).

330. *Id.* at 551 (quoting 8 C.F.R. § 1208.18(a)(1) (2016)). This requirement is similar to the requirement under the INA that the government knows and fails to control the individual acting to inflict harm on the victim. *See* Immigration and Nationality Act, 8 U.S.C. § 1158 (2012).

331. *Suradi*, 437 F. App’x at 550.

332. *See id.* at 551–52.

333. *See id.*

334. *See, e.g., id.* at 550; *Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 871 (11th Cir. 2008).

335. *See, e.g., Sarhan v. Holder*, 658 F.3d 649, 651 (7th Cir. 2011); *Yadegar-Sargis v. I.N.S.*, 297 F.3d 596, 605 (7th Cir. 2002).

336. *Suradi*, 437 F. App’x at 550–51.

extramarital affairs and drug conviction” in the U.S.³³⁷ Under the CAT, she argued the Jordanian government would fail to protect her and thus approve of her murder.³³⁸ The Ninth Circuit noted her “testimony alone, if credible, ‘may be sufficient to sustain the burden of proof without corroboration.’”³³⁹ This is a much lower bar than the Seventh Circuit’s *Yaylacciegi v. U.S. Attorney General* decision, which disregarded personal testimony on law enforcement in Turkey.³⁴⁰

Going further, Suradi also provided evidence her husband “explicitly threatened to kill her to ‘cleanse the dishonor’” she caused in having an extramarital affair.³⁴¹ Her brother testified, “It’s not I think. I know that she will [be killed].”³⁴² After considering testimony presented and other evidence, including the Human Rights Watch report on Jordan, the Ninth Circuit found it was “more likely than not that Suradi [would] be subjected to an honor killing by her family”³⁴³ In reaching this decision, the Ninth Circuit gave appropriate weight both to official reports and personal testimony regarding Jordanian culture.³⁴⁴ The court accepted the gravity of Suradi’s situation and of the environment in Jordan in order to find she had presented sufficient evidence through her testimony alone—although she did provide corroborating evidence—that she would be tortured and the government would fail to act if she was forced to return to Jordan.³⁴⁵

The Seventh Circuit likewise granted Sara Sarhan (referred to as Disi in the case) asylum in *Sarhan v. Holder*.³⁴⁶ In *Sarhan*, the court considered Disi’s petition under the CAT and the “withholding of removal” procedure.³⁴⁷ “Withholding of removal is mandatory under the INA if an applicant establishes that it is more likely than not that she would be persecuted in the country of removal ‘because of [her] race, religion, nationality, membership in a particular social group, or political opinion.’”³⁴⁸

337. *Id.* at 551.

338. *See id.*

339. *Id.* (citing 8 C.F.R. § 1208.16(c)(2) (2016)).

340. *See infra* notes 354–55 and accompanying text.

341. *Suradi*, 437 F. App’x at 551.

342. *Id.*

343. *Id.* at 552.

344. *Id.*

345. *Id.*

346. *Sarhan v. Holder*, 658 F.3d 649, 650 (7th Cir. 2011).

347. *Id.*

348. *Id.* at 653 (citing 8 U.S.C. § 1231(b)(3) (2006)).

Both the CAT and the withholding of removal procedure place a burden of proof on the applicant to show it is “more likely than not” there will be negative repercussions if her petition is denied.³⁴⁹

Under immigration-law requirements, the Seventh Circuit also found Disi belonged to a qualifying particular social group of “women . . . who have (allegedly) flouted repressive moral norms, and thus who face a high risk of honor killing.”³⁵⁰ The court noted, “[W]omen facing honor killings in Jordan are no less cohesive than these groups and no more able to shed the stigmatizing characteristics that render them victims.”³⁵¹ Unfortunately, this is one of the only cases where a court has recognized women facing honor killings could be a qualifying social group. The court explained:

The dispute between Disi and Besem is simply a piece of a complex cultural construct that entitles male members of families dishonored by perceived bad acts of female relatives to kill those women. The man who does the killing may have a personal motivation in the sense that he is angry that his sister has dishonored the family, or he may regret the need to take such an irrevocable step. Either way, he is killing her because society has deemed that this is a permissible—maybe in some eyes the only—correct course of action and the government has withdrawn its protection from the victims.³⁵²

Under this analysis, women facing honor killings due to traditional cultural practices and general perspective that women are controlled by their male family members should be a qualifying social group in U.S. jurisprudence and granted asylum.

The Seventh Circuit went one step further and also found Disi could not be removed to Jordan based upon her ability to relocate within the country.³⁵³ “Relocating to another part of the country does not mean living

349. *Id.*

350. *Id.* at 655. Other social groups recognized included “women who fear they will be victims of female genital mutilation” (citing *Agbor v. Gonzales*, 487 F.3d 499, 502 (7th Cir. 2007)); “Christian women in Iran who do not wish to adhere to the Islamic female dress code” (citing *Yadegar-Sargis v. I.N.S.*, 297 F.3d 596, 603 (7th Cir. 2002)); “Chinese women who face forced sterilization” (citing *Lin v. Ashcroft*, 385 F.3d 748, 752 (7th Cir. 2004)); and “women who are sold or forced into marriage and involuntary servitude” (citing *Qu v. Holder*, 618 F.3d 602, 607–08 (6th Cir. 2010)). *Id.*

351. *Id.* at 655.

352. *Id.* at 656.

353. *Id.* at 661.

in hiding.”³⁵⁴ This was an important note as it temporally followed, but conflicted with, the Eleventh Circuit’s finding in *Vellani* that the claimant could successfully relocate within Pakistan and avoid familial persecution.³⁵⁵

b. *Cases denying asylum despite evidence of local cultural practices of VAW and failure of government to protect women.* In the 2011 case of Mehriban Yaylalicegi, a devout Muslim from Turkey, the Seventh Circuit refused to grant asylum to Mehriban despite her argument supported by expert testimony that the Turkish police were “unable or unwilling to help women in her situation.”³⁵⁶ This decision was in direct contrast with the Ninth Circuit’s *Suradi* decision which also considered personal testimony and noted that testimony would be sufficient.³⁵⁷ In the *Yaylalicegi* case, Mehriban discussed in detail familial threats and testified police, in reality, would not help her.³⁵⁸ She also provided corroborating evidence from a professor who stated he “[did] not believe that Mehriban would receive much in the way of protection from the Turkish government because they do not aggressively pursue such cases, sometimes treating them as family matters.”³⁵⁹ Instead of giving the testimony and record appropriate weight, the court instead relied upon the State Department’s Report on Human Rights, which suggested the Turkish police would provide some protection and her brothers, as the persecutors, were not the requisite “government agents or parties whom the government was unable or unwilling to control.”³⁶⁰ Ultimately, the Seventh Circuit denied her claim for asylum.³⁶¹

Just months after its *Sarhan* decision,³⁶² the Seventh Circuit inconsistently denied Almas Abraham’s asylum petition despite evidence honor violence is prevalent in Syria and punishment for offenders is virtually

354. *Id.* (quoting *Aghor*, 487 F.3d at 505).

355. *See Vellani v. U.S. Att’y Gen.*, 296 F. App’x 870, 872 (11th Cir. 2008).

356. Shapiro, *supra* note 251, at 304–05 (citing *Yaylalicegi v. Gonzales*, 175 F. App’x 33, 34 (7th Cir. 2006)).

357. *Compare Yaylalicegi v. Gonzalez*, 175 F. App’x 33, 34 (7th Cir. 2006), with *Suradi v. Holder*, 437 F. App’x 549, 551 (9th Cir. 2011).

358. *Yaylalicegi*, 175 F. App’x at 34–35.

359. *Id.* at 36.

360. Shapiro, *supra* note 251, at 304–06 (citing *Yaylalicegi*, 175 F. App’x at 36).

361. *Yaylalicegi*, 175 F. App’x at 34.

362. *Granting asylum to Disi based on evidence of honor killings in Jordan. Sarhan v. Holder*, 658 F.3d 649, 656 (7th Cir. 2011).

nonexistent.³⁶³ The environment in Syria is similarly grave for women as it is in Jordan and thus what Almas Abraham faced was overwhelmingly comparable to what Sarah Sarhan faced if she returned to Jordan.³⁶⁴ However, the Seventh Circuit failed to overturn the BIA and IJ and find Abraham was part of a qualifying social group containing stigmatizing characteristics.³⁶⁵ Although Abraham, a citizen of Syria, was ultimately denied her asylum application because the court lacked jurisdiction due to a filing error,³⁶⁶ the court still considered the validity of her claim and found Abraham failed to prove it was more likely than not she would be harmed by her family upon returning to Damascus.³⁶⁷ This decision was contingent on her returning to a large city away from her family rather than her home village.³⁶⁸ The court noted that when she originally left her small village of Tel-Sakra for Damascus, her family did not follow her.³⁶⁹ Following that logic, if she returned to Damascus, her family would not come find her.³⁷⁰ The Seventh Circuit failed to give appropriate weight to a United States Department of State 2009 Human Rights Report documenting honor killings in Syria and failed to consider the cultural importance of honor that ultimately caused Abraham's life to be threatened.³⁷¹

The Eleventh Circuit considered the same condition in *Vellani v. U.S. Attorney General* and denied asylum to Zehra Vellani, finding if she relocated within Pakistan, it was unlikely her family would seek her out.³⁷² The court ignored her expert witness, Professor Riffat Hassan, who told the court her denial of the accusations "would carry no weight in Pakistan."³⁷³ This type of reasoning on the court's behalf is erroneous and underscores a

363. *Abraham v. Holder*, 647 F.3d 626, 628, 629 (7th Cir. 2011) (citing *2009 Country Reports on Human Rights Practices: Syria*, U.S. STATE DEP'T, <https://www.state.gov/j/drl/rls/hrrpt/2009/nea/136080.htm> (last visited May 10, 2011)).

364. *See id.* at 629 (noting Abraham feared she would be killed upon her return).

365. *Id.* at 633.

366. *Id.* at 632.

367. *Id.* at 634.

368. *See id.* ("[B]ecause Abraham's family and former boyfriend did not disturb her after she moved to Damascus, it was unlikely that they would harm her if she returned to Syria.").

369. *Id.*

370. *Id.*

371. *See id.* (noting Abraham's cousin's testimony corroborated the findings of the 2009 Human Rights Report).

372. *Vellani v. U.S. Att'y Gen.*, 296 F. App'x 870, 877 (11th Cir. 2008).

373. *Id.* at 873.

complete misunderstanding of the importance of honor to a family.³⁷⁴ Further, it refuses to consider repercussions on the female even if she is not killed. Zehra introduced evidence to the court showing that even if she was not killed, the accusations would certainly lead her family to disown her, a social act which brands women as prostitutes and forces them to live in poverty.³⁷⁵

These decisions highlight the inconsistencies in U.S. jurisprudence; specifically, how U.S. courts consider the personal testimony of asylum seekers regarding the current environment in their home country. The federal courts have shown a misunderstanding and disregard for the reality of gender-based persecution in Sharia-law nations.³⁷⁶ Additionally, when comparing the Ninth Circuit to the Seventh Circuit rulings regarding the aforementioned tests, there is no consistent jurisprudence throughout the courts, making asylum claims inconsistently handled and their outcomes uncertain.³⁷⁷ The Seventh Circuit exemplifies these inconsistencies with finding in *Sarhan* “women facing honor killings in Jordan” was a qualifying social group, but then finding women facing honor violence in Syria was not.³⁷⁸

U.S. courts have a responsibility to give the necessary weight to evidence on the cultural realities for women who will be forced to return. It is erroneous to conclude that domestic violence in Sharia-law nations occurs in a vacuum and lacks political repercussions.³⁷⁹ For example, a Jordan judge recently implemented tough anti-honor violence penalties.³⁸⁰ Nevertheless, under Article 98 of Jordan’s penal code, a perpetrator can spend six months or less in jail if the victim’s family drops charges.³⁸¹ Despite trends within the

374. See discussion *supra* Parts II–III.

375. *Vellani*, 296 F. App’x at 874.

376. See *id.*

377. Compare *Suradi v. Holder*, 437 F. App’x 549, 550 (9th Cir. 2011), with *Sarhan v. Holder*, 658 F.3d 649, 650–57 (7th Cir. 2011).

378. Compare *Sarhan*, 658 F.3d at 655, with *Abraham v. Holder*, 647 F.3d 626, 628, 629 (7th Cir. 2011).

379. See *Cianciarulo*, *supra* note 259, at 156.

380. Rothna Begum, *How to End ‘Honor’ Killings in Jordan*, HUM. RTS. WATCH (Apr. 3, 2017), hrw.org/news/2017/04/03/how-end-honor-killings-jordan (noting that a Jordan court doubled the sentences imposed on two brothers who committed an “anti-honor” crime against their sister—ultimately imposing sentences of 15 years for one brother and 20 for the other).

381. Kathleen Peratis, *Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan*, HUM. RTS. WATCH (Apr. 19, 2004), <https://www.hrw.org/report/2004/04/19/>

country pushing for reform, honor violence is on the rise in Jordan, and the punishment remains horribly lax.³⁸²

Comparably, honor violence in Pakistan remained rampant up to the 2016 law reform removing the possibility of familial forgiveness, because the previous law purportedly outlawed honor killings but lacked a deterrent effect as offenders would be released if a victim's family member forgave them.³⁸³ It remains to be seen whether the law reform will actually help fight VAW or whether such acts of violence will continue to occur at alarming rates due to lack of local law-enforcement protection.³⁸⁴

The reality in many countries following Islamic law is women are not protected, despite policies put forth by the government to provide protection.³⁸⁵ The existing moral code in Sharia-law nations stigmatizes women in such a way that they cannot shed this characteristic, and thus persecution is imminent in the face of accusations of dishonorable conduct.³⁸⁶ The United States has fallen behind other progressive Western nations by narrowly construing social group and thus failing to recognize gender as a qualifying social group.³⁸⁷ "The failure of courts to recognize political opinion . . . is a failure (or refusal) to acknowledge the political underpinnings of intimate partner violence."³⁸⁸ Because of pervasive persecution against women around the globe perpetuated by patriarchal systems clinging to notions of honor and male domination, U.S. courts are truly sending women to their death. U.S. courts must realize this to protect women seeking asylum in the U.S. from threats at home that could be fatal.

VI. CONCLUSION

Sharia law's influence has created a culture which stigmatizes and

honoring-killers/justice-denied-honor-crimes-jordan.

382. See Adam Coogle, *Recorded 'Honor' Killings on the Rise in Jordan*, HUM. RTS. WATCH (Oct. 27, 2016), hrw.org/news/2016/10/27/recorded-honor-killings-rise-Jordan (noting a 53 percent incline in honor violence in 2016). The country of 6.8 million reports 15 to 20 honor killings per year, compared to 1,000 in Pakistan, a country of over 182 million, and 23 to 27 in the United States, a country of 318.9 million. *Id.*; HELBA ET AL., *supra* note 28, § 1.3 *Pakistan Events of 2016*, *supra* note 29.

383. Ullah, *supra* note 60.

384. See *id.*

385. See, e.g., *id.*

386. Bond, *supra* note 33.

387. Heitz, *supra* note 150, at 243.

388. Cianciarulo, *supra* note 259, at 155.

marginalizes women. The legal systems of Sharia-law nations have failed to create gender equality and protect women from traditional practices of violence, notably, honor killings. This atmosphere has bled into U.S. culture, with law enforcement being ill-equipped to handle cases of honor violence, proposed legislation attempting to disable U.S. judges from handling cases which should be considered under Sharia law, and U.S. courts failing to protect women as a qualifying particular social group when it is clear returning to their home country would result in a culturally-protected act of violence.³⁸⁹ It is necessary for states to be able to consider Islamic law to best respect the rights of Muslim American citizens.³⁹⁰ Further, since circuit courts have failed to consistently extend asylum to women facing an imminent threat, the U.S. Supreme Court should rule on asylum cases and determine gender can be a qualifying social group in the face of honor violence and consequently strengthen gender equality.³⁹¹

*Julia Steggerda-Corey**

389. *See supra* Part V.C.4.

390. *See supra* Part V.B.

391. *See supra* Part V.C.

* B.A., Pepperdine University, 2012; J.D. Candidate, Drake University Law School, 2018; LL.M. Candidate, Drake University Law School, 2018. Thank you to the Drake Law Review editorial board and Drake University Law School faculty for thoughtful suggestions. Mostly, thank you to my family who supported every step of this process. Without your love and support, this would never have been possible.