Abstract: Pakistan since 1979 has been transformed into an amalgamation of a series of often contradictory political enterprises which retain two cohesive strands among them: the articulation of divergent views on the rights of women and rhetoric to incorporate more laws and institutions derived from Islam. The Ministry for Women’s Development has sought, over the years, to identify problems and suggest solutions to further the status of women in the country but these have often been received as controversial. The federal government of Pakistan sought to assert its stance on its perceptions of women’s rights in 1996 when it became a States Party to the UN CEDAW Convention and, as such, pledged to review its existing laws and social institutions to eliminate discrimination against women. However, consensus remains evasive in identifying what constitutes discrimination against women in Pakistan. The degree to which conflicting visions of women's rights were held by different groups further escalated when the Islamist coalition, the Muttahida Majlis-i-Amal (MMA) came to power in the NWFP in the October 2002 elections. The most powerful and transformative of many of their new and proposed laws and policies directly concern the rights of women. Today, two distinct proposed laws – the Women’s Rights Bill at the federal level and the
Hisba Act at the NWFP provincial level – are being debated as solutions to problems confronting women in Pakistan. Following an overview of both, this paper addresses the controversies surrounding them, particularly focusing on the questions being raised as to what constitutes women’s rights in Pakistan. It seeks to propose common ground that various viewpoints can agree upon in moving forward to enhance the status of women in Pakistan.

In October 2002, national and provincial elections were held throughout Pakistan. While little changed as a result of the national election, a decidedly Islamist political coalition, the Muttahida Majlis-i-Amal (MMA), was voted into office in the provincial election in the Northwest Frontier Province (NWFP). This unprecedented outcome was the first time in Pakistan’s 55-year history that an Islamist political party had won a significant election. The social and political implications of this event are staggering, for Pakistan is but one of many Muslim states that are grappling with balancing the demands of modernity and globalization with the often contradictory demands of their local populace. The provincial MMA government in the NWFP has subsequently proposed and promulgated a number of laws and policies that directly contest those of the federal government; the most powerful and transformative of these directly concern the rights of women.

The rise of this kind of Islamist political force represents one of the greatest concerns today in the Muslim world. Islam is increasingly used as a rallying cry of identity politics although little consensus exists anywhere on the priorities of an Islamist government, should one come to power. Are social and cultural policies the most compelling to implement first, or should legal transformation – including clarifying which school of fiqh (jurisprudence) will be used – be preeminent?

If the former, need it prioritize the conservatism of veiling or the moderation of seeking justice? If the latter, should governments respond to constituency demands or prioritize orthodoxy as communicated increasingly through tabliqh
groups? Importantly, it seems that many Islamist groups place a great deal of attention on women’s rights, often as a cornerstone of their policies, regardless of which kind of path they choose to pursue first.

The potential for provincial Islamist governments to be elected is intriguing, for such situations may place national laws and policies in direct contestation with emergent local agendas. Globalized Islamic politics, on the whole, tend not to differ greatly with one another, but emergent provincial discourses – such as we’ve seen for a number of years with PAS in Malaysia – may well change that. Opponents of Islamist political parties in Pakistan, in particular, fear that such kinds of provincial governments may result in an abrogation of rights that are mandated at the national level to be enjoyed by a country’s citizenry while cloaking their policies in the guise of implementing Islamic sharia.

In Pakistan, there is an ongoing debate between the provinces and the federal government on the kinds of law that provinces can legislate and the kinds of laws that remain the domain of the federal government.¹ Most issues that have emerged in this debate are not contentious in and of themselves; the critical dispute has been which entity has the right to pass legislation about them.

The issue of women’s rights, however, is another matter as different constituencies within Pakistan are deeply divided over what constitutes women’s social roles and rights, what activities and privileges are acceptable and unacceptable for women, who is to define what these social roles and rights are, and where responsibility lies for ensuring these rights. In particular, there is a conspicuous disparity between the vision and subsequent policy on women’s rights as articulated by the federal government and that of the MMA government in the Northwest Frontier Province.

This paper also reviews the agenda of the federal government of Pakistan to promote women’s rights and eliminate
discrimination against women – as mandated in the U.N. CEDAW Convention that it has joined – and compares these efforts with laws and policies being proposed and implemented by the provincial NWFP government of the MMA. Based on interviews I have conducted with a wide range of actors in Pakistan intermittently over the past three years, this article interrogates the nature of the conflicting visions of women's rights held by each government. It also assesses whether the MMA’s stance on women’s rights transgresses the established boundaries in which provinces can legislate. Indeed, this issue is underscored in last year’s ruling of the constitutionally-mandated Council on Islamic Ideology which found the MMA’s proposed Hisba Bill unconstitutionally vague, arbitrary, and potentially destabilizing as it legislates moral and ethical issues about which there is no consensus or agreement.

When we question whether the MMA is crossing the line over what is allowable for provincial governments to legislate and what remains the domain of the federal government, we are interrogating an issue that confronts Islamist groups worldwide today, particularly in considering their policies on women. Can a provincial government legislate its constituents’ morality and determine on what that morality code is based? It is one thing for a provincial government to decide that it will negate federal policies, but it is quite another thing when that overflows into the arena of international agreements. The MMA provincial government could no more decide that the torture of prisoners would be acceptable, or that child marriage should be encouraged (which would negate Pakistan’s position as a signatory to the U.N. Convention on the Rights of the Child), as to promote discrimination against women, which would be in contradiction to the federal government’s pledge when it acceded to CEDAW.

**Background to the current debate on women’s rights in Pakistan**

The Government of Pakistan has long been a formal defender of women’s rights. It had become a State Party to a
number of gender-focused U.N. human rights instruments, beginning with the 1953 Convention on the Political Rights of Women. It went further than some of the requirements of the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (which it did not ratify) when it promulgated the 1961 Muslim Family Laws Ordinance (MFLO) to regulate marriages and restrain polygamy. The MFLO requires the registration of all marriages and provides a number of safeguards for women in the event of a divorce or a husband’s second marriage. Pakistan later became a State Party to the U.N.

Convention on the Rights of the Child in 1990, the 1993 Vienna Declaration which recognized “women’s rights as human rights,” the 1994 Cairo Population and Development conference’s Programme of Action, and the 1995 Platform for Action in Beijing. In 1996, Pakistan became a State Party to the United Nations CEDAW Convention and, as such, pledged to review existing laws and social institutions to eliminate discrimination against women. In the three years that followed, limited progress was made to implement this pledge nor even to file the first mandatory CEDAW Report to the U.N.

The Musharraf government, which came to power in a coup in October 1999, revived the issue of women’s empowerment as a key component of its policies to promote Pakistan’s progress. Shortly before Musharraf’s government was finally ready to file Pakistan's first CEDAW report, the tragedy of 11 September 2001 struck and then the ensuing war in Afghanistan began. The final filing of the CEDAW report – similar to many things on the Government of Pakistan’s social agenda – has been on hold ever since. Substantial conflict has embroiled the Pakistan state in the ensuing years and, similar to the past four decades, much of the resultant social turmoil has focused on the rights of women. The degree to which conflicting visions of women's rights were held by different groups further escalated with the MMA’s provincial victory in the October 2002 elections.
Pakistan became an independent state as a result of partition of the former British India in 1947. At the outset, its greatest advocates were those supporting a homeland for the Muslims of South Asia so they would not be at risk of living under the threat of Hindu hegemony. The most religiously-oriented groups, particularly the Deobandis, did not support the creation of Pakistan on the basis that Islam could not be constrained within the borders of a modern nation-state.

Others, particularly the members of the Punjab Unionist Party, saw no reason to seek independence from Britain. Therefore, with various forces pulling in different directions, and an overriding concern for the long-term security of the new political entity, little attention was initially paid to the state having a distinct ideology or to the kinds of social policies it would pursue. There was far greater concern for its very existence.

The country was not even declared to be an Islamic republic initially; that designation only came with the second constitution in 1965. The third constitution, promulgated in 1973 after the divisive 1971 civil war that confirmed that a shared religion was not enough to hold the union together, finally included other references to Islam and the supremacy of Islamic laws. The third Constitution also mandated the establishment of the Council of Islamic Ideology to ensure that no laws in Pakistan are in contradiction to the *sharia*.

However, no substantive program of Islamic reforms existed in Pakistan prior to General Zia ul-Haq's implementation of his Islamization program in February 1979. Those reforms included the establishment of a *zakat*-based welfare/taxation system, a profit-and-loss banking option in accordance with Islam's prohibitions against usury (*riba*), and an Islamic penal code which had far greater implications for women than for men. The new penal code made it relatively easy for a woman to be charged with (and hence arrested for) adultery (*zina*); uneducated women with no experience of how a legal system operates nor funds for legal defense came to populate Pakistan’s prisons.
While Zulfiqar Ali Bhutto's government had outlawed alcohol and changed the ‘day off’ from Sunday to Friday in 1977, General Zia's government further emphasized those features that brought Pakistan closer into the cultural orbit of the Middle East.

The Islamization program under Zia ul-Haq was pursued in a rather complicated ideological framework. His stance contradicted popular culture in which most people were ‘personally’ very religious but not ‘publicly’ religious. An untoward outcome was that by relying on an Islamically-based policy, the state fomented factionalism: by legislating what is Islamic and what is not, Islam itself could no longer provide unity as it was now being defined to exclude previously-included groups. Importantly, too, the state had attempted to dictate a specific ideal image of women in Islamic society – chador aur char divari, remaining veiled and within the four walls of one’s home – which was largely antithetical to that existing in popular sentiments and in everyday life.

The one component in his Islamization program that Zia ul-Haq had been unable to implement was his proposed Shari'at Bill, which would have required all laws in the country to be in conformity with Islam. A highly diluted version was passed by the Nawaz Sharif government three years after Zia’s death, in April 1991. While seemingly unpretentious, there are many ways in which this Shari’at Law can be interpreted. Women's groups in particular were concerned that the reforms made in the Muslim Family Laws Ordinance (MFLO) of 1961 would be jeopardized if more conservative forces could convince the courts that it was not in conformity with religious precepts. The constitutionally-mandated Council for Islamic Ideology has undertaken review of the Ordinance, but despite having had it for years, has not yet released its assessment. To do so would be taking a distinct position one way or other, something that may further polarize different factions in the country. By the late 1990s, the effects of laborers returning from the Gulf States where they had seen ‘the authentic Islam’ in practice combined with the proliferation of deeni madaris, residential religious schools, began to be felt throughout the county. Pakistan had
enjoyed a fairly good public education system in its first three decades, albeit it remained plagued by limited attendance from poor communities, especially in rural areas. In the early 1980s, Zia’s government declared that the medium of instruction in all public schools would be the national language, Urdu; wealthier Pakistanis began to send their children to the English medium private schools that were becoming established in urban areas.

However, a crisis of confidence ensued: it was expensive to send a child to a government school as families were still required to purchase school uniforms and books, and would also have to do without the benefit of the labor a child might contribute. Many people also ascertained that there would be a limited return (by way of a child being able to get a well-paying job later on) to attending government school. Meanwhile, many deeni madaris were being established throughout the country, often with funding from Saudi Arabia or from expatriate Pakistanis working in the Gulf region, as well as by local contributions by such workers who had returned. Many of these religious schools would offer a student’s family essential grains (rice, wheat, etc.), cooking oil or even money to help towards a sister’s marriage. Families considered that at the least, their son would learn to read the Qur’an and lead prayers, which has a moral benefit. They also surmised, and appropriately so, that their son could earn a living later on by being a resident mullah at a mosque and by teaching children the Qur’an and their prayers, as many families have a ‘maulvi saheb’ visit their house daily to do so. The Zia regime indeed encouraged their proliferation by approving their syllabi for degrees being granted at government schools. The MMA Provincial Information Minister, Asif Iqbal Daudzai, contends that madaris throughout the province are undergoing internal reform and are introducing new subjects, and that both English and computer science are now being taught at Akoora Khattak.

But these madaris have noticeably changed the tone of Islam practiced in Pakistan today, particularly in Punjab and Sindh which had been historically less orthodox than the western parts of the country. Even public school curricula are teaching a
less tolerant version of Islam, a stricter Islam far removed from the pir and shrine-centered practices that were included just a generation ago. Muslim communities worldwide became politicized in the 1990s; nowhere is this truer than in the Islamic Republic of Pakistan, and especially in the Northwest Frontier Province.

Today, with 97 percent of its population professed Muslims (over 3/4 of whom are Sunni Muslims), Pakistan still seeks to find an appropriate role for Islam in civic and political life.

What it means to be a Muslim is intrinsically tied to local cultural traditions which, to many adherents, are inextricably intertwined. Indeed, there exists substantial confusion over where the lines are drawn between what is Islamic, what is codified tradition, and how (if at all) to delineate their separate jurisdictions. In other words, many Pakistanis experience their identity as Muslims as inseparable from other component parts of their culture and often confuse those things that are not in accordance with cultural norms, values or practices as being in contradiction with Islam. Alternatively, other groups (e.g., those promoting human rights, women’s rights, business interests, and many political parties) question Islam’s jurisdictional space in the contemporary political sphere and whether state-sanctioned Islamic injunctions should have a role to play in socioeconomic domains in Pakistan. The debate continues to escalate over the role Islamic law should play in the country's affairs and governance. At question are such matters as government intervention in the personal practice of Islam, whether the Hudood Ordinances – and particularly the zina clause – should be repealed, if the federal Shari’at Bill should be strengthened, and how to introduce Islamic banking practices, among others.

Federal Law and the Rights of Women
Pakistan’s national constitutional framework is inconsistent on women’s rights. The 1973 Constitution affirms that the state is committed to eliminating exploitation and guarantees that “all citizens are equal under the law and are
entitled to equal protection of law,” and that there is to “no discrimination on the basis of sex alone.” It promises that “steps shall be taken to ensure full participation of women in all spheres of national life” and that it is the responsibility of the state to “secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living.” Yet laws passed under Zia ul-Haq’s Islamization program are also a part of Pakistan’s constitutional make-up. The Hudood Laws, a penal code selectively gleaned from *fiqh* (Islamic jurisprudence), focused on enforcing punishments for three kinds of crimes explicitly outlined in Islamic *sharia* (law): theft of private property, the consumption of intoxicants, and adultery and fornication (*zina*). The most controversy swirled around the latter, *zina*, both because the ordinance governing it made no legal distinction between adultery and rape and because its enforcement was highly discriminatory against women. The Law of Evidence, promulgated four years later in 1983 and subsequently upheld only in cases concerning economic transactions, would have restricted women from providing evidentiary testimony in certain kinds of cases and require corroboration by another woman in other kinds of cases. Regardless, the law clearly gives men and women different legal rights and, at the least, underscores that the state does not regard women and men as equal economic actors.

In the years following Zia’s demise which saw Benazir Bhutto and Nawaz Sharif jockeying for power, no pivotal legislation was passed that further affected the rights of women, one way or the other. The 1991 Shariah Bill, greatly watered-down from what both Zia and Nawaz had initially proposed, was promulgated, declaring Islam as be the Supreme law in the land but without any further stipulations. The mandate to reserve seats for women in parliamentary elections expired, and neither Benazir nor Nawaz resurrected it, a big disappointment for women’s rights activists. They clamored for the Hudood Ordinances – and particularly the *zina* clause – to be repealed, but that didn’t happen either. When Benazir Bhutto spoke at the 1995 Fourth World Conference on Women in Beijing, she (as did
many other heads of state speaking there) pledged that her government would become a Party to the CEDAW Convention.

Through ratification of CEDAW, Pakistan assumed the obligation to review the impact of existing laws on women, change those laws which discriminate against women, and submit periodic reports to the U.N. Division for the Advancement of Women on its progress. CEDAW’s principle of State Obligation requires States Parties not only to bring their domestic laws in line with the Convention, but also to ensure the practical realization of rights by undertaking extra measures to implement enabling conditions so that women’s capacity to access the opportunities provided is enhanced.

The women’s movement in Pakistan had played a key role in getting the government of Benazir Bhutto to ratify CEDAW in 1996. Critical elements within the Convention attest to this ratification as a watershed point for the Pakistan women’s movement. Some important examples include the following:

Article 1: requires States Parties to create policies to eliminate discrimination against women and ensure “on a basis of equality of men or women . . . human rights and fundamental freedoms”

Article 2: requires States Parties “to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation. . . [and] establish legal protection of the rights of women on an equal basis with men”

Article 5: take “all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”
Article 7: States Parties “shall ensure to women, on equal terms with men, the right to participate in the formulation of government policy and the implementation thereof.”

Additional articles assert that women are to enjoy the same conditions and access to education as men (Article 10), that women are to be accorded “a legal capacity identical to that of men” in civil matters (Article 15) and there be no discrimination “against women in all matters relating to marriage and family relations” (Article 16). Important, too, is the assertion in Article 5 that States Parties must strive to modify “the social and cultural patterns of conduct of men and women” to eliminate prejudice based on stereotyped beliefs of the inferiority of women, which blurs the lines separating public and private spheres, and is the first international human rights instrument to do so.

With the exception of distinct controversial laws said to be based on Islam, laws in Pakistan, by and large, do not condone discrimination against women. Islamic laws in Pakistan are generally based on Hanafi interpretations – widely considered to be the most liberal in the Muslim world – though on occasion the state has turned to decisions based on other schools of fiqh as well.

The key areas of dispute that the Pakistan state has had with CEDAW fall into three categories: co-education, inheritance; and evidence/legal witness. The first category is often framed as being contradictory to those sentiments prevailing in the local culture which largely operate under the ideal of separate spheres for males and females. Interestingly, co-educational schools had been a norm in higher education in Pakistan until its expansion in the 1970s when students from a range of social, economic and religious backgrounds began to attend high schools and universities; it was dismantled nearly everywhere during the waning years of Zia ul-Huq’s regime a decade later. Post-graduate universities, however, remain largely coeducational throughout the country.
The latter two categories are directly affected by Pakistan’s constitution, which requires that no laws can be in contradiction to the injunctions of Islam. These two categories of dispute — inheritance and evidence/legal witness — are widely regarded as being derived from the Qur’an and, as such, are immutable.

One point that many people believe is an issue in Pakistan — but under federal law is not — concerns consent and guardianship at the time of marriage. Pakistani case law until recently was ambiguous on this, as there had been rulings in favor of a new bride and her husband who had willingly married but without the consent of the bride’s guardian (wali) but also rulings in favor of a father who had opposed a daughter’s marriage. The Saima Waheed and Humaira Butt cases in the late 1990s set a clear precedent for case law: based on Hanafi Islam, once a child is legally considered to be an adult, the only consent necessary to obtain for a marriage to occur is that of the man and woman entering into the marriage. Consequently, a parent’s objection to a marriage is not relevant to the law (albeit it is preferred within the culture). The ruling noted that the issue has been raised in Pakistan repeatedly more because of rivaj (tradition) than because of its legal foundations within Islamic jurisprudence. As an extension of this interpretation, of a woman’s rights as a legal adult, the nationality law has been revised so that a Pakistani woman’s children can ‘inherit’ her nationality, irrespective of her husband’s nationality, although her husband still cannot.

In its draft CEDAW Report, the Pakistan government identifies a number of obstacles, quite forthrightly, that it faces in eliminating discrimination against women and in implementing the Convention, notably prevailing sociocultural norms, the existing patriarchal system, legal guarantees that are often not translated into concrete actions, and the society’s feudal values. It argues that most of the substantive challenges lie in implementation, especially at the grassroots level, due to locally-perceived cultural restrictions and political necessities to appease certain groups.
The MMA Provincial Government in the NWFP

The provincial government in the NWFP which came to power in November 2002 is a coalition, the Muttahida Majlis-e-Amal Pakistan (MMA), consisting of six Islamist parties:

Jama’at Islam, Jamiat ulema-e-Islam (Fazlur Rehman group), Jamiat ulema-e-Islam (Sami ul-Haq group), Jamiat ulema-e-Pakistan, Markazi Jamiat Ahle Hadith, and Tehrik Nifaz Fiqah Jaferiya (a Shi’a party). These parties had initially joined together as the Pakistan-Afghanistan Defense Council (PADC) in response to the west’s criticism of the Taliban government in the spring of 2000.

After the war in Afghanistan began in October 2001, the PADC transformed into the MMA. The constituent political parties decided to make an alliance “to implement an Islamic system and to protect Islamic values” with the objective of ensuring the “supremacy of Islamic Law and enactment of legislation according to the recommendations of the Islamic Ideological Council.”

The MMA’s campaign re agenda had four priorities: promote the Islamization process; greater provincial autonomy; rename the NWFP province to Pukhtunkhwa; and social issues (e.g., lower unemployment and inflation rates). The MMA Manifesto released for the October 2002 election goes even further in stating the alliance’s overall objectives:

Establishment of Islamic Judicial system, economic prosperity, self sufficiency and provision of employment; Protection of ideological and geographical boundaries and sovereignty/ independence of the country – in short, checking all types of external interferences; and to put an end to the ethnic, caste and creed, regional, tribal, religious and sectarian hatred and violence and to create an atmosphere of friendship and brotherhood.
The Election Manifesto pledged to support reforms that would provide “real constitutional autonomy” to the provinces by removing “all powers resting jointly with the Federal and Provincial Governments” in Pakistan’s constitution. This pledge is of particular importance to the overall agenda of the MMA, for to implement a number of its goals it needs to ensure it has the power to pass legislation in those domains. In particular, it was seeking to cross lines where it could pass legislation affecting one’s religious piety, though in actuality the MMA’s interpretation of piety. Significantly, much of that legislation bears directly on women’s rights.

The MMA identifies explicit goals of an Islamic polity, including provision of rights to women “according to the Qur’an and Sunnah and to enable them to play their role in society,” to arrange for “healthy entertainment and mental, psychological and moral mentoring of the youth,” and to end “unwanted restrictions on independent journalism and freedom of speech, and that journalism be made according to religious and national values.” A key campaign promise was to institute an effective process of implementing shariah laws in the province.

Six months after taking office, the MMA government passed a provincial Shariah Law (2 June 2003) which, while similar to the federal Enforcement of Shariat Act of 1991, has two key differences: while the federal law states that no Islam should be the Supreme law in the land (i.e., that no law should be in contradiction with or against Islam), the provincial law states that all issues would be decided according to Sharia and that it extends to all arenas of law. It emphasizes *amar bil maroof* and *nahi anil muunkar*, to “advocate virtue and forbid evil” respectively, and that legal and constitutional protection is necessary to ensure these objectives.

The provincial Shariah Law states that “all local courts would interpret and execute all laws falling within the jurisdiction of the Provincial Government strictly according to Sharia” and that in the event laws can be interpreted and implemented in more than one way, then “the courts would adopt
that interpretation which is closer to Shariah.” That local courts are now being given jurisdiction to interpret laws according to Islam is revolutionary, as these tasks have thus far been shared between the constitutionally-mandated Council for Islamic Ideology and the Federal Shariat Court. No distinct school of fiqh (jurisprudence) is mentioned in the provincial Shariah Law; mention of fiqh and shariah appears to presume a shared understanding (albeit in practice this may not be so) of what would constitute them.

The Provincial law also proposed various measures – many of them fairly detailed – for enforcement of Islam in education, culture, the economy, system of justice, and governance. It states that mass media should be used to promote Islamic values and teachings, and vowed to constitute distinct Commissions to examine educational, judicial and economic institutions in the province to ensure conformation to the requirements of Islam.

The Shariah Law provides a framework for an Islamic system of education by mandating that the provincial government ensure “that all education systems that prevail must promote Islamic teachings and character building,” incorporate Islamic fiqh into the curricula of all law colleges within its administrative control and promote the Arabic language. However, the Shariah Law also delves into fairly uncharted political territory (for an official document): it vows to “put an end to corruption, embezzlement and malpractices of the provincial government” and that in order “to put an end to all social evils, the provincial government would ensure the promotion of virtue and elimination of sin according to the teachings of Qur’an-e-Pak.” In addition, the provincial government is to enact “necessary legislation. . . to wipe out vulgarity and lawlessness.”

The MMA government laid out hundreds of other explicit, detailed goals to promote Islamization in the NWFP. There has been a distinct emphasis – critics claim an undue emphasis – on gender segregation under the MMA leadership:
girls are to study in separate schools from boys; only female physicians are to treat female patients; and all new mosques are to have separate areas for women. The notion is that it is in this context, of gender segregation, that women’s rights can be best secured. However, these ideals are being conveyed in a resource poor social environment: schools often don’t have furniture, teachers or books and female literacy rates are appallingly low; there are not enough doctors to begin with (let alone female doctors) aside from many families being reluctant to seek out medical care especially for females; and women in this area don’t go to mosques for their prayers. MMA representatives, claiming that creating an Islamic context itself will solve many prevailing social problems, are prioritizing the construction of more schools and colleges for girls, especially in more remote areas. They are also emphasizing district colleges and postgraduate schools throughout the province, claiming that people are conservative and don’t want to send their girls to Peshawar.

They are creating a Women’s University in an attempt to train more female teachers and physicians. It has recently begun to hold classes in the afternoons at the long-established Frontier Girls College, but the plan is to build a separate university eventually in Peshawar. The MMA is also building a female medical college, hoping to encourage parents to educate their daughters but in “a safe context.” While co-education will continue for those who prefer it, the MMA contends that separate facilities for women will be very important for those families who would only send their daughter there (and not to a co-educational school).

The impetus for a women’s university apparently came from a female MMA MPA. She told me that she had not been allowed to pursue her B.A. at the co-educational university in Peshawar and instead had to register as a private candidate (i.e., study through correspondence). Upon taking office, she found a very receptive climate when she told the MMA leadership that had there been a women’s university when she was studying she would have been able to have received a far better education.
The leadership incorporated the idea of a woman’s university into its priorities, although funding for it remains problematic.

The justification generally offered for such gender segregation is that this would enable women to live better lives as this segregation is in accordance with Islam. For example, in response to the reality that some families (especially the most conservative) refuse to have female members treated by male doctors, a female MMA member said to me:

There is a growing need for female doctors to treat female problems. In this way demands of modesty and purdah during treatment can also be fulfilled. Therefore numerous women have entered this field and are providing valuable services. However, they should remember that actions are based on intentions. They should become doctors with the intention of serving females who do not want to go to namehram (men from whom women should observe purdah) for treatment. Also they should observe purdah so that Allah is happy with their services.\textsuperscript{21}

In particular, it has been singled out that male doctors, ideally, should not perform ECG tests on females as the test requires a doctor to touch the patient’s chest. MMA detractors have argued, however, that this recommendation is being taken to the extreme and that some male doctors are refusing to treat female patients altogether. MMA representatives have countered this charge by contending that this would be an ideal scenario but that, in order to implement this recommendation, there must first be many more female physicians and hence the need to establish a female medical college in the province.

Another arena concerning women’s rights that the MMA government has explicitly addressed is that of women’s rights within the family in this cultural context. To their credit, they have condemned the Pukhtun customary practice of swara\textsuperscript{22}, deeming it as being against Islam, as well as honor killings and the trafficking of women, stating that:
Killing in the name of honor, trading of women, un-Islamic traditions like ransom in the form of women, and forced marriage should be totally banned.\textsuperscript{23}

While the ban against \textit{swara} is now in place, how the ban is to be enforced has not been specified, thereby undermining the MMA’s credibility that it will actively ban the practice. The MMA has been less innovative in its stance on women’s legal rights within the family. In this cultural context where women are pragmatically regarded as property, the consideration of women’s independent rights is akin to sacrilege. For example, in its draft Islamization agenda, the MMA declared that “Divorce, which is also an unwanted act in Shariah and destroys many families, should be declared as a punishable act” without recognizing that there are legitimate reasons for pursuing a divorce, especially on the part of women when domestic violence occurs.

Consistent with the position held by the Jama’at Islami, a key coalition member, the MMA leadership criticizes the 1961 Muslim Family Laws Ordinance, claiming that it includes two un-Islamic clauses: the requirement to register divorces (as it is not required in Islam and neglect to do so often results in charges of \textit{zina} – adultery – against women) and the requirement for a man to acquire permission from his first wife before he can marry a second wife. One MMA leader told me that as “women cannot control their husband’s sexuality, it’s better that he has a legally binding second marriage, than run around with ten other women.”\textsuperscript{24} This stance is highly controversial elsewhere in Pakistan today.

I repeatedly asked different MMA representatives that if they really wanted to redress un-Islamic practices regarding women’s rights within the family, why they had not raised the issue of forced widow remarriage – the Pakhtun custom that a widow must marry her late husband’s brother – which is clearly inconsistent with Islam as the woman’s consent is irrelevant.
Alternatively, what of promoting a widow’s right to remarry outside of her late husband’s family as the Prophet Muhammad had done in the exemplary act of his own marriage to a widow? I never received any substantive answer as to why the MMA has not done so, as every respondent acknowledged that while widow remarriage is condoned in Islam, such choices for a widow are antithetical to local practices. To champion otherwise would require the MMA to assert a very unpopular stance in this cultural context, something which could certainly cut into their political popularity.

In its efforts to ward off what is perceived as westernizing influences, the MMA government shut down the Aurat Foundation’s Women’s Crisis Center on 15 June 2003. They took the building back from them, claiming in a letter to the German embassy (which is a major donor of the Aurat Foundation) that it is an advocacy NGO and wants to make Pakistani women western. While the Aurat Foundation offices in Peshawar have been allowed to continue, the crisis center remains closed as of this writing. In the summer of 2004, the MMA government did open another kind of crisis center, a homeless shelter for men in Peshawar. On a pilot project basis, about forty-five male beggars are taught various skills. More may be opened in the future, including a women’s shelter in the Hayatabad area of Peshawar.

The MMA is heavily prioritizing gender segregation in educational institutions to the extent that there should be a complete separation of staff – by gender – so that purdah can be observed. This includes even eliminating male officials from prize distribution ceremonies at girls’ schools. In a move, however, to encourage more girls to enroll in secondary schools (to pursue a matric, 10th class, degree), they have passed a law that a girl can use her fingerprints instead of a picture on the secondary school enrollment form if a family objects to using a girl’s picture, thereby, in the words of one MMA MPA, “this way, education isn’t closed for girls.” She has proposed that the next step is to allow this for higher education (Intermediate and B.A. degrees)."
I was told consistently that Islamic values should be kept in mind in the daily routines and functions of educational institutions, and that education should promote equality, not class differences. However, a critic of the MMA assesses that “there is a dangerous trend occurring now in NWFP: the proliferation of new madrasas. All education monies are being given to the madrasas. President Musharraf has said that the federal government will set the curriculum for madrasas, but they won’t let that happen.”

The MMA has also voiced concerns about cultural issues and social change. These have largely fallen into two categories: disdain of westernization and the elimination of obscenities (which it deems is a product of the West) and implementation of a reward system for honest behavior. In the former category, they have identified such things as video games as playing “a poisonous role in society” and should be eliminated. Music has been banned in government buildings (which, as they are often locales for wedding celebrations, also precludes music being played at such ceremonies as well) on the basis of being un-Islamic. They have had limited success in eliminating vulgar film posters and vulgar Pashto films. If anything, the situation has worsened as I heard many accounts of pornography being inserted increasingly into the middle of Pashto films in cinema halls and pornography being available in most bazaars and downloadable from cyber cafes (and then subsequently sold as well).

In the second category, that of instituting a system of rewards for honest behavior, the MMA has asserted that in line with its efforts to promote honesty, transparency, and ‘justice at the doorstep,’ there should be “a column of honesty added in the service record of government servants and promotion should be conditioned with honesty in their service record.” The provincial government has encouraged its Ministers and other officials to limit their expenses on foreign tours, and “should also refrain from attending parties given as bribes.” In developing a moral code for its Ministers, they have been told they are not to participate in any function where there is music or other “anti-
Shariah and unethical things going on,” that they should plan you’re their prayers during visits and stop working during prayer times, and “offer Juma (Friday) prayer in a large mosque and bring government performance to the notice of the public.”

Many of the above stances and recommendations can be critiqued as mere ‘window dressings,’ as light efforts by an Islamist-oriented government to try to garner popular support for its ideology. However, the seriousness of these efforts emerges when we analyze a pivotal piece of legislation the MMA introduced to ensure implementation of both the Shariah Law and various other goals to promote Islamization: the Hisba Act. An analysis of the Hisba Bill reveals just how different the MMA’s stance on women is from that of the federal government of Pakistan as well as from globalized views on women’s rights.

The Hisba Bill was introduced shortly after the MMA implemented its provincial Shariah Law. This controversial bill would have created a new ombudsman’s office to “advocate virtue” and, with the assistance of a Hisba Force, ensure that “social evils, injustices and the misuse of powers could be checked properly.” The MMA maintained that the Hisba Bill would eliminate non-Islamic practices from the province and bring “justice to people’s doorsteps” while critics feared that it may result in an overwhelming vice squad that would compromise human rights in the process of requiring a rigid conformity to regressive practices considered to be ‘Islamic’ by its advocates.

Provincial Information Minister Asif Iqbal Daudzai told me that the MMA’s Hisba Bill would help bring about a just, Islamic society and be beneficial for women, We are trying to eliminate social diseases. We have banned swara. We have banned talaq. Hisba will enforce this. The Shariat Bill will be completed by Hisba. It creates an ombudsman. The federal system [for an ombudsman] is here, but there is always a conflict between the federal and the provincial. He will have authority here in the province.
The Hisba Act, through the Hisba Force which it was initially to have created, would ensure “compliance of Islamic moral values at public places, discouragement of lavish spending on wedding parties and other social occasions, suspension of business activities and games at prayer times, and a strict enforcement of Islam in all walks of life of the people, government institutions and private businesses and societal activities.”31 The Hisba Force was proposed to be a sort of vice and virtue patrol, similar to that which the Taliban had established, that a “police force would be provided to the provincial mohtasib [ombudsman] and district mohtasib for dealing with the matters.”32 The vagueness of this statement opens up many possibilities, especially for the potential of the Hisba Force over-reaching its mandate. Nothing like the Hisba Force has ever existed in Pakistan; it is difficult to imagine its potential for effectiveness.

An important dimension of the Hisba Bill is its creation of a different kind of ombudsman – mohtasib – than the one that already exists at the federal level and whose powers are envisioned as being far more vast. The federal mohtasib is to intervene between citizens and government entities (e.g., the Water and Power Development Authority, Pakistan Telephone, etc.) when there is a dispute. Importantly, the mohtasib is to iron out differences, not make value judgements or interpretations. But the powers given to the district and provincial mohtasibs in the Hisba Bill are quite substantive. The mohtasib is to promote Islam, make people pray more, and make them better practitioners of Islam. The mohtasib is to have powers of accountability including the ability to fine people and determine sentences (up to a month’s time), somewhat like a Supreme Court justice.33

An MMA provincial Minister stated to me that the MMA government, with its Hisba Act, is trying to Islamize those subjects that do not come under the Federal List, and is seeking to implement laws in those areas where the provincial government has authority to act.34 However, the Council on Islamic Ideology and federal Supreme Court judgements
explicitly ascertained the Hisba Bill was overstepping those boundaries.

Surprisingly, the federal Council of Islamic Ideology, the constitutionally-mandated institution charged with determining if laws (and proposed laws) in Pakistan are in accordance with Islam, made a judgement on the Hisba Bill in September 2004. It deemed that under Paragraph 23, Article 12 of Pakistan’s Constitution, the proposed Hisba Bill was unconstitutionally vague. What is surprising about the judgement is that it was made at all: the Council of Islamic Ideology is notorious for not making judgements on controversial laws. For example, it has yet to publish a judgement on either the 1961 Muslim Family Laws Ordinance or on the 1979 Hudood Laws. To do so would be to take a firm position on interpreting Islam one way or another, something which the Council of Islamic Ideology has been very reluctant to do.

The judgement made on the Hisba Bill, however, did not rule on the Act’s Islamic credentials per se. Instead, the judgement is concerned specifically with the possibility of the Hisba Force opening the door to havoc (muwasid) because it raises the possibility of posing contradictions between the Qur’an and the sunnah (laws derived from the Qur’an). This force may create a dangerous condition of indeterminacy in the law, resulting in a situation whereby, In the course of making laws, at any time, any government, whatsoever, can use these laws to obtain its political objectives in an unfair manner.

The Judgement’s greatest concern seems to be with the arbitrariness which may result. The Judgement also raised concerns about the Hisba Bill’s inclusion of moral and ethical issues about which there is no consensus or agreement.

Its greatest unease was with the goals of establishing a Hisba Administration at all. It states that there is a danger of a Hisba Administration being misused, especially as there is no agreement on the ethical issues it is supposedly implementing. Implementing a uniform Islamic law and saving people from the
injustices of “high handed classes” should be the first goal of Hisba officials. But instead, this Bill “has not defined what good and evil are.” It cannot do this on an ad hoc basis, and arbitrariness would bring disgrace to the institution. Importantly, the Judgement recognizes that existing Civil and Shariat courts have checks and balances against arbitrariness built into them, which the Hisba Bill lacks. The goals of a Hisba Administration should be to implement the law, including Islamic laws, and to rectify shortcomings in their implementation and especially to rectify and remove injustices. By the Judgement stating that this is why a Hisba Administration should be established, it is implying that this is not the reasoning behind the MMA government’s actions.

One aspect of the Hisba Bill which was allowed – despite its questioning of federal vs. provincial powers – is that a provincial government can have its own mohtasib. However, the MMA government reached a compromise when it stated that the person must be qualified and eligible to become a federal shariat court judge.

The MMA revised its Hisba Bill, ostensibly on the basis of the Council of Islamic Ideology’s guidelines, and then adopted the new version on 14 July 2005. NWFP Senior Minister Sirajul Haq said that the bill’s purpose was “to order good and forbid evil” in the society, curb anti-Islamic activities and protect the rights of women and minorities. He lashed out against critics of the bill as being lackeys of the United States, as “America and Britain with their stooges around the world are voicing concern against the bill because they cannot see implementation of Shariat in any Muslim country.”

There is little difference, however, between the two versions. Iqbal Haider, secretary-general of the Human rights Commission of Pakistan and a former federal minister for law, argued that the provisions in the revised bill, with the exception of Section 23, “are already covered by the existing laws on the list of both federal and provincial statues on the same subject and having the same objects and purposes.” He saw that the real
magnitudes for the bill were that the MMA government could dictate and impose, through the provincial, district and tehsil *mohtasibs* their own peculiar orthodox, obscurantist social, moral and cultural values, norms and practices on the society to enslave the people of the Frontier. At the same time, by this law, the MMA government intends to deny the people their basic right to challenges any order or directive of the *mohtasib* in any court of law in the country.

Under the revised Hisba Act, the *mohtasib* has the authority “to protect Islamic values and etiquettes; to ensure that government publications are useful for the purposes of upholding Islamic values, and forbid government servants from acting against Shariah.” The vagueness initially cited by the Council on Islamic Ideology remains as the law does not specify what these things are: whose vision of etiquette, what school of *fiqh*, and who finally decides if something is Islamic or not.

Merely three weeks later on 4 August 2005, the Supreme Court of Pakistan opined that the new Hisba Bill was unconstitutional on the grounds it was “vague, overbroad, unreasonably based on excessive delegation of jurisdiction, denying the right of access to justice to the citizens and attempting to set up a parallel judicial system” and it directed the governor of the NWFP (who is appointed by the federal government) not to sign the bill in its present form. The Court took umbrage that the Hisba Bill went too far and that “private life, personal thoughts and the individual beliefs of citizens cannot be allowed to be interfered with.” This was immediately celebrated elsewhere in the country, where many people felt the MMA was pushing the limits of their conservatism. For example, an op-ed piece in the Lahore-published newspaper *The News*, heralded the decision,

This decision of the apex court saved the lives of millions who could have suffered irreparable loss in terms of human freedom had such an erratic and draconian law been enforced. Behind the whole bizarre episode lurks a continuous struggle between the forces of obscurantism and enlightenment.
It is very unfortunate that forces of obscurantism are getting support of [the] masses merely for the reason that unrepresentative rulers are following the agenda of the USA and its allies that is detrimental to the interest of the Muslim world as a whole. Denying the establishment of a true democratic structure and freedom of the judiciary are in fact strengthening the hands of forces of obscurantism.\(^3\)

Qazi Mohammad Anwar, a lawyer and human rights activist, claimed that the Hisba Bill would introduce a parallel system in violation of Article 14 of the Constitution which guarantees privacy.\(^4\)

The MMA tabled a discussion of the new Hisba Act for 10 October 2006. This date, however, was two days after the devastating earthquake which claimed over 80,000 lives in Pakistan, most of which were in either NWFP or Azad Kashmir. The MMA was widely criticized for pushing this controversial bill through at a time when the country’s focus was on responding to the devastation. In the months that followed, the MMA government has repeatedly stated that its focus is on earthquake relief, and not on advancing the Hisba Act. But if indeed that is the case, then why was the Act tabled in the provincial parliament on October 10th?

**Crossing Lines on Legislating Women’s Rights?**

In the Pakistan context, both the federal and MMA provincial government’s actions hold the potential to have enormous implications for women's rights, yet both will also certainly be modified because of the conflicting visions of women's rights held by the other. It has been the aim of this chapter to articulate what these ideologies and actions are as well as analyze how, in crossing lines between provincial and federal domains, this has become a globalized issue within the Muslim world.

The MMA is trying to address traditional values, especially those associated with Islam, and bring them into a
political agenda. How far will they go to ban popular practices that are not Islamic? While many MMA members may claim that are rooting out unIslamic elements from local culture, nearly three years after having taken office the ban on swara has not been formalized nor have I ever heard anyone advocate something so antithetical to the culture such as banning forced widow remarriage to one’s in-law’s family. Even though Hanafi case law consistently reaffirms the necessity of a woman’s consent to her marriage and despite my suggestions that the MMA begin to encourage the remarriage of widows and divorcees (of their own free will) on the grounds that this is well within the parameters of Islam, no one within the MMA wanted to advocate doing so. To do so would be very unpopular politically with their vote base, which sees local sociocultural mores as inextricably interwoven with Islam.

A prominent Peshawar-based journalist assessed that the MMA is a political entity “that espouses an ideological framework but lacks a depth of knowledge” and that this alone will be their undoing. Another critic sees the MMA as still groping for an identity, which has led it to pass a number of superficial things such as requiring schoolchildren to wear traditional clothings – shalwar kamize – and not trousers.

While the provincial MMA in the NWFP claims to be drawing primarily on a cultural base for support and ideological direction, in fact its actions and ideology are consistent with the globalized politicization of Islam, especially that borne out of conflict, economic instability and border insecurities. There are tangible interests at stake in how the provincial MMA defines women’s rights which differ from that which the national MMA espouses. The provincial MMA’s Pakhtun base does not see itself in a globalized context: its optic is far more immediate and concerned with Pakhtun cultural preservation and values. But in the national context where the majority of the population – while fairly conservative – steer away from the extreme rhetoric of the provincial MMA, the MMA has moderated its actions and its rhetoric. There is no mention of gender segregation, no call for a national Hisba Act. Indeed, the disdain for such actions is
evident in a discussion I had with some graduate students at Quaid-i-Azam University in the national capital, Islamabad, about the social priorities of the MMA. A female Pakhtun student – but one whose family lives in the Punjab – quite adroitly told me:

The kind of suffocation one feels surrounded by what they are doing, that they are putting a compulsion in Islam, saying prayers, shutting cinemas, etc. I cover myself because I want to, not because I have to. We understand that there is to be no compulsion in Islam, but they are putting a lot of compulsion in what they are doing. If I am a doctor, why shouldn’t I treat men? Islam doesn’t say you are only to treat your own sex alone.\(^{42}\)

I heard this sentiment echoed many times throughout Pakistan, and particularly in the Punjab. I heard it less within the NWFP. What women in villages and towns instead told me was that they were becoming disenchanted with the MMA because they weren’t doing enough to implement true Islam. A number of women told me that they had truly believed that the MMA was different from past political parties which had used Islam for its own purposes, and that it genuinely cared about Islamicizing the province. But that it had been unable to ban vulgar (i.e., those with unIslamic themes) television programs made them question the MMA’s ulterior goals.

In mid-November 2003, one of the MMA’s constituent members, the Shia group Tehrik Nifaz Fiqah Jaferiya, was banned as a terrorist organization. The JUI-Samiul Haq has periodically disassociated itself a few times from the coalition on the basis that it is not being treated equally with the other senior partners, the Jama’at-i-Islami and the JUI-Fazlur Rehman group. While its leader, Sami ul-Haq, stressed that no ideological differences were separating it from the coalition, his group wants to play a greater decision-making role and hold more cabinet positions (than they already have) in the provincial government.
The MMA may well be crossing the line over what is allowable for provincial governments to legislate and what remains the domain of the federal government when we consider its policies on women and with the Hisba Bill, in particular. The provincial government was confronted with a dilemma: how to implement its agenda to Islamicize the NWFP while also acknowledging that it is a resource-poor province. It cannot risk losing the financial support given by the federal government. The World Bank’s structural adjustment credit that it was to have given to the province was denied in December 2003, although the Bank pledged it would continue to review its provincial policies. (I have been told that the MMA’s follow-up budget for structural adjustment credits, SAC-3, was different in the Urdu from the English versions.\(^{43}\)

The extent to which World Bank personnel assess that the MMA government is moving in extremist ways will affect whether or not the funding is reinstated. That the provincial government has already encumbered a ‘carry forward’ of six years for its budget allocations makes it very dependent on receiving this funding.\(^ {44}\)

The MMA’s more activist-Islamist rhetoric has had an important effect on the rhetoric of the federal Government of Pakistan. The latter cannot act to rescind any of the laws passed under Zia-ul-Haq’s Islamization program – even the most inequitable such as the *Zina* (Adultery) Act – for to do so would incur charges of, at the least, not being as proactive about Islam as is the MMA. The federal government has articulated its development priorities for Pakistan within a global framework: skills training, poverty alleviation strategies, improvement of the educational infrastructure, and promoting the empowerment of women. But it cannot leave behind the patois of Islam, as this would provide the MMA with the opportunity to claim it is the only viable Islamist alternative on the political landscape. The federal government struck back against the agenda of the MMA by cutting down the MMA’s pivotal yet provocative Hisba Bill on the basis that it would introduce arbitrariness and hence disgrace Islam. To its credit, it *didn’t* strike down the Hisba Bill as an intrusion into federal matters, for to do so could have
opened the possibility of conflicting demands to make the Hisba Bill a federal statute. As consensus does not exist at the provincial level on the ethics which Hisba is to enforce, it most certainly does not exist at the national level, where imposing such an Act would definitely have resulted in heated, destabilizing conflicts.

Yet the Hisba Bill *would* intrude into the domain of international treaties that the federal government of Pakistan has joined, and particularly into the requirements of the CEDAW convention noted above. The provision of separate facilities in a resource-poor environment—capital as well as personnel—which prioritizes men *is* discriminatory. It is one thing for the MMA provincial government to decide that it will negate federal policies, but it is another thing when that overflows into the arena of international agreements. The MMA provincial government could no more decide that the torture of prisoners would be acceptable, or that child marriage should be encouraged (which would negate Pakistan’s position as a signatory to the U.N. Convention on the Rights of the Child), as to promote discrimination against women, which would be in contradiction to the federal government’s pledge when it acceded to CEDAW. When some NWFP Union Councils decided that women would not be allowed to vote in the August 2005 local body elections and MMA provincial leaders did not step in to ensure women’s electoral rights, the provincial government became party to an unabashedly discriminatory practice. This practice, indeed, is a direct contradiction to the requirements of the international treaty, CEDAW, which Pakistan is a States Party.

Culture wars have been ripping Pakistan’s social fabric asunder for some time. The MMA leadership has been actively engaged in trying to quell people’s fears that it is moving in extremist directions. However, as the process is still unfolding, and a critical piece of legislation (the Hisba Act) must now be fundamentally recast, a final assessment of both the social reform agenda of the MMA and its long-term impact on the country, overall, will have to be suspended for a future date. It is certain, however, that the ideological and substantive differences we
have seen manifest in the exchanges between the provincial Islamist government of the MMA and the federal Government of Pakistan are contestations over power but fought to the detriment of women’s lives.

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1. This dispute goes back to 1973 when the newly formulated Constitution in Pakistan deemed that laws on the Federal List could be made only in the National Assembly and laws on the Concurrent List would be made either by the National Assembly or a Provincial Assembly (with priority of the former over the latter). This arrangement was to last only ten years (i.e., until 1983), after which time responsibility for laws pertaining to national defense, foreign policy and international agreements would remain on the Federal List, and responsibility for most other matters on the Concurrent List would devolve solely to the provincial governments. This full devolution, however, has not occurred, feeding into an ongoing debate on ‘states’ rights’ in Pakistan.

2. CEDAW is the Convention on the Elimination of all forms of Discrimination Against Women, which was entered into force in 1981.

3. I had seen different versions of Pakistan’s draft CEDAW Report by that time. On 7 September 2001, the then-Secretary of the Ministry for Women’s Development told me that the CEDAW Report was in the midst of being proofread and she expected it to be submitted shortly.

4. I have already written about the conflicting views on women’s rights held by various groups in Pakistan in the past and the substantial challenges the state faces not only in eliminating discrimination against women but in even identifying what is discriminatory. See, for example, Weiss 2003 and Weiss 1999.

5. Of the 124 members of the NWFP Provincial Assembly, 70 are from the MMA, 54 are from the opposition. There are a total of 23 female members; only one woman, Ghazala Habib (PML-Sherpao party), came into the assembly on a general seat, the rest were appointed on reserve seats for women, based on proportional representation of total seats won by distinct parties. The
MMA has 13 female MPAs, and the combined opposition has 10.

6. Under Zia’s new Law of Evidence, if a woman who has been raped does not have enough witnesses to prove her innocence, she can be charged with adultery (*zina bil jabr*, adultery without consent). A former Superintendent of Police (SP) of Sargodha district, one of the most populous in Punjab, told me that he estimated that over 90 percent of women imprisoned in his district had been charged with adultery. He also estimated that nearly all of them were innocent.

7. In an effort to promote economic growth, the ‘day off’ in the country reverted to Sundays in the late 1990s, so that the business week in Pakistan would be the same as in much of the world.

8. Philanthropy in Pakistan has grown to surprising proportions. According to the National Survey of Individual Giving conducted by the Pakistan Centre for Philanthropy, individuals gave an estimated Rs. 41 billion in cash and goods in 1998. Of the total share going to organizations (35 percent), 94 percent went to religious institutions and causes. Source: Pakistan Centre for Philanthropy *Philanthropy in Pakistan: a Profile* Islamabad, June 2002.

9. An excellent assessment of these changes, including the intolerance being taught in public schools, is in A.H. Nayyer “Pakistan: Islamisation of Curricula” *South Asian Journal* (Lahore) No. 2, October - December 2003, pp. 71-87.

10. I have elaborated on various constitutional points that have important gendered implications in “Interpreting Islam and Women’s Rights: Implementing CEDAW in Pakistan” (*International Sociology*, Vol 18 (3), September 2003), pp. 586.

11. The Islamization program focused on four areas: economic programs, judicial reforms, an Islamic penal code, and a new education policy. A discussion of particular details of Zia’s Islamization program is in...
Weiss 1986:11-16; for an updated discussion refer to *ibid*, pp. 586-590.


15. 1997 and 1999, respectively.

16. This case law notwithstanding, parents periodically lodge a Hudood case against a daughter who has married against their permission, such as the April 20 arrest in Okara of Aruna, her husband and brother-in-law. The accused were freed the following day. Full details can be found at http://www.dawn.com/2006/04/21/top7.htm and at http://www.dawn.com/2006/04/22/top8.htm.

17. These are stated thus: I. A number of sociocultural norms influence women’s status and perception of self in the community and are a hindrance in the implementation of laws safeguarding women’s status and enjoyment of basic human rights; ii. [the] prevailing patriarchal system, cultural norms and feudal values in the society continue to influence the role of women in the community; iii. The legal guarantees often do not get translated into concrete actions, due to prevalent social and cultural norms/practices in the society; and iv. Domestic affairs are considered a private matter and incidents of family/domestic problems are usually hushed up; Community conciliatory communities have been set up; Trained case workers have been posted in different localities to provide initial marriage and family counseling services.


19. From “Islamization in NWFP Draft Document” issued by the MMA, Fall 2003 [exact date uncertain].

21. Speech by Rehana Ismail, MMA MPA, at a reception at the Lucky Marwat School, NWFP (undated).

22. The customary practice of *swara* is used as a final conclusion in dispute resolution generally involving a murder. A female from the family of the murderer is given to marry someone from the family of the victim, on the assumption that the former belligerent won’t harm them if one of their own women is in that household, and that long-term peace is assured once there are children from that marriage. However, in practice, the life of a girl given in *swara* becomes a living hell, for the strong, lingering animosity towards the murder is taken out on the girl. Even very young girls have been given in *swara*.

23. From “Islamization in NWFP Draft Document” issued by the MMA, Fall 2003 [exact date uncertain].


27. From “Islamization in NWFP Draft Document” issued by the MMA, Fall 2003 [exact date uncertain].

28. Ibid.

29. The initial proposal was subsequently disallowed by both the Supreme Court and the constitutionally mandated Council on Islamic Ideology. The revised Act, however, does not differ markedly from the initial one.

30. *Talaq* is the act that by a husband stating *talaq* three times has divorced his wife. This simple act leading to divorce has already been banned by the 1961 federal Muslim Family Laws Ordinance (MFLO). However, the Jama’at Islami has long advocated that the MFLO should be repealed as it includes many aspects (noted earlier in the case of registration of divorce and permission from a first wife before marrying a second) that have nothing to do with Islam. The MMA has singled out this issue and banned it, stating that now, a month must be inserted each time talaq is pronounced, and only then is a divorce finalized. There is no provision in the provincial law that such divorces need be registered.

32. This is from Section 22, ‘Hisba Force’ of the Amended Version of the proposed Hisba Act.

33. The Bill includes 27 additional ‘Special Powers’ that the mohtasib will hold, too numerous to list here, but which includes such powers as to ensure moral ethics in public places, to discourage beggary, to stop indecent behavior in public places, to stop loitering, to eliminate professional jugglery, palmistry and selling of amulets, to safeguard women’s rights specifically honor killings and ensure their due share in inheritance and eliminate the abusive tradition of swara, and to check artificially-created inflation.

34. Personal interview in Peshawar, 29 October 2003. The ongoing issue concerns federal and provincial authority surrounding the Concurrent and Federal Lists, and when distinct items should be removed from the Concurrent legislative list and authority for them be allowed to devolve to the provinces.

35. I am very grateful to Juan Cole for helping me translate the judgement on the Hisba Act.


42. Personal interview in Islamabad, 11 November 2003.

43. This charge was leveled by an opposition member of the provincial assembly in an interview in Peshawar, September 2004.

44. A non-MMA federal government official in Peshawar told me this in Fall 2003.