

Immigration and Refugee Board of Canada

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Responses to Information Requests

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3 December 2007

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Pakistan: The Protection of Women (Criminal Laws Amendment) Act, 2006 and its implementation
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The *Protection of Women (Criminal Laws Amendment) Act, 2006* was approved by the National Assembly on 15 November 2006 (HRW 11 Jan. 2007; HRCP 2007, 199; *Dawn* 2 Dec. 2006) and was enacted on 1 December 2006 (Pakistan 5 Oct. 2007; *Dawn* 2 Dec. 2006; US 6 Mar. 2007, Sec. 5). This Act affects the application of the Hudood Ordinances especially in matters relating to sexual crimes, such as rape (US 2 May 2007, 249). The Act amends some of the provisions in the Hudood Ordinances, inserts and deletes some sections and transfers some offences to the *Pakistan Penal Code*; for example, it removes the crime of rape from the Hudood Ordinances and inserts it in the penal code instead (Pakistan 1 Dec. 2006; US 2 May 2007, 249; see also CFR 1 Mar. 2007). Previously, according to the Hudood Ordinances, women who accused men of rape required evidence from four men for a conviction, and failing that, faced the possibility of being punished for having sex outside of marriage (BBC 15 Nov. 2006; AI n.d.; *Dawn* 2 Dec. 2006; see also US 6 Mar. 2007, Sec. 5). Under the new Act, rape will be an offence under the penal code (US 2 May 2007, 249; HRW 11 Jan. 2007; *Dawn* 2 Dec. 2006; Pakistan 1 Dec. 2006, Sec. 5) and convictions will be based on evidence (US 2 May 2007, 249). The Act also prohibits charging women with fornication offences in the cases where women allege they were victims of rape but cannot prove their "absence of consent" (AI 2007). Heterosexual consensual sex outside of marriage continues to be criminalized; however, the Act provides that such complaints will be investigated by a court before formal charges are laid (ibid.; BBC 15 Nov. 2006). In addition, sentences of capital punishment and corporal punishment (flogging) for consensual extra-marital sex have been abolished under the Act; however, this offence remains punishable by sentences of up to five years in prison and/or a fine (HRW 11 Jan. 2007; Pakistan 1 Dec. 2006, Sec. 7).

The preamble of the Act declares that "it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation" (Pakistan 1 Dec. 2006). Although many human rights activists have welcomed this new legislation as a "step in the right direction" (*Dawn* 2 Dec. 2006; BBC 15 Nov. 2006; AsiaNews.it 1 Dec. 2006; CFR 1 Mar. 2007), others say that the Act falls short of its stated intentions (HRCP 2007, 199; HRW 11 Jan. 2007). Media sources report that some activists have criticized the Act by stating that it is not very different from the Hudood Ordinances (*The News* 11 Feb. 2007; AsiaNews.it 1 Dec. 2006), which human and civil rights groups have lobbied to have abolished (ibid.; CFR 1 Mar. 2007; BBC 15 Nov. 2006). The Human Rights Commission of Pakistan describes the Act, in its 2007 report, as "farical," saying that it does not address discrimination against women, that it creates confusion between Islamic and civil laws, and that it gives "leeway to the judiciary to interpret the law in the most orthodox way" (2007, 199). Human Rights Watch (HRW) criticizes the Act as not complying with Pakistan's obligations under the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* (11 Jan. 2007). During a public presentation at the University of Ottawa, Asma Jahangir, the United Nations (UN) Special Rapporteur on Freedom of Religion or Belief and well-known human rights and women's rights activist, stated that sentences of stoning and amputation are still possible under the Act and that Pakistan had "a long way to go" with regards to women's rights (22 Oct. 2007). An article from the British Broadcasting Corporation (BBC) suggests that reporting rape cases under the Act will be "much harder" because complainants will have to report to district sessions courts, which have limited hours of operation and locations, instead of at local police stations, which are more accessible, especially for those in rural areas (15 Nov. 2006).

Various sources indicate that the *Protection of Women (Criminal Laws Amendment) Act, 2006* has generated conflict in Pakistani society as some people perceive it as anti-Islamic or against the Quran (BBC 15 Nov. 2006; *Nawa-e Waqt* 15 May 2007; US 5 Dec. 2006; *The Daily Times* 3 Aug. 2007). *The Daily Times* further reports that a city-wide strike protesting the Act occurred in Karachi in December 2006 where most of the public transportation

stopped operations, major commercial markets were closed and private schools started their winter holidays early in anticipation of the strike (23 Dec. 2006). Around 5,000 activists from the Muttahida Majlis-e-Amal (MMA), a conservative Islamist political alliance (BBC 15 Nov. 2006), participated in the rally against the Act and there were reports of violence, though no details were provided (*The Daily Times* 23 Dec. 2006). Clashes also occurred in Lahore and Gujranwala (AsiaNews.it 1 Dec. 2006).

The Ministry of Women Development of Pakistan indicates on its website that a bill to address customary practices such as forced marriages, Vani-Swara (i.e., giving a woman in marriage to hostile families in compensation for a relative's crime), and "marriage to the Quran" [a practice whereby girls dedicate themselves to studying the Quran and forego marriage (*Asharq Alawsat* 22 July 2007)] is under review and that another bill to address domestic violence is being forwarded to the Cabinet for approval (Pakistan 5 Oct. 2007; see also *The Daily Times* 11 Jan. 2007).

Information regarding the implementation of the *Protection of Women (Criminal Laws Amendment) Act, 2006* could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Internet sites, including: European Country of Origin Information Network (ecoi.net), Integrated Regional Information Networks (IRIN), *Pakistan Observer* [Islamabad], United Kingdom Home Office Country of Origin Information Service.

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