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A COMPARATIVE APPROACH OF THE DEVELOPMENT AND IMPACT OF VICTIMS' RIGHTS ON VIOLENCE AGAINST WOMEN IN THE UNITED STATES, PORTUGAL, AND PAKISTAN

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I. INTRODUCTION

Nearly one in three women worldwide has experienced violence in their lives.¹ This includes sexual and intimate partner violence.² Statistics show violence against women is not isolated to a certain corner of the world or to a

¹ *Facts and Figures: Ending Violence Against Women*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> (last updated Mar. 2021).

² *Id.*

certain time period in history.³ Rather, it continues to plague communities in every socio-economic group in every country in the world.⁴ An estimated 1,946 women were killed by men in 2018 in the United States out of a population of 327 million.⁵ In 2017 in Portugal, 12 women were killed out of a population of 10 million, and in 2019, a national day of mourning for victims of domestic violence was declared in response to the increasing reports of femicide.⁶ An estimated 1,000 “honor killings” take place each year in Pakistan in a population of over 210 million, but the number is feared to be much higher and is compounded by the number of women who die from additional forms of violence.⁷

³ *Id.*

⁴ *Id.*

⁵ *When Men Murder Women*, VIOLENCE POLICY CENTER 3 (Sept. 2020), <https://vpc.org/studies/wmmw2020.pdf>; *U.S. Population 1950-2021*, MACROTRENDS, <https://www.macrotrends.net/countries/USA/united-states/population> (last visited Nov. 20, 2021).

⁶ Goncalo Almeida, *Portugal declares day of mourning for domestic violence victims*, REUTERS (Feb. 28, 2019, 12:12 PM), <https://www.reuters.com/article/us-portugal-government-domestic-violence/portugal-declares-day-of-mourning-for-domestic-violence-victims-idUSKCN1QH2BV>.

⁷ Sabir Shah, *An overview of crimes against women in Pakistan*, THE NEWS INTERNATIONAL (July 28, 2021), <https://www.thenews.com.pk/print/869740-an-overview-of-crimes-against-women-in-pakistan> (Pakistan ranks sixth most dangerous place in the world for women, with cases of sexual crimes and domestic violence rising at a rapid rate due to cultural, religious,

Approximately 24% of women experience violence in their lifetime in both the United States and Portugal, while 90% of women experience violence in Pakistan.⁸ Each of these countries experienced an increase of violence against women during the Covid-19 global pandemic.⁹

While both the United States and Portugal require improvement in enforcement of their victims' rights laws, both countries have comprehensive legal frameworks aimed at both prevention of gender-based violence and creation of responsive victim assistance programs. Such legal frameworks for victims in Pakistan, in particular women

and traditional practices); *Pakistan Population (Live)*, WORLDOMETER <https://www.worldometers.info/world-population/pakistan-population/> (last visited Nov. 20, 2021).

⁸ David Thomas, *Violence against women and domestic abuse*, PORTUGAL RESIDENT (Mar. 21, 2019), <https://www.portugalresident.com/violence-against-women-and-domestic-abuse/>; Shah, *supra* note 7; *Domestic Violence Statistics*, NATIONAL DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/stakeholders/domestic-violence-statistics/> (last visited Nov. 20, 2021) [hereinafter *Domestic Violence Statistics*].

⁹ Brad Boserup et al., *Alarming trends in US domestic violence during the COVID-19 pandemic*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Apr. 28, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7195322/>; Ana Gama et al., *Domestic Violence during the Covid-19 Pandemic in Portugal*, PORTUGUESE JOURNAL OF PUBLIC HEALTH 37-39 (Mar. 10, 2021), <https://www.karger.com/Article/PDF/514341>; *Pakistan Events of 2020*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2021/country-chapters/pakistan> (last visited Nov. 20, 2021).

victims, are at best deficient and at worst mere lip-service both in how victims' rights and gender-based violence laws are approached and enforced. Despite increased awareness and support for victims' rights and an increase of victim involvement, violence perpetrated against women has only decreased incrementally. This poses the question: why do rates of serious violence against women still persist at high levels given the implementation of victims' rights legislation? Has the implementation of victims' rights legislation had any impact on violence against women?

This paper will focus on three areas of the world: (1) the United States, (2) Portugal-a member of the European Union, and (3) Pakistan. Part II of this paper will examine how victims' rights are defined in each country and how these rights are triggered, focusing particularly on how violence against women is addressed under the victims' rights legislation. Part III will evaluate any correlation between the presence and enforcement of victims' rights and the impact victims' rights has had on violent crimes against women. Finally, Part IV will analyze where improvements must be made in both violence prevention and response

policies so that victims' rights laws may have their intended effect on violent crime against women. By comparing the strengths and weaknesses of victims' rights legislation, enforcement of victims' rights, and societal attitudes toward women in each country, this paper proposes creating an improved legal framework that combats violence against women. This paper offers two initiatives to achieve this framework. The first targets the prevention of violence toward women by raising women's societal status through corporate and political leadership. The second initiative targets the response to violence against women through governments' increased accountability to victims, specifically as it relates to the expansion of sexual assault laws, and through expanding victims' participation and control in criminal cases during both the investigative and adjudication phases. This paper's scope will cover adult victims who are citizens of each mentioned country at the federal level or equivalent level of government.

II. WHAT ARE VICTIMS' RIGHTS, WHO DO VICTIMS' RIGHTS COVER, AND WHEN ARE VICTIMS' RIGHTS TRIGGERED?

A. THE UNITED STATES

Victims' rights are the legal rights afforded to victims of crimes.¹⁰ The United States currently has comprehensive victims' rights legislation with a victim-centric approach., however, most of these rights were enacted within the past 40 years.¹¹ *Linda R.S. v. Richard D.* constitutes the furthest the United States has strayed from a victim-centric approach.¹² In *Linda R.S.*, the Supreme Court of the United States held the complainant lacked legal standing to challenge the prosecution's discriminatory application of a law criminalizing non-payment of child support for illegitimate children.¹³ The Court stated the complainant lacked a sufficient nexus between her injury and the challenged government action to justify judicial intervention.¹⁴ Moreover, the Court stated that in American jurisprudence, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another."¹⁵

¹⁰ *Victim Law: About Victims' Rights*, OFFICE OF JUSTICE PROGRAMS, <https://victimlaw.org/victimlaw/pages/victimsRight.jsp> (last visited Nov. 20, 2021) [hereinafter *About Victims' Rights*].

¹¹ *Id.*

¹² Kathryn M. Young, *Parole Hearings and Victims' Rights: Implementation, Ambiguity, and Reform*, 49 CONN. L. REV. 431, 435-36 (2016).

¹³ *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-19 (1973).

¹⁴ *Id.*

¹⁵ *Id.* at 619.

This case highlighted that victims in the 1970s had “no formal legal status beyond that of a witness or piece of evidence.”¹⁶ The Court, however, stated that Congress had power to “enact statutes creating legal rights, the invasion of which creates standing.”¹⁷ This case, along with other social justice movements, such as the civil rights movement and the feminist movement, prompted social consciousness about victims’ rights and the roles victims played in the criminal justice system, thus propelling the modern crime victims’ rights movement.¹⁸ This movement spurred recognition for the need for victim participation and victims’ services at the state and federal levels.¹⁹ Currently, two key federal laws address victims’ rights. First, the Crime Victims’ Rights Act (CVRA) 18 U.S.C. § 3771, enacted in 2004, specifies a broad set of rights for victims of federal crimes and authorizes federal funding for programs to assist victims with accessing

¹⁶ *Fundamentals Of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States*, NATIONAL CRIME VICTIM LAW INSTITUTE 1 (Nov. 2011), <https://evawintl.org/wp-content/uploads/fundamentals-of-victims-rights-a-brief-history-of.pdf>.

¹⁷ *Linda R.S.*, 410 U.S. at 617 n.3 (1973).

¹⁸ Jessica Jackson, *Clemency, Pardons, and Reform: When People Released Return to Prison*, 16 U. ST. THOMAS L.J. 373, 382 (2020).

¹⁹ Robin Turner, *Domestic Violence: Victims’ Rights*, 40 MONT. LAW. 18, 18 (2015).

and enforcing these rights.²⁰ The rights afforded to victims under CVRA are: (1) the right to protection from the accused; (2) the right to notification; (3) the right not to be excluded from the proceedings; (4) the right to speak at criminal justice proceedings; (5) the right to consult with the prosecuting attorney; (6) the right to restitution; (7) the right to a proceeding free from unreasonable delay; (8) the right to be treated with fairness and respect for the victims' dignity and privacy.²¹

Second, the Victims of Crime Act (VOCA), enacted in 1984, established the Crime Victim Fund financed by offender fees, which provides funds for victims' compensation, victims' notification systems, and victims' assistance programs.²² Who the law considers a "victim" entitled to the particular rights in federal legislation is

²⁰ 18 U.S.C.S. § 3771 (2021); Matthew B. Riley, *Victim Participation in the Criminal Justice System: In re Kenna and Victim Access to Presentence Reports*, 2007 UTAH L. REV. 235, 238-39 (2007).

²¹ 18 U.S.C.S. § 3771 (2021).

²² Victims of Crime Act of 1984, Pub. L. No. 98-473, 98 Stat. 2170 (1984) (codified in scattered sections of 18 U.S.C.S. and 42 U.S.C.S.); *Victims of Crimes Act*, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/victims-of-crime-act/> (last visited Nov. 20, 2021).

generally defined within that legislation.²³ At times, victims' rights attach only to a particular group protected by certain legislation. Other times they attach to victims of felonies, or certain types of violent crime regardless of status.²⁴ Currently, a circuit split exists when victims' rights are attached under CVRA. In *In re Wild*, the Eleventh Circuit held the rights under CVRA do not attach during the pre-charge investigatory phase.²⁵ Rather, the right to consult with the prosecution attaches to a pending prosecution, not preceding the prosecution.²⁶ This decision contradicted the 5th circuit's holding in *In re Dean*, which held the right to confer with the prosecution applied pre-charge.²⁷ *In re Wild* has been appealed and is awaiting review.

B. PORTUGAL

Article I of the Portuguese Constitution provides that Portugal is a sovereign republic based on the dignity of the human person.²⁸ Portugal's legal framework, which is

²³ *About Victims' Rights*, *supra* note 10.

²⁴ *About Victims' Rights*, *supra* note 10.

²⁵ *In re Wild*, 955 F.3d 1196, 1220-21 (11th Cir. 2020).

²⁶ *Id.*

²⁷ *In re Dean*, 527 F.3d 391, 394-95 (5th Cir. 2008).

²⁸ Constituição da República Portuguesa [C.R.P.], art. 1, https://www.constituteproject.org/constitution/Portugal_2005.pdf.

influenced by membership in the European Union, includes promoting gender equality, focusing specifically on violence against women.²⁹ Under the Victims' Rights Directive, victims' rights apply to all victims of crimes that occurred in the European Union, both subjective and objective crimes, regardless of citizenship, and apply retroactively.³⁰ Further, all victims of crimes in the European Union, including Portugal, are afforded a: (1) right to respect and recognition; (2) right to be heard; (3) right to information; (4) right to reimbursement of expenses; (5) right to protection; (6) right to support; (7) right to compensation; (8) right to interact with trained professionals; and (9) right to cross-border assistance.³¹ A "victim of crime" has suffered a personal

²⁹ *Portugal*, UN WOMEN, <https://data.unwomen.org/country/portugal> (last visited Nov. 20, 2021); *See Portugal*, EUROPEAN UNION, https://european-union.europa.eu/principles-countries-history/country-profiles/portugal_en (last visited Nov. 21, 2021).

³⁰ Directive 2012/29, of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/eli/dir/2012/29/oj>; *Victims' Rights Directive: Frequently Asked Questions*, EUROPEAN COMMISSION, https://ec.europa.eu/commission/presscorner/detail/hr/MEMO_15_6113 (last visited Nov. 20, 2021).

³¹ *Help For Victims Victims' Rights*, VICTIM SUPPORT EUROPE, <https://victim-support.eu/help-for-victims/victims-rights/> (last visited Nov. 20, 2021).

injury, property theft, or damage as the result of an incident that constitutes a crime according to national law.³² Victims' rights are triggered when this occurs and continue after court proceedings.³³ Criminal proceedings include two stages: (1) investigation, where police and prosecutors collect evidence and build a case against the offender, and (2) trial, where the offender is prosecuted.³⁴ This differs from the United States where the dispute continues regarding when rights first become available and where victims are bound by the trial outcome.³⁵

In Portugal, victims have more power, are entitled to greater involvement, and have certain rights after a trial has concluded.³⁶ During the trial, a victim may participate as a

³² *Victims' rights-by country Portugal*, EUROPEAN JUSTICE, https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-pt-en.do?member=1 (last visited Nov. 20, 2021).

³³ *Id.*

³⁴ *Id.*

³⁵ *Compare In re Wild*, 955 F.3d at 1220-21 (rejecting application of CVRA during pre-criminal proceedings), *with In re Dean*, 527 F.3d at 394-95 (allowing application of CVRA during pre-criminal proceedings).

³⁶ *Victims' rights-by country Portugal*, EUROPEAN JUSTICE, https://e-justice.europa.eu/171/EN/victims_rights_by_country?PORTUGAL&action=maximizeMS&clang=en&idSubpage=2&member=1

(last visited Nov. 20, 2021) [hereinafter *Victims' rights-by country Portugal*].

witness, civil claimant, or assistant to the prosecutor.³⁷ In each of these roles, victims are entitled to certified copies of case file documents and are entitled to an attorney.³⁸ These victims' attorneys are appointed if victims are unable to afford legal services.³⁹ In a witness role, victims are only allowed in the courtroom during public hearings and only after their testimony is given.⁴⁰ The victims' attorney, however, may remain in the courtroom and represent the victim in their absence.⁴¹ As a civil claimant or assistant to the prosecutor, however, victims are allowed in the courtroom throughout the entire court hearing.⁴² In this situation, the victims' attorney may make introductory and final remarks, ask questions, examine and cross-examine witnesses, present and request evidence, and make proposals.⁴³ Further, victims may request their testimony be given outside the presence of the defendant.⁴⁴ After a trial, victims who participated in an assistant role may appeal the

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

court's decision and if the appellate court affirms the original verdict, these victims may appeal the decision to the Supreme Court in certain cases.⁴⁵ As with the United States, however, merely enacting legislation has proven insufficient in achieving the full potential of victims' rights.⁴⁶

Portugal only recently enacted violence against women laws due to efforts over the past 40 years.⁴⁷ These efforts have succeeded in implementing laws against rape, female genital mutilation, stalking, and forced marriage as well as providing victims' program funding and assistance for victims of domestic violence.⁴⁸ A key development was the Universal Declaration of Human Rights (UDHR) in 1948.⁴⁹ This Declaration classified violence against women as an

⁴⁵ *Victims' rights-by country Portugal*, EUROPEAN JUSTICE, https://e-justice.europa.eu/171/EN/victims__rights__by_country?PORTUGAL&action=maximizeMS&clang=en&idSubpage=3&member=1 (last visited Nov. 20, 2021).

⁴⁶ Robyn Holder et. al., *Transforming crime victims' rights: from myth to reality*, 45 INT'L J. OF COMPARATIVE AND APPLIED CRIM. JUST. 1, 7-10 (Dec. 10, 2020), <https://www.tandfonline.com/doi/pdf/10.1080/01924036.2020.1857278>.

⁴⁷ *Combating violence against women Portugal*, EUROPEAN INSTITUTE FOR GENDER EQUALITY 2, 2016.5490_mh0416664enn_pdfweb_20170215100610.pdf (last visited Nov. 20, 2021) [hereinafter *Combating violence*].

⁴⁸ *Id.*

⁴⁹ *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Nov. 20, 2021).

abuse of human rights.⁵⁰ It provides the right to life, liberty, and the security of person constituting an inalienable right, inherent to the dignity of the human person.⁵¹ This language clarified the obligation of the United Nations to prevent, eradicate, and punish violence inflicted upon its citizens.⁵²

Several subsequent European Union treaties specifically addressed crimes against women and three addressed the global crisis of violence against women. First, the Istanbul Convention of 2011, considered the most far-reaching international treaty, recognized violence against women as a serious human rights violation.⁵³ Portugal signed this treaty in 2011 and it became effective in 2014.⁵⁴

⁵⁰ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR 3d Sess., 1st plen. mtg., U.N. Doc. A/810, preamble (Dec. 12, 1948).

⁵¹ *Id.* at art. 3.

⁵² *What is the Universal Declaration of Human Right?*, AMNESTY INTERNATIONAL UK (Oct. 21, 2017, 12:44 AM), <https://www.amnesty.org.uk/universal-declaration-human-rights-UDHR>.

⁵³ *Here's Why the Istanbul Convention Saves Lives*, AMNESTY INTERNATIONAL (May 7, 2021, 9:43 AM), <https://www.amnesty.org/en/latest/news/2021/05/heres-why-the-istanbul-convention-saves-lives/> [hereinafter *Here's why*].

⁵⁴ *See EU Accession to the Council of Europe Convention of Preventing and Combating Violence Against Women (Istanbul Convention)*, EUROPEAN PARLIAMENT (Mar. 2016), <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention>; *See Group of Experts on Action against Violence*

It prioritized the prevention of violence, the protection of victims, and the prosecution of perpetrators and declared European Union members would be held accountable for failures to adequately respond to such violence, obligating members, for the first time, to incorporate these crimes into their legal systems.⁵⁵ It defines a victim as “any natural person who is subject to the conduct specified” as “violence against women” or “domestic violence.”⁵⁶ “Violence against women” includes, “all acts of gender-based violence that results in or is likely to result in physical, sexual, psychological, or economic harm or suffering to women . . . ” including threats and coercion to inflict this harm.⁵⁷ “Domestic violence” includes “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”⁵⁸ These rights

against Women and Domestic Violence (GREVIO), COUNCIL OF EUROPE 10 (Sept. 8, 2017) <https://rm.coe.int/portugal-state-report/168074173e> [hereinafter *Group of Experts*].

⁵⁵ *Here's why*, *supra* note 53.

⁵⁶ *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, COUNCIL OF EUROPE, art. 3 (Apr. 12, 2011), <https://rm.coe.int/168046031c>.

⁵⁷ *Id.*

⁵⁸ *Id.*

and services are activated once a triggering event is reported by a victim, witness, or professional.⁵⁹ The Istanbul Convention instructed all Member States to begin work on immediate development and implementation of measures to eradicate all prejudices and practices based on women's inferiority and on gender stereotypes.⁶⁰

Second, the Victims' Rights Directive of 2012 ("The Directive") established minimum standards on the rights, support, and protection of victims of crime.⁶¹ Its goal is to ensure that victims of crime are recognized and treated with respect by strengthening the victims' procedural rights in criminal proceedings.⁶² Protection under The Directive activates the moment a complaint is made, or once authorities initiate criminal proceedings *ex officio*.⁶³ Victims are entitled to The Directive's protection regardless of whether an offender is identified, apprehended, prosecuted,

⁵⁹ *Id.* at art. 27-28.

⁶⁰ *Id.* at art. 12.

⁶¹ Directive 2012/29; *Victims' rights in the EU: Legal and policy framework on victims' rights*, EUROPEAN COMMISSION, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en (last visited Nov. 20, 2021) [hereinafter *Legal and policy framework*].

⁶² Directive 2012/29; *Legal and policy framework*, *supra* note 61.

⁶³ Directive 2012/29 at ¶ 22.

or convicted.⁶⁴ The Directive required European Union countries to implement its provisions into their national laws by November 16, 2015, however, a 2020 report assessing implementation showed Portugal as having an incomplete or incorrect transposition.⁶⁵

Third, the European Union Strategy on Victims' Rights (2020-2025) ("The Strategy") aims to ensure all victims of crimes can fully rely on their rights no matter how or where in the European Union the crime occurred.⁶⁶ Its key priorities are: (1) effective communication with victims and a safe environment for victims to report crime; (2) improving support and protection to the most vulnerable victims; (3) facilitating victims' access to compensation; (4) strengthening cooperation and coordination among all relevant actors; and (5) strengthening the international

⁶⁴ *Id.* at ¶19.

⁶⁵ *Legal and policy framework*, *supra* note 61; *Report From the Commission to the European Parliament and the Council*, EUROPEAN COMMISSION 3 (May 11, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0188&from=EN>.

⁶⁶ *EU Strategy on victims' rights (2020-2025)*, EUROPEAN COMMISSION, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025_en (last visited Nov. 20, 2021) [hereinafter *EU Strategy*].

dimension of victims' rights.⁶⁷ The Strategy addressed recent studies showing that Member States of the European Union, including Portugal, have not achieved the minimum standards set forth in victims' rights legislation, including the treaties mentioned above.⁶⁸ The Strategy aims to strengthen and improve already existing laws by empowering victims and working together for victims' rights.⁶⁹ Victims under The Strategy, therefore, continue to be classified as they are under existing laws, and protections continue to be activated once a triggering event is reported.⁷⁰ Contrary to the United States where controversy still exists over whether victims' rights are triggered during the investigatory stage, these three treaties expressly provide a guarantee that victims' rights and protections are triggered earlier than they are guaranteed in certain parts of the United States. This shows the European Union and

⁶⁷ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on victims' rights (2020-2025)*, EUROPEAN COMMISSION 3 (June 24, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>.

⁶⁸ *Id.* at 1-2.

⁶⁹ *Id.* at 3.

⁷⁰ *See id.* at 1-3.

Portugal's, strong position and commitment to an expansive victims' rights legal framework.

C. PAKISTAN

The Constitution of Pakistan, 1973, is the chief legal authority of Pakistan.⁷¹ The fundamental rights specified within the Constitution are to some extent based on the United Nations Universal Declaration of Human Rights, 1948.⁷² Article 8 through Article 28 of Pakistan's Constitution cover the fundamental human rights provided, with Article 8 specifically stating enactments conflicting with these fundamental human rights shall be null and void.⁷³ The principles of policy contained within the Constitution, however, are merely guiding principles lacking mandatory implementation.⁷⁴ The Pakistan Penal Code, 1860, the Criminal Procedure Code, 1898, and the Police Rules, 1934, all old British Empire enactments, provide the

⁷¹ Muhammad Athar Waheed, *Victims of Crime in Pakistan*, PARTICIPANTS' PAPER FOR THE 144TH INTERNATIONAL SENIOR SEMINAR 141, https://www.unafei.or.jp/publications/pdf/RS_No81/No81_14PA_Waheed.pdf (last visited Nov. 20, 2021).

⁷² *Id.*

⁷³ PAKISTAN CONST. art. 8, ¶ 1, art. 28, <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>; Waheed, *supra* note 71, at 141.

⁷⁴ Waheed, *supra* note 71, at 141.

legal framework for victims' rights.⁷⁵ These laws and subsequent legislation in conjuncture with Pakistan's societal values greatly affect the role and treatment of victims, particularly women, in the criminal justice process.⁷⁶ Despite the supposed protective legislation, certain discriminatory laws have been enacted specifically placing women victims at a disadvantage in the legal system.⁷⁷ Two laws, which have been highlighted by the human rights commission, include Section 295-C of the Penal Code and Article 17 of the Evidence Act, 1984.⁷⁸ Section 295-C of the Penal Code, which deals with blasphemy and is subject to the death penalty, has been misused by some religious groups in regard to female victims coming forward to seek legal help.⁷⁹ Article 17 of the Evidence Act discounts the testimony of women by treating a female's testimony as worth only half of a male's testimony in financial matters and, in other circumstances, leaves the

⁷⁵ Waheed, *supra* note 71, at 141.

⁷⁶ See Waheed, *supra* note 71, at 141.

⁷⁷ Waheed, *supra* note 71, at 141.

⁷⁸ Waheed, *supra* note 71, at 141.

⁷⁹ 15 PAK. PENAL CODE § 295-C (1860), <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>; Waheed, *supra* note 71, at 141.

weight of a female's testimony to the court's discretion.⁸⁰ Despite internal calls from advocacy groups and external calls from humanitarian organizations, the Pakistani government has been reluctant to amend these laws.⁸¹ Further, laws related to offenses against the state and religion are stronger than the laws for the protection of women victims.⁸² This proves especially challenging to help women victims achieve justice when the state itself is the offender.⁸³

Information regarding Pakistan's victims' rights legislation and when these rights are triggered is deficient and defective.⁸⁴ Under national law, victims of crime are permitted to participate in nearly all proceedings against the accused and can steer the course of the investigation once a triggering event occurs.⁸⁵ This appearance of victim control, however, is misleading because Islamic jurisprudence is

⁸⁰The Qanun-E -Shahadat Order, 1984 (Law of Evidence), art. 17 (1984), <https://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>; Waheed, *supra* note 72, at 141; Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U.J. GENDER SOC. POL'Y & L. 309, 321 n.61(2004).

⁸¹ Waheed, *supra* note 71, at 141.

⁸² Waheed, *supra* note 71, at 141.

⁸³ Waheed, *supra* note 71, at 141.

⁸⁴ Waheed, *supra* note 71, at 141 and 148.

⁸⁵ Waheed, *supra* note 71, at 146.

based around retribution, allowing for the provision of compensation.⁸⁶ The level of attainable compensation to the victim is much higher compared to English common law.⁸⁷ In some sections of the Pakistani Penal Code, compensation has no fixed amount but is rather based on the satisfaction of the victim.⁸⁸ Issues surrounding seeking justice for victims arise as compensation payments have been misused as a bargaining tool between the victim and the accused.⁸⁹ Unlike the United States and Portugal, there is no victim compensation scheme in Pakistan meaning the only compensation a victim may receive is from the accused.⁹⁰ Moreover, victims of crime have the right to forgive the accused, even in serious crimes like murder.⁹¹ The victim must only declare forgiveness of the accused in court "in the name of God."⁹² The primary motive for "forgiveness"

⁸⁶ Waheed, *supra* note 71, at 146-47.

⁸⁷ Waheed, *supra* note 71, at 147.

⁸⁸ Waheed, *supra* note 71, at 147.

⁸⁹ Waheed, *supra* note 71, at 147.

⁹⁰ Waheed, *supra* note 71, at 147.

⁹¹ Secunder Kermani, *Pakistan forgiveness laws: The price of getting away with murder*, BBC NEWS (Jan. 6, 2020), <https://www.bbc.com/news/world-asia-50716694>.

⁹² *Id.*

declarations, however, is generally the compensation paid to victims.⁹³

In Pakistan, no comprehensive and consistent post-victimization services exist. Crime victims may request physical protection by the police, but this protection only lasts for a short time.⁹⁴ Lack of emergency services, training, and resources additionally plague the response to crime victims, specifically women.⁹⁵ Unlike the United States and Portugal, only some police districts have crisis centers that offer legal guidance and counseling to victims of crime.⁹⁶ The government has established some female-staffed police stations as well as women-run help desks in general police stations to provide a safe place for female victims to register complaints, file charges, and receive legal advice and counseling.⁹⁷ However, these centers are relatively few as women account for less than 1% of the police force.⁹⁸ These centers are severely under-resourced, and the quality of their

⁹³ *Id.*

⁹⁴ Waheed, *supra* note 71, at 143.

⁹⁵ See Waheed, *supra* note 71, at 143.

⁹⁶ Waheed, *supra* note 71, at 143.

⁹⁷ *Country Policy and Information Note Pakistan: Women fearing gender based violence*, UK HOME OFFICE 50 (Feb. 2020), <https://www.justice.gov/eoir/page/file/1250691/download> [hereinafter *Country Policy and Information*].

⁹⁸ *Id.* at 45.

counseling has not been adequately assessed.⁹⁹ Moreover, victims must generally be accompanied by an officer to receive medical treatment.¹⁰⁰ Certain laws disallow doctors from treating victims of crime without a police report leading some hospitals to set up police posts within their walls to assist female victims of crime.¹⁰¹ Lastly, a woman's ability to access any of these sparse resources depends on her location and status within Pakistan's deeply patriarchal society.¹⁰²

It is difficult to assess when victims' rights take effect because law enforcement officials' responses can almost be described as case-by-case. All cases are sent to public prosecutors irrespective of the area of specialization.¹⁰³ Moreover, in cases against the state, private attorneys are hired for prosecution whereas, in more heinous cases, matters are referred to the public prosecutors who are reportedly less motivated and less professional.¹⁰⁴ Instead of filing charges in domestic assault or rape cases, police often respond by encouraging the parties to reconcile and by

⁹⁹ *Id.*

¹⁰⁰ Waheed, *supra* note 71, at 143.

¹⁰¹ *Country Policy and Information*, *supra* note 97, at 7.

¹⁰² Waheed, *supra* note 71, at 143.

¹⁰³ Waheed, *supra* note 71, at 144.

¹⁰⁴ Waheed, *supra* note 71, at 144-45.

returning victims to their abusers.¹⁰⁵ It is common for police to refuse to register reports of rape while some police demand bribes before registering cases and then go on to conduct superficial investigations.¹⁰⁶ Courts and law enforcement have historically perceived rape victims as immoral and blameworthy rather than in need of protection.¹⁰⁷ In response to recent public outcry against sexual violence following the gang rape of a woman in a motorway, however, Pakistan's president has approved a tough new anti-rape law.¹⁰⁸

III. THE IMPACT ON VIOLENCE AGAINST WOMEN IN THE UNITED STATES, PORTUGAL, AND PAKISTAN SINCE THE INTRODUCTION OF VICTIMS' RIGHTS IN THOSE COUNTRIES

A. THE UNITED STATES

Despite major progress and efforts by advocacy groups, violence against women continues to affect women's economic security, health, civic engagement, and

¹⁰⁵ *Country Policy and Information*, *supra* note 97, at 48.

¹⁰⁶ *Country Policy and Information*, *supra* note 97, at 48.

¹⁰⁷ *Country Policy and Information*, *supra* note 97, at 12.

¹⁰⁸ *Pakistan anti-rape ordinance signed into law by president*, BBC NEWS (Dec. 15, 2020), <https://www.bbc.com/news/world-asia-55314493>.

overall well-being.¹⁰⁹ The rate of women murdered by men in single victim/single offender incidents rose by 11% between 2014 and 2016.¹¹⁰ One in four women experiences severe intimate partner physical violence, intimate partner sexual violence, or intimate partner stalking with impacts such as injury, fearfulness, post-traumatic stress disorder, use of victims' services, or contraction of sexually transmitted diseases.¹¹¹ Further, 72% of all murder suicides involve an intimate partner and 94% of these victims are female.¹¹² Domestic violence hotlines nationwide receive more than 20,000 phone calls per day on average.¹¹³ Forty years ago, and before the enactment of major victims' rights legislation, however, victims were virtually overlooked in the

¹⁰⁹ *Violence & Safety*, STATUS OF WOMEN IN THE STATES, <https://statusofwomendata.org/explore-the-data/violence-safety/#chapter> (last visited Nov. 20, 2021).

¹¹⁰ Meg Black, *Violence Against Women Is an Issue That Concerns Us All*, UNICEF USA (Dec. 10, 2018), <https://www.unicefusa.org/stories/violence-against-women-issue-concerns-us-all/35247>.

¹¹¹ *Statistics*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/STATISTICS#:~:text=On%20average%2C%20nearly%2020%20people,10%20million%20women%20and%20men.&text=1%20in%203%20women%20and,violence%20by%20an%20intimate%20partner> (last visited Nov. 20, 2021).

¹¹² *Id.*

¹¹³ *Id.*

criminal justice system.¹¹⁴ Receiving no or minimal assistance navigating the criminal justice system, their needs were disregarded.¹¹⁵ Often denied the chance to speak in court, excluded from the investigation, and having no access to compensation, victims were left to their own devices to rebuild their lives.¹¹⁶ Moreover, few victims had access to counseling or compensation for physical injury treatment.¹¹⁷ Over the years, however, the nation has made great strides in securing rights, protections, and services for victims.¹¹⁸ VOCA, CVRA, and the Victim and Witness Protection Act (VWPA) of 1982, have all improved victims' access to justice, raised awareness for violence against women, and strive to hold government actors accountable for the implementation of these rights.¹¹⁹ VWPA provides the "fair treatment standards" for victims in the federal criminal justice system and assigns responsibility for victims'

¹¹⁴ *Celebrating 2020 National Crime Victims' Rights Week – Seeking Justice and Inspiring Hope*, THE UNITED STATES ATTORNEY'S OFFICE DISTRICT OF WYOMING (Apr. 20, 2020) <https://www.justice.gov/usao-wy/pr/celebrating-2020-national-crime-victims-rights-week-seeking-justice-and-inspiring-hope> [hereinafter *Celebrating 2020*].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

assistance to U.S. Attorneys' Offices nationwide.¹²⁰ Presently, each U.S. Attorney's Office employs a Victim-Witness Coordinator to ensure compliance with victims' rights legislation.¹²¹ Further, the judiciary has also moved towards victim participation in the criminal justice process.¹²² The United States Supreme Court in *Payne v. Tennessee* held victim testimony in the form of a victim impact statement was admissible during the sentencing phase of a trial.¹²³ Unlike in Portugal, however, victims are not entitled to a victims' attorney to advocate their rights, represent them in trial, or appeal a trial outcome.¹²⁴ Victims are left to rely on law enforcement and prosecutors during the investigation and trial stages because victims only have the "reasonable right to confer with the attorney for the Government. . . ."¹²⁵ Despite the development of VWPA, it is

¹²⁰ *Id.*; Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (Oct. 12, 1982).

¹²¹ *Celebrating 2020*, *supra* note 115.

¹²² *History of Victims' Rights*, NAT'L CRIME VICTIM LAW INST., https://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victims_rights/ (last visited Nov. 20, 2021).

¹²³ *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

¹²⁴ *Cases That Are Appealed*, UNITED STATES ATTORNEY'S OFFICE DISTRICT OF WYOMING, <https://www.justice.gov/usao-wdwi/victim-witness-program/cases-are-appealed> (last visited Nov. 20, 2021).

¹²⁵ *Id.*; 18 U.S.C.S. § 3771(a)(5).

up to the individual prosecutors or policies of a particular office on how well this program is implemented.¹²⁶ Only “best efforts” are required to ensure victims are accorded their rights creating a subjective standard for enforcement.¹²⁷ One national survey showed two-out-of-three victims received little to no assistance following an incident.¹²⁸

Whether a victim reports the crime to police, however, is a key factor in receiving assistance and services.¹²⁹ From 2000 to 2009, 14% of violent crime victims who reported the crime to law enforcement received victims’ services compared to only 4% of violent crime victims who did not report the crime.¹³⁰ This shows that support is available for victims who reach out for assistance.¹³¹ Crime victims’ services have dramatically grown in the past 40 years, with

¹²⁶ *Victim Witness Assistance*, THE UNITED STATES ATTORNEY’S OFFICE DISTRICT OF WYOMING, <https://www.justice.gov/usao-edtn/victim-witness-assistance> (last visited Nov. 20, 2021).

¹²⁷ *Id.*; 18 U.S.C.S. § 3771(c)(1).

¹²⁸ *Crime Survivors Speak*, ALLIANCE FOR SAFETY AND JUSTICE 11, <https://allianceforsafetyandjustice.org/wp-content/uploads/2019/04/Crime-Survivors-Speak-Report-1.pdf> (last visited Nov. 20, 2021) [hereinafter *Crime Survivors Speak*].

¹²⁹ Jennifer Yahner and Janine Zweig, *How to improve services for crime victims*, URBAN INSTITUTE (Apr. 9, 2014), <https://www.urban.org/urban-wire/how-improve-services-crime-victims>.

¹³⁰ *Id.*

¹³¹ *Id.*

nearly every community in the United States offering victims' assistance along with numerous resource and crisis centers available by phone and online.¹³² This increase in victims' services reveals a steady increase in women willing to seek assistance.¹³³ Additionally, the Department of Justice has awarded grants totaling over \$144 million to enhance services for victims of crime across the United States within the past year, showing the United States' continual efforts to support victims of crime, specifically enhancing support for crimes affecting women such as rape, domestic violence, and female genital mutilation.¹³⁴

Despite great improvement in the enactment of both victims' service rights and victims' procedural rights, victims' descriptions of their involvement with the criminal

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Justice Department Awards \$144 Million to Improve Services for Crime Victims*, THE UNITED STATES DEPARTMENT OF JUSTICE (Oct. 6, 2020), <https://www.justice.gov/opa/pr/justice-department-awards-144-million-improve-services-crime-victims>; Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United State: Updated Estimate of Women and Girls at Risk, 2012*, PUBLIC HEALTH REPORTS (Jan. 14, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4765983/pdf/phr131000340.pdf> (estimating that 513,000 girls and women in the United States have experienced or at risk of Female Genital Mutilation).

justice system range from positive to hostile.¹³⁵ Studies show that half of victims surveyed stated their experience with the legal system was hurtful and caused secondary victimization, the harm suffered by victims after the primary harm from the criminal offender.¹³⁶ Further, while studies indicate that victims desire to be included in their cases, those who experience this secondary victimization become reluctant to fight for involvement.¹³⁷ Victims have a right to address the court at sentencing and to consult with the prosecuting attorney, however, many victims struggle accessing these rights despite entitlement to this participation and a desire to be involved.¹³⁸ The more these rights are implemented consistently, the greater empowerment victims feel and the greater involvement law enforcement will receive from victims.¹³⁹

¹³⁵ Zulkifl M. Zargar, Note, *Secret Facts Accomplis: Declination Decisions, Nonprosecution Agreements, and the Crime Victims' Right to Confer*, 89 FORDHAM L. REV. 343, 352 (2020).

¹³⁶ Kyle Haney, *Increasing Victim Satisfaction with Traditional Criminal Justice Systems: Lessons Learned From Restorative Justice*, UNIV. OF OREGON 9-10 (June 2016), https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/20457/Haney_oregon_0171N_11539.pdf?sequence=1.

¹³⁷ Zargar, *supra* note 135.

¹³⁸ Zargar, *supra* note 135.

¹³⁹ Zargar, *supra* note 135.

Overall, victims' rights legislation has had a positive impact on violence against women. Victims must know that what they think and feel matters. Advocacy groups have successfully lobbied the federal government to enact these rights and victim participation has increased, thus increasing offender accountability. While victims' rights laws are consistent, implementation and interpretation of victims' rights by individual law enforcement officers, prosecutors, and courts remain inconsistent. It is the increased awareness concerning the importance of victims' rights that has had a positive impact on violence against women. The attitudes and opinions on violence against women from the individuals responsible for ensuring these rights, however, control whether a victim's experience is positive or negative. Though inconsistency in enforcement is prevalent, the federal government has shown continual accountability to its citizens and continual action towards improving and prioritizing victims' rights, including a willingness to debate and expand these rights.

B. PORTUGAL

Portugal is a reflection of European reality. Progress has been accomplished, but much work remains to raise awareness of the seriousness of violence against women. Due to this continuing struggle, the European Union placed gender equality as one of its priorities for Member States. The number of reports of crime and arrests has generally increased since implementation of victims' rights, including crimes against women.¹⁴⁰ This increase is the result of greater police efficiency resulting from mandatory victims' rights and violence against women training and of greater public understanding of what rights victims are entitled to resulting from public victims' assistance program initiatives.¹⁴¹ Though awareness has increased within communities, law enforcement agencies, and the courts, compliance with victims' rights depends on a variety of factors including societal and political norms.¹⁴² Compliance, as with the United States, continues to be a hurdle for victims and intertwines heavily with societal and political

¹⁴⁰ Isabel Baptista, *Rights of crime victims to have access to justice – a comparative analysis*, FRA: EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS 13 (2017), https://fra.europa.eu/sites/default/files/fra_uploads/portugal-rights-of-crime-victims-justice_en.pdf.

¹⁴¹ *Id.*

¹⁴² Holder et al., *supra* note 47, at 7-8.

views, particularly how these views relate to women.¹⁴³ The greatest struggle is combating resistant mindsets held not only by citizens but by those responsible for ensuring victims' rights compliance.¹⁴⁴ Victims' assessments of how police carried out the investigation in their cases reveal a clear divide between domestic violence victims, primarily women, and victims of other violent crimes, (i.e. the former expressing a much more negative opinion than the latter).¹⁴⁵ "Compliance is 'as much about informal practice as formal process'" and has occurred in conjuncture with social movements, like the feminist movement.¹⁴⁶ Increased compliance with victims' rights must occur the same way creation of these rights occurred- by citizens talking about these rights, expecting them, and demanding them.¹⁴⁷ In addition to combating these mindsets, victims' rights advocates face challenges from offenders' rights advocates, concerned with offenders' rights to due process and a fair

¹⁴³ Holder et al., *supra* note 47, at 7-8.

¹⁴⁴ Holder et al., *supra* note 47, at 7-9.

¹⁴⁵ *Sanctions that do justice: Justice for victims of violent crime*, FRA: EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS 2 (2019), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part_3-sanctions_en.pdf.

¹⁴⁶ Holder et al., *supra* note 47, at 8.

¹⁴⁷ Holder et al., *supra* note 47, at 2.

trial.¹⁴⁸ These groups object to the continued expansion and mandatory implementation of victims' rights as an infringement on offenders' rights.¹⁴⁹ Despite these continual challenges, continued education, periodic review, and increased mandatory compliance have all worked to create an ever-growing normative victims' rights framework covering crimes against women that have been historically disregarded.¹⁵⁰

A 2016 report provided 24% of women experienced violence in Portugal, 9% lower than the European Union as a whole.¹⁵¹ Additionally, Portugal was the first European Union member to ratify the Istanbul Convention on preventing and combating violence against women and domestic violence.¹⁵² Though resistance still remains, external accountability of being a Member State of the European Union has forced victims' rights legislation on Portugal, creating an ever-increasing supportive culture for victims.

¹⁴⁸ Holder et al., *supra* note 47, at 5.

¹⁴⁹ Holder et al., *supra* note 47, at 5.

¹⁵⁰ Holder et al., *supra* note 47, at 7-10.

¹⁵¹ *Combating violence*, *supra* note 48, at 1.

¹⁵² *Combating violence*, *supra* note 48, at 3.

C. PAKISTAN

It is difficult to see the impact of victims' rights on violence against women in Pakistan because of the inconsistent application of rights and unreliable crime data. Since the 1960s, the Pakistani government has enacted legislation protecting women's rights and promoting gender equality.¹⁵³ Despite these efforts, reports of violence against women have increased, particularly in the past decade.¹⁵⁴ The Pakistani criminal justice system creates obstacles for expansion and enforcement of victims' rights due to forgiveness and compensation laws. Laws allowing for the forgiveness of bodily harm were introduced in the 1990s to reduce burdens on the courts.¹⁵⁵ Studies show, however, the conviction rate for murder dropped 17% since the introduction of these laws, particularly affecting cases of

¹⁵³ Mohsin Khan, *Combating Institutionalized Discrimination and Gender-Based Violence in Pakistan*, CORNELL POLICY REVIEW 1-2, <https://www.cornellpolicyreview.com/gbv-pakistan/?pdf=4838> (last visited Nov. 21, 2021).

¹⁵⁴ Id.; Hamida Khatri, *Domestic Violence in Pakistan from 1990-2020: A Mixed Method Approach*, HARRISBURG UNIVERSITY OF SCIENCE AND TECHNOLOGY 44 (Aug. 10, 2020), https://digitalcommons.harrisburgu.edu/cgi/viewcontent.cgi?article=1002&context=isem_dandt.

¹⁵⁵ Kermani, *supra* note 92.

femicide.¹⁵⁶ Additionally, compensation settlements to victims are rarely thoroughly investigated by the courts, contributing to victims' rights being disregarded.¹⁵⁷ Strong resistance toward overhauling these laws results in frustrated and burned-out law enforcement officers and decreased attempts to help victims of crime. These officers witness the continual violent cycle involving the same offenders being forgiven and compensating victims only to re-offend.¹⁵⁸ Worse yet, some rape allegations are made toward police officers while other officers are recipients of compensation settlements.¹⁵⁹ In recent years, however, a number of violent attacks on women have sparked outrage and protests, demanding better enforcement of women's rights and treatment of women victims.¹⁶⁰ Even with the growing outrage concerning victims' treatment, and women in particular, harsh opposition still confronts efforts to call attention to violence against women and opposes the

¹⁵⁶ See Kermani, *supra* note 92.

¹⁵⁷ Kermani, *supra* note 92.

¹⁵⁸ Kermani, *supra* note 92.

¹⁵⁹ Saroop Ijaz, *Blaming the Victim for Sexual Violence in Pakistan*, HUMAN RIGHTS WATCH (Sept., 14, 2020, 9:32 AM), <https://www.hrw.org/news/2020/09/14/blaming-victim-sexual-violence-pakistan#>; Kermani, *supra* note 92.

¹⁶⁰ Ijaz, *supra* note 160.

enforcement of victims' rights.¹⁶¹ Women in Pakistan face "honor violence,"¹⁶² danger on transit mediums, abuse at home, and sexual harassment in the workplace.¹⁶³ These women have very few avenues for protection.¹⁶⁴ Domestic violence shelters generally require women to have a court order to reside there and these shelters report lacking necessary resources and staff.¹⁶⁵ In 2019, the Pakistani government announced a reform aimed at improving women's access to justice.¹⁶⁶ This reform includes implementing over 1,000 courts specifically for addressing violence against women.¹⁶⁷ These courts will allow women victims to testify privately and hold domestic violence hearings separately.¹⁶⁸ These initiatives, however, appear to

¹⁶¹ *Pakistan 2020*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan/> (last visited Nov. 20, 2021) [hereinafter *Pakistan 2020*].

¹⁶² Daniele Selby & Leah Rodriguez, *How Activist Helped Change Pakistan's Honor Killing Law*, GLOBAL CITIZEN (Apr. 9, 2019), <https://www.globalcitizen.org/en/content/honor-killings-case-study/> (honor killings persisting despite being outlawed in 2004 and the passing of the Anti-Honor Killing Bill of 2016 which closed the legal loophole allowing family member to forgive perpetrators).

¹⁶³ Ijaz, *supra* note 160.

¹⁶⁴ *Country Policy and Information*, *supra* note 98, at 13.

¹⁶⁵ *Country Policy and Information*, *supra* note 98, at 13.

¹⁶⁶ *Country Policy and Information*, *supra* note 98, at 12.

¹⁶⁷ *Country Policy and Information*, *supra* note 98, at 12.

¹⁶⁸ *Country Policy and Information*, *supra* note 98, at 12.

be inconsistent nationwide.¹⁶⁹ Informal legal protections and traditional criminal justice systems remain strong in rural areas.¹⁷⁰ In 2020, hundreds of cases of violence against women were reported, but few offenders have been held accountable.¹⁷¹

Pakistan's overall response to victims, at best, is inconsistent. Demand for reform, however, is growing despite conservative politicians referring to these efforts as "vulgar."¹⁷² There is very little accountability for government actors, internally from citizens or externally from international organizations, to prioritize enacting or enforcing victims' rights in response to violence against women. With the renewed outrage and promised reforms, human rights organizations will continue to monitor Pakistani's progress in women's rights and victims' rights for any measurable impact on violence against women.

IV. ANALYSIS OF NEEDED IMPROVEMENTS IN EACH COUNTRIES' LEGAL FRAMEWORK TARGETING THE PREVENTION AND RESPONSE TO VIOLENCE AGAINST WOMEN.

¹⁶⁹ *Country Policy and Information*, *supra* note 98, at 13.

¹⁷⁰ *Country Policy and Information*, *supra* note 98, at 13.

¹⁷¹ *See Pakistan 2020*, *supra* note 162.

¹⁷² Ijaz, *supra* note 160; *See Pakistan 2020*, *supra* note 162.

Overall, the implementation of victims' rights in all three countries has had a positive impact on violence against women. Portugal has the best victims' rights legislation scheme due to expansive victim participation and control in criminal prosecutions and victims' services that activate earlier than the United States or Pakistan. However, enforcement of these rights and services appear no better than those offered in the United States, with crime rates against women being approximately the same in both countries.¹⁷³ Pakistan lags significantly behind both the United States and Portugal in both legislation and enforcement. Each of these three governments, however, must learn from each other to create improved legal frameworks that most effectively combat violence against women. This framework can be achieved through (1) implementing initiatives aimed at the prevention of violence against women and (2) implementing stronger victims' rights responses when violence occurs against women. The preventative initiative requires each government to prioritize social welfare policies aimed at elevating women's

¹⁷³ Thomas, *supra* note 9; *Domestic Violence Statistics*, *supra* note 9.

status and respect in society by increasing the number of women in corporate and political leadership positions. The responsive initiative is two-fold. The first initiative requires that each government increase its accountability to victims' demands for the expansion of sexual assault laws. The second initiative requires that each government expand victims' rights to guarantee victim participation and control in criminal cases during both the investigative and adjudicative phases.

A. PREVENTATIVE INITIATIVE

Women's status in society is critical to raising public awareness of violence against women.¹⁷⁴ Higher status correlates to greater respect and greater respect leads to greater outrage and stronger, united demands for change.¹⁷⁵ Women in the United States, Portugal, and Pakistan must be integrated into more decision-making roles to achieve both widespread awareness of the violence perpetrated against them and its eradication. Achieving this will require the United States and Pakistan to take Portugal's lead in implementing stronger social welfare policies such as equal

¹⁷⁴ Khan, *supra* note 154, at 5.

¹⁷⁵ Khan, *supra* note 154, at 3-5.

pay, maternity leave, and access to abortions, which help women pursue and accept leadership positions in their community.¹⁷⁶ Though Portugal's welfare policies are more expansive than the United States', both countries far exceed Pakistan's welfare policies.¹⁷⁷ Further, both the United States and Portugal have more women in leadership roles in corporate and political fields leading these countries to stronger victim rights legislation and enforcement of this legislation.¹⁷⁸ Both Portugal and Pakistan, however, have mandated gender quotas for women in corporate and political leadership roles.¹⁷⁹ Regardless of implementation, though, these quotas have not appeared to increase women's status in society in relation to attitudes on violence against women or in relation to women in general.¹⁸⁰ In fact, in the United States, the debate surrounding mandated quotas has sparked backlash against women in leadership positions.¹⁸¹ Rather than forced quota mandates for women's inclusion,

¹⁷⁶ See discussion *infra* Part IV. A.

¹⁷⁷ See discussion *infra* Part IV. A.

¹⁷⁸ Holder et al., *supra* note 47, at 7-10; Zargar, *supra* note 136, at 352; *Pakistan 2020*, *supra* note 162; See discussion *infra* Part IV. A.

¹⁷⁹ See discussion *infra* Part IV. A.

¹⁸⁰ Waheed, *supra* note 72, at 140; See discussion *infra* Part IV. A.

¹⁸¹ See discussion *infra* Part IV. A.

Pakistan, and the United States to a lesser degree, must follow Portugal in implementing strong social welfare policies that actually address obstacles women face in accessing leadership roles.

In each country, women's participation in corporate and political leadership roles has increased in recent years, but their participation still lags behind men.¹⁸² Portugal and Pakistan have required quotas for women in corporate and political leadership while the United States leaves these decisions to each state.¹⁸³ Currently, California is the only state with a mandated corporate leadership quota for women while other states only incentivize this leadership.¹⁸⁴ Portugal exceeds the United States and Pakistan in terms of successful implementation of women in corporate and political leadership.¹⁸⁵ Portugal is nearing its goal of a gender-balanced society by complying with the "Strategic Engagement for Gender Equality 2016-2019," which promotes economic independence for women, the passage of

¹⁸² *Facts and figures: Women's leadership and political participation*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> (last visited Nov. 21, 2021).

¹⁸³ See discussion *infra* Part IV. A.

¹⁸⁴ See discussion *infra* Part IV. A.

¹⁸⁵ See discussion *infra* Part IV. A.

Law 62/2017, which mandates 33.3% of board and supervisory positions be held by women, and by legislative quotas mandating women hold 40% of parliament.¹⁸⁶ Women hold 29.1% of non-executive positions and 10% of executive positions as of 2018.¹⁸⁷ Moreover, women represent 40% of the Portuguese Parliament showing significant progress in reaching its target goal of a gender-balanced legislature.¹⁸⁸ Even with this surface success, however, women still face sexist attitudes regarding their status in society. In a 2017 written ruling, a panel of male judges expressed understanding for a man convicted of assaulting his wife

¹⁸⁶ Eur. Comm'n, Strategic Engagement for Gender Equality 2016-2019, EUROPEAN UNION (2015), <https://op.europa.eu/en/publication-detail/-/publication/24968221-eb81-11e5-8a81-01aa75ed71a1>; Decree-Law no. 62/2017 of 1 Aug.; Bettina C.K. Binder et al., *The Plight of the Women in Positions of Corporate Leadership in the United States, the European Union, and Japan: Differing Laws and Cultures, Similar Issues*, 26 Mich. J. Gender & L. 279, 292-93 (2019); 2018 Report on equality between women and men in the EU, European Commission 34 (2018), <file:///Users/briannawilliams/Downloads/DSAU18001ENN.en.pdf>; *Gender Quotas Database*, INTERNATIONAL IDEA, <https://www.idea.int/data-tools/data/gender-quotas/country-view/247/35> (last visited Nov. 21, 2021).

¹⁸⁷ 2019 Report on equality between women and men in the EU, EUROPEAN COMMISSION 30 (2019), https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf.

¹⁸⁸ *Id.* at 32; *Portugal: Women in Parliament*, GLOBALECONOMY.COM, https://www.theglobaleconomy.com/Portugal/Women_in_parliament/ (last visited Nov. 21, 2021).

with a nail-covered bat over allegedly committing adultery and gave him only a fifteen-month suspended sentence and a €1,750 fine.¹⁸⁹ The judges wrote adultery was a “serious offense against a man’s honor” and stated the Bible allowed adulterous women to be put to death.¹⁹⁰ Though still fighting for greater respect in society, strong social policies exist that address women’s societal disadvantages.¹⁹¹ Women have greater access to abortions across the country than either the United States or Pakistan.¹⁹² Abortions are available from ten to twenty-four weeks, with no limitation for life-threatening situations to the mother.¹⁹³ Further, Portugal provides up to five months of parental leave and an additional four months whenever a child needs essential care.¹⁹⁴ Portugal additionally has laws requiring equal pay through pay transparency and a presumption that any

¹⁸⁹ Barry Hatton, *Outrage after Portugal court quotes Bible in woman’s assault*, AP NEWS (Oct. 24, 2017), <https://apnews.com/article/portugal-international-news-europe-womens-rights-95d467894724406195e841b889b75515>.

¹⁹⁰ *Id.*

¹⁹¹ Binder et al., *supra* note 187, at 293.

¹⁹² See discussion *infra* Part IV. A.

¹⁹³ *Portugal*, ABORTREORT.EU, <https://abort-report.eu/portugal/> (last visited Nov. 21, 2021).

¹⁹⁴ *Portugal-Maternity, paternity, and adoption benefits*, EUROPEAN COMMISSION, <https://ec.europa.eu/social/main.jsp?catId=1125&langId=en&intPageId=4733> (last visited Nov. 21, 2021).

unjustified pay gaps are discriminatory.¹⁹⁵ Portugal sets a proactive social policy framework for the United States and Pakistan for equalizing societal disadvantages women have historically faced.

A different, graver picture is painted in Pakistan. Despite a regulation issued by the Securities and Exchange Commission Pakistan mandating every listed company have at least one female director, compliance is slow and, in some companies outright disregarded.¹⁹⁶ Due to strong patriarchal prejudices, women make up only 24% of the entire workforce in Pakistan while women in executive positions are substantially lower.¹⁹⁷ Further, women in Pakistan only account for 5% of leadership roles in government.¹⁹⁸ This low

¹⁹⁵ *Portugal: Law bolsters enforcement of equal pay for equal work*, WILLISTOWERSWATSON (July 10, 2019),

<https://www.willistowerswatson.com/en-US/Insights/2019/07/gnb-portugal-law-bolsters-enforcement-of-equal-pay-for-equal-work>.

¹⁹⁶ Listed Companies (Code of Corporate Governance) Regulations, 2019 (2019), 1163 S.R.&O. 1, 3 (Pak.),

[https://www.psx.com.pk/psx/themes/psx/uploads/SRO_1163\(I\)2019-](https://www.psx.com.pk/psx/themes/psx/uploads/SRO_1163(I)2019-)

ListedCompanies(CodeofCorporateGovernance)Regulations_2019.pdf; Rafae Saigal, *Gender Diversity in the Pakistani Corporate Boardroom*, UNIVERSITY OF OXFORD (Jul. 21, 2020),

<https://www.law.ox.ac.uk/business-law-blog/blog/2020/07/gender-diversity-pakistani-corporate-boardroom>.

¹⁹⁷ Saigal, *supra* note 197.

¹⁹⁸ *Strengthening Women's Political Participation in Pakistan*, OXFAM 7 (Nov. 2020),

number, however, is double the rate since the implementation of the Election Act of 2017, which mandates women comprise 5% of all candidates for contested general seats.¹⁹⁹ Moreover, Pakistan has very few social policies aimed to help women. Abortion is criminalized in most situations and often, if allowed, doctors will refuse to perform it.²⁰⁰ Despite facing imprisonment, Pakistan has one of the highest abortion rates in the world and, with little legal access to it, women are forced to rely on back-alley providers.²⁰¹ In 2021, Amin Mashi, a twenty-seven-year-old woman, died as a result of a botched abortion, a result not

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621107/cs-strengthening-womens-political-participation-pakistan-241120-en.pdf?sequence=1>.

¹⁹⁹ Elections Act, 2017, No. 33 of 2017, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Oct. 2, 2017,

<https://www.ecp.gov.pk/Documents/laws2017/Election%20Act%202017.pdf>; Myra Imran, *Only eight women won general seats out of 464 contestants in NA*, THE NEWS INTERNATIONAL (Jul. 28, 2018), <https://www.thenews.com.pk/print/347236-only-eight-women-won-general-seats-out-of-464-contestants-in-na>; Ayesha Khan & Sana Naqvi, *Dilemmas of Representation: Women in Pakistan's Assemblies*, 51 ASIAN AFFAIRS 2, 298-99 (May 5, 2020), <https://www.tandfonline.com/doi/pdf/10.1080/03068374.2020.1748414>.

²⁰⁰ 16 PAK. PENAL CODE § 338 (A)-(C) (1860); Diaan Hadid, *Why The Abortion Rate In Pakistan Is One Of The World's Highest*, NPR (Nov. 28, 2018, 5:02 AM),

<https://www.npr.org/sections/goatsandsoda/2018/11/28/661763318/why-the-abortion-rate-in-pakistan-is-one-of-the-worlds-highest>.

²⁰¹ Hadid, *supra* note 201.

uncommon in Pakistan.²⁰² Mehnaz, another Pakistani woman and mother of four daughters, has undergone multiple partially self-administered abortions due to her husband's threats to throw her out if she had another daughter.²⁰³ Moreover, women in Pakistan suffer substantial economic disadvantage by earning 36% less than men and having no feminized occupations in the country, meaning no job fields in Pakistan have more women than men.²⁰⁴ Pakistan has no equal pay laws, however; after efforts by activists, the Companies Act was amended in 2020 to eliminate the requirement that women give the name of their father or husband when incorporating their companies, equalizing the procedure for women opening a business.²⁰⁵ In

²⁰² Betsy Joles, *Why Deadly Abortions Keep Killing Women in Pakistan*, PULITZER CENTER (Jul. 15, 2021), <https://pulitzercenter.org/stories/why-deadly-abortions-keep-killing-women-pakistan>.

²⁰³ Hadid, *supra* note 201.

²⁰⁴ *Women are paid less than men-and that hits harder in an economic crisis*, LEAN IN, <https://leanin.org/equal-pay-data-about-the-gender-pay-gap> (last visited Nov. 21, 2021); *The Gender Wage Gap*, UN WOMEN, <https://asiapacific.unwomen.org/en/countries/pakistan/wee/wee-participant/the-gender-wage-gap> (last visited Nov. 21, 2021).

²⁰⁵ The Companies Act, 2017 Ordinance, No. 5 of 2020, THE GAZETTE OF PAKISTAN EXTRAORDINARY, May 5, 2020, http://www.na.gov.pk/uploads/documents/1595862792_559.pdf; Iva Hamel et al., *Legal Reform in Pakistan: One More Step Towards Gender Equality*, WOMEN ENTREPRENEURS FINANCE

a progressive step, Pakistan enacted the Maternity and Paternity Leave Act, 2020, mandating maternity leave for up to six months for a first child, four months for a second child, and three months for a third child for any employer under the administrative control of Pakistani government.²⁰⁶ Pakistan is a prime example that even with mandated quotas for women in leadership positions, without social policies to support women's access to these leadership positions, women's status will not increase and violence perpetrated against them will not decrease. Pakistan must follow Portugal's lead in providing women access to abortion and mandating equal pay for women.

In the United States, with only California mandating a quota for women in corporate leadership, women hold nearly 40% of managerial roles, but only 5% hold CEO positions.²⁰⁷ While many progressives urge a mandated or

INITIATIVE, <https://we-fi.org/legal-reform-in-pakistan/> (last visited Nov. 21, 2021).

²⁰⁶ The Maternity and Paternity Leave Act, 2020, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Jan. 27, 2020, https://senate.gov.pk/uploads/documents/1580369887_449.pdf; Fiona Webster & Stephanie Rosseau, *Pakistan: Paid maternity, paternity leave mandated*, MERCER (Dec. 1, 2020), <https://www.mercer.com/our-thinking/law-and-policy-group/pakistan-paid-maternity-paternity-leave-mandated.html>.

²⁰⁷ CAL. CORP. CODE § 301.3 (Deering 2020); Binder et al., *supra* note 187, at 285.

incentivized corporate quota for women, a heated debate has erupted over the issue.²⁰⁸ The corporate leadership positions women achieved due to these incentives and mandates, however, were women filling added roles rather than filling existing roles, contributing to the concern that these were token positions.²⁰⁹ Moreover, the increase in women being promoted to CEO positions has recently been dubbed the “glass cliff” as these promotions are to failing companies or those in the mists of a reputation crisis.²¹⁰ The United States, in contrast to both Portugal and Pakistan, has no political candidate quota but has still seen an increase in women representatives.²¹¹ A record number of women ran for office in 2020 and women currently hold 26.9% of Congressional seats.²¹² Despite women’s improved numbers in political

²⁰⁸ Malathi Nayak, *California’s Board Gender Quota Faces Conservative Showdown*, BLOOMBERG EQUALITY (Sept. 28, 2021, 1:45 PM), <https://www.bloomberg.com/news/articles/2021-09-28/california-s-battle-over-gender-quotas-for-boards-heads-to-trial>; *Women on Corporate Boards (Quick Take)*, CATALYST (Nov. 5, 2021), <https://www.catalyst.org/research/women-on-corporate-boards/>.

²⁰⁹ Binder et al., *supra* note 187, at 284.

²¹⁰ Binder et al., *supra* note 187, at 287.

²¹¹ Kelly Dittmar, *What You Need to Know About the Record Numbers of Women Candidates in 2020*, RUTGERS EAGLETON INSTITUTE OF POLITICS (Aug. 10, 2020), <https://cawp.rutgers.edu/election-analysis/record-numbers-women-candidates-2020>.

²¹² *Id.*

leadership, they still face strong misogynistic resistance. Women in both political parties have faced name-calling and threats from men outside and within the United States Congress.²¹³ Women in Congress and their allies argue these threats are the equivalent of “workplace harassment” and a “global phenomenon meant to silence women from seeking political office.”²¹⁴ Moreover, social policies helping women’s liberation, like abortion access, are under attack.²¹⁵ Laws

²¹³ Barbara Sprunt, *I Could Not Allow That To Stand’: Ocasio-Cortez Rebukes Republican For Vulgar Insult*, NPR (Jul. 23, 2020, 12:34 PM), <https://www.npr.org/2020/07/23/894596598/i-could-not-allow-that-to-stand-ocasio-cortez-rebukes-republican-for-vulgar-insu> (Representative Ted Yoho calls Representative Alexandria Ocasio-Cortez “disgusting” and a “f***** bitch”); John L. Dorman, *Liz Cheney is surrounded by a security detail after death threats over her Trump criticism: NYT*, INSIDER (Jun. 21, 2021, 10:09 AM), <https://www.businessinsider.com/liz-cheney-security-detail-death-threats-trump-impeachment-criticism-2021-6> (Representative Liz Cheney faces death threats over Trump impeachment vote); Mariam Khan et al., *House votes to censure GOP Rep. Gosar, remove from committees over violent video*, ABC NEWS (Nov. 17, 2021, 4:40 PM), <https://abcnews.go.com/Politics/house-plans-vote-wednesday-censure-gop-rep-gosar/story?id=81212617> (Representative Paul Gosar censured after posting video showing him stabbing President Biden and killing Representative Alexandria Ocasio-Cortez).

²¹⁴ Rebecca Shabad & Teaganne Finn, *House votes to censure GOP Rep. Paul Gosar over video depicting killing of AOC*, NBC NEWS (Nov. 17, 2021, 4:32 PM), <https://www.nbcnews.com/politics/congress/house-votes-censure-gop-rep-paul-gosar-over-video-depicting-n1284008>.

²¹⁵ *Abortion laws in the US-10 things you need to know*, AMNESTY INTERNATIONAL (June 11, 2019, 10:35 AM), <https://www.amnesty.org/en/latest/news/2019/06/abortion-laws-in-the-us-10-things-you-need-to-know/> [hereinafter *Abortion laws in the US*].

restricting abortions were declared unconstitutional in the landmark Supreme Court case, *Roe v. Wade*.²¹⁶ Since then, anti-choice activists have attempted to overturn this decision.²¹⁷ Several states have passed laws that virtually ban abortion, drastically reduce women's access to it, and criminalize doctors who perform it.²¹⁸ In addition to attacks on abortion rights, women are only guaranteed three months of maternity leave, a much lower amount than both Portugal and Pakistan.²¹⁹ Both the United States and Portugal mandate equal pay for equal work, though a wage gap between the sexes continues.²²⁰ Studies have shown that in

²¹⁶ *Roe v. Wade*, 410 U.S. 113, 154 (1973) (striking down laws that criminalized abortion as unconstitutional).

²¹⁷ *Abortion laws in the US*, *supra* note 216.

²¹⁸ K.K. Rebeca Lai, *Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year*, THE NEW YORK TIMES, <https://www.nytimes.com/interactive/2019/us/abortion-laws-states.html> (last updated May 29, 2019); *Abortion laws in the US*, *supra* note 215; Ashley Lopez, *How the Texas ban on most abortions is harming survivors of rape and incest*, NPR (Nov. 15, 2021, 5:00 AM), <https://www.npr.org/sections/health-shots/2021/11/15/1054710917/texas-abortion-law-harm-sexual-assault-survivors>.

²¹⁹ Family Medical Leave Act (FMLA) of 1993, 29 U.S.C.S. § 2612(a) (2021); *Paid Parental Leave*, U.S. DEPT. OF LAB., <https://www.dol.gov/general/jobs/benefits/paid-parental-leave> (last visited Nov. 21, 2021).

²²⁰ 29 U.S.C.S. § 206(d) (2021); J. Andrew Morgan, Note, *How to Close the Gender Pay Gap: Transparency in Data Regarding Compensation is the Key*, 35 CONN. J. INT'L L. 407, 416 (2020); *Equal Pay/Compensation Discrimination*, U.S. EQUAL EMP'T

addition to an equal pay mandate, pay transparency should be required, as the pay gap was virtually eliminated in companies that implemented a transparent pay process.²²¹ Though the United States has relatively steady social policies to assist women's access to leadership positions, its laws are not on par with Portugal. The United States must push for longer family leave, establish stronger protections for abortion rights, and implement a wage transparency mandate.

The bitter, misogynistic resistance women have recently faced proves that when more women are leaders, attention becomes focused on violence against women. Sexist comments and violent actions become top news stories and momentum builds for progress. Women must continue to increase their corporate and political leadership numbers for progress to build. Achieving this goal, however, will not be accomplished through mandated quotas that only help some women and only fuel stronger resistance to women's

OPPORTUNITY COMM'N,
<https://www.eeoc.gov/equal-paycompensation-discrimination> (last visited Nov. 21, 2021).

²²¹ Stephen Miller, *Transparency Shrinks Gender Pay Gap*, SHRM (Jan. 31, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/transparency-shrinks-gender-pay-gap.aspx>.

progress. Rather, implementing social welfare policies aimed at expanding all women's abilities to pursue and take leadership positions will result in a stronger and longer-lasting increase in women's status.

B. RESPONSIVE INITIATIVE

1. GOVERNMENTS' INCREASED ACCOUNTABILITY TO VICTIMS' DEMANDS FOR THE EXPANSION OF SEXUAL ASSAULT LAWS.

The United States and Portugal have historically been successful in implementing progressive social initiatives expanding the rights and protections of minority groups.²²² The United States has generally accomplished this implementation through internal accountability, by the demands of its citizens.²²³ Portugal's implementation, however, has been largely due to external accountability, by compliance with European Union treaties.²²⁴ Pakistan has shown little consistency with any implementation of

²²² *Group of Experts, supra* note 55, at 6. See discussion *infra* Part IV. B.1.

²²³ See John Halpin & Marta Cook, *Social Movements and Progressivism*, CENTER FOR AMERICAN PROGRESS 1 (Apr. 2010), https://cdn.americanprogress.org/wp-content/uploads/issues/2010/04/pdf/progressive_social_movements_execsumm.pdf?_ga=2.189077291.1098805321.1637520743-115804231.1636058739.

²²⁴ *Group of Experts, supra* note 55, at 6.

progressive initiatives whether from internal or external sources.²²⁵ Both Portugal and Pakistan must follow the United States in internal accountability to their citizens by implementing change at the demand of citizens, specifically as it relates to the enforcement and expansion of sexual assault laws. The United States must go further in its efforts to hold sexual predators accountable by eliminating the statute of limitations in rape cases. Portugal and Pakistan must also strive for the same.

Sexual assault women face daily was historically ignored in the United States but was catapulted into the spotlight through the #MeToo social movement that demanded the accountability of sexual predators.²²⁶ In the cases of Bill Cosby and Harvey Weinstein, dozens of women accused both men of sexual assault ranging from intimidation to rape.²²⁷ Though these accusations had been

²²⁵ See discussion *infra* Part IV. B.1.

²²⁶ Helen Hershkoff & Elizabeth M. Schneider, Symposium, *Sex, Trump, and Constitutional Change*, 34 CONST. COMMENTARY 43, 45-46 (2019).

²²⁷ *Bill Cosby: The rise, fall and release of 'America's Dad'*, BBC NEWS, <https://www.bbc.com/news/entertainment-arts-30194819> (last visited Nov. 21, 2021) [hereinafter *Bill Cosby*]; Colin Dwyer, *The Harvey Weinstein Trial: A Brief Timeline of How We Got Here*, NPR (Jan. 22, 2020, 1:06 PM), <https://www.npr.org/2020/01/22/798222176/the-harvey-weinstein->

around for years, it was not until a collective of women shared their experiences with sexual assault publicly and demanded accountability that the government took action.²²⁸ However, only a fraction of these cases were able to be criminally prosecuted because the statute of limitation had expired.²²⁹ Only at the judge's discretion were some of these women able to testify to establish a sexual predator pattern.²³⁰ Further, in Mr. Cosby's case, only one victim was able to be criminally prosecuted and that sentence was vacated due to a technicality.²³¹ Had more women's cases not been barred, this sexual predator would likely still be in jail. Further, Mr. Weinstein only received twenty-three years in prison. If more victims' cases had not been barred, it is possible he would have received a life sentence.²³² In both Portugal and Pakistan, #MeToo, unfortunately, sparked

trial-a-brief-timeline-of-how-we-got-here [hereinafter *The Harvey Weinstein Trial*].

²²⁸ #MeToo: A timeline of events, CHICAGO TRIBUNE (Feb. 4, 2021), <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html>.

²²⁹ *Bill Cosby*, *supra* note 228; *The Harvey Weinstein Trial*, *supra* note 228.

²³⁰ *Bill Cosby*, *supra* note 228; *The Harvey Weinstein Trial*, *supra* note 228.

²³¹ *Bill Cosby*, *supra* note 228 (Court overturned Cosby's conviction after finding he was denied protection against self-incrimination).

²³² *The Harvey Weinstein Trial*, *supra* note 228.

harsh debate over false rape allegations rather than focusing the discussion on believing victims' stories of rampant sexual assault.²³³ In Pakistan, some women who came forward through the #MeToo movement faced criminal defamation charges and eventually agreed to gag order settlements preventing them from discussing their allegations publicly.²³⁴ #MeToo advocates argued that the cyber defamation laws passed to protect women from online harassment were used to silence these sexual assault victims.²³⁵ Though the United States experienced similar oppositional debate as Portugal and Pakistan over the #MeToo movement, government officials believed the victims and pursued criminal accountability despite the high profiles of the perpetrators. A willingness to enforce sexual assault laws against high-profile offenders, however, was curtailed by statutes of limitations.

²³³ Joanne Sweeny, *The #MeToo Movement in Comparative Perspective*, 29 AM. U.J. GENDER SOC. POL'Y & L. 33, 84-85 (2020); Hannah Ellis Petersen, *Pakistan's #MeToo movement hangs in the balance over celebrity case*, THE GUARDIAN (Jan. 1, 2021), <https://www.theguardian.com/global-development/2021/jan/01/pakistans-metoo-movement-hangs-in-the-balance-over-celebrity-case>.

²³⁴ Peterson, *supra* note 234.

²³⁵ Peterson, *supra* note 234.

Portugal and Pakistan must further expand their sexual assault laws by working with victims on how to best improve these laws. In Portugal, rape laws were recently expanded to focus on lack of consent rather than the use of violence. This expansion was ordered to comply with the Istanbul Convention, and the case which called attention to this lack of compliance involved a judge suspending the sentence of four men who raped an unconscious woman in a bar.²³⁶ The judge stated no force was used and that the bar was a “mutually seductive” atmosphere.²³⁷ The new expansive law will now cover unconscious and coerced victims.²³⁸ In Pakistan, a woman gang-raped on a motorway in front of her two children sparked international outrage and called attention to Pakistan’s dismal response to violence against women, specifically victims of sexual assault.²³⁹ In response to this outrage, The Anti-Rape

²³⁶ Sweeny, *supra* note 234, at 79; Helen Battaglini, *Portugal finally expands the legal definition of rape*, AMICUS INFO (Feb. 21, 2019), <https://info.amicus-curiae.net/europe/portugal-finally-expands-the-legal-definition-of-rape/>.

²³⁷ Sweeny, *supra* note 234, at 79.

²³⁸ Battaglini, *supra* note 237.

²³⁹ Hamza Fareed Malik, *Legal reforms, not hollow punishments, will deliver justice for rape victims in Pakistan*, THE BOAR (Feb. 9, 2021), <https://theboar.org/2021/02/pakistan-laws/>.

Ordinance 2020 was signed into law and is a complete overhaul of Pakistan's sexual assault laws.²⁴⁰ The new law will include expedited rape trials, improved rape kit procedures, the creation of a sex-offender registry, and chemical castration of rapists.²⁴¹ Advocacy groups, however, are hesitant to label this a success because of Pakistan's past lack of enforcement issues, its dismal rape conviction rate of below 3%, and the concerns of human rights violations associated with chemical castration.²⁴²

Sexual assault is a complex crime that has a high psychological, economic, and social cost to victims.²⁴³ Victims often feel shame or confusion which prevents timely reporting.²⁴⁴ In the United States, some states have recently extended their statute of limitations to allow victims more time to report in response to #MeToo, but these reforms do

²⁴⁰ *Id.*

²⁴¹ *Id.*; Anti-Rape (Investigation and Trial) Ordinance, 2020, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Dec. 15, 2020, [http://www.mohr.gov.pk/SiteImage/Misc/files/Anti-Rape%20\(Investigation%20and%20Trial\)%20Ordinance%2C%202020.pdf](http://www.mohr.gov.pk/SiteImage/Misc/files/Anti-Rape%20(Investigation%20and%20Trial)%20Ordinance%2C%202020.pdf).

²⁴² Malik, *supra* note 240.

²⁴³ Sammy Caiola, *How Rape Affects Memory And The Brain, And What More Police Need To Know About This*, NPR (Aug. 22, 2021, 7:00 AM), <https://www.npr.org/sections/health-shots/2021/08/22/1028236197/how-rape-affects-memory-and-the-brain-and-why-more-police-need-to-know-about-thi>.

²⁴⁴ *Id.*

not go far enough.²⁴⁵ These statutes of limitations must be eliminated in recognition of the complex nature and social stigmas surrounding sexual assault. Though Portugal and Pakistan must take the United States' lead on believing victims in sexual assault cases and pursuing charges, the United States must eliminate statutes of limitations in rape cases. Further, Portugal and Pakistan must focus on improving their internal accountability to victims of sexual assault in addressing and expanding sexual assault laws. Portugal must focus its efforts on listening to victims' demands on how to improve their sexual assault laws rather than focus on external accountability to the European Union. Pakistan must focus on listening to victims' accounts on how to create meaningful legislation with a step-by-step plan to address enforcement of the new sexual assault laws.

2. GOVERNMENTS' EXPANSION OF VICTIMS' RIGHTS TO GUARANTEE VICTIM PARTICIPATION AND CONTROL IN CRIMINAL CASES DURING BOTH THE INVESTIGATIVE AND ADJUDICATIVE PHASES.

²⁴⁵ Rebecca Beitsch, *High-Profile Cases Spur States to Reconsider Statutes of Limitations for Rape*, PEW (May 18, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/05/18/high-profile-cases-spur-states-to-reconsider-statutes-of-limitations-for-rape>.

The United States, Portugal, and Pakistan must all commit to safeguarding victims' rights once a crime has occurred. Portugal has the most comprehensive victim rights framework for both the investigative and adjudicative phases, including automatic attachment of rights once a triggering event occurs, control of the investigation, legal representation during trial, and rights to appeal a verdict.²⁴⁶ Portugal, however, struggles with the enforcement of these rights and thus a victim's experience in a criminal case is roughly the same as in the United States, which guarantees fewer rights to victims. Both the United States and Portugal report victim dissatisfaction with victims' services received. Kate Juby, who was raped in Portugal by Tiago Curado de Sousa, publicly shared her story to prevent other women from having to face the same ordeal she did "at the hands of the Portuguese legal system."²⁴⁷ During her rape examination, she was held down, told to "man up," to stop crying, and to "stop being a baby."²⁴⁸ Katie had to wait

²⁴⁶ *Victims' rights-by country Portugal*, *supra* note 37.

²⁴⁷ *British rape victim describes horror as "laughing culprit" walks free*, PORTUGAL RESIDENT (Feb. 27, 2019), <https://www.portugalresident.com/british-rape-victim-describes-horror-as-laughing-culprit-walks-free/> [hereinafter *British rape victim*].

²⁴⁸ *Id.*

eighteen months for the trial and was only able to meet with her victim's attorney two hours before the trial.²⁴⁹ Worse yet, Curado de Sousa received only a four-and-a-half-year suspended sentence and was only required to pay €2,000 compensation to Katie despite fully confessing to the crime.²⁵⁰ This case mirrors the concern Portuguese women have been voicing for years: the Portuguese criminal system is a sexist institution that delivers lenient sentences for crimes committed against women.²⁵¹ At least Katie has the opportunity to appeal in Portugal, a right denied to victims in the United States and Pakistan.²⁵² In the United States, a victim's family was not informed that their daughter was killed as a result of domestic violence until days after the incident.²⁵³ Moreover, this family was only offered minimal participation in the trial and was kept in the dark regarding

²⁴⁹ Emily Hall, *Hitch-hiking Brit raped side of road-but laughing culprit walks free*, MIRROR (Feb. 23, 2019), <https://www.mirror.co.uk/news/uk-news/hitch-hiking-brit-tourist-23-14041679>.

²⁵⁰ *British rape victim*, *supra* note 248.

²⁵¹ *Portugal registers 11,000 domestic violence cases*, PORTUGAL RESIDENT (Oct. 24, 2020), <https://www.portugalresident.com/portugal-registers-11000-domestic-violence-cases/>.

²⁵² *British rape victim*, *supra* note 248.

²⁵³ See *Crime Survivors Speak*, *supra* note 129, at 14.

the full details of the incident until after the trial.²⁵⁴ Though victims in both Portugal and the United States express dissatisfaction, these examples reveal a stark contrast in victim involvement and control. Victims in Portugal have more rights than victims in the United States, even when enforced poorly.

Pakistan's victims' rights legislation provides that victims' rights activate once a triggering event occurs, and those victims can control the investigation, but strong patriarchal prejudices combined with forgiveness and compensation laws make these rights virtually useless.²⁵⁵ Saba Qaiser, the subject of the Oscar-winning documentary, *A Girl in the River: The Price of Forgiveness*, was shot, put in a bag, and thrown into the river by her male family members after secretly eloping.²⁵⁶ Saba miraculously survived.²⁵⁷ Despite the brutality of the attack, Pakistani courts did not pursue charges because Saba forgave her

²⁵⁴ See *Crime Survivors Speak*, *supra* note 129, at 14.

²⁵⁵ Waheed, *supra* note 72, at 146.

²⁵⁶ *She Survived An 'Honor Killing': Oscar-Winning Documentary Airs Tonight*, NPR (Feb. 29, 2016), <https://www.npr.org/sections/goatsandsoda/2016/02/29/468582341/this-oscar-winning-film-could-help-end-honor-killings-in-pakistan>.

²⁵⁷ *Id.*

attackers.²⁵⁸ Initially determined for them to face justice, Saba faced great pressure and threats of ostracization from her family and community.²⁵⁹ Saba ultimately declared in court that she forgave her attackers.²⁶⁰ However, she stated she forgave them because of the pressure she faced, but that they remain unforgiven in her heart.²⁶¹ This case highlights the coercive nature of Pakistani's forgiveness and compensation laws and how great an obstacle they present to victims' fight for justice.

Following Portugal's example, the United States and Pakistan must enact and enforce express legislation that attaches victims' rights once a triggering event occurs. Further, the United States and Pakistan must guarantee legal representation of victims during the investigative and adjudicative phases and guarantee victims post-trial remedies. Pakistan must also address forgiveness and compensation laws by either eliminating them or requiring thorough investigation when settlements are reached to ensure victims are not coerced. Portugal, though leading in

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

victims' rights legislation, must address enforcement problems and ensure the rights guaranteed to victims are actually accessible. Each country must ensure these expanded rights are accompanied by systematic and sustained action as well as support for necessary funding.

V. CONCLUSION

The implementation of victims' rights in the United States, Portugal, and Pakistan has had an overall positive impact on violence against women. The victims' rights legal frameworks in each country, however, are utilized far less than their full potential, thus creating deficiencies within each system. While Portugal has the most expansive victims' rights legislation, crimes against women occur at a rate similar to the United States, where fewer victims' rights exist. Pakistan lags significantly behind the United States and Portugal in protection and enforcement, in particular concerning women victims. All three countries must learn from each other to discover their own system's deficiencies and how to create a truly effective legal framework that targets the elimination of violence against women. This framework must include both preventative and responsive initiatives. The preventative initiative must aim to elevate

women's status in society through leadership positions and the responsive initiative must mandate increased accountability to victims' demands for expanded sexual assault laws and must mandate victim participation and control in criminal cases during both the investigative and adjudicative phases.