SHE CAN DO NO WRONG: RECENT FAILURES IN AMERICA’S IMMIGRATION COURTS TO PROVIDE WOMEN ASYLUM FROM “HONOR CRIMES” ABROAD

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“. . . if you don’t shoot the immoral one, you jeopardize the morality of the others. All the girls in your family will be soiled.”

“There is no honor in honor killings.”

I. INTRODUCTION

On January 1, 2008, Yaser Abdel Said drove his seventeen and eighteen-year-old daughters, Sarah and Amina, to a hotel parking lot in Dallas, Texas and shot them both to death. Much speculation surrounded the Said sisters’ brutal murder and the term “honor killing” emerged as the motivation for the crime. Honor crimes are brutal acts of violence towards women committed by male relatives who seek to avenge their family’s honor after perceiving that the female engaged in a dishonorable act.

In the media frenzy that surrounded the girls’ deaths, friends of the Said family informed reporters that Yaser was “furious” that his daughters had boyfriends and had previously

1 AYSE ONAL, HONOUR KILLING: STORIES OF MEN WHO KILLED 164 (2008) (statement by Bahri Efendi who was convicted of the brutal murder of his younger sister Naile). Bahri shot Naile in the head while neighbors and family members watched and applauded Bahri’s “bravery.” Id. at 161.
threatened to kill them. The Saïd family’s story further unfolded in the public eye, detailing long-suffered abuse and the girls’ previous attempt to flee to their aunt’s home. After the murders, Yaser fled the area and a capital warrant remains active for his arrest. Family members believe he returned to Egypt, his native country.

Due to Yaser’s disappearance, Sarah and Amina’s deaths in the name of “honor” remain an unexamined issue for the court. The perpetrators in many other comparable honor crimes both nationwide and internationally are similarly not brought to justice for committing crimes against female family members. Yet, although many trials for the actual crimes remain untried, women who seek asylum in fear of becoming honor killing victims in their native countries bring this challenging issue into American courtrooms. To rule on these claims, immigration judges must substantiate the fear of “potential” harm based on a cultural and societal practice that is so foreign to the American way of life. As a result, an honor killing claim in a woman’s asylum petition does not guarantee protection within America’s borders.

This paper first introduces the extreme value of honor in Islamic societies to provide the reader a backdrop against which honor killings are deemed acceptable and necessary. Second, this paper defines honor crimes and killings and explains the cultural, societal, and religious justifications surrounding such offenses. A brief overview follows on how women who fear becoming honor crime victims in their home countries may seek asylum under the Immigration and Nationality Act. A discussion of Vellani v. U.S. Attorney General and Yaylacicegi v.

6 Honor Killing Victims?, supra note 3.
7 Tanya Eiserer et al., Haunted by History: For Years, Friends Say, Slain Sisters Amina and Sarah Said Lived with Their Father’s Threats of Violence and Abuse, DALLAS MORNING NEWS, Jan. 10, 2008, at 1A; Spencer, supra note 4. See also Tanya Eiserer et al., Lewisville Cab Driver Had Been Investigated for Previous Abuse, DALLAS MORNING NEWS, Jan. 9, 2008, at 1A [hereinafter Previous Abuse] (reporting that Amina and Sarah accused their father of sexual abuse but later told authorities the allegations were false).
9 Previous Abuse, supra note 7.
Gonzalez follows, which both involve women who sought asylum based on their fear of a potential honor killing. This section purposefully narrates the women’s stories to underscore the severity of harm the practice of honor crimes and killings causes women and the international community as a whole.

The paper then shifts its focus to analyze the inherent problems in immigration proceedings, such as Vellani and Yaylacicegi, where the court fails to find the claim of an honor killing credible, even when substantiated by the woman’s personal history and prevalence of honor crimes in her native country. To remedy this situation, the paper first recommends that courts comprehend the meaning and context of such crimes in the specific country at issue before denying an asylum seeker’s petition. Highlighting the Ninth Circuit’s recent and progressive approach, the paper then recommends courts eliminate the harmful link between adverse credibility determinations and delayed reports of sexual abuse for honor killing claims. This paper concludes that if implemented, both recommendations for immigration proceedings will improve the status of women who seek asylum from potential honor crimes or killings abroad.

II. THE VALUE OF “HONOR” IN ISLAMIC SOCIETIES

The concept of “honor” in Islamic societies has long been a gendered principle, deeply rooted in cultural tradition. For Islamic men, one’s honor, or “sharaf,” represents a man’s moral behavior and determines his social standing in the community. A Muslim man obtains sharaf through family reputation, hospitality, generosity, chivalry, socioeconomic status, or

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10 Stanley Dale Radtke, *Defining a Core Zone of Protection in Asylum Law: Refocusing the Analysis of Membership in a Particular Social Group to Utilize Both the Social Visibility and Group Immutability Component Approaches*, 10 J. L. & SOC. CHALLENGES 22, 51 (2008); see also Hussain, suprano note 5, at 227.
political power. Sharaf is a flexible concept in that an Arab man can acquire, augment, diminish, lose, or regain his honor.

The traditional Arab female equivalent, “ardh,” translates to “virtue” but generally relates to a woman’s sexual practices such as chastity, purity, seclusion, adultery, and so on. Ardh specifically requires Islamic women exhibit bodily modesty with non-provocative, unadorned clothing. In more conservative Islamic sects, women must also veil themselves in public and refrain from wearing makeup when exposed to men outside of their families. Ardh also requires women remain sexually pure by zealously protecting their virginity until marriage. In fact, Islamic culture and society view female virginity and ardh as indistinguishable. Unlike a man’s sharaf, the loss of ardh is irreparable. As the practice of honor killings reveals, losing one’s ardh can bear fatal consequences for many Arab women.

A woman’s ardh also reflects upon her family. In particular, a man’s sharaf will greatly suffer if a woman’s ardh becomes damaged due to actual or alleged sexual relations. Many
Arab men will therefore ardently protect the ardh of the women in their families to preserve their own sharaf first, and their family’s reputation second.22

III. THE VALUELESS FEMALE

A. Honor Crimes Defined

Honor crimes are brutal acts of violence towards women committed by male relatives who seek to avenge their family’s honor when the male perceives that the female engaged in a dishonorable act.23 Fathers mostly commit such atrocities although brothers, uncles, and even female relatives frequently assist.24 Honor crimes typically involve murder but maiming, disfigurement, or dismemberment of the female may also occur such as through acid attacks or cutting off a specific organ.25 Rape may also punish an alleged dishonorable act.26 Islamic communities in which honor crimes and killings occur offer no general agreement regarding what they consider “dishonorable.”27 Consequently, the scope of those acts sufficient to justify an honor crime is dangerously wide and far-reaching.

For example, a woman may become an honor crime victim for seeking a divorce, adultery, premarital sexual relations, pregnancy out of wedlock, refusing to consent to sexual relations or to prostitution, not fulfilling the demands of husbands, fathers, brothers, or other

22 Nesheiwat, supra note 13, at 253 n.6.
23 Hussain, supra note 5, at 225.
24 Cinnamon Stillwell, Honor Killings: When the Ancient and the Modern Collide, SAN FRAN. CHRON., Jan. 23, 2008, http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2008/01/23/cstillwell.DTL. For example, in 2007, twenty-year-old Banaz Mahmod’s father and uncle were convicted of her rape and murder resulting from a planned honor killing. Joan Smith, Introduction to ONAL, supra note 1, at 9.
26 Hussain, supra note 5, at 226.
27 ELLEN R. S HEELEY, RECLAIMING HONOR IN JORDAN 1 (2007).
male relatives, and interrupting man-to-man conversations.\textsuperscript{28} Additional behaviors that provoke honor crimes in some Islamic communities include being seen alone with a boy, dating, smoking, seeking employment without permission, or refusing to agree to an arranged marriage.\textsuperscript{29} Even failing to serve a meal on time,\textsuperscript{30} receiving a dedication of a love song over the radio,\textsuperscript{31} stealing a glance at a boy,\textsuperscript{32} or wanting to go to the movies\textsuperscript{33} have incited honor crimes and murders.

Female victims of sexual assault or rape also dishonor the family name despite the fact that they engaged in such sexual relations without choice and through physical force.\textsuperscript{34} In fact, when rape occurs, the community views the female victim, not the rapist, as the offender, believing that the woman tarnished both her and her family’s honor.\textsuperscript{35} As an egregious twist of fate, this “crime” is then punishable by death.\textsuperscript{36}

Mere rumor or speculation can also validate an honor crime against a female relative in many Islamic communities since even gossip related to sexual behavior or misconduct can tarnish a family’s reputation, regardless of its accuracy.\textsuperscript{37} In 2007, the U.S. State Department reported that 25% of honor crime victims in Jordan were killed after a mere “suspicion” of involvement in an illicit relationship and only 15% were murdered \textit{after} the family proved any connection.

\textsuperscript{29} Lehr-Lehnardt, \textit{supra} note 25, at 403 n.1.
\textsuperscript{31} Id. In 1998, a male relative slit a Turkish woman’s throat after a man dedicated a love ballad to her over the radio.
\textit{Id.}
\textsuperscript{33} \textit{Id.}
\textsuperscript{34} Hussain, \textit{supra} note 5, at 225–26; Lehr-Lehnardt, \textit{supra} note 25, at 403 n.1.
\textsuperscript{36} \textit{Id.} For example, in 1998, after a seventeen-year-old Jordanian woman was raped by a family friend, the girl’s father and brother “shot her eight times and left her for dead.” Editorial, \textit{supra} note 17.
\textsuperscript{37} \textit{No Honor, supra} note 35, at 3; Warrick, \textit{supra} note 11, at 322.
relationship occurred.\(^{38}\) Generally, any activity that triggers suspicion of dishonorable conduct can lead to a woman’s death.\(^{39}\) In other words, honor crimes often transpire when a male merely believes a woman committed an indiscretion, rather than when a woman actually defies a societal gender norm.\(^{40}\) Mere neighborhood gossip can therefore seal a woman’s fate.\(^{41}\)

The U.S. State Department officially monitors and reports on honor crimes and murders against women in annual Country Reports on Human Rights Practices.\(^{42}\) In general, the U.S. government reports that honor crimes and murders largely occur in the Middle East and South Asia with the vast majority overwhelmingly committed in Islamic communities.\(^{43}\) Specifically, London’s Centre for Social Cohesion reports that some of the highest rates of honor killings in the world occur in the Kurdish regions of Turkey and Iraq.\(^{44}\) Nevertheless, such atrocities against women transpire in all regions of the world, crossing all socioeconomic and cultural boundaries.\(^{45}\) Honor crimes and violence against women are thus a global epidemic.

**B. Cultural, Societal, & Religious Justifications**

Although honor crimes and murders are widespread throughout Islamic communities, Islamic religion or law does not officially sanction murders in the name of honor.\(^{46}\) In fact, the

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\(^{40}\) See Warrick, *supra* note 11, at 322; Rebecca E. Boon, *They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey’s Accession to the European Union and Lessons for Iraq*, 35 HOFSTRA L. REV. 815, 816 (2006) (defining “honor killings” as “the murder of a girl or woman by her family members due to their disapproval of her alleged sexual misbehavior, which they perceive as defying societal gender norms.”).

\(^{41}\) See ONAL, *supra* note 1, at 256 (discussing the “powerless young women whose fates were sealed by neighborhood gossip.”).

\(^{42}\) *No Honor*, *supra* note 35, at 3.

\(^{43}\) *Id.*; SHEELEY, *supra* note 27, at 1.

\(^{44}\) Joan Smith, *Introduction to ONAL*, *supra* note 1, at 10.

\(^{45}\) *No Honor*, *supra* note 35, at 3.

\(^{46}\) Gendercide Watch, *supra* note 30.
Koran, the central religious text of Islam, forbids honor killings. Furthermore, the Universal Islamic Declaration of Human Rights (“UIDHR”)\textsuperscript{48} asserts “human life is sacred and inviolable and every effort shall be made to protect it.”\textsuperscript{49} Thus, Islamic religion and law do not justify honor crimes to preserve or restore a family’s reputation.

Yet, even though the UIDHR proclaims that the right to life is sacred, the international community criticizes its English translation as misleading and differing significantly from the original Arabic text.\textsuperscript{50} Much speculation therefore surrounds the UIDHR, questioning whether its many obscure or ambiguous proclamations actually forbid honor crimes and killings.\textsuperscript{51} Too many Arab communities also believe Islam allows honor killings as an acceptable and standard practice to cleanse or restore a family’s name.\textsuperscript{52} For example, in August 2008, Pakistani Senator, Israr Ullah Zehri, publicly defended honor killings as “our norms” that should “not be highlighted negatively” after a human rights organization leaked information about five Pakistani women who were beaten, shot, and buried alive by male relatives.\textsuperscript{53} Many communities also openly justify such murders as “inherently just” punishment for the social harm and loss of honor that the woman’s behavior caused.\textsuperscript{54}

Society may even label an Arab man as “feminine” or weak if he does not take authoritative action (an act of violence) over a woman perceived as disobedient.\textsuperscript{55} In fact, acts of violence by a male over a female family member often demonstrate his masculinity and reinstate

\textsuperscript{47} Major David J. Western, Islamic “Purse Strings”: The Key to the Amelioration of Women’s Legal Rights in the Middle East, 61 A.F. L. REV. 79, 104–05, 107 (2008). Many men who commit honor crimes, however, cite the Koran as justification to do so. Editorial, supra note 17.

\textsuperscript{48} Representatives from many Arab countries drafted the UIDHR under the Islamic Council’s direction, a private organization that represents the interests and views of conservative Muslims. MAYER, supra note 15, at 21.

\textsuperscript{49} UIDHR, Sept. 9, 1981, 21 Dhul Qaidah 1401, articles 1 (a) and (b), http://www.alhewar.com/ISLAMDECL.html.

\textsuperscript{50} MAYER, supra note 15, at 21.

\textsuperscript{51} See id.

\textsuperscript{52} Lehr-Lehnardt, supra note 25, at 419; Salman Masood, Pakistan Begins Inquiry Into Deaths of 5 Women Amid Dispute Over Honor Killings, N.Y. TIMES, Sept. 3, 2008, at A6 [hereinafter, Pakistan Inquiry].

\textsuperscript{53} Id.

\textsuperscript{54} Warrick, supra note 11, at 322; Lehr-Lehnardt, supra note 25, at 418.

\textsuperscript{55} Hussain, supra note 5, at 227.
his male dominance in his family and in society’s eyes.\textsuperscript{56} Some men therefore carry out honor crimes to be “treated as men” within their communities while others do so to retain male authority over their female relatives.\textsuperscript{57} For example, Bahri Efendi, who was convicted for his sister’s murder after she gave birth out of wedlock, commented, “[t]he authority of our family solely over the girls would have been shaken . . . if I hadn’t shot Naile.”\textsuperscript{58} Such ideologies starkly contradict Western society’s view that murderers and domestic abusers are cowardly and inhuman for committing such gruesome crimes.

\textbf{IV. BRIEF OVERVIEW OF ASYLUM LAW IN THE UNITED STATES}

A woman who fears becoming a victim of an honor crime in her home country may seek asylum through the Immigration and Nationality Act’s (“INA”)\textsuperscript{59} “Sufficiency of Evidence to Establish Alien’s Well-Founded Fear of Persecution Entitling Alien to Status of Refugee” provision.\textsuperscript{60} Under this provision, a woman in fear of an honor killing satisfies her burden of proof if she: (1) proves a “well-founded fear of persecution” or past persecution;\textsuperscript{61} (2) proves her “persecution” is based within one of the five categories enumerated by the INA: race, religion, nationality, membership in a particular social group, or political opinion;\textsuperscript{62} (3) proves her

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item O\textsc{nal}, supra note 1, at 255, 256.
\item Id. at 164.
\item Id.; see also Kara Simard, \textit{Innocent at Guantanamo Bay: Granting Political Asylum to Unlawfully Detained Uighur Muslims}, 30 \textit{SUFFOLK TRANSNAT’L L. REV.} 365, 389 (2007).
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presence in the United States;\(^{63}\) and (4) overcomes the court’s ability to exercise discretion in granting asylum.\(^{64}\)

For the “well-founded fear of persecution” element, the INA does not define “persecution” and no universal definition has been accepted for its use in immigration proceedings.\(^{65}\) A definition of persecution within federal law might in fact exclude otherwise valid applicants from obtaining asylum if such individuals experienced or fear harms that fall outside the confines of a statutorily set definition.\(^{66}\) Certain jurisdictions and government entities, however, provide some guidance to interpret whether an asylum seeker has a well-founded fear of persecution. For example, the Eighth Circuit applies the reasonable person standard—the asylum seeker must show that “a reasonable person in the alien’s position would fear persecution if returned to the alien’s native country.”\(^{67}\) In addition, the Board of Immigration Appeals (“BIA”) interprets “persecution” as “harm or suffering that is inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome.”\(^{68}\) Both federal courts and the BIA recognize that “a government, or persons a government is unwilling or unable to control” can inflict persecution.\(^{69}\) The United Nations High Commissioner for Refugees Office also provides that private acts of violence—the category under which honor crimes and killings fall—“can be considered persecution if they are

\(^{63}\) 8 U.S.C. § 1101(a)(42)(A) (2006); see also Simard, supra note 61, at 389.

\(^{64}\) 8 U.S.C. § 1101(a)(42)(A) (2006); see also Simard, supra note 61, at 389.


\(^{66}\) Id.

\(^{67}\) Menjivar v. INS, 259 F.3d 940, 941 (8th Cir. 2001) (citing Ghasemimehr v. I.N.S., 7 F.3d 1389, 1390 (8th Cir. 1993)); see also Regalado-Garcia v. I.N.S., 305 F.3d 784, 788 (8th Cir. 2002).


\(^{69}\) Id. (citing Pitcherskaia v. I.N.S., 118 F.3d 641, 647 (9th Cir. 1997)).
knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer
effective protection.”70

V. IN FEAR OF “HONOR CRIMES”: RECENT IMMIGRATION LAW DECISIONS IN THE UNITED STATES
DENYING ASYLUM


In 2003, Zehra Vellani, a Pakistani citizen, entered the United States with a
nonimmigrant fiancée visa.71 One year later, Zehra sought asylum arguing that she would be
persecuted if sent back to Pakistan.72 What happened to Zehra in the interim provides the basis
of her asylum claim—fear of being subjected to an honor killing if forced to return to Pakistan.73

Numerous facets of Zehra’s story are highly characteristic of the archetypal honor crime
or killing. Soon after joining her fiancé Amin in the United States, Amin requested Zehra
engage in premarital sexual relations.74 Knowing such acts were forbidden both by her family
and Muslim society, Zehra refused.75 Amin, however, forced Zehra to perform oral sex on him
for ten days.76 Amin then called off the engagement claiming he would not marry a “loose
woman.”77 Zehra’s brother accused her of ruining the “family’s honor” and moved his family
from Zehra’s home in Pakistan to shield his own daughter from Zehra’s “disgrace.”78 Zehra’s
brother repeatedly informed her that she could not return to Pakistan because “he was waiting for
her there” and the community had branded her an adulterer and a “woman of loose moral character.”

In addition, Zehra’s brother told her: “If you come in front of me, I will kill you.”

Zehra submitted an affidavit detailing her story to the immigration court in January 2005. Zehra’s attorney also submitted data and information on the prevalence of honor killings in Pakistan, underscoring the fact that many men killed female relatives suspected of adultery or “defiled” by rape. Zehra informed the court that the Pakistani government took no measures to ban the practice of honor killing or to hold perpetrators accountable despite a documented 1,211 cases in that year alone, plus numerous suspected, unreported murders. Zehra’s expert witness, Professor Riffat Hassan, testified that Zehra’s denial of the accusations of loose behavior would hold “no weight in Pakistan” and the fact that she sought legal recourse would “weigh against her.” Hassan stated that it was “highly probable” Zehra would experience “grievous bodily harm” if Zehra returned to Pakistan.

The immigration court denied Zehra's application for asylum because the court believed Zehra could live in Pakistan but away from her family. Zehra appealed to the BIA, arguing that even if not killed by her brother or other male relative in Pakistan, her family and community would shun her, a social act that forces women to live in squalor and branded as prostitutes. The BIA, however, affirmed the denial of asylum. On appeal, the Eleventh Circuit held that substantial evidence supported the determination that Zehra did not establish

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79 Id. at *2.
80 Id. at *3.
81 Id. at *1.
82 Id. at *2.
83 Id.
84 Id.
85 Id.
86 Id.
87 Id. at *3, *4.
88 Id. at *4.
that it would be reasonable for her to relocate within Pakistan.\textsuperscript{89} The court therefore denied Zehra’s asylum petition.\textsuperscript{90}

\subsection*{B. Yaylacicegi v. Gonzalez: March 29, 2006}

Like Zehra Vellani, Mehriban Yaylacicegi came from a devout Muslim family that imposed a strict code of conduct on all aspects of Mehriban’s life.\textsuperscript{91} While living in her native country of Turkey, Mehriban endured repeated acts of domestic violence at the hands of her two older brothers.\textsuperscript{92} For example, after using the phone without their permission, one brother attacked Mehriban with a knife causing her an injury that required stitches and left visible scars.\textsuperscript{93} After Mehriban requested to marry Umit, a man from a “modern” family, her brothers sequestered her in the family home and beat her for three weeks.\textsuperscript{94} Mehriban and Umit later eloped, after which her brothers beat her so severely that she was bedridden for one month.\textsuperscript{95}

Mehriban, Umit, and their daughter came to the United States on a visitor’s visa.\textsuperscript{96} In applying for asylum, Mehriban argued that the Turkish police were “unable or unwilling to help women in her situation” and that she feared her brothers would kill her if she returned to Turkey.\textsuperscript{97} Mehriban’s expert witness, Professor Charles MacDonald, testified about the prevalence of honor killings in Turkey, stating that he too believed Mehriban’s brothers would kill her if she returned to Istanbul.\textsuperscript{98} Consistent with the argument that certain Islamic societies view honor killings as an acceptable practice, MacDonald also informed the court that Turkish

\textsuperscript{89} Id. at *7.
\textsuperscript{90} Id.
\textsuperscript{92} Id.
\textsuperscript{93} Id.
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Id. at *2.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
police “often look the other way” and that courts hand down “very, very lenient or nonexistent” prison terms for honor killing perpetrators.\(^9\)

Despite MacDonald’s testimony, the immigration judge denied the Yaylacicegis’ asylum application, finding the State Department’s Report on Human Rights contradicted the family’s testimony that Turkish authorities would not protect them from an honor killing.\(^1\) The court also found that Mehriban was persecuted by her brothers, and not by the Turkish government, government agents, or parties whom the government was unwilling or unable to control.\(^2\) The BIA affirmed the immigration judge’s decision.\(^3\) On appeal, the court again denied Mehriban’s petition, finding that the Yaylacicegis did not prove the Turkish government would not come to the family’s aid.\(^4\)

VI. PROBLEMS WITH DENYING ASYLUM TO POTENTIAL HONOR CRIME VICTIMS

A. The “More than One Death Threat” Requirement

What is most shocking in Vellani v. U.S. Attorney General is not that the court denied asylum to a woman who feared an honor killing in her home country, but rather how the United States Court of Appeals handled Zehra Vellani’s honor killing claim. The court stated that although Zehra presented documentary evidence that proves honor killings occur throughout Pakistan, her argument that she would become a victim to such a crime was “without merit.”\(^5\) The court further states “it is irrelevant that honor killings occur throughout Pakistan” since Zehra “has not argued that people throughout Pakistan wish to kill her to avenge the dishonor of

\(^9\) Id.
\(^1\) Id.
\(^2\) Id.
\(^3\) Id. at *3.
\(^4\) Id.
her family.”\(^{105}\) The court asserts that Zehra could therefore move in Pakistan to where her brother did not reside to avoid the honor killing.\(^ {106}\) With this holding, the court disregards the fact that her brother can likely seek out Zehra if he so chooses. Moreover, Zehra’s brother never specified that he would only kill her if she returned to the area of Pakistan in which he lived.

The court’s ruling also suggests that a woman who fears an honor killing must prove that at least more than one person plans to murder or gravely harm her in her home country. For American citizens, one death threat surely bears enough weight for action by law enforcement or the judicial system. *Vellani* therefore raises the question of why women with American citizenship should enjoy a higher standard of the basic human right to life than non-American women seeking protection within our borders. Although the court has discretion to determine whether to grant asylum,\(^ {107}\) *Vellani* suggests a deep ignorance regarding the severity and prevalence of honor killings abroad. Requiring Zehra Vellani to prove that a separate individual in all areas of Pakistan plans to kill her in order to obtain asylum in America precluded her from actually obtaining asylum. In doing so, the Eleventh Circuit also set an unattainable standard for future asylum petitions from other women who fear honor crimes and killings.

**B. The Difficulty in Proving the Foreign Government’s Role**

In *Yaylacicegi v. Gonzalez*, the female asylum seeker could not establish the required well-founded fear of persecution due to the court’s focus on whether the government or private parties whom the government were unable or unwilling to control inflicted harm on the Yaylacicegis.\(^ {108}\) For women like Mehriban Yaylacicegi, it is extremely difficult to prove that a

\(^{105}\) *Id.* (emphasis added).

\(^{106}\) *Id.*


\(^{108}\) *Yaylacicegi*, 2006 WL 906444, at *4.*
“government entity” caused their suffering and fear of future harm when the actual perpetrator was instead a male relative.

Moreover, a government entity will likely not provide clear evidence that it will condone or allow honor killings, or that it is unable to control certain factors of its society that perpetrate such crimes. An asylum seeker must therefore present the case of government indifference to prove her native country’s approval of honor killings. In *Yaylacicegi*, Mehriban sought to overcome this hurdle by offering expert testimony from a professor and specialist on human rights in Turkey.¹⁰⁹ Yet, the expert’s testimony did not suffice despite providing substantial evidence regarding honor crimes and killings in Turkey. In fact, other jurisdictions, such as the Sixth Circuit, have held that “[g]overnment acquiescence . . . is not established by proof of the mere existence of the problem of honor killings in the country.”¹¹⁰ With such precedent, women with similar claims are hard-pressed to prove their native government’s fault in the perpetration of and tolerance for honor killings in their home countries. Without doing so, such women cannot meet their burden of proof, requiring their return to the violent home from where they originally fled.

VII. RECOMMENDATIONS

Due to the court’s discretion in asylum cases, a judge may bar an asylum petition regardless of whether the applicant met all other required elements under the INA. Such discretion therefore allows courts to interpret honor killing claims against their own yardsticks of credibility. Yet, since honor killings are so foreign to the American way of life, such claims

¹⁰⁹ *Id.* at *2, *3.
¹¹⁰ *Dia v. Mukasey*, 292 Fed.Appx. 468, 2008 WL 4179678, at *2 (6th Cir. Sept. 9, 2008); *see also* *Rreshpjaj v. Gonzales*, 420 F.3d 551, 557 (6th Cir. 2005) (holding that the known problem of human trafficking in Albania did not alone establish “government acquiescence”).
require a more flexible evaluation. The following two recommendations seek to address this inherent need.

A. Review Information on Foreign Nations with a Grain of Salt

First, since many foreign nations enact laws that forbid honor killings even though the practice remains widespread, courts must not take a foreign nation’s stated legal and political assertions at face value. Rather, judicial decision-makers must understand the social and cultural context of the asylum seeker’s native government. For example, Pakistan banned honor killings in 2004 on penalty of death, yet honor killings remain “rampant” in high-poverty, rural areas.\(^{111}\) Despite the law’s enactment, the Pakistani government and police officials do not implement it effectively and the threat of capital punishment does not serve as a deterrent.\(^{112}\) Moreover, in 2005, Pakistan’s Parliament defeated a bill to strengthen the law prohibiting honor killings since many lawmakers in support of the government’s decision rejected the law as “un-Islamic.”\(^{113}\) Numerous other foreign, Muslim-based governments enact laws that mitigate or eliminate sentences for those who kill female relatives in the name of honor.\(^{114}\) Accordingly, in 2003, Jordan’s Parliament twice voted against stricter penalties for men who commit honor killings, arguing the law “would encourage vice and destroy families.”\(^{115}\) Some Parliament members argued the tougher laws would “promote adultery” and “harm public morality.”\(^{116}\)

\(^{111}\) Pakistan Inquiry, supra note 52.
\(^{112}\) Id.
\(^{114}\) Editorial, supra note 17; Lehr-Lehnardt, supra note 25, at 419 (stating that many Arab countries either “mitigate or completely excuse the murder of a female relative if the man has committed the act in an attempt to restore the family’s honor.”).
\(^{116}\) Editorial, supra note 17.
It is imperative that decision-makers in asylum cases also understand the alarming frequency and severity of honor killings abroad. The United Nations Population Fund approximates that 5,000 women worldwide become victims of honor killings each year. Yet, various societal, cultural, and unofficial government practices indicate that this estimate is a gross understatement since accurate statistics are incredibly difficult to obtain due to the behind-closed-doors nature of such crimes. Most honor killings are a “private family affair,” with very few ever reported to official authorities. When honor killings are reported, however, many police entities in Islamic nations will overlook such reports, believing themselves to be “guardians of tradition and morality rather than impartial enforcers of the law.” Such unwillingness to enforce the law over custom reflects the deeply ingrained gender bias within the legal systems of many Arab nations. Courts must therefore not allow the small reported number of honor killings in those countries to be persuasive information that can seal a woman’s fate.

Financial corruption in some police systems in Islamic countries also harms protection of women and reporting of honor crimes. For example, in Pakistan, police inaction often occurs when family members pay authorities to remain silent about the crime or its perpetrator. In Kashmore, Pakistan, police are known to “charge” 7,000 rupees, the equivalent of about $87 dollars, to remain silent about an honor killing. The fact that only $87 dollars excuses an

117 Stillwell, supra note 24.
118 Id.
121 Id.
122 Id.
123 Id.
124 Id.
honor killing provides inestimable insight into the social and cultural practices surrounding
honor killings and the shocking status of women in many Arab nations.

Furthermore, the result of such lax government regulations against honor killings is that
many Middle-Eastern men do not fear the repercussions of committing honor crimes and
killings.\(^{125}\) Even in regions where men do suffer harsh punishments for murder, the practice has
emerged where family members demand that the female kill herself so that no one will be further
“punished” for her sins.\(^{126}\) Rising female suicide rates in these areas are therefore distressing
manifestations of the deeply rooted practice of honor killings.\(^{127}\)

Interestingly, the dissenting judge in the 2004 case, *Zaza v. Ashcroft*, discussed Jordanian
cultural and societal practices when arguing against the Ninth Circuit’s denial of asylum to
Fatima Ruman.\(^{128}\) The dissent stressed that the government’s acquiescence to the subordinate
role of women in Jordan made it more likely that an honor crime against Fatima would occur.\(^{129}\)
Had the majority applied such analysis to Fatima’s case, it likely would not have held that the
Muslim Brotherhood’s threats that Fatima “should pay a price” and “be taught a lesson” upon
return to Jordan did not support a probability of “actual physical harm.”\(^{130}\) The court instead
insinuated that such threats may only result in “verbal harassment” against Fatima and her three
daughters by classifying them as “generalized statements” that “may refer to any treatment.”\(^{131}\)
To Fatima’s detriment, the court failed to acknowledge the frequency, severity, and reality of

\(^{125}\) Lehr-Lehnardt, *supra* note 25, at 423.
\(^{126}\) See Bilefsky, *supra* note 32, at 13 (sharing the story of a seventeen-year-old Turkish girl who attempted suicide
three times after intense pressure from her family to do so after she fell for a boy she met at school). Women’s
groups in Turkey also believe many families will put women in rooms with a pistol, rope, or poison to allow them
“re redemption” through suicide. *Id.*
\(^{127}\) *Id.*
\(^{129}\) *Id.*
\(^{130}\) *Id.* at *1.
\(^{131}\) *Id.*
honor killings in Jordan. Such information would have strongly suggested to the court that the Muslim Brotherhood’s “lesson” for Fatima would likely include more than mere “verbal harassment.”

Overall, a judicial decision-maker must allow information and evidence of these and other social, cultural, and governmental practices regarding honor killings from women who seek asylum. Without such knowledge, courts cannot adequately assess a foreign nation’s role in perpetrating the fear of future harm—the INA required element that the female asylum seeker must prove to gain protection on American soil. The more educated a court, the more the court can discern a foreign nation’s public condemnation of honor killings from the societal reality in which such horrific crimes continue to define the status and rights of women.

B. Eliminate the Link Between Credibility & Delayed Reports of Sexual Abuse

When testifying about a fear of a potential honor killing, many female applicants also substantiate their claims with evidence of prior sexual abuse. Some courts have used their discretion to find such women not credible if a delay in reporting the sexual abuse occurred. The Ninth Circuit, however, has repeatedly held that “the assumption that the timing of a victim’s disclosure of sexual assault is a bellwether of truth is belied by the reality that there is often delayed reporting of sexual abuse.” In doing so, the Ninth Circuit affirmatively rejects the

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134 Paramasamy v. Ashcroft, 295 F.3d 1047, 1052–53 (9th Cir. 2002) (emphasis added); see also Mousa v. Mukasey, 530 F.3d 1025, 1027 (9th Cir. 2008) (rejecting the finding that Maha Mousa’s testimony was not credible due to her delayed reporting of sexual abuse); Kebede v. Ashcroft, 366 F.3d 808, 811 (9th Cir. 2004) (asserting that a sexual assault victim who fails to report the assault does not compromise her credibility).
link between a delayed report of sexual abuse and credibility, which often supports adverse credibility rulings against female asylum applicants.

In particular, the Ninth Circuit identified that a cultural Code of Silence justifies why delayed reporting of sexual abuse or severe underreporting occurs with many women seeking asylum in fear of honor killing claims. For example, in *Mousa v. Mukasey*, the Ninth Circuit asserted that many sexual assault victims “feel so upset, embarrassed, humiliated, and ashamed about the assault that they do not tell anyone that it occurred.” In *Paramasamy v. Ashcroft*, the court cited studies that analyze the extreme underreporting of sexual abuse in general. Such studies revealed that in cultures that accept honor crimes and killings as a means to protect a family’s integrity, women often do not report incidents of sexual assault due to social and cultural pressures. Amnesty International further reports that many sexually assaulted women can be ostracized if they speak out against sexual violence due to societal attitudes about “honor” that perceive such actions as shameful.

Accordingly, when Maha Mousa, the petitioner in *Mousa*, failed to mention early in her asylum proceedings the rape that she suffered at the hands of Iraqi religious fundamentalists, the IJ and BIA found her not credible and denied her petition. On appeal, however, the Ninth Circuit held that Maha provided a “compelling explanation”—“her cultural reluctance to admit the fact that [the rape] had occurred.” On cross-examination, Maha stated that “through our family tradition [sexual assault] is a big taboo” and “a very shameful thing for a woman.” Maha further explained that she failed to tell her male asylum interviewer or translator about the

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135 *Mousa*, 530 F.3d at 1027.
136 *Paramasamy*, 295 F.3d at 1053 n.3.
138 *Id.*
139 *Mousa*, 530 F.3d at 1027.
140 *Id.* at 1028.
141 *Id.* at 1028 n.3.
rape in fear that her community in Iraq would learn of her reports.\textsuperscript{142} In \textit{Paramasamy}, the female petitioner similarly testified regarding her cultural reluctance to tell male interviewers that she had been sexually violated.\textsuperscript{143} \textit{Mousa and Paramasamy} reveal how the Code of Silence\textsuperscript{144} operates as a powerful gendered and cultural construct that suppresses women’s voices within male-dominated societies. By doing so, the Code of Silence also protects men from accountability for crimes against women since such violence goes undocumented time and time again.

In addition, sexual assault victims who seek asylum often do not report their assaults due to “lack of confidence in the prosecution system and fear of reprisals.”\textsuperscript{145} Recall that in \textit{Vellani v. U.S. Attorney General}, Zehra Vellani’s expert witness testified that the fact Zehra sought legal recourse in the United States would “weigh against her” and it was therefore “highly probable” she would experience “grievous bodily harm” if sent back to Pakistan.\textsuperscript{146} To address this issue, the Ninth Circuit has held that “a victim of sexual assault does not irredeemably compromise his or her credibility by failing to report the assault at the first opportunity.”\textsuperscript{147} Such hesitancy is in fact highly logical due to the lax government regulations against crimes against women in many Arab nations as discussed in Part VII.A.

Fortunately for Maha Mousa and Uthayarosa Paramasamy, the Ninth Circuit acknowledged the female petitioners’ delayed reports of sexual assault as products of the Code of Silence rather than indicators of credibility. Both cases reveal that despite the fact that women seeking asylum are currently living in America, many still act under the Code of Silence in fear

\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Paramasamy}, 295 F.3d at 1053.
\textsuperscript{144} \textit{See} Ayelet Shachar, \textit{Two Critiques of Multiculturalism}, 23 CARDOZO L. REV. 253, 266 (2001) (identifying the Code of Silence as a cultural and societal construct in many Muslim communities).
\textsuperscript{145} Reimann, \textit{supra} note 137, at 1210 n.72.
\textsuperscript{147} \textit{Kebede v. Ashcroft}, 366 F.3d 808, 811 (9th Cir. 2004).
of punishment or retaliation from family or community members in their native countries.

Decision-makers in asylum proceedings that involve honor killing claims must therefore understand and acknowledge the Code of Silence and fear of government officials before finding a female applicant not credible due to a related, but delayed, report of sexual assault. Accordingly, the Ninth Circuit’s elimination of the link between credibility and delayed reports of sexual abuse provides an extremely valuable model of gender and cultural sensitivity.

VIII. CONCLUSION

The complex social structures in many foreign nations where honor crimes occur render it imperative that judges deciding immigration matters look beyond the foreign government’s black letter laws. To determine whether a claimant meets her burden of proving that the government or private parties whom the government were unable or unwilling to control inflicted harm, the courts must comprehend the full meaning and context of honor killings. This includes exploring the motivation of perpetrators, the role of family members, and all factors that influence foreign governments and their officials regarding such crimes.¹⁴⁸ Courts must also eliminate the link between credibility and delayed reports of sexual abuse so that women are not denied asylum because they feared reprisal in their families and communities. Doing so will significantly improve the status of women who seek asylum in American courts from potential honor crimes or killings abroad.

¹⁴⁸ See Abdullahi Ahmed An-Na’im, The Role of “Community Discourse” in Combating “Crimes of Honour,” in “HONOUR”: CRIMES, PARADIGMS AND VIOLENCE AGAINST WOMEN 64, 66 (Welchman & Hossain eds., 2005) (identifying the need for governments to combat the practice of honor killings by learning their “basic nature”).