

Women's Access to Justice in Pakistan

Working Paper

submitted to the Committee on Women's Access to Justice, at the 54th CEDAW Session
by Sarah Zaman¹ and Maliha Zia², on behalf of War Against Rape & Aurat Foundation, Pakistan

Introduction

Access to justice for women in Pakistan has a long and chequered history, which continues to influence present day attempts to rectify follies of the past. Distortions in how crimes against women were understood, handled and tried began in a large part with the passage of the notorious Hudood Ordinances in 1979, the same year the international community celebrated the passage of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Prior to and in continuation to this, law makers repeatedly failed to revise archaic Commonwealth laws while the judiciary struggled to afford existing laws statutory interpretation necessary to deliver justice.

But women's restricted access to justice in Pakistan, like any other country, is not a result of antiquated laws and the judiciary's lack of ingenuity only. It is a result of the interplay between various social, cultural, structural, instrumental & legal complexities and anomalies that can only be understood and addressed through a keen interdisciplinary analysis of the justice system and its gatekeepers.

This paper seeks to provide a sequential overview of challenges faced by the women of Pakistan in accessing the criminal justice sector and justice itself. As the process of bringing charges in all criminal offences is the same, including offences of violence against women (VAW), the authors have contextualized the discussion in this paper based on rape cases that constitute the least reported and most mishandled of all VAW cases in the country. The paper seeks to trace the challenges at multiple levels, from the time a woman is raped to the time a verdict is reached in court and beyond. It aims to analyse inherent legal, institutional and socio-cultural problems experienced by women who connect with or are forced to disengage from the system at different points. While the focus of this paper remains on rape cases, it is also indicative of the response to the criminal justice sector of cases involving other forms of VAW.

The paper draws heavily from a research report conducted jointly by War Against Rape (WAR) and the Collective for Social Science Research in 2012³, which provides a thorough examination and analysis of the criminal justice sector and issues relating to women's access to justice. The study sought to understand, narrate and recommend measures necessary to achieving a *survivor-centric approach* in servicing by the public sector with regard to handling of rape & sexual assault cases, which as the study argues, is the most pressing of all concerns.

Access to Justice for Rape Victims- An Overview

¹Sarah Zaman is a development professional and women/child rights activist with over 7 years of experience in violence against women programming and management. She has served as the Director of War Against Rape (WAR) from 2006 to 2012 and is its board member. She presently heads the Program Support Unit at the Indus Resource Centre and can be reached at sarah.zaman@outlook.com.

²Maliha Zia is an Advocate of the High Court and currently works with Aurat Foundation as Manager Law and Gender. Her work focuses on legal empowerment and protection of women. She can be reached at maliha.zia.lari@gmail.com.

³Khan, A., & Zaman, S. (2012). The Criminal Justice System & Rape- An Attitudinal Study of the Public Sectors' Response to Rape in Karachi. Research, Karachi

Barriers to women's access to justice in Pakistan are numerous. The laws, systems and procedures that determine the path a woman has to take in her quest for justice are heavily invested in patriarchal values, which generally also dictate the larger moral order of the Pakistani society. Whether it is a woman seeking legal redress for an induced abortion, rape, domestic violence or cyber stalking, barriers exist or are erected at every stage beginning from barriers to her credibility and often ending in a complete miscarriage of justice. By justice, it may be understood to mean the restoration of a victim's dignity and her reintegration into society, while the offender is held accountable for his actions. It may not be taken to mean simply a favourable court verdict.

In order to provide a holistic overview while respecting the limitations of space, this paper provides information and analysis of some of the most persistent barriers to justice for women. The narrative alternates between micro-, meso- and macro- level issues to provide a relevant albeit non-exhaustive list of problems women have to face in this pursuit. It goes on to provide critical information regarding the legal framework of rape laws and as well as the socio-cultural setting in which grave crimes against women continue to be committed, condoned, accepted and/or aggravated by State and non-state actors.

I. Socio-Cultural Impact of Rape and Obstacles in Accessing Justice

Sexual abuse in the form of rape, molestation and/or harassment against women in Pakistan is not only rampant to the extent of an epidemic but also the least reported forms of abuse after domestic violence. Extent of reporting varies between provinces, as does the severity of the abuse and ages of the victims. Cases of minors are more likely to make the front-page news as opposed to adult women, unless terrible violence has accompanied the act.

Experts in the field suggest that reported cases are but the tip of the iceberg. Aurat Foundation, a national NGO, in its annual report on VAW, stated that 827 and 822 cases of rape and gang rape were reported in 2011 and 2012 respectively (Foundation, 2012)⁴. It must be kept in mind that majority of cases of rape are not reported. Organizations like War Against Rape, a local NGO based in Karachi and Lahore and Aurat Foundation, hold that actual cases may be 60% to 70% higher. Women's access to justice is restricted from the outset, when they cannot disclose what has happened to them without inviting public scrutiny and shame onto themselves and their families.

If they do find the courage, they are often disbelieved or reprimanded for being part, if not entirely responsible. The first point of access, the Police (though it should not be, given the importance of medical intervention at the initial stage), is usually apathetic and often turns the offense around by blaming the woman for inviting trouble onto herself. In cases of incest, victims are disbelieved as a matter of routine, unless they can present many witnesses to back their claim, particularly the men in her family (Zaman & Rasheed, 2012). Even though a handful of women police stations exist in Pakistan⁵⁶, a woman needs to file an application for the transfer of her case to these stations. Medico-legal officers hold that only minors less than 10-years-old are raped; the rest concoct stories. They often lack necessary equipment to conduct these examinations, including glass slides, swab, weighing machines, etc., and do not conduct head-to-toe examinations. Victims are almost never tested for HIV/AIDS, pregnancy or referred for counselling unless they seem exceedingly distressed. The Chemical Testing lab in Karachi does not have DNA facilities while it caters to cases from both Sindh and Baluchistan. The

⁴Aurat Foundation: *Annual Report on VAW: A Qualitative Review of Statistics*". Islamabad. 2012.

⁵Ahmad, G. B. (2012). *Women Police in Pakistan*. Islamabad: Individualland.

judiciary has a very small percentage of women Judges and hardly any female public prosecutors. Trials are often held in open court, with nothing barring onlookers from making gestures of mockery and ridicule. Minors are not awarded special care, as they are neither shielded during the identification process nor given in-camera trials as a matter of routine. The defence is free to probe the victim's sexual history and often cite lack of medical evidence to indicate consent. Bails are granted casually when the crux of the evidence is based on medical findings, particular visible marks of violence in the woman's body. Offenders, once released find ways to torment the victims and her family, against which the State awards no tangible protection.

Trials are lengthy, arduous and have high direct and indirect costs, including opportunity costs of lost wages from days spent in court (Social Policy and Development Center (SPDC), 2012). It is very normal for Police, Judges and Lawyers to broker a 'compromise' or out-of-court settlement, which, if accepted, ends in dismissal of the case and release of the offender. This has also happened in cases where the offender was the victim's father. A substantial percentage of victims and affected families are forced to relocate due to tremendous social pressures and ostracization. The Government does not provide for alternate housing and often, families shift deliberately to disappear into anonymity and escape persecution.

There are very few shelter homes against the number of women seeking refuge. Going to a shelter home is still considered taboo and perceived as the last resort of women who have been turned away by respectable society.

There is no existing long-term rehabilitation plan for victims of violence supported by the Government. Even within the Government, many cases have been reported of undue political interference in cases and often seizing of such cases for political mileage.

II. Relevant Laws on Rape & Sexual Assault

The fundamental rights and protections of all citizens in Pakistan stem from the Constitution of the Islamic Republic of Pakistan 1973. An entire chapter enunciates these rights including the right to equality before the law and no discrimination on the basis of sex⁷, protection of life and liberty⁸, and right to a fair trial⁹. The fundamental rights' chapter also mandates that, 'any law inconsistent with or in derogation of fundamental rights would be void'¹⁰. Majority of criminal offences are identified in the Pakistan Penal Code, 1860.

Rape¹¹ is defined in the PPC¹² as, " a man having sexual intercourse with a woman against her will, without her consent, with her consent, when the consent has been obtained by putting her in fear of death or of hurt, with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or with or without her consent when she is under sixteen years of age". The provision also states that, "Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

⁷ Article 25, Constitution of the Islamic Republic of Pakistan 1973

⁸ Article 9, Constitution of the Islamic Republic of Pakistan 1973

⁹ Article 10 A, Constitution of the Islamic Republic of Pakistan 1973

¹⁰ Article 8, Constitution of the Islamic Republic of Pakistan 1973

¹¹ Section 375, Pakistan Penal Code 1860

¹² The provisions relating to rape had previously been included in the Zina Ordinance 1979 (one of the Hudood Ordinances). They were removed and placed in the PPC as a result of the Protection of Women (Criminal Law Amendment) Act 2006.

There has been confusion as to whether the law covers marital rape. In this respect, this discussion must draw notice to the previous wording of Section 375, prior to the 2006 amendment. The law previously stated:

*“A man is said to commit rape who has sexual intercourse with a woman, **who is not his wife....**”* The removal of the words ‘*who is not his wife*’ in 2006 evidences that there was a concerted move to include marital rape within the law. However, there has been no case of marital rape having been reported, most likely due to the ambiguity of the law and socio-cultural lack of acceptance of marital rape as an offence.

Other forms of sexual violence explicitly addressed in the PPC and other laws include¹³:

- Insulting Modesty or Causing Sexual Harassment (Section 509);
- Unnatural Offences (Section 377);
- Assault or Criminal Force to Women with Intent to Outrage her Modesty (Sections 354 & 355);
- Kidnapping, Abducting or Inducing a Woman to Compel for Marriage (Section 365B);
- Kidnapping or Abducting in Order to Subject Person to Unnatural Lust (Section 367A);
- Isqat-i-Haml (Forced abortion) (Sections 338A & 338B);
- Selling Person for Purposes of Prostitution, etc./ Buying Person for Purposes of Prostitution (Sections 371A & 371B);
- Procurement of Minor Girl/ Importation of Girl from Foreign Country (Sections 366A, 366B);
- Cohabitation Caused by a Man Deceitfully Inducing a Belief of Lawful Marriage (Section 493A); and
- Marriage Ceremony Fraudulently Gone Through Without Lawful Marriage (Section 496)

Other areas of law include provisions related to sexual violence as well, such as:

- Punishment for Human Trafficking (Prevention & Control of Human Trafficking Ordinance, 2002; Section 3);
- Punishment for Male Adult above Eighteen Years of Age Marrying a Child (Child Marriage Restraint Act, 1929; Section 4);
- Punishment for Solemnizing a Child Marriage (Child Marriage Restraint Act, 1929; Section 5);
- Punishment for Parent or Guardian Concerned in Child Marriage Child Marriage Restraint Act, 1929; Section 6); and
- The Prevention of Electronic Crimes Ordinance, 2009 (Sections 13, 19 and 20)

Supporting provisions which may be attached to these provisions in the event of rape include those on aiding and abetting, hurt, criminal trespass, criminal intimidation, forced detention, criminal force, inter alia, which may be considered preparatory or related offences¹⁴ This is however, not done in practice. The tendency of the Police is to lodge a complaint against the most obvious offences commitment, with preparatory and related offences may not as much as get a mention on official papers. Overall, there are about 77 legal provisions and sub-provision that can be applied to cases of sexual violence (different types) under different statutes, including preparatory and accompanying offences. (Lari & Zaman, 2011)

¹³ Ibid; Lari, M. Z., & Zaman, S. (2011). *Sexual Violence & the Law in Pakistan*. Karachi: War Against Rape

¹⁴ Ibid

III. Discriminatory Laws & Absence of Legislation

If the offence reported is cognizable under the law, as rape is under Pakistani law, an arrest may be made without prior warrant. Section 153 (3), Criminal Procedure Code (Cr.P.C) authorizes a magistrate to order the Police to register cases, conduct investigations and submit a charge sheet (*challan*). If the accused is not recovered for appearance before the court, Section 512 of the Cr.P.C allows for evidence to be recorded in the absence of the accused and a trial to be held *in absentia* until he is apprehended.

The Law of Evidence Order (*Qanun-e-Shahadat*), 1984, deals with proof of facts in legal proceedings. It is pertinent to mention two provisions here which have a discriminatory effect on prosecution of rape cases. These are reproduced and discussed below:

“Section 151(4) - Impeaching the Credit of Witness- When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.”

This provision allows for the examination a victim's past sexual history. Case law is replete with judgements accrediting the victim with 'immorality' and consequent dismissal of charges. A woman qualifies to be immoral if she can be shown to have men calling at her house, have male friends that are not her relations, or being sexually 'habituated' before marriage¹⁵.

“Section 21(j) - Motive, Preparation and Previous or Subsequent Conduct- The question is whether A was ravished...the facts that 'shortly' after the alleged rape, she made a complaints relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant.”

This provision has allows courts to draw averse inference from delayed reporting of rape cases, despite the fact that most cases are registered late with the Police due to psychological or logistical reasons, or because the Police simply dissuades/ refuses to file the case. Delayed reporting works against survivors as their intentions are viewed as 'mala fide', and taken to point towards concoction and conspiracy to falsely implicate the accused¹⁶.

In additions to these discriminatory provisions, there also exists a lack of legislation on particular forms of sexual assault, including object and digital rape. The law on rape understands penetration to signify penile penetration only, even though there have been reported cases of non-penile rapes across the country¹⁷. Additionally, the absence of specific provisions on digital rape can cause molestation (particularly occurring within the house) to continue unabated. There is no law on necrophilia, despite 2 recent and highly publicized cases from two provinces, one of them involving the rape of 48 corpses by a single man over a period of 8 years¹⁸. It is important to note that while the law does recognize certain

¹⁵Khan, A., & Zaman, S. (2012). *The Criminal Justice System & Rape- An Attitudinal Study of the Public Sectors' Response to Rape in Karachi*. Research, Karachi

¹⁶ Ibid

¹⁷ In a 2010 case from Karachi, a 16 year old woman was raped and tortured by her husband and mother-in-law. The mother-in-law used sticks to rape her, while inserting chilli powder in her vagina. The woman was admitted in critical condition to a local hospital in Karachi with iron burns across her back and multiple internal injuries. The case was withdrawn by the victim when her brother-in-law threatened to divorce her sister if she didn't stop embarrassing him and his family by taking the matter outside the home.

¹⁸See <http://tribune.com.pk/story/284912/man-arrested-from-graveyard-with-bone-chilling-story/>; Retrieved 13 Feb., 2013.

forms of sexual violence, it does not define sexual offence as a violation of bodily integrity and sexual autonomy and there is no gradation on the basis of harm in the various forms of rape itself¹⁹

IV. Prosecuting Rape: Institutional and Structural Systems - Gaps and Limitations

The Police:

An FIR is the main instrument to initiate criminal proceedings against the perpetrator. While the police do not have any discretion in terms of filing an FIR of a cognizable offence under the Cr.P.C, they do enjoy authority to dispose of a case at the investigation stage. Disposal of a case could be due to lack of evidence, exaggerated claim by the aggrieved or misrepresentation of facts. Personal biases may affect the decision of the Police officer, particularly if the victim is older; is a divorcee or has a history of multiple marriages; makes what Police officers believe to be an incredible claim (especially in incest cases); the accused is a man of good repute; the victims appears confident and calm; or brings evidentiary material(s), among others (Khan & Zaman, 2012). It may be noted that according to data collected and published by WAR since 2004, substantial disparities have been reported between the number of FIRs registered and medico-legal examinations conducted, the latter sometimes being greater than three times the FIRs registered for the same offences over the same period (WAR, 2010, 2011, 2012).

With the Police empowered to exercise discretion in recognizing an offence as such, inordinate delays do occur routinely. Even a delay of a few hours can work against a victim, as evidenced by various judgements that have resulted in acquittals. Further, such delays allow time for the perpetrator to pressurize the victim through intimidation and harassment into withdrawing their case, even if rape and gang-rape are non-compoundable offences with the passage of the Criminal Laws Amendment (Protection of Women) Act, in 2006. Indeed, the Police have been involved in mediating many cases of rape inside the premises of a Police station and in the presence of both the accused and the perpetrator(s). It is common for the Police to push for marriage between the aggrieved and accused. Additionally, numerous cases have been reported in the media where absconding accused frequently torment their victims, whom the Police fails to arrest. The Police have also been known to interject their own opinions or give misinformation in the FIRs to undermine consistency of a victim's story²⁰.

An incorrect or incomplete is FIR extremely harmful to a case as subsequent investigation reports and charge sheet filed in Courts are based on the initial facts narrated by the victim and recorded in the FIR. A common reason for dismissal of a rape case is lack of evidence and/or disparities between the in the victim's statement in Court and the FIR.

It may be noted that the Police in most parts of Pakistan is severely handicapped due to lack of resources and capacity, and political interference in their work. Forensic criminal investigations is a relatively new science in Pakistan and officers usually do not know how or are not equipped to collect evidence for chemical testing from a crime scene. Among other constraints, the Police department has been plagued by rampant corruption, mismanagement by the authorities, lack of accountability, absence of incentives and an overall negative image (Suddle, 2001).

¹⁹Khan, A., & Zaman, S. (2012). *The Criminal Justice System & Rape- An Attitudinal Study of the Public Sectors' Response to Rape in Karachi*. Research, Karachi

²⁰ Ibid

Medico-Legal

The sector includes the medico-legal doctors (MLOs), Chemical Examiners, and Police Surgeons, whose task is to establish the physical evidence of rape, and whose report is essential to prosecution. The number of these doctors, particular MLO is dismally low, with disparities in their availability varying between urban and rural settings. For example, in Karachi, there are only 5 female MLOs across 3 Government hospitals, who are the only ones authorized to conduct and issue reports of a medico-legal examination for female victims. In rural Sindh, like other rural parts, the nearest hospital can be as far as 25-30 kilometres away. In Sindh, despite the provincial Health Policy of 2005, the remaining 6 Government hospitals in Karachi are yet to be made functional for these services.

The police refer cases directly to medico-legal officers (MLOs) posted at designated Government Hospitals across the country. The debate on what comes first- medical examination or lodging of the Police complain- continues to baffle practitioners as both Police and MLOs are not trained in handling of trauma victims. What happens is a run-around between the two parties, where MLOs need a Police report to start their examinations and the Police often refuse to register cases for which "there is no medical evidence".

The trainings given to the MLOs carry heavy biases against women, rape victims in particular. Citing the example of commonly-used textbook on forensics and toxicology²¹, Khan and Zaman argue that blatant biases and presumptions are made relating to a woman's credibility and probability of a false charge of rape, e.g., a woman in 'hard labour' will resist more while 'rich and middle class of an educated family....will not be able to resist for long'; that it is 'necessary to note the previous character of the girl and her relations with the accused'; that to determine if a woman is lying, the promptness of complaint, past (sexual), etc., are important to note. Prejudicial textbooks such as these only serve to perpetuate various myths around sexual violence and exacerbate victims' trauma.

The Police Surgeon, who was interviewed for the study held that, "90 percent of reported cases are not actually rapes and ulterior motives are at play". In an older interview with the Chief Chemical Examiner for Sindh and Baluchistan, the Examiner told one of the authors of this report that, "Women who come with physical evidence of rape are not to be believed". This opinion is shared too often by public office holders across the board which leaves women in a strange dilemma: what is the right amount of evidence and how should it be presented?

Pakistani MLOs still prescribe to finger- and virginity- testing methods. Little attention is paid, if any to other parts of the body that may carry evidence of the assault. DNA facilities do not exist in most Government hospital and samples have to be sent to labs in other cities for forensic and chemical tests, the results of which can be delayed by weeks and months. Although the incumbent Government has made commitments to provide DNA testing in rape cases free of charge, the formidable costs continue to be borne by victims and their families.

The Courts:

Prosecuting cases in courts is an agonizing proposition for litigants, particularly women and children. Other than a sense of disorientation that comes with a court-room environment, protracted trials with high concomitant costs of litigation make it difficult for any person to want to seek justice. The case is

²¹Modi's Medical Jurisprudence & Toxicology, adapted by Muhammad Akbar Khan, Advocate of the High Courts, Pakistan, includes Pakistani laws and other relevant information to meet the requirements of lawyers working in the criminal field in Pakistan. The original Modi's Medical Jurisprudence was first published in India in 1920 and it has been updated numerous times.

more severe for women who have to face the prying eyes of men, discrimination, and disbelief. In terms of infrastructure, there are no secure waiting areas and few & dirty latrines, while perpetrators and other under-trial prisoners move about in shackles with Police escorts.

The pervasive mentality across the criminal justice system is that if a woman was truly raped, she would not tell anyone out of shame. This attitude affects the manner in which women are treated inside the courtroom as well. Cases are often called out in open court whereupon the woman is often made to speak or testify in front of irrelevant people. In other situations even when the trial is conducted in-camera or inside the Judge's chamber, often the accused is there while she points him out as the perpetrator.

A rape trial can go on from anywhere between one-and-a-half years to 10 years, possibly more if the aggrieved is able to go through with it. On average, a case can take about 3-4 years to conclude, which goes against the National Judicial Policy of the Supreme Court, 2009 (revised 2012)²², which stipulates that, "All cases punishable with imprisonment from 7 years and above including death cases shall be decided within a period of 1 year." Despite policies like these, the Police waste tremendous amounts of time in so-called investigations and almost always fail to submit the charge-sheet within the 14-day period (as also directed under the Policy and liable to disciplinary action by the Courts). The table below depicts the pendency state and disposal rate for the Criminal Jurisdiction, Sindh Courts, for the month of September 2012:

| Previous Pending Cases | New Cases Added | Total | Disposal | Case Disposal | | Disposed of by way of Mediation | Disposed of by way of Compromise | Balance |
|------------------------|-----------------|--------|----------|---------------|-------------|---------------------------------|----------------------------------|---------|
| | | | | Acquittals | Convictions | | | |
| 67,921 | 14,418 | 82,339 | 14,108 | 1,788 | 662 | 0 | 36 | 68,231 |

Taken from the, "Consolidated Statement showing the institution, disposal and balance of Criminal Cases before the District & sub-ordinate Courts in Sindh, for the month of September, 2012"

Source: IT Department, Sindh High Court

As of 13 February, 2013, there were 17 (10%) women Civil Judges and Judicial Magistrates posted across all courts in Sindh, out of a total 170 positions. Similarly and at the same time, there were 13 (21%) women District and Sessions Judges across Sindh, out of 62 positions²³. Though these numbers show an increase since 2010, they are still inadequate given the number of women-related cases and their pendency in court.

The Courts also do not provide security and witness protection to victims apart from sending them to the women's shelter homes, or in some cases, placing them into protective custody in women's police stations. In Karachi, the government-run Dar-ul-Aman shelter home for women was handed over to a local NGO due to high levels of mismanagement and notoriety the shelter has acquired²⁴. Last year, a move was made by the Sindh government to legislate on witness protection in the wake of politically motivated target killings in the city of Karachi, the largest and most populous city of the country. The Bill has made no attempt to extend witness protection to other criminal cases, including VAW. This is a huge omission as in most VAW cases, particularly rape/ gang-rape, the accused are either not arrested or granted casual bail by the Courts in the absence of incriminatory evidence at the outset, before the prosecution has even had its day in court.

²² See <http://www.paklawyer.com/admin/PIimages/National%20Judicial%20Policy%20Revised%20Edition%202012.pdf>; Retrieved on 15 February 2013

²³ Data received from the High Court Computer Department of Sindh via the Legal Rights Forum, a local NGO in Karachi

²⁴ See <http://archives.dawn.com/2007/08/13/local1.htm>; Retrieved on 15 February 2013

Negative judgments in the past such as that in Mukhtaran Mai's case²⁵ (2011) have also set bad precedents and serve to dissuade victims from coming forward. For those that muster the courage to come forward, Police officers, lawyers, and even judges frequently try to broker a settlement between the two parties, sometimes with the promise (not necessarily realization) of a monetary gain in turn for consent. A recent case of this phenomenon is Ayesha's case from Rawalpindi, where the father of the victim informed the court that he had agreed to taking Rs. 1,000,000 as 'compensation' for his daughter's rape, which led the Rawalpindi Court to set aside the case as disposed, citing article 265-K of the Pakistan Penal Code²⁶. A petition was submitted with the Supreme Court against this decision (Criminal Petition No. 38 of 2012), which set aside the lower court's decision and granted many demands made under the petition for improving the criminal justice system's response to such cases.

A case tried by WAR saw similar kind of compounding in a rape case: *"I have given my careful consideration to the advanced arguments of both advocates for parties and have gone through the evidence of the witnesses. It appears that the complainant *** deposed in her cross examination that she forgiven to accused on the intervention of mohallah (neighbourhood) persons and made compromise on the intervention of mohallah people and she is not interested in further proceedings against the accused ...The statement of accused was recorded U/S 342 CrPC in which he denied the allegations levelled against him and deposed that he is innocent and falsely implicated in this case and also complainant and victim forgiven to him (sic)."*

V. Other Challenges

After the devolution of powers the provinces, respective provinces had instated funds for the provision of pro non legal services for women. A 2012 media report suggest that often these funds are underutilized despite deserving plaintiff being clear in sight. The devolution has also brought challenges in terms of sufficient budgetary allocations for provinces for development. The present allocations for social development, including medical services is dismally low that do not allow satisfactory systems to be developed, implemented and sustained, particularly for marginalized communities.

Recommendations

Even though laws on rape may have changed in Pakistan, the necessary structural, procedural and cultural prerequisites to make these laws effective have not been established. The burden of proof in rape cases still rests on the victim, denying her any access to justice or a chance at recovery. Below are some recommendations in light of the discussion in this paper:

- The Government of Pakistan (GoP), including the Provincial Governments must repeal all discriminatory laws against women in light of its commitment under CEDAW. A woman's past sexual history should be made to have no bearing on the efficacy of the charges being brought by her against the offender. Similarly, laws and systems must be put in place to make justice accessible for women who may be deterred due to social and psychological reason from reporting promptly. This would also include building better facilities for the preservation of forensic samples and evidence. Superficially, Section 151(4) and 21(j) of the Law of Evidence 1984 need to be repealed as they are discriminatory towards women, unconstitutional, and award undue concessions to rapists under the

²⁵PLD 2011 Supreme Court 554

²⁶ See also, <http://www.thenews.com.pk/Todays-News-4-111839-Civil-society-decries-out-of-court-settlements>; Retrieved on 15 February 2013

law. Additionally, compounding in cases through out-of-court settlements should be outlawed, with severe penalties for offending individuals.

- Incest cases need to be given special treatment in courts, with the relationship of the accused to the survivor taken to be an aggravating factor in sentencing. Additionally, because the psychological trauma resulting from incestuous rape is more severe than in cases of stranger or acquaintance rape, special measures need to be taken to ensure that the survivor is not forced to go back to living with the accused in the event that he is acquitted.
- The GoP needs to legislate on sexual offences that have not yet translated into legal language in order to award women legal protection in every related crime. This includes legislation on marital rape, incest, necrophilia, object rape and digital rape (or molestation).
- More women need to be inducted and trained to decide on and prosecute in rape cases to break the prevailing gender biases in the system and to ease the burden of disclosure for women;
- Similarly, non-functional medico-legal centres need to be made functional to allow ease of access and timely & thorough collection of evidence so as not to undermine the prosecution's case;
- The GoP needs to invest in trainings for Police officer, MLOs, Judges and Public Prosecutors for them to deliver high-value, well-coordinated survivor-centred services; Similar trainings must be provided to other special human rights cells and Government-run shelter/ crisis centre officials.
- Finger and virginity testing should be disallowed across the board as it subjects women, particularly minors to trauma similar to the sexual assault they experienced, and drives its value from a bias against non-virgins. In the same vein, the Government must instead adopt the World Health Organization's guideline for conducted medico-legal examinations for victims of rape through the introduction of standardized rape examination kits and appropriate protocols- for this, both medico-legal evidence collection and chemical testing of evidence would have to be brought up to par.
- More shelter homes must be set up by the Government both in rural and urban parts of Pakistan, staffed with well-trained officers;
- Witness protection laws must be made to include protection for women and minors who have been subjected to violence and who may be pressurized/ harassed into dropping charges;
- There is a need to review the curriculum and training material for police and medico-legal officers eliminate gender bias and discourage officers from making their own judgments a priori before investigating verdict in a case;
- Women police stations need to be made more accessible, effective and number of officers increased.

Works Cited

- Ahmad, G. B. (2012). *Women Police in Pakistan*. Islamabad: Individualland.
- Foundation, A. (2012). *Annual Report in VAW: A Qualitative Review of 2011 Statistics*. Islamabad.
- Khan, A., & Zaman, S. (2012). *The Criminal Justice System & Rape- An Attitudinal Study of the Public Sectors' Response to Rape in Karachi*. Research, Karachi.
- Lari, M. Z., & Zaman, S. (2011). *Sexual Violence & the Law in Pakistan*. Karachi: War Against Rape.
- Social Policy and Development Center (SPDC). (2012). *The Socio-economic Cost of Violence Against Women: A Case Study of Karachi*.
- Suddle, M. S. (2001). *Reforming Pakistan Police: An Overview*.
- WAR. (2010, 2011, 2012). *Sexual Violence Factsheet*. Karachi.
- Zaman, S., & Rasheed, S. (2012). *With and End in Sight: Incest in Pakistan- A Legal & Socio-cultural Analysis*. Karachi: War Against Rape.