



**SPECIAL MECHANISMS
TO
ADDRESS VIOLENCE AGAINST
WOMEN IN PUNJAB:**

PUNJAB COMMISSION ON THE STATUS OF WOMEN
Women Development Department, Government of The Punjab

**A STUDY OF MODEL GENDER-BASED VIOLENCE COURT
IN LAHORE & VIOLENCE AGAINST WOMEN CENTRE IN MULTAN**

SPECIAL MECHANISMS TO ADDRESS VIOLENCE AGAINST WOMEN IN PUNJAB:

**A STUDY OF MODEL GENDER-BASED VIOLENCE COURT
IN LAHORE & VIOLENCE AGAINST WOMEN CENTRE IN MULTAN**



Punjab Commission on the Status of Women

88-Shadman-II, Lahore.

www.pcsw.punjab.gov.pk,

facebook.com/pcswpb,

twitter.com/pcswpb

Table of Contents

Executive Summary.....	i
Introduction	1
OBJECTIVES AND SCOPE OF STUDY.....	1
Chapter 1: Gender Based Violence Model Court, Lahore.....	3
INTRODUCTION.....	3
GUIDELINES AND PRACTICE NOTE FOR GBV MODEL COURT	4
CASES REFERRED TO GBV MODEL COURT	5
STATISTICAL DATA OF GBV MODEL COURT, LAHORE.....	5
NATURE OF OFFENCE AND STATUS OF EVIDENCE COLLECTED IN CASES WHICH RESULTED IN A CONVICTION.....	7
Grounds of Conviction: Ocular Testimony or Forensic Evidence.....	12
Quantum of Sentence	12
Duration of trials	13
Court Action Against Investigation Officer	13
CASES OF ACQUITTAL AFTER COMPLETE TRIAL.....	14
ANALYSIS OF ISSUES EMERGING FROM THE CASES TRIED AT THE GBV MODEL COURT.....	18
Gender Sensitivity	18
What is Consenting Party Under Coercion?.....	18
Technical escape, or faulty investigation?	20
Customs/Gender sensitivity.....	22
Credibility, Conduct Of Victim, Virginity: Same Old Questions.....	23
TABLE OF CASES ACQUITTAL UNDER SECTION 265-K PPC.....	28
Hostile and Resiling Witnesses	31
GBV MODEL COURT AND OTHER RELEVANT AGENCIES	35
Special Investigation Cell for GBV Cases in the Police	35
GBV Investigation Teams: Structure and Placement	35
Coordination with Public Prosecutors	40
STATISTICS OF CASES AT THREE GBV CELLS OF THREE POLICE DIVISIONS	41
Cantonment Division.....	41
Civil Lines Division	41
City Division.....	41

Total cases in all 3 Police Divisions (Lahore)	42
RECOMMENDATIONS	42
Police	42
Medico-Legal Officers	43
Public Prosecutors.....	44
Area Magistrates.....	44
GBV Model Court	45
All Agencies	45
Proposed Penal Statutory Amendments	45
Chapter 2: Violence against Women Centre, Multan	46
INTRODUCTION	46
LEGISLATIVE CHANGES.....	46
VIOLENCE AGAINST WOMEN CENTRE (VAWC).....	47
PART I: STRUCTURE AND FACILITIES AT VAWC.....	47
Working System at VAWC.....	48
Police.....	48
Prosecution	50
Health/Medical Department.....	50
Mediation and Rehabilitation	51
PART II: IMPLEMENTATION STATUS AGAINST GUIDELINES.....	52
Cases at VAWC: From 25 March 2017 till 25 October 2018	52
Coordination with Other Services, Dar-UI-Aman, Legal Aid And Training Institutes.....	57
OVERALL IMPRESSION OF VAWC.....	57
RECOMMENDATIONS	58
Annex A: GBV Model Court Practice Note	59
a. Set up of the court room.....	59
b. Set up and use of the e court room	59
c. Process for the trial and recording of evidence.....	59
d. Process of Taking Evidence Of The Victim And The Witnesses	59
e. Trial process	59
f. Protection orders for the victim, witnesses and even accused if situation warranted	60

g. Procedures to be adopted by the court when the victim or other witnesses resile from previous statements	61
Annex B: GBV Model Court Form for Report Sought from SDPO Regarding Pressure on Resiling Witnesses	62
Annex C: Guidelines and SOPs for Investigation of Rape Cases	63
Annex D: Progress Report issued by GBV Cell in GBV Cases.....	68
Annex E: Form Used by VAWC Mediation Team to Record Agreement in Reconciliation	69

Foreword

Punjab Commission on the Status of Women is a statutory entity set up by Government in Punjab to *inter alia* monitor and assess implementation of initiatives taken for women's empowerment and protection of women's rights in Punjab. In line with its mandate, PCSW commissioned a Study on Redress Mechanisms for Women Survivors of Violence, particularly two pilot initiatives taken in Punjab; the Gender based Violence Court in Lahore and the Model Violence against Women Centre in Multan.

The objective of this research study is to conduct a systematic review of the two redress mechanisms mentioned above, as primary case studies of "institutions that provide redress to women survivors of violence." Both institutions were established in 2017; the VAWC in March and GBV Model Court in October, to improve accessibility of the justice system for women, including delivery of services such as speedy registration of First Information Report (FIR); timely medical examination; provision of legal aid; maintaining confidentiality of proceedings in Court, including during victim/survivor statements and cross-examination; and ensuring safety of the survivor in times of crisis.

It is hoped that this Study will aid supervisory bodies in ensuring that these Mechanisms are responsive to the needs of women survivors of violence. It is further hoped that the challenges highlighted in this Study are used to create better, more victim-centric institutional mechanisms that cater to women's access to justice in Punjab.



Fauzia Viqar

Chairperson

Punjab Commission on the Status of Women (PCSW)

Acknowledgements

Punjab Commission on the Status of Women commissioned this Study in the winter of 2018 – 19. We would like to express our gratitude for all those who helped us complete this study. PCSW particularly appreciates the hard work, diligence and dedication of the principal researcher and consultant, Mr. Sohail Akbar Warraich, and his Research Assistant, Ms. Hiba Akbar, without whom this Study would not have been possible.

We highly appreciate the cooperation of the Staff and Management of the Violence against Women Center in Multan, who were very forthcoming with information compiled in this Report. We are also grateful for the assistance provided by Judge Rehmat Ali Malik, Public Prosecutor Asia Yaseen at the Gender based Violence Model Court in Lahore, and Staff of the Court. Furthermore, Magistrate Zafar Fareed Hashmi, the focal person appointed by the Session Judge, Lahore, played a major role in facilitating this study in Lahore.

Additionally, this study would not have been possible without the assistance, time, and cooperation of Additional Inspector General (Investigations) Punjab, Mr. Abu Bakr Khuda Baksh, his staff, and the police officials at Gender Based Violence Investigation Cell at Civil Lines, Lahore Cantonment, and City Divisions of Lahore. It is due to the hard work and commitment of many officials and civil servants who often remain anonymous, that justice is accessible to the few who are able to access it in Pakistan.

Executive Summary

The GBV Model Court established in Lahore in October, 2017, has visibly succeeded in establishing an atmosphere where complainants, victims and witnesses can come without fear and harassment. This is especially true for minor victims. Those who themselves expressed apprehension of any danger or fear, or did so upon the Court asking them, are provided with adequate security in going to and from court. Such security is not restricted only to complainants; but also extended to the accused, if requested. This commendable measure has gone far in establishing the credence of the court, and has won the Court praise with all quarters.

However, the main challenge for the GBV Model Court remains tackling hostile and resiling witnesses, and complainants, which leads to a high number of cases resulting in acquittals without being contested. For better performance of the Court, it needs to have due assistance from other state agencies, specifically investigation by police, and forensic analysis by experts.

The flagship Violence against Women Centre was set up in Multan in 2017 as a 'one-stop-shop-solution' to issues of women's access to justice and interaction with the criminal justice system, mainly for domestic and gender-based violence. It was set up under the Punjab Protection of Women against Violence Act, 2016 and houses medical, police, prosecution and mediation services under one roof. However, by the conclusion of 1 year of its operation, the Centre faced some hurdles, chief among which was a lack of funds received by the Centre from June 2018 to June 2019. This was because the Punjab Women Protection Authority, supervisory body for the Centre, experienced delays in composition and requisite budget-allocation. This problem, however, was resolved in 2019, when the VAWC was officially handed over to the Social Welfare Department (SWD), and its charge given to the Director General SWD. At the administrative level, its performance is hindered by limited coordination among its various constitutive departments – the police, prosecution, medical and mediation. Further, this report found that all departments initially envisaged to function under one roof were not fully functional and staffed by the time this Study was conducted. For instance, the shelter home had not been built by June 2018; the Magistrate Court to be located in the centre did not shift to the same premises. Frequent changes in the police officials posted at the Police Station of the centre hindered continuity in police functioning at the police station established at the centre.

Introduction

In recent years, reported cases of Violence Against Women (VAW) in Pakistan have persistently been on the rise. In the year 2017, a total of 7,678 cases of Violence Against Women (VAW) were reported, a 5% increase from 2016. In this context, legislative and policy measures have been taken to curtail the incidence of VAW. In addition, special institutions have also been set up to combat Gender Based Violence (GBV) in Punjab. However, statistics don't show progress in aiding victims' access to justice in Punjab. In 2017, courts decided 7,219 cases of VAW; merely 315 of these cases resulted in convictions, while 6,904 accused persons were acquitted. This extremely low conviction rate demands an inquiry into existing mechanisms of the criminal justice system, and functioning of relevant agencies.

Since 2006 and especially in the last three years (2015-2018), there have been several legislative changes, both at the Federal level and in Punjab, to address VAW. In Punjab, a special law, the Punjab Protection of Women Against Violence Act was enacted in 2016. This law is different from Domestic Violence legislation enacted in the provinces of Sindh and Balochistan; in literal terms, the law in Punjab is meant to address all forms of VAW, including Domestic Violence. It provides for grant of Economic Orders, Residence Orders and Protection Orders, similar to those provided for in Domestic Violence prevention and protection laws for Sindh and Balochistan.¹ One distinct and key measure under this law is the establishment of Protection Centres and shelter homes for aggrieved women in a phased manner. The first such protection centre, called the Violence Against Women Centre (VAWC) was inaugurated in Multan in March 2017. This Centre was established to provide female victims of violence with all facilities mentioned in the aforementioned law, under one roof.²

Another special initiative started in Punjab was the establishment of a Model gender based violence (GBV) court in Lahore to exclusively deal with the cases of GBV. This study undertakes a systematic review of these two special redress mechanisms for protection and prevention of Violence Against Women. It identifies key challenges women and girls face in accessing the Criminal Justice System and in light of this review, makes recommendations to strengthen these mechanisms.

OBJECTIVES AND SCOPE OF STUDY

The objective of this research study is a systematic review of two redress mechanisms set up in Punjab: the VAWC in Multan and the GBV Model Court in Lahore, as primary case studies of "institutions that provide redress to women survivors of violence." Both institutions were

¹ The definition of "domestic violence" in the Act has been criticized, because it does not cover a broad range of issues as included in the laws of the two other provinces mentioned above.

² Section 13 of the Punjab Protection of Women Against Violence Act, 2016.

Introduction

In recent years, reported cases of Violence Against Women (VAW) in Pakistan have persistently been on the rise. In the year 2017, a total of 7,678 cases of Violence Against Women (VAW) were reported, a 5% increase from 2016. In this context, legislative and policy measures have been taken to curtail the incidence of VAW. In addition, special institutions have also been set up to combat Gender Based Violence (GBV) in Punjab. However, statistics don't show progress in aiding victims' access to justice in Punjab. In 2017, courts decided 7,219 cases of VAW; merely 315 of these cases resulted in convictions, while 6,904 accused persons were acquitted. This extremely low conviction rate demands an inquiry into existing mechanisms of the criminal justice system, and functioning of relevant agencies.

Since 2006 and especially in the last three years (2015-2018), there have been several legislative changes, both at the Federal level and in Punjab, to address VAW. In Punjab, a special law, the Punjab Protection of Women Against Violence Act was enacted in 2016. This law is different from Domestic Violence legislation enacted in the provinces of Sindh and Balochistan; in literal terms, the law in Punjab is meant to address all forms of VAW, including Domestic Violence. It provides for grant of Economic Orders, Residence Orders and Protection Orders, similar to those provided for in Domestic Violence prevention and protection laws for Sindh and Balochistan.¹ One distinct and key measure under this law is the establishment of Protection Centres and shelter homes for aggrieved women in a phased manner. The first such protection centre, called the Violence Against Women Centre (VAWC) was inaugurated in Multan in March 2017. This Centre was established to provide female victims of violence with all facilities mentioned in the aforementioned law, under one roof.²

Another special initiative started in Punjab was the establishment of a Model gender based violence (GBV) court in Lahore to exclusively deal with the cases of GBV. This study undertakes a systematic review of these two special redress mechanisms for protection and prevention of Violence Against Women. It identifies key challenges women and girls face in accessing the Criminal Justice System and in light of this review, makes recommendations to strengthen these mechanisms.

OBJECTIVES AND SCOPE OF STUDY

The objective of this research study is a systematic review of two redress mechanisms set up in Punjab: the VAWC in Multan and the GBV Model Court in Lahore, as primary case studies of "institutions that provide redress to women survivors of violence." Both institutions were

¹ The definition of "domestic violence" in the Act has been criticized, because it does not cover a broad range of issues as included in the laws of the two other provinces mentioned above.

² Section 13 of the Punjab Protection of Women Against Violence Act, 2016.

established in 2017; the VAWC in March and GBV Model Court in October, to improve accessibility of the justice system for women, including delivery of services such as speedy registration of First Information Report (FIR); timely medical examination; provision of legal aid; maintaining confidentiality of proceedings in Court, including during victim/survivor statements and cross-examination; and ensuring safety of the survivor in times of crisis.

This study is divided into two chapters. The first chapter reviews the Gender Based Violence Model Court set up at Lahore. The second reviews the Violence Against Women Centre set up in Multan. The study uses the word 'victim' to refer to the rape survivor, in keeping with the language used in case judgements and the Guidelines and Practice Note of the Gender Based Violence Model Court. This has been done consistently, despite the fact that current practice is to use the word 'survivor' instead of 'victim.'

Chapter 1: Gender Based Violence Model Court, Lahore

INTRODUCTION

In October 2017 a model court presided over by an Additional Sessions Judge (ADSJ) was set up and notified to try Sessions cases³ of gender based violence. In this regard, a Practice Note, and Guidelines for the functioning of the Court, were issued by the Lahore High Court (LHC).

This study is categorized as follows:

1. Structure and facilities provided at GBV Model Court;
2. Sensitization of the court officials towards women in crisis;
3. Knowledge of the relevant officials regarding women's rights enshrined in the Constitution, women related laws and policies;
4. Provision of legal aid and gender sensitive support mechanisms;
5. Observation of "on-going" cases and review of "disposed off" cases to analyse reasons for delay in on-going cases, disposal of cases, non-prosecution (if applicable), dismissal; and
6. Review of implementation status of GBV Model Court against its purpose, the Guidelines and practice note issued by the LHC.

To undertake and analyse the above, the author of this study observed on-going cases and reviewed files of disposed of cases to analyse reasons for delay in on-going cases, disposal of cases, non-prosecution (if applicable), dismissal, etc. During such visits to the court, the researcher had detailed meetings with the judge of the GBV Model Court, the Prosecutor assigned to the Court, its female support staff, Reader and other officers. After each visit, the issues and questions that emerged were discussed with the Judge and Prosecutor of the Court. Frequently, individual cases or hearings observed were discussed in depth with both officials, and forthcoming responses received from both officials. The researcher also obtained forms, documents and statistical data or reports related to the Court from time to time from the various officers and staff.

The future success and current evaluation of the Court depends greatly on correct and supportive functioning of agencies critical to the justice system; investigation wing of Punjab Police,⁴ Prosecution Service, and Medico-legal experts.⁵ Coordination among the

³ Cases of penal offences to be tried by the Sessions Court. In Lahore there are 4 courts for Session trials of cases falling in category of Gender Based Violence (so far, only rape cases are tried in this court) and one of those four courts was declared Model Court.

⁴ The Special Investigation Cell in the Police was set up at the same time as the GBV Model Court to investigate GBV cases.

⁵ Medico-Legal and PFSA staff were not interviewed and studied in detail. This report only mentions their impressions from decisions of the court.

aforementioned agencies is vital to access to justice for victims of VAW. In cases taken up by the Court to-date, the process was heavily hindered by the time taken to get documents, reports and set up communication with these departments. Analysis of cases decided by the Court will exhibit this with greater clarity.

GUIDELINES AND PRACTICE NOTE FOR GBV MODEL COURT

This Model Court was set up as a consequence of a series of measures taken by the Lahore High Court. On 17 October 2017, Chief Justice of the Lahore High Court issued a Gender Equality Policy, officially titled the 'Punjab Judicial Service, Gender Equality Policy 2017.' This policy spelled out directions for Judicial staffing and administrative matters, and categorically defined facilities to be provided for female judges. In continuation of this policy, Chief Justice LHC approved guidelines to be followed in Gender Based Violence cases.⁶ A Practice Note for Judges was also issued to enable the Guidelines to be followed, and implemented with clarity and consistency in cases of Gender Based Violence (hereinafter referred to as the 'Practice Note'). The Practice Note allows for flexible application of its clauses, if particular situations required adaptability in order to maintain the spirit, purpose and principles enshrined in the Guidelines.

The Practice Note describes the purpose of setting up this court as, *"to enable cases which concern gender based violence offences to be prioritized and conducted in a gender-sensitive manner."* Gender Based Violence has been defined as "an act of violence that results in, or is likely to result in physical, sexual, psychological or economic harm or suffering, and such violence is committed on the victims by reason of their sex or gender."

The Practice Note provides "rules" and principles for the functioning of the court, commencing from the arrival of a GBV victim at the court, the manner and care to be carried out in receiving such a victim, and the mode of conducting trial. The Practice Note carries specific instructions for the following:

- a) Set up of the court room
- b) Set up and use of the e-court room
- c) Process for the trial and recording of evidence
- d) Process of Taking Evidence Of The Victim And The Witnesses
- e) Trial process
- f) Protection orders for the victim, witnesses and even the accused, if the situation warrants
- g) Procedures to be adopted by the court when the victim or other witnesses resile from previous statements.

⁶ Guidelines were framed in light of the Supreme Court directions in *Salman Akram Raja v. Government of Punjab through Chief Secretary and others* 2013 SCMR 203.

Details of the aforementioned Instructions can be found in Annexure A of this report.

CASES REFERRED TO GBV MODEL COURT

The GBV Model Court at Lahore started functioning on 26 October 2017. Initially, one hundred cases of rape,⁷ in which evidence had not been recorded thus far, were transferred to the court. The court dealt with these cases, upon conclusion of which, fresh cases got referred to the court. A substantive number of cases transferred to this court related to offences committed before the October 2016 Amendments in criminal laws, both substantive and procedural. This meant that many mandatory procedures introduced in investigation and trial of cases of sexual violence by the said 2016 Amendments could not be fully adhered to by the time of trial. This resulted in acquittal of accused persons in the first 30 decisions rendered by this court. These 30 cases included many cases which would not have reached trial stage and would have been cancelled at investigation stage; while in others, the accused stood acquitted on the basis of “no evidence” brought against them, or the grounds that the complainants, victims and prosecution witnesses resiled from their earlier statements. The cases of witness resiling definitely left an impression of out of court settlements, which needed to be questioned.

In the later cases, this trend changed. Police and prosecution agencies started following legal provisions introduced through 2016 Amendments and the GBV Model Court, by adhering to Practice Note and Guidelines issued by LHC started achieving better results.

STATISTICAL DATA OF GBV MODEL COURT, LAHORE

From 23 October 2017 to 20 February 2019 this court has disposed off 123 cases:

Total cases disposed off	Consigned to record u/s 512 CrPC, accused absconding	Acquittal on resiling of complainant, victim, witnesses	Acquittal on merit in contested cases	Conviction	Conviction Rate, expressed as a percentage
123	44	56	10	13	16.45

13 of these cases tried resulted in conviction.⁸ This brought the conviction rate of the GBV court to 16%, a much higher percentage than the conviction rate of the other 3 courts trying the

⁸ Actually conviction is in only 12 cases. The Court record says 13 because in one case there was FIR as well as private complaint, both were tried and a conviction resulted in both.

same offenses in Lahore. Judge GBV Model Court informed the researchers that the other courts only managed 2 convictions during the same time period.

This conviction percentage is calculated on the outcome of 79 cases of which 13 resulted in conviction, 10 in acquittal on merit, and acquittal in 56 because of resiling of complainant or victims. Cases consigned to record because of absconding accused persons are not included in this data as those are technically still pending and have not been disposed of.

Acquittal in 56 cases because of resiling of witnesses including complainant/victim or complainant and witnesses is a very high number, and a challenge for the criminal justice system. This matter will be discussed in greater detail in the later part of this paper.

NATURE OF OFFENCE AND STATUS OF EVIDENCE COLLECTED IN CASES WHICH RESULTED IN A CONVICTION

Sr no	FIR No & Police Station	Offence	Survivor age/ personal status	Date & Place of occurrence	Perpetrator known to victim?	s.164CrPC statement of victim	Medical date & Initial report	DNA report	Sentence	Trial duration, from framing of charge against accused till decision	
1	350/16 PS Nawankot	s.376/511 PPC	8 years	06.09.2016 Victim home she living with father and step mother	victim's father in law from his 2 nd marriage	Yes on 01.10.2016	29.09.2016 Hymen ruptured with multiple tags, Initial opinion victim raped	On 06.10.2016, PFSA refused to receive samples, holding occurrence is a month old	5 years RI &Rs.50,000/ fine	Charge framed on <u>10.06.2017</u>	Decided on <u>29.01.2019</u>
2	420/16 PS Quaide Azam Industrial Area	s.376 & 365-B, PPC	adult medical college student	18.08.16 Kidnapped from market place and raped at accused place	One known other unknown	no	On 20.08.16 Multiple bruises on external genitalia & inner thighs	Yes positive, report came at investigation & doctor gave final opinion on basis of positive DNA report	Death &Rs. 5 lac fine for gang rape. life for kidnapping to one accused, Co accused absconding	20.06.17	17.01.19
3	326/16 GulshanR	s.376 PPC	6 years	15.04.16 at madrassa	Nominated via	no	On 15.04.16	24.05.16 Report	Life imprison	30.01.17	13.11.18

	avi				supplementary statement		Bruises vagina admitted tip of finger	negative	ment & 5 lac fine		
4	1817/16 South Cantt, Lahore	s.376 PPC	14 years	24.12.16 & earlier Home	Step father	no	29.12.16 Parian excess drain, bleeding dressing done	Negative report came on 28.06.18	10 years & 1 lac fine	12.06.17	05.11.18
5	286/17 Bata Pur	s.364-A, 376, 511, 377-B PPC	8 years	14.05.17 at accused's place	from neighbourhood	No	Same day, fresh rupture of hymen, blood found, initial opinion rape committed	Report came on 11.09.18 Positive matching of materials found on sheet sent to PFSA.	Charge altered & convicted under 377-B, 5 years RI & 50,000/ fine	19.12.17	09.10.18
6	583/16 Ghaziabad	s.376 PPC	12 years	15.07.16 2 accused took her away	Not nominated, turned out from neighbourhood	Yes, on 14.10.16	On 19.07.16 Fresh act of sexual assault final opinion after DNA report, victim clothes	Report came to court on 10.07.18 Negative	10 years & Rs. 1 lac fine to 1 accused other not placed in any column of <i>challan</i> court took	15.11.16	26.09.18

							washed, taken bath		action		
7	438/17 Johar Town	s.376	12 years old special child, mentally challeng ed	Around 05.05.17 at school bathrooms area	Guard of school she studied in	no	On 16.05.17, about 15 days after occurrence because FIR was late, doctor opinion hymen old torn, menstruati ng at examinatio n, sexual assault could not be ruled out	On 26.06.18 report to court, negative	Life imprison ment &Rs. 2 lac fine	23.11.17	31.07.18
8	726/15 Shahdara Town	s.376/11	5 to 7 years old	08.07.15 at accused place	From neighbourh ood, known	no	On 10.07.15 Initial opinion attempt made, swabs and clothes sent for DNA	negative	5 years imprison ment & Rs. 50,000/ fine	13.02.15	26.06.18
9	883/15 Ghaziaba d	s.376	15 years old, mentally	05.12.15 at accused place	From neighbourh ood,	no	On 06.12.15 Weak & in	Positive, semen material	Life sentence &Rs. 2 lac	04.02.16	27.04.18

			challenged		known		need of psychological examination, other tests also advised	found and matched with accused as per DNA report	fine		
10	486/16 Ghaziabad	s.376, 452, 324	Adult, married	10.06.16 till 19.06.16 victim's house, confined	Ex husband	no	On 20.06.16	negative	Convicted u/s 376, 10 years & 1 lac fine because no marks of violence and 1 st offence	16.11.16	10.03.18
11	1021/14	s.376 PPC	Adult, working woman	10/11.10.2014 at victim's parents home, trespass by accused	known	no	On 12.10.14 Marks of violence on person of victim, 1 st degree perianal tear at her introitus & hymen absent	In court on 27.10.18 Negative Accused clothes and sheet of bed were sent for forensic	10 years RI & 1 lac fine	03.12.14	06.03.18
12	117/17 Shalimar	s.376 PPC	adult	31.01.17 at victim's aunt place	Main accused nominated,	No	14.02.17 at time of examination	negative	15 years imprisonment &	31.01.17	06.05.17

					3 unknown	hymen absent which shows she had lost her virginity, no evidence of bleeding and seminal stain		Rs. 1 lac fine		
--	--	--	--	--	-----------	--	--	-------------------	--	--

As this table demonstrates, cases which resulted in convictions include:

- 9 cases of rape, including one of gang rape,
- 2 cases of attempt to rape (victims in both cases were under 10 years of age); and
- 1 case of sexual abuse (section 377-B of PPC) with a victim aged 8 years of age.

In the aforementioned cases, four victims were ten years of age, while another four were aged between 10 and 15 years, and mentally challenged. This means that in these cases, only sexual acts against the victim by the alleged accused was to be established, as sexual intercourse with a female of less than 16 years of age amounts to rape.

In all the cases except one, DNA reports from the PFSA came late and during pendency of trial proceedings. Trial commenced months after the registration of cases. Only in one case, in which DNA report was positive, did the report come during investigation stage. The doctor was thus able to render her final report on the basis of this DNA report.

Grounds of Conviction: Ocular Testimony or Forensic Evidence

Convictions in all except 2 cases were recorded on the basis of the initial medical report, testimonies of the victims and other witnesses. Of these cases, with the exception of 2 cases, DNA report was in the negative. In one case, PFSA refused to accept sample for DNA stating that occurrence is a month old. In one case, that of sexual abuse of a minor, the DNA report was negative but forensic evidence extracted from bed sheets matched the hair of the perpetrator.

The Court relied on the testimonies of the victims and complainants (in cases of minor victims, complainants were either one of the parents or some other family member), formal evidence of the investigation police officials, doctors initial opinions, despite negative DNA reports.

In those cases where the DNA reports were negative, the written judgments have not recorded any details of such reports; in one case, however, the court noted that “no seminal material was detected.” In all other cases, Judgments did not indicate that incriminating substances were not found at all, or that cross-matching was not positive.

In two cases where, in addition to the swabs from the bodies of the victims, other materials like bed sheets and a piece of *darri* were sent for forensic testing, only negative DNA reports were mentioned, but no results of forensic testing of these other materials had been noted.

Quantum of Sentence

The GBV Model Court is required to adhere to statutory provisions. In two cases involving minors, one case involves a victim aged 14 years and the perpetrator is stepfather, while the other concerns a victim aged 12, who is mentally challenged. In both these cases, the court

sentenced the accused persons to 10 years rigorous imprisonment, as per section 376(3) PPC, which defines the punishment as “death or imprisonment for life.” The latter case mentioned fell under section 376(3) PPC on two accounts: first, age of the victim, and second, the victim’s mental disability. The said section reads: “whoever commits rape of a minor or a person with mental disability shall be punished with death or imprisonment for life and fine.” Therefore, it is unclear on what basis sentences of 10 years have been given.

Duration of trials

Notably, cases on trial in the GBV court took very long. Though the statutory requirement under section 344-A CrPC is “three months from the date of taking cognizance of the matter”, GBV Model Court trials have taken very long; some over a three years period. Of the 13 cases that resulted in conviction, only two trials were concluded within a year.

Court Action Against Investigation Officer

In a case of rape⁹ of a twelve-year-old girl, there were two accused persons; one got convicted while the co-accused was declared “innocent” during investigation. The complainant (father of the victim) had submitted an affidavit to police during investigation that this person was not accused.

The court pointed out to the IO that he had not given his findings about this co-accused in the police diary. During investigation and in compiling the final investigation report (*challan*) under s. 173 CrPC, the said co-accused person had not been mentioned by the IO in any column of the report. This is something the IO is legally bound to do. The IO submitted: “When the accused was declared innocent during investigation, he withdrew his bail application, thereafter; I did not mention his name in any column of report u/s 173 CrPC. It was my duty to submit supplementary *challan* to the extent of accused ... However, I did not submit the same.”

The court held that the facts show negligence and defective investigation on the part of the IO, who conducted the investigation in an illegal manner. The Court then proceeded to send the copy of the judgment to DIG Operations for necessary legal action against the delinquent police officer.¹⁰

If such actions by the court are taken more often in cases of defective investigations, police performance can improve. Furthermore, it will also give an opportunity to senior supervisory officers of Police to monitor the work of their subordinates in an effective manner and also deal with any systemic obstructions in police functioning.

⁹ Case FIR No. 583/16, PS Ghaziabad.

¹⁰ Case was decided on 26.09.18, the author inquired from the court if there was any communication of nature of action taken against the IO but no clear information was available on this matter.

CASES OF ACQUITTAL AFTER COMPLETE TRIAL¹¹

Sr No	FIR No & PS	Offence	Age & personal status of victim	Date & place of occurrence, Accused known to victim?	s. 164 CrPC statement of victim	MLE date and findings	DNA report date & finding	Grounds for acquittal	Trial duration	
1	739/16 Liaqatabad	376 PPC	5 years	23.07.16, in street near a parked cart, stranger	Yes implicated nominated accused	23.07.16 hymen ruptured freshly & sexual assault was done	Report came in trial, negative, profile from sperm fraction mixture of at least 2 other individuals other than accused	In case circumstances sole statement of victim not sufficient for conviction, Prosecution gave up other key witness, she was of same age as victim) DNA report negative	21.06.18	20.02.19
2	655/15 Factory area	376, 380, 496-A, PPC	Adult, married	03.04.17, victim allegedly taken away by accused when went out for household shopping accused, FIR days afterwards	No	Date not given in judgment No injury noticed on any part of body, Hymen old ruptured, No evidence of bleeding, no evidence of	Negative came in trial	Complainant resiled in court from his statement for FIR Victim gave affidavit on 07.03.18 exonerating accused stating	25.01.18	19.12.18

¹¹ There are 10 such cases decided by the GBV Model Court, but this table discusses only 5. Judgments of only these 5 cases were made available.

						seminal stain		she taken satisfaction accused not her culprit Victim herself created doubt when she deposed affidavit Medical evidence did not corroborate allegation		
3	242/14 Garden Town	376 PPC	Adult Working woman, Herself filed FIR	05.03.2014 , In a hotel room victim invited out by accused for dinner and shopping Accused an acquaintance FIR on 07.03.14	no	On 07.03.14 Hymen old ruptured, No definite opinion if sexual intercourse committed	Negative	Hymen of victim old ruptured which creates doubt regarding her virginity, No evidence of resistance or any mark of injuries In circumstances complainant consenting party to sexual intercourse, her testimony seems to be fabricated No	03.11.16	08.11.18

								independence witness to support statement of complainant She entered into an agreement with accused 4 days after FIR and then contracted marriage with him Marriage still subsists		
4	1271/16 Raiwind	376, 365-B, PPC	16 years School student	16.09.16 Victim allegedly went to school but not found there at school closing time Accused seems to be known to complainant	no	No mention in judgment, would be done as PFSA report presented in court	PFSA report mentioned in judgment but contents not described	Alleged abductee and accused both Christians converted to Islam and married Certificates of conversion to Islam of both and nikahnama produced in court, Nikahkawan testified before court	16.01.17	26.09.18
5	503/17	376/511 PPC	8 years	17.03.17 At victim's home	no	No medical and no information why was not it	No	Contradiction in prosecution evidence	16.09.17	17.05.18

				Stranger came to do house repair work lured victim to another room of house		done?		Site plan of place of occurrence faulty showed occurrence and others present in house in same room No medical examination of victim or of accused		
--	--	--	--	---	--	-------	--	--	--	--

ANALYSIS OF ISSUES EMERGING FROM THE CASES TRIED AT THE GBV MODEL COURT

Quite apart from the Guidelines and Practice Note of the GBV Model Court, a few key issues emerged during PCSW's research study on the working of the Model Court. These are manifestations of wider social pressures, quite outside of the narrow doctrinal approach of the law, and are analysed below. However, even these 'soft' trends result in miscarriage of justice, and must be highlighted when analysing issues of access to justice.

Gender Sensitivity

This is a classic problem concerning GBV cases. It is an old problem for the Medico Legal Officers issuing MLCs and persists in this court as well. In one case involving attempt to rape, trial of a victim aged 5 to 7 years (in judgment at one point age mentioned is 5 years while at another place it is 7 years), when considering the quantum of sentence, the Court observed *"...Furthermore, no mark of violence or injury on the body of the victim and hymen being absent and possibility of victim being a consenting party under coercion cannot be ruled out."* Court mentions that the accused was illiterate, aged 50, coupled with the consideration quoted above as mitigating factors; the accused was sentenced to 5 years rigorous imprisonment and fine.

The Court had also misread the medical report. The Doctor who issued MLC stated that examination showed that although hymen is intact, there was certain sort of violence on the private parts of the body.¹² But the Court failed to take this observation into account in its entirety.

What is Consenting Party Under Coercion?

This is an intricate point that requires detailed discussion. In a case in which accused was convicted, the Doctor wrote in her opinion: *"at the time of examination, her hymen was absent, which shows that she had lost her virginity, but no hyperemia at her introits shows that any physical or sexual assault had been done for more than one week."*

The Court, while considering quantum of sentence wrote, *"however, keeping in view the mitigating circumstances of this case i.e., no mark of violence or injury on the body of the victim and hymen being absent and possibility of victim's being a consenting party under coercion cannot be ruled out."* [emphasis added]

Definition of rape under s.375 PPC says that rape will occur if "consent is obtained under coercion". Therefore, consent obtained under coercion cannot be treated as a mitigating circumstance. Further, the Court is convicting and even sentencing the accused to 15 years rigorous imprisonment, but is also stating that the victim gave her consent under coercion because of the medical report stating "absence of hymen", which the doctor equated that with

¹² Case reference FIR No. 726/15, Police station Shahdra Town decided on 26-06-2018.

being non-virgin. This brings us back to the question of “virginity being an issue, versus it being a non-issue in cases of rape.” Absence of hymen is not definitive proof of being sexually active. Further, previous sexual conduct, if any, should be considered irrelevant in determining whether the victim consented to sexual interaction with the accused in the said instance. Therefore, the absence or presence of the hymen is being erroneously treated as a mitigating circumstance by the Court.

Majority of cases resulting in conviction were either of “statutory rape”¹³ or otherwise not complicated as in the case stated above. One major factor in unsuccessful prosecution in rape cases is the interpretation of definition of rape. Two vital issues are meanings of ‘will’ and consent. Both these words are critical in definition of rape. Rape is defined¹⁴ as:

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions;

- i) Against her will;*
- ii) Without her consent;*
- iii) With her consent, when the consent has been obtained by putting her in fear of death or of hurt;*
- iv)*
- v)*

The words ‘will’ and ‘consent’ have not been defined under the offense of rape. These are left to the interpretation of the court with respect to circumstances of each case. However the law has not just left it to ‘without her consent’ but also added that consent obtained by putting the victim in fear of death or of hurt is also rape. Nature of hurt has not been specified, meaning it would also be determined according to the facts and circumstances of each case.

The question of consent under threat of hurt, and the degree of hurt which would constitute “threat”, was under debate at the time of framing of the Penal Code as well.¹⁵ The crimes of sexual nature against a woman in one sense were classified in two sets. This classification carried an innate contradiction both in theory and more so in its practice. In the first set, which contained crimes of sexual assault (including rape), the underlying current and overriding notion in practice was to test the extent of women’s resistance against male perpetrators. She is presumed to be guilty until she proves her innocence. The crimes which fell in the second set were of abduction, enticement, elopement and adultery where women would have some

¹³ Victim was below the age of 16 years, in fact 8 of 12 convictions were of victims below the age of 16 years.

¹⁴ Section 375 PPC.

¹⁵ Then called Indian Penal Code (IPC).

expression of their sexuality. Here, the Penal Code made women passive and exonerated them in totality and put the burden on men, practically serving as a tool for control over women's sexuality by the male family members. It did so by enabling the family to prosecute any man with whom woman had an association, thus curbing women's freedom. This reverse application started right from the beginning, as is very clear from the reports of mid-nineteenth century.

At the time of drafting the Penal Code, the debate was about the level of hurt a woman was threatened with, which qualified her to give consent. Death threat was easily accepted under this criterion, but the initially proposed definition of rape, which mentioned threat of hurt was debated. Judicial officers of the East India Company, noteworthy among them being Messrs Campbell and Pyne, who were in the Judicial Service of the Madras Presidency argued that any woman who submitted to threats of 'trivial' hurt was not reluctant and, therefore did not deserve the protection of law.¹⁶

Such approach did get support from other English officers, although not all clear cut. JM McCleod, for example, commented that a woman whose consent was too easily obtained would not be protected by the courts which exercised sufficient discretion in these matters. On the other hand, much pain could be inflicted upon a person without constituting 'grievous hurt.' He added by remarking, that these sections were not intended to protect only 'rigid chastity.' Had such standards obtained everywhere, there would have been no need to pass laws against rape, the woman would be dead before they could be violated.¹⁷ Cases before the GBV Model Court, too, demonstrate a lack of clarity on this distinction.

Technical escape, or faulty investigation?

This case¹⁸ involved a five-year-old girl who was caught and raped by the accused when she was playing in the street with her *khala* (maternal aunt, aged about same) on a Sunday afternoon. The accused allegedly took her away and raped her under a cart. On hearing her cries, her mother rushed to the spot and saw her daughter crying and her clothes were stained with blood. Police response on 15 call was prompt, and on written application of the victim's mother, a case was registered. The accused was nominated in the FIR. The victim was medically examined within three hours of the occurrence. The lady doctor who examined the victim stated before the court that according to her initial opinion, hymen was ruptured freshly, and sexual assault was evident. The investigation officer (IO) collected sealed parcels from the lady doctor and deposited them at PFSA three days later. The accused was arrested four days after the occurrence. He and the victim were taken to PFSA for DNA two days after the accused was

¹⁶ Report of the Indian Penal Code, Vol. 1, par 440, cited in Vasudha Dhagmwar, Law, Power and Justice: The protection of Personal Rights in the Indian penal Code (2nd edition, 1992), Sage, at p.113.

¹⁷ Ibid at p.113.

¹⁸ Case reference, FIR No. 739 of 2016, PS Liaqatabad decided by GBV court on 20.02.2019.

arrested. The minor victim's statement under section 164 CrPC was also recorded before the Magistrate.

The police also found criminal history of the accused, and discovered two old FIRs against him¹⁹ registered in the same Police Station where this case was registered. There was no mention of the outcome of the two FIRs against the accused.

At trial, the victim narrated the occurrence and pointed her finger towards the accused, who was present in the courtroom. Her mother (complainant in the case) also recorded her testimony. The prosecution gave up the third witness, aunt of the victim, as being unnecessary.²⁰

The accused's DNA report came as negative. According to the DNA report there were two other individuals whose DNA was matching with the victim, but not with the accused under trial.

The accused was acquitted by the court, holding that although the victim categorically deposed before the court that the accused Mr. ... raped her, her testimony requires strong corroboration by the oral as well as documentary evidence. Referring to the given up witness of the prosecution, the court stated, that it is cardinal rule in law of evidence that the best available evidence must be brought before the court in support of a claim, and withholding such evidence will create inference against the prosecution. The court concluded that according to the circumstances of this case, sole statement of the victim is not sufficient to record the conviction of the accused. The DNA report is also negative for the accused in this case. Although DNA test is not conclusive evidence, however, the importance of DNA in a rape case cannot be ruled out.

The DNA report came after the commencement of trial, which began long after the date on which DNA samples were submitted. Had DNA report come during the course of investigation, Police might have had a chance to trace out the two other individuals whose DNA samples matched. Could better investigation had made a difference? In his testimony before the court, the IO did not mention any materials he collected from the place of occurrence. It is not clear if the clothes of the victim were sent for any forensic test.

It will remain a question that was a wrongly accused person nominated in the FIR, or would better, more scientifically-sound sample collection and investigation have helped in achieving a better outcome of the case?

¹⁹ One FIR was from 2009 and u/s 363/511 PPC and one FIR was of 2008 u/s 363 PPC.

²⁰ In my interview with the Public Prosecutor, she informed me that this witness was given up because she could not speak clearly, was of same age as victim and was shy.

Customs/Gender sensitivity

A review of cases decided by the GBV Model Court and conversations with court staff and judges revealed that “marriage between the perpetrator and survivor of rape is treated as settlement or ‘resolution’ of the rape.” In most decisions of the GBV Model Court, marriage of the accused and the victim is outright treated as a mitigating circumstance in awarding sentence of the crime.²¹

This happens because of a cultural notion of social justice and social order that is centered on the *collective* (family, or tribe) rather than the *individual*. As long as the family heals and is able to reclaim its honour, social order is deemed to have been restored. What is worrying is that this idea is accepted and thereby encouraged by the court. An illegal out-of-court settlement is forged to turn prosecution witnesses hostile under the garb of restoring patriarchal social order.²² The judicial process allows the erasure of the illegal compromise of rape.

The court is, as a result, unwilling to disturb the so-called ‘peace’ of a victim’s newly married life, if she is now married to someone other than the perpetrator of rape. In one case, therefore, a brother of the rape victim came to court to state that the family will not even reveal the address of the now-married victim, who has moved to another city. The court, in such situation, allows the case to be slowed down and weakened to the extent that the accused is acquitted.

The same logic applies to resiling witnesses, who act on account of an out-of-court compromise. Rape is a non-compoundable offense²³ under the laws of Pakistan. In addition, while a marriage or resiling/hostile witness may restore the garb of so-called social order, this does not account for “hurt” suffered by the individual. In such a situation, the accused person’s liability/accountability vis-à-vis the law is also not upheld.

²¹ See for example, Judgment dated 29.01.2019 of FIR No. 950/16 u/s 376/511 PPC of PS Nawan Kot, Lahore.

²² Pratiksha Baxi, *Public Secret of Law: Rape Trials in India*, (Oxford University Press, 2014).

²³ Offences in the Penal code are divided into two categories compoundable and non-compoundable; in the former, parties can compromise, while in the latter, a compromise is not permitted and the case cannot be disposed off on the basis of a compromise between the parties.

Credibility, Conduct Of Victim, Virginity: Same Old Questions

Questions in a case of Acquittal

One case tried by the GBV model court, which resulted in acquittal, especially revealed many questions. This is a case study of how legal lacunae and social biases converge to result in miscarriage of justice. It requires detailed discussion, as it demonstrates the many ways that social and cultural perceptions and stereotypes in cases of sexual violence, invariably defeat the correct application of statutory law.

The facts of this case were different from the majority of rape cases. It did not involve allegation of kidnapping or being “forcefully” taken away from one place to the other. The perpetrator was also not a stranger, but acquainted with the victim for about two years via internet. As per the complainant/victim, the alleged accused intended to marry the complainant. He lived abroad and during one of his visits to Pakistan, came to meet her at her workplace. A few days later, the accused asked the victim to accompany him for shopping and dinner, but instead took her to his hotel room, locked the room, harassed her and raped her. She was confined there for two hours. The accused took nude pictures of her as well. After escaping, the victim came back home and told her family members about the occurrence. As per the victim’s allegation, the accused started threatening her on the phone, saying that if she discloses the incident to anyone, he would upload nude pictures of her on the internet. The FIR of the case was registered two days after the alleged occurrence. The victim was medically examined soon after registration of FIR. The case became more complicated when a subsequent agreement was signed between the accused and the victim in which she undertook that she would not pursue the case. Later, the accused and victim got married; a *nikah* was signed by both parties four days after the registration of FIR. The accused obtained post arrest bail from the High Court six days after *nikah* on the basis of this marriage, and the victim’s undertaking that case was registered due to misunderstanding and she did not want to proceed with the matter.

Several conditions were settled between the parties in the agreement, but due to subsequent breach of those conditions by the accused, relations between the parties became restrained. The victim/wife then proceeded to file a case of recovery of past maintenance in the Family Court against the accused/husband. The case lingered on in trial court. Yet another FIR was registered on 7 March 2014, and the accused was formally charged by the Court on 3 November 2018, while the case got decided on 8 November 2018. The accused was acquitted. The reasons for his acquittal, which can be deduced from the trial court judgment are:

- Conduct of the victim;
- Her marriage with the accused continued to subsist until the decision of the case and she had not filed a suit for dissolution of marriage;

- Her medical report.

The trial court in its judgment referred to the observations of the High Court in the post arrest bail order. These observations are:

“According to the FIR, the petitioner committed *zina bil jabr* with the complainant on 05-03-2014. No one is stated to have witnessed the occurrence which statedly took place. The occurrence is stated to have taken place at 04.00pm on 05.03.2014 whereas the victim was medically examined with a delay on 07.03.2014. The Medico Legal Examination Certificate of the complainant Mst.** does not lend credence to the prosecution’s case. The hymen of the alleged victim, stated to be unmarried, was found to be “old” ruptured. No other marks of violence were found on the body of the victim. So far there is no report of the Chemical Examiner or DNA report on record to connect the petitioner with the commission of offence. The complainant married the petitioner with her free will and consent on 11.03.2014. It does not stand to reason why the complainant married the petitioner soon after accusing him of having committed a heinous offence. A compromise was arrived at between the parties, reduced into writing on a stamp paper wherein the complainant gave an undertaking that she would not like to proceed against the petitioner. During the course of arguments, it came to light that the complainant is still legally wedded wife of the petitioner and has not filed any suit for dissolution of marriage.”

The trial court also referred to the statement of the doctor who examined victim, who deposed in court that she physically examined the victim and on physical examination, there was laceration over vulva region. The hymen was old ruptured. There was no bleeding.

Social Biases

In light of these, the court recorded that the marriage was still intact and that it was clear from the record that no suit for dissolution of marriage had been filed by the complainant against the accused. The court used this to mean “mala fide intent” of the complainant. It was further recorded that when the conduct of the complainant is doubtful, her testimony requires stronger corroboration. The Court referring to the doctor’s statement, observes that the hymen was old ruptured, which creates doubts about the virginity of the complainant. The court kept using the complainant’s conduct against her, but there has been no mention of the conduct of the accused, and the negative conclusions that can be drawn from it.

The judgment does not mention who the witnesses of the agreement between the parties were. Were there any witnesses to this agreement at all? If so, who were they? This then begs the question of whether families of the two were involved in the agreement and subsequent

marriage. If they were not, as the judgment is silent on this matter, did the complainant woman act alone in solemnizing a marriage with the man she accused of rape, and consequently also register a case against him?

The judgement fails to consider that in the wake of an FIR against a person accused of rape, who benefited from the marriage and the other agreement? Was it not the male accused who actually benefitted as a result of both, as the agreement and marriage both became the basis of his post arrest bail?

Further, the judgement also does not consider the breach of conditions of the agreement allegedly on the part of the accused/husband, which resulted in filing of a suit of recovery of past maintenance on part of the complainant/wife. While it reads the conduct of the complainant to conclude dishonesty on her part, the court does not take the accused's conduct into account at all. To render a complete decision, the court should have considered why he married the complainant after being accused of rape and registration of the case.

Faulty Investigation

There are also clear lacunae in the record and evidence of this case. The complainant had alleged that the accused made threatening phone calls to her after the alleged occurrence. It is unclear whether the police traced any data regarding "incoming calls" to investigate this allegation. The judgement was also silent on this. There was also no mention of recovery of the accused's phone or any other equipment used by the accused to allegedly take nude photos of the complainant.

Did the police check the hotel where the alleged rape took place, to ensure that the accused checked-in and actually stayed there? Was any evidentiary material taken into custody from the hotel room for a further forensic examination? Was the accused even medically examined? In the list of prosecution witnesses, there is no mention of the doctor who examined the accused nor was any reference to a report of such doctor made. From the judgment one does not find any answer to the aforementioned questions related to police investigation. To PCSW's researcher, it seemed that given the findings of the medical report, and the fact that this case did not involve a stereotypical rape victim, state agencies had given up without conducting thorough investigation.

On the question of "no one having witnessed the alleged occurrence", the accused also did not produce any evidence in his defence. In his statement before the court, the accused only denied the allegation against him and stated that a case had falsely been registered against him. In reply to the court's question as to why the present case had been registered against him, and why witnesses had been deposed against him, his reply was, "A false and concocted story was narrated by the complainant, and subsequently also registered with the police, purely

for illegal monetary gain. Marriage between me and the complainant was solemnized and continues to be in existence. No offence was committed by me. The complainant's suit for past maintenance is still pending adjudication before Family Court. In order to blackmail me and get financial benefits, this case was registered. Witnesses have deposed against me due to mala fide intention and in connivance with the complainant. Depositions against me are all false."

It is pertinent to mention here, that during trial, the accused was not questioned regarding his agreement to marry the complainant, and his agreement with her after the registration of FIR, even though she accused him of rape. These questions are also not mentioned in the judgement.

Court Falls Into the Same Trap

The trial court judgment mentions that the facts of this case could be broken down into three distinct parts. In the court's view, these three parts were:

1. First part was before the registration of the case when the complainant went with the accused and alleged occurrence took place.
2. Second part was from the time that the FIR was lodged and parties entered into an *Iqarnama* to the time that marriage between the parties was solemnized.
3. Third part spans from the time after the agreement between the parties was violated, and the beginning of the present case, as well as other family litigation for recovery of past maintenance.

To appreciate the intricacies of the case, the events lumped together in the second part require separation. The FIR is a separate event. The Agreement between the parties and their subsequent marriage were conducted to deal with the consequences of the FIR. The accused got post arrest bail on the basis of the agreement and marriage. Similarly, the criminal litigation related to the alleged rape could not be placed in the third part of the case, and was actually referred to as "only resulting from the breach of agreement between the parties." It was in fact the result of the FIR, which was supposed to have reached its logical conclusion, but for the agreement and marriage between the parties.

Any agreement between the parties in a non-compoundable heinous offence has no legal sanctity. State functionaries were bound under the law to proceed as mandated by law, but had in fact, failed to do so. Had there been no breach of the agreement, the FIR would still have gone through its procedural stages, and reached its logical conclusion, like any other case. Like other cases, the complainant might have resiled from allegations levelled by her in the FIR, but the case should still have been decided on its merits. A court of law was not by any means bound to the terms and conditions of any agreement between the parties in a non-

compoundable offence. Such an agreement had no legal standing, and should not have been recognized by the court.

In this particular case the case resulted in acquittal due to lack of evidence; and the conduct of the complainant for not being a "virgin" while being unmarried, entering into an agreement with the accused, subsequently marrying him, and filing a case against the accused/husband in Family Court. The conduct of the accused who was the other equal party in the agreement and marriage did not come under question.

In conclusion, to the researcher it seemed that social practices of dealing with heinous crimes against women via out-of-court settlements managed to find some legal weightage and consideration and influence the outcome of this case. The court too, therefore, had fallen into the same "biased" trap of drawing negative inferences against the victim because of the medical report, and because she did not fit the image of a typical rape victim.

TABLE OF CASES ACQUITTAL UNDER SECTION 265-K PPC

Sr No	FIR No & PS	Offence u/s	Victim age & date of occurrence	Accused	164 statement of victim	MLC date and findings	DNA date & finding	Victim/complainant statement in court	265-K application when?	Trial duration Court charged	
1	368/16 City Raiwind	376,49 6-A PPC	12/13years 14.04.16	2 nominated in FIR	none	No mention in judgment	none	On 19.02.2019 resiled from allegation	On 19.02.2019	13.10.18	22.02.19
2	2020/2017 Shahdra	376, 363 PPC	Adult 12.09.17	3 nominated, 2 unknown	Yes altered was under coercion	none	none	On 17.05.18 on date for prosecution evidence, had married accused	On resiling statement of victim	22.01.18	24.05.18
3	268/16 Naseerabad	376,36 5-B,371-A PPC	Adult 27.08.16	2 males & 2 females all nominated	Yes	none	none	Victim on 05.04.18 resiled from her 164 statement	Victim filed application for accused acquittal	15.12.17	21.04.18
4	798/14 Harbanspura	376 PPC	Adult, Ramazan month of 2014	Nominated	No	none	none	Victim on 12.02.19 recorded resiling statement	On resiling statement of victims	06.02.19	18.02.19
5	602/17 South Cantt	376 PPC	Adult 24.05.2017	Nominated by victim herself	No	none	none	On 30.01.19 recorded resiling statement, she did so at pre	On resiling statement of victim	16.01.20 18	08.02.19

				complainant				arrest bail stage also			
6	14/17 Harbanspura	376 & 496-A	18/19 years 03.01.17	Unknown, named in supplementary statement	none	None	none	Complainant father and victim recorded statements at bail stage, no statement in trial	Before framing of charge, police found accused innocent	07.11.17	30.01.19
7	53/14 Hanjerwal	376 & 365-B	13 years 12.12.13	2 male & 1 female nominated by complainant mother	Yes, victim implicated accused persons	none mentioned	none	On 04.09.18 complainant mother & victim recorded resiling statement, victim said her 164 was not on true facts	On complainant & victim resiling statement	02.11.15 & 29.08.17	12.09.18
8	569/15 Defense A	376 & 365-B PPC	Adult, married 11.04.15	In FIR 2 unknown, later 3 in <i>challan</i> , no identification parade done	Yes but did not implicate accused, in 161 nominated 1 of 3	None mentioned	Not done	On 08.05.18 victim & her father filed statements exonerating accused under trial	At framing of charge by court		08.05.18

Statistical analysis of the information extracted from judgments of cases where offences against s.265-K PPC were acquitted (mentioned in the table above), raises many questions about their treatment by the allied agencies before being put up for trial. Medical examination of the victims was conducted in only 2 cases, while DNA was done only in one case²⁴ (results were negative as no seminal material was detected). As the date of medical examination in this case was not mentioned in the judgment, it was not clear if DNA samples were sent in due time for the required evidence to be detected. This case resulted in acquittal, as the victim had actually contracted marriage with the accused and her family registered the case, knowing factum of *nikah* between the girl and alleged accused.

Further, no medical examination was carried out in 3 cases that involved minor victims from the table above. Out of the 13 cases mentioned above, the victim's statement was recorded before the Magistrate (under section 164 CrPC) in only 3 cases. All three victims subsequently resiled from statements made before the Magistrate:

- One stated that her statement u/s 164 CrPC was recorded under pressure from her parents and was recorded in presence of her father.
- Another one stated in her resiling statement before the court that her statement u/s 164 CrPC was not based on true facts, even though she had implicated the accused persons.
- In the third instance, the complainant had not implicated the accused persons in her statement u/s 164 CrPC. However, in her statement before the police u/s 161 CrPC, she had implicated one of the three accused persons.

9 of the 13 cases related to allegations of enticement or kidnapping and rape. One of these included charges of kidnapping from lawful guardianship, and one case included charges of selling for prostitution. How did the police insert a charge of rape in these cases without producing these victims before the Magistrate after their recovery, if there was any such occurrence in reality? If a charge of rape was added in these cases on the basis of the victims' statements before the police u/s 161 CrPC, then their medical examinations should have been carried out to substantiate the allegation. However, as per the judgments, a medical examination was only conducted in one case. The SOPs for police clearly mention: "efforts should be made to get the statement of the victim recorded u/s 164 CrPC at the earliest"²⁵.

In these 13 cases, recording of the prosecution's witnesses could only begin at trial in one case. In the said case, the IO and the complainant (father of the girl) recorded statements, but during

²⁴ As per information from the judgments of cases.

²⁵ Point VIII of 'Part 3; Handling the Victim' of the SOPs issued by the IGP Punjab on 20.08.13, reference is made to *Salman Akram Raja* case judgment.

cross examination, the complainant admitted to a marriage having taken place between the alleged abductee and the alleged accused.

In the remaining 12 of 13 cases, complainants and victims, or only victims (depending on the facts of the cases) recorded their resiling statements before the court either at the stage of framing of charges against the accused or even before that. In only one instance, resiling statement was recorded on the date fixed for the prosecution evidence. In another case resiling statement was recorded by the complainant husband and his victim wife four months after the framing of charge against the accused by the court. In these four months evidence of not a single prosecution witness was recorded.

If there was no substance in the allegations and no incriminating evidence could be collected in support of allegations, then could these cases not have been disposed off during investigation? The Investigation Officer could have prepared a discharge or case cancellation report and presented it to the concerned Magistrate for appropriate orders, but had simply failed to do so.

Hostile and Resiling Witnesses

In 56 out of 79 cases decided by the GBV Model Court, accused persons had been acquitted because the complainants or victims resiled from earlier statements recorded before the Police or Magistrate. Such witnesses have remained a challenge for courts for a long time, and thus far, the GBV Model Court has not been able to tackle this difficulty effectively. It should be mentioned, however, that many cases which resulted in acquittal because of resiling witnesses (thereby giving opportunity to the accused to avail acquittal u/s 265-K of CrPC) were cases in which trials had commenced before the establishment of the GBV Model Court. Those cases were not investigated by the GBV Investigation Cell officials, as the cell had also not been formed at the time.²⁶ However, this tendency seems to continue without strict adherence to Guidelines and the Practice Note issued by the Lahore High Court.²⁷ The Practice Note specifically mentioned some measures to be taken to tackle hostile or resiling witnesses; however, these steps have not been applied strictly.

In routine practice, when a complainant along with the victim, or cases where complainant and victim are the same person, come to record their resiling statement, they are asked if there is any pressure upon them. They are made to sit in the Judge's chamber or in court, and given time to think over their official statement. In some cases, a report is sought from the concerned Sub-Divisional Police Officer (SDPO), to decipher whether the witnesses had been put under

²⁶ The first 30 cases decided by GBV Model Court resulted in acquittal and almost all were decided u/s 265-K of CrPC, because witnesses resiled.

²⁷ The cases referred to in this report relate to the period from the start of the GBV Model Court till 20 February 2019. The resiling witnesses' tendency is seen as continuing in decisions rendered in March 2019 as well. Three such decisions have been reviewed by the researcher.

pressure by someone to record resiling statements.²⁸ The Court has drafted a form, attached here as Annexure B, to seek the aforementioned information from the relevant SDPO. However, in many cases such statements are recorded on the same day, although on application, the Public Prosecutor is allowed to cross examine such witnesses. For the purposes of this Report, judgments in 13 such cases decided by the GBV Court were examined. These showed that the Public Prosecutor was unable to extract incriminating material from such witnesses. Even in cases where the victim repeated allegations made in the FIR in her statement before a Magistrate (under section 164 CrPC) and had implicated the accused in both these statements, the victims could easily resile and they were not questioned regarding their earlier statements during cross examination.²⁹

In the resiling statement before GBV Model Court, one complainant mentions: "Earlier, I had recorded a statement before the Magistrate under pressure of my parents and that the statement was not based upon true facts. I have no objection if the accused person is acquitted in this case."³⁰

Rehearsed Statements

Resiling statements invariably seem stereotyped and rehearsed, and at times, do not match allegations levelled in the FIR filed earlier. In resiling statements, the complainant/victim deny the occurrence of offences, which were not alleged in the FIR, or in their statement before the police (u/s 161 CrPC).

In one case,³¹ the judgment describes the prosecution's case as: "the accused ... committed zina with the complainant while she was alone in the house." Complainant's resiling statement before the court was, "I am complainant/victim of instant case. Present accused is not the culprit and the instant case was registered against accused ... due to misunderstanding and suspicion. The accused did not abduct me; nor did he commit zina with me. Respectable people of the locality also satisfied me regarding guilt of the accused. Currently, I am not ready to proceed against the accused present in court, and have no objection if the accused is acquitted of the charge. I had also submitted affidavit at bail stage of the accused....." (para 5 of the judgment).

²⁸ Not in a single case a report of any pressure on the witnesses came from the police officials despite the fact that resiling statement mentioned that the accused has given his satisfaction in presence of the respectable of the locality. The judgments show that by December 2018 practice of inquiring from the concerned SDPO about any pressure on the witnesses was stopped by the court.

²⁹ Judgments of such cases reviewed do not contain any information of resiling witnesses being confronted with her statement before the magistrate u/s 164 of CrPC.

³⁰ Case reference FIR 268/16, Police Station Naseerabad, Lahore.

³¹ FIR No 798/14, PS Harbanspura.

In this case, it was worth asking the complainant *how respectable people of the locality satisfied her of the accused's guilt*. No such "respectable person" had been produced before the court. Notably, this case did not involve theft or any other crime in which the complainant did not see the accused, and merely nominated him on a suspicion. The nature of rape is totally different.

The Court, while acquitting the accused u/s 265-K CrPC referred to the complainant's statement and wrote: "she is satisfied that the accused is not her real culprit and that she is not ready to prosecute the accused." Notably, the word "real" was added to naturally mean that someone else was the culprit.

In another case in which the accused were charged with offences of enticement, rape and selling the woman for prostitution, three months after framing of the charge against the accused, the victim and her complainant husband appeared before the court to record their statements. During this three month period no statement of any of the PWs was recorded before the court. The alleged victim deposed before the court, "I am the alleged victim of the instant case and sui juris. My husband registered this case against the accused persons due to some misunderstanding and now the accused persons present before the court have given us satisfaction of their innocence in the presence of respectable people of our locality. ... I have no objection if the accused are acquitted from the charge."

It is possible that the case might have started with an FIR of enticement, charges of rape, and the charge of the alleged victim being sold by the accused for prostitution, were added subsequently. The concern, however, that upon whose statement and on what evidence the charges were added, remains. This should have been explained to the Court and recorded in the judgment.

Intervention by the so-called respectable people of the locality raises doubts if the resiling statements were recorded voluntarily in the first place. Cases in which rape was alleged straightaway and FIR of rape was registered, questions about the veracity of the allegation could be raised. However, in cases where charges of rape and other offences, like selling the woman for prostitution, were added subsequently and upon recovery of the alleged abductee or on her appearance before the police on her own, raises questions about the resiling statements of witnesses and the investigation agency's work.

Prolonged Trials May Be One Reason Witnesses Resile

Prolonged trials may be one reason why witnesses resile, especially those who are under pressure from the accused person, and local influential persons. In the case³² of an alleged rape of an adult woman, the trial went on for two years from the date of framing of charge against the accused. Other than the complainant, evidence of two police officials was recorded during

³² Case FIR NO 276/16 PS Nawab Town decided on 25.03.19.

this time. The complainant was partially cross examined on 30.06.18 and her remaining cross examination was fixed for 9 months later, on 13.03.2019. On this date, defence counsel filed an affidavit, which stated that the complainant had filed the FIR in question due to misunderstanding and that she had no objection if the accused was acquitted of the charge. On this date, the complainant admitted to the contents of this affidavit in her cross examination. Consequently, the court accepted the accused person's application for acquittal u/s 265-K of CrPC. The court, while acquitting the accused, held that there is no evidence of any resistance from the complainant; nor was there any mark of injuries or violence on the person of the victim. There was also no independent witness to support the statement of complainant/victim, and her DNA report was negative. All these facts created severe doubt and dents in the prosecution's story.

Did the long gap between two dates of hearing for cross examination of the victim facilitate the defence in obtaining the complainant's affidavit? Why was there such a long gap between the two dates of hearing?³³ Could her affidavit be considered as her "resiling statement" from that made before the court of law?

Stereotyped FIRs

Rape FIRs continue to be in gendered and written in stereotypical language, with forced insertion of witnesses and unconvincing stories. This was the language used prior to the Criminal Law Amendment (Protection of Women) Act, 2006 when witnesses were required to prove the offense of *zina bil jabr*. These FIRs would state, for example, that the complainant father came home one day and was told by a neighbour that his daughter had been taken away by the accused for the purpose of committing *zina*. Such concocted stories and language have not died out, despite the removal of *zina bil jabr* as an offence from Pakistan's law. In fact, police, prosecutors and judges alike continue to use the same language to-date.

Furthermore, police officials and judges alike, including those of the GBV Cell, continue to use the words 'enticement' and 'kidnapping' interchangeably. Enticement comes from s.496-A PPC ("enticing or taking away or detaining with criminal intent a woman") and kidnapping from s.365-B PPC ("kidnapping, abducting or inducing a woman to compel for marriage"). Part of this confusion may be due to translating both words from Urdu. Kidnapping has a stringent requirement of establishing compulsion or force, while enticement does not. Investigation for both offences would therefore have to be strikingly different. However, due to this interchangeable use by courts and police officials, confusion persists, and investigation suffers. In this way, social perception impacts legal process.

³³ The Practice Note at point 29 says that the whole of evidence of the victim, including examination, cross examination and re-examination, is as far as possible, to be conducted on the same day.

GBV MODEL COURT AND OTHER RELEVANT AGENCIES

To fully understand the functioning and performance of the GBV Model Court, we must also briefly consider the work of key relevant institutions: the police, the prosecution and the medico-legal units of designated Government hospitals and the Punjab Forensic Science Agency. The outcome of any case in the GBV Model Court depends significantly on the quality of work done by these connected agencies within the Criminal Justice System.

Special Investigation Cell for GBV Cases in the Police

At the time of establishment of this GBV Model Court, Lahore Police designated specific officers to investigate cases of rape and related sexual offences against women. On 10 January 2018, a Gender Based Violence Cell (GBV Cell) was constituted at Investigation Headquarters, Lahore under the supervision of the SSP Investigation, Lahore. The notification for this Cell described its basic purpose as “dealing with offences concerning Gender Based Violence (GBV).” A team of male and female Investigation Officers from all the Divisions of the Capital City, Lahore were nominated for this special cell.³⁴ The Notification carried names of 42 Police officials (IOs and other personnel) from six Police Divisions of Lahore.

These officials were given a two-day training at the Investigation Headquarters. Trainings and orientations workshops are held periodically for these officials after their posting in the GBV Cell.

These investigation officers have been issued Guidelines to investigate rape cases, attached to this report as Annexure C. In addition to these 16 point Guidelines, SOPs for investigation of rape cases and a checklist for *challan* in Urdu been provided.³⁵ The 2013 SOPs and subsequent memorandums relate to registering the FIR, handling of victim, inspecting the crime scene, collecting evidence from suspect/s, rehabilitating the victim, handling of media, and conducting trial of the case.

GBV Investigation Teams: Structure and Placement

In each police Division, a team of GBV police officials led by a female IO of rank Sub-Inspector have been placed. For each division, this team is based in one particular police station. For the purposes of this study, three of six GBV investigation teams [units] were visited at police stations where they regularly sit.³⁶ The GBV units visited were in Lahore Cantonment Division

³⁴ See notification regarding establishment of gender Based violence Cell issued on 18 January 2018 by the Deputy Inspector General of Police, Investigation, Lahore.

³⁵ In the province of Punjab, SOPs for investigation were issued in English on 20.08.2013 (office memo No 53790-87/Inv-HC) by then IG police, Punjab. Subsequent instructions were circulated vide memo No 881/Inv/M dated 17.01.2018 and further additions were circulated on 23.04.2018 in the previous memos regarding handling of the victim, Inspection of Scene of Crime and Collection of evidence from suspects.

³⁶ 2/3 GBV Cells visited did not have copies of the 16 point Guidelines and related SOPs.

(placed at Police Station Mustafabad), Civil Lines Division (placed at Police station Race Course) and City Division³⁷ (placed in Police station Shahdara).

Functions and Mode of Operation

Each GBV investigation unit is responsible for investigation of GBV cases³⁸ registered at any of the police stations within their division. The cases are registered at the police station which has jurisdiction over the area of occurrence of crime. After registration of FIR, investigation is entrusted to the GBV Cell of the division. In many cases of enticement or detaining a woman with criminal intent³⁹ or kidnapping of a woman to compel her in marriage against her will,⁴⁰ a charge of rape is added to the statement of recovery of the enticed or abducted woman. Once a case for investigation is entrusted to GBV Cell, all matters related to the investigation till submission of *challan* become the GBV Unit's exclusive responsibility. The referring police station is to provide assistance such as logistical support, if required.

Besides investigation, the GBV Investigation Officer is required to immediately inform senior officers⁴¹ about the case and provide regular updates on progress made in investigation. Senior police officials are sent progress reports in individual cases, through a progress report form, attached as Annexure D, which asks information on 16 aspects of the case. In addition to the filling of information against the mentioned items of the said form, summary of progress is written in narrative form. Interestingly, this form seems to have been designed for murder cases. For rape and other crimes of sexual assault, it needs to be revised to record information relevant only to such cases. Punjab Police has also begun using a new POLCOM software for centralisation and management of police station records. Information via the smaller POLCOM is sent to the SHO of the police station where FIR of the case is under investigation. Once *challan* of the case is prepared through POLCOM, information is transmitted to the SP Investigation of the Division.⁴²

Challenges of Mode of Functioning

After detailed research and discussions with judges, prosecutors and police officials, the following challenges emerge in the functioning of these three agencies and the medico-legal department.

³⁷ In Cantonment division 16 Police Stations fall, in Civil Lines Division 13 Police Stations and in City Division, 22 Police Stations.

³⁸ So far only cases of rape and attempt to rape are categorized as GBV cases.

³⁹ Section 496-A of PPC.

⁴⁰ Section 365-B of PPC.

⁴¹ Immediate communication is sent to DIG Operations reader, SSP Operations wireless. Concerned SP office and Gender Focal Person (officer) in AIG Investigation office are also informed.

⁴² Information includes report u/s 173 CrPC, DNA report, medical report zimni of *challan* and verification of *challan* zimni by the concerned SDPO.

Facilities

The first and foremost issue is of facilities (both infrastructural and equipment) for the running of GBV Cell. The Cell is not provided with the necessary equipment required for investigation of such cases. Guidelines direct that for inspection of the crime scene, PFSA experts and mobile lab investigation be called. But the GBV Investigation Officials were of the opinion that for site inspection and collection of vital evidence, coordination with the PFSA officials is often not very timely. This results in failure to collect all major and minor materials of evidence from the crime scene. One IO commented that PFSA mobile teams only come in high profile cases, and not in routine cases. Further, in their orientation sessions, these IOs are told about 'rape kits' (having tools for collection of evidence from the crime scene), but no such equipment is provided to them.

Transfer of Case from Operations to Investigation

Transfer or marking of case from the Operations side to the GBV Investigation teams in many instances happens with delays, which result in loss of collection of critical evidence from the crime scene.

Every police division has different practices about involving the GBV Cell in investigation, often heavily influenced by the SHO of the police station in whose jurisdiction the crime takes place. Some police stations intimate GBV personnel about a rape case the moment a matter is reported to them, or the moment intimation is received on 15 helpline. However, in instances where this intimation is delayed, or the GBV Cell personnel are not able to reach on time due to large distances or work load,⁴³ confusions persist about the division of responsibilities between the GBV Cell and Operations. There needs to be clarity over what tasks the police stations staff could have undertaken on their own, such as protecting the crime scene from contamination, or having conducted the victim's MLE, or seeking permission from the Magistrate for her MLE.

All rape cases do not start as rape FIRs. In cases registered u/s 496-A⁴⁴ or 365-B⁴⁵ of the PPC or on the statement of the alleged woman victim before the police or the Magistrate, rape is added as an additional charge in the FIR. In such cases, till the inclusion of the charge of rape, investigation is conducted by the IOs of the police station where case was registered. On addition of the rape charge, it is transferred to the GBV Cell in the police division. Once again, there is no clear demarcation of responsibilities and functions of the referring police station's

⁴³ GBV Investigation Cell of City Division has 22 police stations in its jurisdiction.

⁴⁴ Enticement or taking away or detention for illicit intercourse.

⁴⁵ Kidnapping of a woman to compel her for marriage against her will or to be compelled or seduced for illicit intercourse.

IO, or that of the officials in the GBV Cell.⁴⁶ Furthermore, any delay in transfer of such cases to the GBV Cell endangers collection and preservation of crucial evidence. Once such a case is transferred to the GBV Cell, completion of investigation and submission of *challan* becomes the responsibility of the GBV IOs. Some GBV IOs complained that they have to rectify crucial mistakes made by IOs who investigated the case before transfer of the case to the GBV Cell. Often, it is too late to rectify initial omissions in investigation and collection of evidence.

The GBV Cell IOs also recorded that the Operations side officials do not record Penal charges correctly, which effect the mode and direction of the investigation. If charges are added later, they have to justify charges entered in the FIR.⁴⁷

Medical examination of the victim

In rape cases sections 164-A and 164-B⁴⁸ of CrPC spell out the nature of the medical examination; DNA test of the victim; and information to be recorded in the medical examination report. Section 164-A CrPC does not require permission from the Magistrate for medical examination of the victim. However, Police Rules 1934 contain a contradictory provision; that which requires a written order from the Magistrate for medical examination of a woman.⁴⁹

According to IOs in the GBV Cell, the requirement of obtaining a written order from the Magistrate often obstructs and delays medical examination of rape victims, especially minors. This becomes more challenging when examination of a victim is to be done after the court's working hours and at a time when the Duty Magistrate cannot be available to make an order. They reported that some hospitals do conduct the medical examination on Police docket, while some out rightly refuse to do so without a Magistrate's order to issue MLC.⁵⁰ One female officer from the GBV Cell said that she had to take a minor victim around midnight for medical examination, but was declined medical examination on police docket alone. This refusal made obtaining crucial medical records and DNA samples impossible, thus negatively affecting the case.

⁴⁶ For example, if charge of rape was added on woman's statement before the police, will the IO get the woman medically examined to get medical evidence recorded before handing over the case to GBV Cell?

⁴⁷ This issue is separately discussed under police's selection of penal Charges at registration of FIRs

⁴⁸ These sections provide for mandatory medical examination for victims of offences of rape, unnatural offences and sexual abuse. Section 164-B directs that samples for DNA are to be collected with the consent of the victim and in case of minor with the consent of his/her guardian.

⁴⁹ Police Rule 25.22.

⁵⁰ Government Kot Khawaja Saeed Hospital has publicly displayed policy for MLC, medical examination in cases of sexual assault is included in the list of cases in which examination shall not be done without the court order.

Each police station has designated a hospital for Medico-Legal medical examination. GBV officials suggest that such an examination be permitted in the nearest government hospital authorized to conduct MLE, rather than going to the hospital designated for the police station.

The GBV Cell police officials said that many hospitals are often short of materials, such as cotton swabs and envelopes, and the IO has to provide them instead.

Another crucial aspect noted by the GBV Cell police officials is that while MLOs are available at night, in many instances doctors recommend Ultrasound, pregnancy tests, pelvic X-ray or refer the victim to a gynecologist. These doctors are only available during the day time. For any of these examinations and tests, the victim has to be brought in subsequently, which may not always be possible, given that the victim might not turn up, may not be in a condition to be brought in. Both scenarios negatively affect the investigation process, and wellbeing of the victim.

The PFSA has issued a rejection policy for forensic samples in sexual assault cases,⁵¹ which states that reference samples from “negative” sexual assault cases will not be accepted for analysis. Any delay in medical examination can result in sample falling in the negative case category as defined by PFSA.⁵² Review of the cases tried by GBV Model Court and information obtained from GBV Cell shows delay in reports of DNA tests. The effects of delay have already been discussed in this report. One factor for delay in DNA reports is the case load of the PFSA.

Budgetary Allocation for Investigation of Sexual Assault Cases

The exact amount currently being reimbursed to an IO as investigation expenses for one case of rape could not be determined for this report. The Police GBV Cell IOs mentioned different figures. Some of them had not been paid for many cases. One document mentioning cost of investigation on the basis of average crime for last six years of Punjab Police⁵³ did not mention the cost for rape and other cases of sexual assault separately. One GBV Cell police official said that it falls in the category of miscellaneous cases under the PPC, which was one thousand rupees per unit. The allocated amount for rape case investigation is far less than expenses, which are incurred on medical examination of the victim and the accused. For example: the fee for initial medical examination of one person is Rs. 200/-, and that for each subsequent test, such as pregnancy test, ultrasound etc., is Rs. 500/-. In many cases just the cost of the medical tests far exceed what an IO may be reimbursed. If a CT scan or any other scan is advised, high

⁵¹ For reference see PFSA letter addressed to IGP, Punjab dated 18 January, 2019. It was circulated to SSP Investigation, Lahore from the office of CPO, Lahore via letter dated 04.02.2019.

⁵² A case with all submitted evidence samples (evidence and reference sample) tested (serology) and found no human body fluid in evidence samples of victim is usually termed as a “negative case”.

⁵³ It was November 2002, so not clear it was ever revised.

costs are bound to be incurred. This sometimes leads to delays in examinations and tests of the victim, or the accused, and may even result in financial burden falling upon the victim.

Coordination with Public Prosecutors

The challan of every criminal case is submitted to the court through a Public Prosecutor appointed under the law.⁵⁴ The Public Prosecutor is to scrutinise *challan* or report, and return it to the concerned police official within three days of its submission, if found defective. The concerned police official is required to remove defects pointed out by the Public Prosecutor.

The GBV Cell Investigation Officers complained of delay in scrutiny of *challans* by the Prosecutors. Almost all IOs said that the Prosecutors return *challans* after substantial delay, and with a long list of objections.⁵⁵ An Official in the Civil Lines GBV Cell Investigation said that a *challan* was submitted to the Public Prosecutor on 28.01.18 and has not been passed to date (15.03.19); nor has a General Number⁵⁶ been issued. Often Investigation Officers have to respond to show cause notices from their Superiors, for delay in submission of *challans* even though the delay is caused by the Prosecutor.

However, this was not the same across the Police Divisions studied. The City Division GBV Cell officials claimed that they got general numbers of all of their *challans* in cases from 2018.⁵⁷ They reported that Prosecutors were frequently approached for advice and assistance, and not refused the same.

The GBV Cell Investigation Officials expressed the need of regular advice from the Prosecutor⁵⁸ for various tasks during investigation, especially in cases wherein penal provisions attracted are to be changed according to the nature of evidence collected.⁵⁹ They suggested that placing Prosecutors at police stations would help in conducting better investigation and reduce delay in scrutiny of *challans*.⁶⁰

⁵⁴ See section 9 of The Punjab Criminal Prosecution Service (Constitution, Function and Powers) Act, 2006. A report for the cancellation of FIR or for discharge of an accused is also submitted to the court through the Public Prosecutor.

⁵⁵ City Division GBV Cell Investigation Officer mentioned a *challan* on which prosecutor marked 45 objections.

⁵⁶ When a *challan* is approved by the Prosecutor for its submission to the court General number for the *challan* is issued.

⁵⁷ 58 cases in which *challans* were submitted.

⁵⁸ The SOPs issued for VAWC Multan directed to involve prosecutor in the case flow process from the time of reporting of the case (point 9 in SOPs).

⁵⁹ Such a situation does arise in cases of attempt to rape of a minor where after doctor's opinion it is not clear if attempt to rape charge is to be retained or changed to charge of sexual abuse.

⁶⁰ See recommendations on Public Prosecutors.

STATISTICS OF CASES AT THREE GBV CELLS OF THREE POLICE DIVISIONS

Cantonment Division

Year	Cases registered	Cases cancelled	Challan cases	Under investigation	Trial completed
2018	180	52	114	14	01 ⁶¹
2019 ⁶²	25	13	5	07	0

In 19 out of 52 cancelled cases, the accused and victim had contracted marriage, while the remaining 33 cases were cancelled due to statements of the complainant/victim before the Police or the Magistrate.

Civil Lines Division

Year	Cases registered	Cases cancelled	Challan cases	Under investigation	Trial completed
2018	47	30	13 ⁶³	04	0
2019	04	03	01	0	0

In 2018, 30 out of 47 cases were cancelled on the basis of statements of the complainant or victim before the magistrate, both of which denied any occurrence or resiled from their earlier statement before the police. Only one or two cases were cancelled due to findings of the police investigation.

In 2019, 3 out of 4 cases were cancelled as police investigation proved that they had been falsely filed, and as verified by NADRA records, that the alleged accused and victim had registered marriages.

City Division

Year	Cases registered	Cases cancelled	Challan cases	Under investigation	Trial completed
2018	73	13	58	02	0
2019	19	03	08	08	0

⁶¹ Victim was minor, accused was acquitted, DNA report did not come.

⁶² Cases figures for 2019 are till 14.03.2019.

⁶³ In 03/13 cases Interim *challans* are submitted as all accused not arrested; 2 cases are under trial in GBV Model Court.

From 2018, 13 of 73 registered cases were cancelled; 10 on the basis of statements made by the complainant or victim, and 03 after Police investigation.

Total cases in all 3 Police Divisions (Lahore)

Year	Cases registered	Cases cancelled	Challan cases	Under investigation	Trial completed
2018	300	95	185	20	Exact figures not available
2019	48	19	14	15	Same as above

The case statistics table shows that in the year 2018, almost one third of the total registered cases were cancelled during investigation, and by April 2019, this ratio continued to rise.

Notably, in the cases cancelled by the police, whether on account of the complainant's statements before the Magistrate or due to falsity discovered during police investigation, no action was initiated by the Police against the complainants for registering false cases. Instead, police officials gave forth excuses of procedural complications involved in initiating action against those who registered false complaints.⁶⁴

RECOMMENDATIONS

Police

1. Guidelines or SOPs should be formulated to clarify functions to be performed by the Operations officials of the Police Station where the FIR of rape (and connected offences) is registered, before handing over of the case to the GBV Investigation Officer of the relevant police division. These tasks, depending upon the facts of the case, may include immediate medical examination of the victim, arrest of the accused, safeguarding the alleged crime scene to preserve evidence for collection by the investigation officer and the Forensic personnel.
2. Police Investigation Officers should strictly comply with the Guidelines and SOPs recommended for investigation of GBV cases, and submission of *challan*. Analysis of cases tried before the GBV Model Court have exposed many flaws and lack of compliance with mandatory statutory provisions introduced since October 2016, and the Guidelines and SOPs issued by police department in 2013. It is important to bear in

⁶⁴ Section 182 PPC was amended by Criminal Laws (Amendment) Act, 2017 and punishment was enhanced up to 7 years for registering false case carrying sentence of death. This section describes punishment for false information with intent to cause public servant to use his lawful power to the injury of another person.

mind that investigations in majority of these cases were carried out by the Investigation Officers of Police Stations where cases were registered, and not personnel of the GBV Cells.

3. Due care should be taken in collection of materials for forensic and DNA testing, keeping in view the 2019 policy announced by PFSA for rejection of old samples for DNA tests.
4. Police trainings on concept and text of penal laws and their working framework should be frequent and thorough. The crucial issue here is how sexual crimes against women are perceived by police officials. These trainings should also include modules on interpretation and language of all penal offences related to sexual and gender-based crimes, so that police officials are able to include the correct sections in the FIR and investigate them accordingly.
5. For new investigation officers included in the GBV Cell, either because of transfer, or any other reason, a standardized training and orientation course should be designed.
6. All investigation officers should be provided with SOPs and Guidelines to investigate GBV cases.
7. Costs of investigation for cases of rape and other offences of sexual assault should be clearly notified. Such costs should be adequate to meet the necessary expenses (especially of medical examination, related medical tests and x rays, scans as advised by the concerned medical officer) as per the nature of the case. Any outstanding dues of the investigation officials should be paid on regular basis.
8. Submission of the *challan* by GBV Investigation Officers is a lengthy procedure, as it has to be cleared by several officials before its submission to the Public Prosecutor for scrutiny and approval. This process should be shortened and clearance obtained from a single line of officials in the hierarchy.

Medico-Legal Officers

1. In order to allow medical examination of the victim from the nearest designated Government hospital, instead of the current demarcation of hospitals as per Police circles within a police division, appropriate administrative and procedural changes should be made. The current set up results in unreasonable delay and hardship to victims.
2. Additionally, government should set up and authorize additional public facilities to conduct DNA testing. Currently, PFSA is the only facility which caters to DNA and forensic testing in Punjab/Pakistan.
3. One standard form for MLCs should be introduced and available in local languages. Currently there are two different forms being used: most hospitals are using a 9-page form introduced in 2013, while some hospitals (including Mayo Hospital in Lahore) use an older one-page form.

4. Doctors and healthcare providers at every public healthcare establishment should be trained to undertake the role of a Medico-legal officer, through regularly conducted trainings and refresher courses. It is recommended that these trainings be formulated on the basis of WHO's Guidelines for Medico-Legal Care for Victims of Sexual Violence (Geneva, 2013). These trainings and refresher courses should also include orientation sessions on forensic sciences (forensic pathology, forensic radiology, forensic odontology and forensic toxicology) over and above what is taught to doctors in their 5-year MBBS. Basic modules addressing myths that surround women's sexuality and sexual offences (to ensure that practice of the two-finger test, and unnecessary focus on the hymen is rooted out) should be introduced for MLOs.
5. Practice of sending case files or detailed case documents along with evidentiary articles for DNA testing must be eliminated, as these may prejudice the findings to be given by PFSA.

Public Prosecutors

1. Dedicated GBV Prosecutors should be available and present at every police division.
2. Prosecutors' involvement should start from the beginning of the investigation of a case.⁶⁵ Prosecutors should guide and supervise police investigation so that any omissions in investigation can be timely checked and rectified.
3. Under this recommendation, the same Public Prosecutor should be given responsibility of prosecution of GBV cases of his circle in the trial court.
4. The Prosecutor's case assessment report submitted to the court u/s 9(7) of the Punjab Criminal Prosecution Service Act, 2006 should be given due consideration by the court. In the aforementioned Report, the Prosecutor should be required to point out if the Investigation Officer, or any other agency involve, did not adhere to statutory directions of investigation of rape and other cases of sexual assault. Cases with weak evidence should accordingly not be prosecuted. Upon endorsement by the Prosecutor and the relevant court, appropriate action must be taken against the concerned officials.⁶⁶

Area Magistrates

Area Magistrates get an opportunity to see case progress, such as at the remand of the accused. Vigilance on the quality of the investigation and adherence to mandatory provisions of law on their part can improve the quality of cases brought before the trial court.

⁶⁵ If this requires an amendment to the Punjab Criminal Prosecution Service Act, 2006, such amendments be made.

⁶⁶ Required amendments should be incorporated in Punjab Criminal Prosecution Service Act, 2006 and CrPC, if required.

GBV Model Court

1. The GBV Model Court's Guidelines and policies should be strengthened to include; (1) measures for witness protection under the GBV Model Court Practice Note and the Punjab Protection of Witnesses Act, 2018 in place where required; and (2) that guidance be taken from the recent Supreme Court full bench judgement dated 04.03.19 on false witnesses.⁶⁷
2. Although there exist statutory penalties for both faulty investigation, non-compliance of mandatory statutory provisions for investigation, and dealing with cases of rape and sexual assault, there is no clear mechanism in force to check non-compliance on a regular basis. Therefore, it is recommended that the GBV Model Court and other courts point out non-compliance by IOs and initiate appropriate action against them.

All Agencies

Sensitization trainings are required to remove preconceived perceptions of "ideal victims". Further, trainings should cover the varying circumstances in which rape can occur, including *inter alia* that rape can occur without marks of violence or signs of resistance on the survivors' body. Most importantly, trainings must stress that absence of an intact hymen has no bearing on the occurrence of rape. It is recommended that all actors in the criminal justice system – judges, prosecutors, police and medico-legal examiners – must be trained on these matters.

Proposed Penal Statutory Amendments

The Pakistan Penal Code, 1860 be amended to include an offense of sexual abuse of women as described in s.377-A PPC, which only applies to people under the age of 18 years.

⁶⁷ Criminal Misc. App. No, 200/2019 in Criminal Appeal No. 238-L of 2013,

PUNJAB

**COMMISSION ON THE
STATUS OF WOMEN**



+92 42 992 680 00-4



pcsw.punjab.gov.pk



facebook.com/pcswpb



twitter.com/pcswpb



88 Shadman II, Lahore, Pakistan