



ACCESS TO JUSTICE

FOR SURVIVORS OF
SEXUAL ASSAULT

A Pilot Study

**NATIONAL COMMISSION ON THE STATUS OF WOMEN (NCSW),
GOVERNMENT OF PAKISTAN**

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A Pilot Study

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LIST OF ABBREVIATIONS USED

ASJ	Additional Sessions Judge
ATC	Anti-Terrorism Court
BHC	Balochistan High Court
CrPC	The Code of Criminal Procedure, 1898
DSP	Deputy Superintendent of Police
FIR	First Information Report
FSC	Federal Shariat Court
FSL	Forensic Science Laboratory
JoP	Justice of Peace
LHC	Lahore High Court
MLC	Medico-Legal Certificate
MLE	Medico-Legal Examination
MLR	Medico-legal Record
PCrLJ	Pakistan Criminal Law Journal
PFSA	Punjab Forensic Science Agency
PHC	Peshawar High Court
PLD	All Pakistan Legal Decision
PPC	Pakistan Penal Code, 1860
RI	Rigorous Imprisonment
S. / s.	Section [of a statute]
SCMR	Supreme Court Monthly Recorder
SHC	Sindh High Court
WHO	World Health Organisation
YLR	Yearly Law Reporter



PART-I

1. INTRODUCTION

The past ten years has seen numerous reforms to criminal laws, particularly on issues of violence against women. Some of these reforms have removed discriminatory provisions, while others have introduced crimes against women. A casual observer may conclude that this has adequately addressed the issue of violence against women in Pakistan. However, the reality is far more complex and nuanced than that: the last two years has seen three widely reported instances where women have been forced to immolate themselves as protest against police's refusal to even register an FIR on their rape complaints.¹ All three instances have been from Muzaffargarh District in Punjab,² hinting to the attitude that feeds this malaise. This is the situation despite the fact that the earliest such case was taken up as a suo moto case by the Supreme Court of Pakistan and close attention was given to it even by the Inspector General of Punjab Police. Instead, the case suffered blatant irregularities at the hands of the police. The survivor's medical examination was not done, which is the first and an important step in cases of sexual violence. The case instead circled on hearsay, which helped the accused persons obtain bails.

At the same time, from 2006 to 30.10.2015, Islamabad District's 22 police stations registered a total of 153 rape cases. Until October 2015, there had been only 4 convictions compared to 48 acquittals (64 cases still remain in court); 27 FIRs were cancelled during investigation and one case was formally recorded as having been 'compromised.'

Evidently then, despite so many years of law reforms, victims of rape and other sexual offences are unable to access justice as their legal right. Attitude of state institutions has not seen any significant change in providing protection to women. Investigation remains fixated on the idea of virginity, finding semen stains and bruises on the survivor's body.

Despite this attitude however, a new trend is observable whereby more and more women are becoming complainants in their personal rape cases, as opposed to the earlier trend where family members, usually male, were complainants. This is at times spurred by fear of public circulation of videos or pictures of the incident made by the assailant or his accomplices, as in the recent case of a student at Islamiya University, Bahawalpur who attempted to pay off the assailant before having to come to the police.³ This case exemplifies two trends: firstly, that blackmail and intimidation prior to or following an incident of rape appears to be common, but one that the criminal justice system is still struggling to address. Secondly, silence is still the first resort for survivors and their families.

This pilot study was thus conducted to examine any positive developments in the investigation and sentencing of cases of rape and sexual offences against women after the amendments in law in 2006 by the Protection of Women (Criminal Law Amendment)

1 Malik Raza Tahseen. "Rape Victim Who Set Herself Ablaze Dies." DAWN (Pakistan), March 15, 2015. <http://www.dawn.com/news/1093090>.

2 "Rape Victim Dies after Setting Self on Fire outside Muzaffargarh Police Station." Express Tribune (Pakistan), October 15, 2015. <http://tribune.com.pk/story/972221/rape-victim-dies-after-setting-self-on-fire-outside-muzaffargarh-police-station/>.

3 "Crime Against Women: Man Arrested for Rape, Harassment" Express Tribune (Pakistan), November 15, 2015. <http://tribune.com.pk/story/991142/crime-against-women-man-arrested-for-rape-harassment/>.

Act, 2006.

2. OBJECTIVES OF THIS RESEARCH STUDY

This research is intended to examine cases of sexual violence with regards to the Protection of Women (Criminal Law Amendment) Act, 2006 (hereinafter referred to as the 'Women Protection Act') and how higher courts' judgments have treated these cases. In addition to this, the objective of this exploratory pilot study is to track the journey of rape cases in order to highlight the institutional impediments to justice.

3. METHODOLOGY

In this study, judgments of the Higher Courts of rape cases under the amended law were reviewed. Along with the judgments of appeal decisions, reported bail orders of the Higher Courts were also examined. Both decisions were picked from two law journals, Yearly Law Reporter (YLR) and Pakistan Criminal Law Journal (PCrLJ) for the period 2006-September 2015 based on a tentative assessment of which law journals reported the most rape decisions. This totaled 18 appeal courts' judgments and 96 bail orders. No Supreme Court decision was reported in either journal for the selected time period.

Initially, the methodology did not include an analysis of bail orders. However, owing to the fact that appeal decisions in the given time frame were far fewer than the incidents of rape cases reported in the press and lists compiled by rights organizations, the Consultant decided to include bail orders as well. This had the additional benefit of reviewing a vast majority of cases that in fact never make it to the appeal stage. Further, bail orders allow us a window into an earlier stage of the case, before conclusion of the trial, which has the following benefits:

1. At the bail stage the courts make a tentative assessment of the case facts and evidence that connects or does not connect the accused with the allegation in the case.
2. At the bail stage, a picture of a criminal case emerges which allows tentative analysis and assessment of the case.
3. Tracks the case's progress in terms of investigation and nature of evidence collected. Availability of medical and forensic evidence provides information of delay or not having been conducted at all.
4. It allows the formation of an idea of the direction the investigation is taking and how far that is in line with requirements of the allegation.
5. Quality of police investigation is fully exposed.
6. A picture of basic structure emerges on which the prosecution tends to build its case.
7. Bail orders give an indication of factors because of which prosecution later fails to obtain conviction in the trial.
8. Lastly, it enables analysis of the factors leading to grant or refusal of bail in rape cases, when rape is a non-bailable offence.

In addition, 50 FIRs registered for the offence of rape between November 2006 (after promulgation of the Women Protection Act, 2006) and September 2015 in the districts

of Islamabad, Rawalpindi and Lahore were also analysed.⁴ This allows us to capture a snapshot of cases before litigation and before investigation is launched.

Similarly, medico-legal examination certificates available from different hospitals in Islamabad, Rawalpindi and Lahore were also scrutinised for broad trends in doctors' working.

Lastly, interviews with lawyers, public prosecutors, medico-legal officers and police officials, of various ranks, including those from Islamabad and Lahore's Women Police Stations, were conducted in order to seek their input on the day-to-day problems and obstacles encountered in investigating and prosecuting sexual crimes, and their recommendations for overcoming them.

4. 2006 AMENDMENTS IN LAW

'Protection of Women (Criminal Law Amendment) Act, 2006' amended the 'Zina (Enforcement of Hudood) Ordinance, 1979' (hereinafter referred to as the 'Zina Ordinance') and the 'Qazf (Enforcement of Hadd) Ordinance, 1979' (hereinafter referred to as the 'Qazf Ordinance'). The amendments relevant to current study are mentioned below:

- Offence of rape was reinserted in the Pakistan Penal Code, 1860 (PPC) and its definition was amended.⁵
- Provisions related to abduction of a woman to compel her for marriage against her will, enticement of a woman and her detention with criminal intent were also removed from the Zina Ordinance and reinserted in the PPC.⁶
- No case in which an allegation of rape has been levelled could be converted into a case of fornication at any stage.⁷

4.1 Definition of rape after 2006 amendments

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

1. against her will;
2. without her consent;
3. with her consent, when the consent has been obtained by putting her in fear of death or of hurt.
4. with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she

4 In addition to the 50 FIRs closely studied, over 100 FIRs from Islamabad were cursorily reviewed.

5 As section 375 PPC, with its punishment given in section 376 PPC. It was previously repealed from the PPC by the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

6 As sections 365-B and 496-A PPC respectively. Definition of enticement provision was changed when incorporated in the Zina Ordinance in 1979. Previously it only covered enticement of a married woman with criminal intent. Enticement of a female under 16 was a separate offence. Its insertion as section 16 of the Zina Ordinance covered all females irrespective of their age or marital status.

7 Section 5-A added in the Zina Ordinance by the Women Protection Act restricted such conversions.

is or believes herself to be married; or

5. with or without her consent when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Punishment for Rape⁸:

1. Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.
2. When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life”.

4.2 Changes in definition of rape from previous definition under Zina Ordinance

1. The provision now provides age of consent for females as 16 years. Under the Zina Ordinance, no age of consent was mentioned in the definition of rape. The Ordinance defined a female as an adult at the age of 16 years or on attaining puberty for the purposes of quantum of punishment. However, no minimum age of puberty was mentioned. Under case law it was on a female attaining puberty, or in absence of any such signs, a female was assumed to have attained puberty on completion of 15 years of age and legally capable to give consent. This lacuna benefited perpetrators when they took the plea of female having consented and prosecution failed to adequately provide evidence for convicting an accused beyond any shadow of doubt.
2. By providing age of consent, the current definition explicitly defines statutory rape as occurring whenever intercourse takes place with a woman aged less than this given age.
3. c) In the current definition, rape has been confined to rape of a woman by a man. Under the Zina Ordinance, a woman could also commit rape against a man or one woman could rape another woman.⁹

5. INDICATORS OF ACCESS TO JUSTICE

Access to justice by sexual violence survivors is influenced by a number of factors that are institutional, social, political and economic in nature. Our methodology allows us to focus on the institutional and social factors that have an impact on those seeking justice. In particular, the following key indicators were used to assess quality and extent of access to justice:

1. Implementation of the law that amended definition of rape, and made provision for statutory rape in cases of sexual intercourse with females under 16 years of age,

⁸ Section 376 PPC provides for punishment of rape and gang rape. In Zina Ordinance there were two levels of punishment for rape one liable to hadd and the other under tazir. The first one required a specific eye witness account and no case of rape was ever known to be punished under had sentence.

⁹ No case of a rape of a woman by another woman, or rape of a man by a woman, was ever known but language of law provided for that.

2. Judicial trends about construction and elaboration of offence of rape as provided in the amended law;
3. The issuance, from time to time, of guidelines by higher courts to the subordinate courts on adjudication and to investigative agencies on investigation and medical evidence,
4. Compliance of the procedural requirements by the investigation agencies and their modes of collection of evidence;
5. Working of medico legal officials (MLOs) and “quality” of their reports;
6. Preservation and use of medical and forensic evidence in reported cases;
7. Time factor in decision of rape cases;
8. Other factors which obstruct access to justice for survivors of rape;
9. Any other related developments to facilitate access to justice for survivors.

Assessment of these factors is most apparent in bail decisions of higher courts.

6. STATISTICAL ANALYSIS OF APPEAL DECISIONS

6.1 Appeal cases outcome

In the two law journals reviewed, 18 cases of appeal in rape offence were reported.¹⁰ Their break up is as follows:

Total Appeal Decisions Reviewed: 18	
Number of Cases	Description
14	Cases of rape alone (without any other Penal Code offence for the same incident)
1	Enticement (496-A PPC) and rape
1	Dacoity and rape
2	Rape and murder
9	Statutory Rape (under 16 years of age)
3	‘Incestuous’ rape ¹¹

In total, 13/18 appeals against convictions were rejected, meaning that convictions and sentences of trial courts were upheld with minor modification in sentences in 2 case.¹²

Further break up of these decisions was as follows:

¹⁰ This research focused on appeals of cases registered after the 2006 amendments. Appeals of old cases of pre-2006 amendments were reported but those are not discussed here, apart from any necessary reference in the report.

¹¹ There is no specific legal provision for incest and such cases are tried under s. 376 (rape).

¹² In addition to these two cases, in one case of statutory rape where a child was born out of rape, compensation of Rs. 1 million was ordered to be paid to the child by the convict.

Number of Cases	Description
1	Case of dacoity and rape, conviction upheld
1/2	Rape and murder case, conviction upheld
7/9	Statutory rape cases, conviction upheld. In 2 cases, appeals were accepted and acquittal granted ¹³

6.2 Attempt to Rape: Appeals Against Convictions

In total, 3 appeals of attempt to rape were reported;

In two of these, involving survivors less than 16 years of age, appeals were accepted and acquittals granted;¹⁴

One case involved an application for suspension of sentence and release of convict/accused on bail, which was granted as the two survivors filed affidavits of no objection to petitioner's (accused's) suspension of sentence and release on bail.¹⁵

6.3 Revision Applications filed by Accused against Rejection of 265-K CrPC¹⁶ Applications

Out of a total of 3 such revision petitions against decisions of the trial courts 2 revision petitions were accepted and acquittals granted.¹⁷

One writ for quashment of criminal proceedings before the trial court was also filed. High Court accepted the petition and quashed the criminal proceedings, even imposing penal/compensatory fine on the concerned police officials.

6.4 Primary Reasons for retaining convictions in appeals

In majority of the cases where convictions were upheld, this was done primarily on the basis of the ocular account of the prosecutrix and other prosecution witnesses. Medical evidence, specifically DNA, was not a contributory factor.

In the 13 appeal cases where convictions were upheld, DNA tests were conducted in only four, out of which in one it was negative and did not match the profile of the accused.¹⁸ In two cases, the survivors became pregnant and DNA of the child and accused matched and this was considered as supporting evidence. In one case, DNA and Chemical Examiner's

¹³ These decisions have been discussed under heading 9.6 entitled 'Statutory Rape.

¹⁴ In one case accused was charged with attempt to rape but convicted under section 354 (outraging modesty of a woman).

¹⁵ Compromises in rape cases are discussed at section 9.8.

¹⁶ This section empowers Sessions Court (as trial court) to acquit an accused at any stage of the case if the court considers that there is no probability of the accused being convicted of any offence.

¹⁷ In one case trial was not concluded in three and half years, while in the other involving "incestuous rape" of a 12 years old survivor and complainant resiled from their statements despite medical evidence.

¹⁸ Khadim Hussain v The State 2011 PCrLJ 1443 [FSC] DNA was conducted three months after occurrence and in court's opinion delay destroyed its evidentiary value.

reports were considered of corroborative nature, though the main reason for conviction was the testimony of the survivor in an “incestuous rape” case.¹⁹ In this case as well, testimony of the survivor, aged about 16 years, was considered as the primary evidence, though what court considered her point of credibility is itself a problematic approach, and is discussed later.²⁰

In nine cases where the convictions were upheld, there were neither DNA reports nor serologists reports of semen grouping, and cases were decided primarily on the testimonies of the survivors and other prosecution witnesses. Medical reports confirming sexual acts and Chemical Examiner’s reports confirming presence of semen in the vaginal swabs (though not in all cases) were considered sufficient corroborative evidence

6.5 Primary Reasons for accepting convicts’ appeals

In four cases where appeals against convictions were accepted and accused acquitted there were neither DNA test reports nor Serologist reports of semen grouping. Courts mentioned that these were missing aspect but from the judgments it is very clear that appeals were primarily accepted for infirmity or contradictions in the prosecution witnesses. The key factor considered by the courts, therefore, was the ocular evidence instead of medical evidence.

In one case,²¹ of rape and murder of a married woman, court accepted appeal pointing out contradictions in the statements of the two prosecution witnesses.²² Chemical Examiner’s report mentioned vaginal swabs were stained with semen. Court pointed out DNA test or semen grouping were of immense importance, and would have sufficiently determined the sexual intercourse with the deceased by the accused. However, court’s remarks about the utility of the medical evidence suggest that the ocular account of the case was to be in consonance before importing support of the medical evidence. The court remarked: “medical evidence may confirm ocular account with regard to the seat of injuries, nature of injuries and kind of injuries and kind of weapon used in occurrence, but it would not connect accused with commission of offence”²³

In another case,²⁴ there was no medical evidence. The accused was acquitted as the court did not believe the prosecution’s story, which had gaps and there were flaws in the investigation, the absence of medical evidence did not surface as a factor for court’s decision. In other words, consideration of medical evidence seemed required only if the ocular account had made its case. Another case²⁵ was also primarily decided on differences in statements of prosecution witnesses, though absence of DNA test and serologist report for semen grouping was mentioned by the court on Chemical Examiner’s evidence that semen was detected on blood stained shalwar of the survivor. The fourth case²⁶ of acquittal was victim of local practices and inefficiency of evidence preservation. In the case of alleged rape in which the survivor girl committed suicide after

19 Zulfiqar Ali v The State 2012 YLR 847 [FSC]

20 Court held that the MLR does not show the girl to be of easy virtue, and therefore confirms her testimony.

21 Muhammad Ashfaq v The State 2014 PCrLJ 1531[Lahore]

22 Case was contested on the basis of last seen evidence which is generally considered by the courts as a weak piece of evidence.

23 Ibid Para 18 of judgment.

24 Haji Abdur Razaq v The State 2014 PCrLJ 1137[Peshawar]

25 Waheed Murad alias Sheikha v The State 2012 PCrLJ 437 [Lahore]

26 Rustam v The State 2013 YLR 2600 [Sindh]

having told her father the name of the accused who allegedly raped her. However the parties compromised and all the prosecution witnesses turned hostile.²⁷ Medical evidence mentioned sexual intercourse with the deceased before her suicide.

7. STATISTICAL ANALYSIS OF BAIL ORDERS

7.1 Bail Outcomes

Total bail cases reported in the period 2006-September 2015 were 96. Their break up is as follows:

80/96 were bails after arrest;

16/96 were cases of pre-arrest bails;

70/96 were cases where bails were granted;

57/80 were cases where post-arrest bails were granted;

13/16 were cases where pre-arrest bail were granted;

3/16 were cases where pre-arrest bails were rejected.

These orders exposed some worrying trends.

Total Bail Orders Reported		Rape following abduction or enticement of a woman		Rape charges alone	
96		50		46	
Granted	Refused	Adults	Minors	Rape	Attempted Rape
70	26	38	12	35	11

In 22/96 cases the plea of marriage between the survivor and the accused, or one of the accused persons was raised in court. These cases were by and large registered as kidnapping or enticement of a woman, and charges of rape were added later.²⁸ In these cases, either nikahnamas were presented in court, or the alleged abductee had previously made a statement before a competent court that she had contracted this marriage out of her own free will.

10/13 cases in which pre-arrest bail was granted, were cases where marriage claims were raised. However, 4 out of these 10 cases involved females under 16 years of age, and the court did not question an underage girl's capacity to contract marriage.²⁹

In total, 18/96 cases of pre and post-arrest bails, survivors were under the age of 16.³⁰

²⁷ This is discussed in depth in section 9.8.

²⁸ in the review of FIRs, however, it was observed that in cases of kidnapping or enticement, police often put a rape charge alongwith the kidnapping/enticement at the very time of registration of FIR when in fact, rape cannot be claimed until the kidnapped woman has been recovered.

²⁹ This is discussed in detail under section 9.7.

³⁰ Here, the age of 16 is being used to distinguish minors from adult survivors because the age for statutory rape under section 375 is set at 16.

In the 70 cases where bails were granted, the most cited grounds for granting bail are given as follows:

Grounds	Pre Arrest Bail	Post Arrest Bail
No Medical Examination Done	0	2
Delayed Medical Examination	0	3 (of which one was made a basis despite challan having been submitted)
Delay in filing FIR	4	6
Contradictions in Occular and Medical Evidence	1	5
Contradictions in Prosecution Witness's Accounts	7	13
Faulty/Inconclusive Medical Examination	1	3
Prolonged trial/investigation	0	3
'Concocted Facts'	0	6
Consensual marriage plea prima facie accepted	6	15

PART-II

8. OBSTRUCTING FACTORS EMERGING FROM REVIEW OF CASES

1. Delay in lodging of FIR for a variety of reasons.
2. Prosecutrix (survivor) statements not in consonance with contents of the FIR.
3. Contradictions in ocular account of prosecution witnesses.
4. Delayed medical examination.
5. Incomplete forensic evidence.
6. High costs of medical and forensic test with limited facilities, resulting in delays.
7. Coercive conversion of 'Choice Marriages' into kidnapping and rape.
8. Prolonged trials.
9. Courts taking lenient view on the basis of compromise between parties, even though rape is a non-compoundable offence.
10. Control of women's sexuality through the provision of rape, as 'zina' now directly gets translated into rape.
11. Gender-prejudiced assumption by police and even courts of consent by the survivor where there are claims of any acquaintance between the survivor with the alleged accused.
12. Inappropriate and prejudiced remarks by doctors in Medico-Legal Certificates (MLCs) about character of the survivor.
13. Survivor has to pass test of subjective notions of women's sexuality to prove her case.

9. ANALYSIS OF OBSTRUCTING FACTORS WITH REFERENCE TO CASES REVIEWED

9.1 Confusion about the nature of medical evidence required by the courts

The cases reviewed under this study reflect that instead of evaluating and analyzing the actual medical evidence of the case, courts imagine a particular type of evidence for rape for a particular survivor according to her age and most likely marital status. There is a notion and perception of a 'virgin' girl who, when subjected to rape or sexual assault, should reveal specific evidence of violence on her body.

The alleged offence to be proved by bodily evidence should resonate with the 'socially prejudiced understanding' of rape rather than strict legal requirements. In a case³¹ in which two accused alleged of rape were acquitted in appeal, the Court while quoting the MLC said that the vaginal swabs were not found to be stained with semen and that:

31 Ejaz UI Haq v The State and another 2013 YLR 2563 [Lahore].

“Admittedly, no bleeding occurred at the time of occurrence. If a girl of 15 years was forcibly raped by 2 young boys as per prosecution version, there must have been symptoms of the same on the body of the victim but no marks were found on her body. Mere redness as deposed by the medical officer could be self-suffered... that from the evidence on record it is established beyond any shadow of doubt that no penetration took place as the hymen of the victim was found completely intact.”

Thus in the Court’s opinion, the medical evidence completely negated the version of the survivor-complainant and the eyewitness. The court, while comparing the statement of the 15-year-old survivor with the medical evidence of case, further held as follows:

“The statement of the victim is negated by the report of the Chemical Examiner and the medical evidence because as per the statement of Dr.....Woman Medical Officer, the hymen was completely intact and she only observed redness in the posterior fourchette...”

Court thus accepted the accused’s argument that medical evidence did not match the allegation of the survivor and acquitted him.

The case was registered after 7 days of alleged occurrence and survivor’s semen stained shalwar was not put to further forensic test for semen grouping or DNA profile. The survivor deposed in cross-examination that both the accused had raped her one by one and they had discharged. Here, the defense argued that the Chemical Examiner’s report said only a part of shalwar was stained with semen. The Court agreed, saying “it may be kept in mind that she was examined after 7 days and not immediately after the occurrence,” meaning that tampering with the evidence cannot be ruled out. The Court further said that the victim had alleged rape, and not attempted rape, which is the actual crime here. Does that mean that where rape is alleged but the evidence only proves an attempt to rape, the accused is to be acquitted as that was not the specific charge brought against him?³²

Lack of proper preservation of medical evidence and forensic tests were issues in this case. The accused might have been acquitted on account of insufficient medical evidence alone, but the court’s remarks and observations reveal the nature of evidence it looked for. In this, the hymen remaining intact became the primary issue for the Court. The law requires penetration to fully constitute the offence of rape. Tearing of hymen is not a precondition to determine penetration. However, courts remain fixated on the state of the hymen to determine penetration. This goes against medical science, as the state of the hymen is not a conclusive indicator of sexual activity, as discussed later.

Furthermore, contrast this with other another case³³ where court discussed various earlier judgments and held that rupture of hymen is not necessary to prove rape. In addition, Chemical Examination of the swabs is not the only means of proving penetration. However, such judgments are an exception rather than a norm as far as typical evidence in rape cases is concerned.

9.1.1 Use of medical evidence

their bail orders reflect that majority of the cases have been decided one way or the other primarily on the ocular evidence. In the 96 bail cases out of which in 70 bails were granted

³² S. 237 CrPC provides for these very instances. It allows the court to convict an accused for a different offence which he is shown to have committed though he was not charged with it.

³³ Khadim Hussain v The State 2011 PCrLJ 1443 [FSC].

(post arrest and pre arrest both included), in only 2 cases, no medical examination of any type was done and this was made one of the factors for bail. Similarly, in 3 cases delay in medical examination was pointed out as a factor, but out of these 3 in only 1 case delay in medical examination became the key factor for grant of bail. Contradictions in the statements of the prosecution witnesses was a basis for grant of bail in 20 orders.

Peculiar nature of the crimes of sexual assault and rape can make medical evidence crucial in the outcome of the case. Modern day evidence, in the form of DNA profiles, can be critical in scientifically proving the offence against the accused. It is a settled principle that witnesses can tell lies but that circumstances don't lie. In cases of rape, sodomy and attempts of such offences medical evidence is therefore obtained to provide support to the other evidence.

In 1979, criminalisation of any form of extra marital sex (zina) brought another offence within the ambit of applicability of medical evidence. Though the primary punishment for this offence was only possible with the evidence of eyewitnesses of specified number having special credentials, the accused could be convicted for a lesser degree of punishment on the basis of circumstantial evidence in the form of medical evidence.

Higher courts have repeatedly given directions on the nature and use of medical evidence. In one case under the Zina Ordinance, the court held:

That the police investigation in this country is not keeping pace with scientific developments. If facilities for grouping of semen be available, as indeed they are, it is not understandable why the Medical Officers examining the male for potency should not obtain the specimen of semen of the accused so that no doubt be left about the identity of the person committing Zina [adultery] or Zina-bil-jabr [rape]. The police officers in their reference to the medical officers should also in such cases invariably request the doctor concerned to take the specimen of semen of the male accused. They should send them for chemical examination and serology along with vaginal swabs and clothes/cloth etc. having seminal stains.

“That the police investigation in this country is not keeping pace with scientific developments. If facilities for grouping of semen be available, as indeed they are, it is not understandable why the Medical Officers examining the male for potency should not obtain the specimen of semen of the accused so that no doubt be left about the identity of the person committing Zina [adultery] or Zina-bil-jabr [rape]. The police officers in their reference to the medical officers should also in such cases invariably request the doctor concerned to take the specimen of semen of the male accused. They should send them for chemical examination and serology along with vaginal swabs and clothes/cloth etc. having seminal stains.

Copies of the judgment be sent to the Secretary Interior, Secretary Department of Law, Home Secretaries and the Inspectors-General Police of the Provinces.”³⁴

More than a decade later, finding no progress in the mode of medical evidence collection, in another case in 1996 the instructions were repeated in the following words:

³⁴ Mst. Ehsan Begum v. The State PLD 1983 Federal Shariat Court 204.

“that where semen of accused not sent to Serologist for semen grouping, semen found on vaginal swabs was of no evidentiary value.”³⁵

9.1.2 Controversy and debate about use of DNA evidence

However, despite these directions, there remains controversy about the usage of DNA tests and their evidentiary status. The two main questions in this controversy are:

1. what is its usage in Zina cases which specify a different nature of evidence in the form of eye witnesses; and
2. reliability of DNA tests.³⁶

For zina cases liable to Hadd, courts do not consider DNA evidence as an alternate for specific eyewitness accounts. It is clarified that since the 2006 amendments in the Zina Ordinance, offence of zina can only be complained and punished on account of eye witness evidence, and that too of a specified number of witnesses possessing credentials mentioned in this law.

However, there are still instances where there can be indirect allegation of zina for alleged acts of extramarital sex. Denial of paternity of child by a father can be one such issue. In such cases, the courts have not considered DNA test results as conclusive proof of child being born as a result of zina by the woman.³⁷ Any controversy about the paternity of the child, other than a child born as a result of rape, is determined under article 128 of the Qanoon-e-Shahadat Order 1984.³⁸ It appears that by virtue of 2006 amendments, which have introduced a special procedure for complaint of zina, criminal proceedings cannot now be initiated on basis of a child born as a result of extra martial sex.

However, to determine the paternity of a child born as a result of alleged rape, higher courts, including the Federal Shariat Court, have ordered DNA tests³⁹ and accepted the results in criminal cases.⁴⁰

The review of cases (both appeal decisions and bail orders) clearly shows that collection and preservation of medical, especially forensic, evidence is not high on the agenda of investigation agencies. Inadequate facilities and costs of tests may be contributory factors for this. Medical evidence has also not been a priority for the courts in determination of cases, as the primary evidence relied upon is the ocular account. In a majority of cases of rape and sexual assault of any nature, medical evidence collected and preserved is on

³⁵ Abid Javed alias Mithu v The State 1996 PCr.LJ (FSC) 1161

³⁶ See Amanullah v The State PLD 2009 SC 542, court said caution be taken while relying on DNA test results in cases where confidence can not be placed on the capacity, competence and the veracity of the laboratory and integrity of one conducting such test.

³⁷ See Muhammad Azhar v The State PLD 2005 Lahore 589. This judgement predates the 2006 amendments and was not in a case of paternity of a child born as a result of rape. However, the case still often erroneously gets referred as a decision to bar DNA tests irrespective of the nature of the case.

³⁸ Courts have refused petitions of men for DNA testing in child paternity cases, see Khizar Hayat v Additional District Judge, Kabirwala PLD 2010 Lahore 422, Muhamamd Arshad v Sugharan Bibi PLD 2008 Lahore 302

³⁹ Muhammad Shahid Sahil v The State PLD 2010 FSC 215

⁴⁰ Feroz Khan v The State 2015 YLR 703, Nadeem Masood v The State 2015 PCrLJ 1633 [Lahore]

the same pattern as that for cases of murder or physical injury. Special nature of medical evidence for rape cases has not evolved as yet. Investigation officers also approach collection of evidence in rape cases with the same attitude. By way of example, during an interview, an investigation officer who claimed to have been trained for collection of forensic-related evidence, remarked, “What is one going to find at the scene of a rape? Its not like murder where it is imperative to collect and preserve all sorts of evidence.”⁴¹

The reasons for this are manifold. Practical and administrative reasons for this are discussed separately. But the primary reason is lack of due acknowledgement and use of forensic evidence extracted through modern systems by our criminal justice system—its status remains that of corroborative evidence. Although in cases of acquittal, courts have mentioned non-availability or lack of medical evidence, but that appears more like ticking off reasons for acquittal than the complete basis of it. This is contrasted with conviction cases, where a majority of convictions have been without considering forensic evidence.

Legal questions about the admissibility of forensics were explained by the Court in case of Muhammad Shahid Sahil and finally, in 2013, the Supreme Court Judgment ordering DNA test mandatory in rape cases.⁴² The court in the Muhammad Shahid Sahil case specifically elaborated on the admissibility of DNA tests with reference to Article 164 of the Qanun-e-Shahadat Order, 1984:

“Article 164 of the Qanun-e-Shahadat Order, 1984 has resolved the problem by enacting that in such cases that the Court may consider it appropriate it may allow to be produced any evidence that may become available because of modern devices or techniques.”⁴³

However, even three years since this Supreme Court judgment in reality there is very little progress in this regard.

Reliance requires to be placed on forensic evidence, especially DNA testing, and courts need to move beyond the acceptance of medical evidence merely as corroborative in nature, unless in exceptional circumstances where serious doubts are cast on the veracity of a DNA test or other forensic evidence.

9.2 Gender-Prejudiced Remarks in Court Judgments

9.2.1 Honour/stigma

It is not uncommon for courts to make comments about the pristine honour of a woman—either when accepting or rejecting the plea of the accused. While rejecting the contention of accused that his implication in alleged rape was to pressurize him in civil litigation between the parties, the court observed, “it is not believable, as in our society no one can put at stake her own honour and the honour of her family for petty matters.”⁴⁴

In Abdul Razzaq v State, court refused bail to the accused on the ground that he could not point out any malice or ill will that might have prompted the complainant in involving the petitioner in false litigation. The court observed that the complainant, father of the survivor would not file a case “in which the father runs the risk of stigmatizing his own

41 Interview, Police Investigation Officer, __ November 2015.

42 Salman Akram Raja v Government of Punjab through Chief Secretary 2013 SCMR 203

43 Muhammad Sahid Sahil v State PLD 2010 FSC 215, paragraph 12.

44 Akmal Ur Rehman v The State 2013 YLR 448 [Lahore] paragraph 6.

daughter.”⁴⁵

Such remarks, usually made when refusing bail and actually benefitting the survivor/complainant, serve only to reinforce the social biases and prejudices against women. They create the impression that merely making such a claim public amounts to stigmatising the survivor. Such comments deter survivors from reporting rapes and further invite scorn for the survivor. In the words of Sociologist Pratiksha Baxi, society views a raped woman as a ‘fallen body,’ signifying the loss of social status of the survivor.⁴⁶

9.2.2 On sexuality of the survivors

In a pre-arrest bail case,⁴⁷ the court granted bail to the accused who allegedly raped and took nude photographs of the survivor. A newly married schoolteacher lodged an FIR against her cousin for rape three months after the alleged occurrence. The FIR was delayed as she waited for her husband’s return from abroad. On delay in FIR, the court remarked: “such a delay for an educated lady, not less than a school teacher, not adequately explained, as neither the consent of her husband was required, nor was he a witness of the occurrence.”⁴⁸

The occurrence happened at the house of the accused where the survivor had gone to collect data that he had stolen from her computer and was now using to blackmail her. The court also remarked that by going to recover this data, which was “till then hardly of any value to her” (as the data was stolen some months ago and she only learned of it when the accused began blackmailing her with it), she invited trouble. The data that the court assumes to be so disposable is the very data that was being used for blackmail. In this, the court is making a prejudiced judgment of her conduct and her character. Courts frequently make comments about the delicate honour of women that needs protection. But in this case, where the sole reason for the survivor acting late was fear of stigma, i.e., being seen as indulging in sexual activity in the absence of one’s husband, the court failed to transcend those very social prejudices. Thus sending the message that in order to be believed, the prosecution’s account ought to be in line with social perceptions about the conduct of a woman.

In another case where bail was granted, a young woman was recovered by police in a deeply disturbed and bewildered condition from a railway station, as noted in the court order granting bail. Her medical examination revealed a torn hymen with old, healed tears and vagina admitting two fingers easily, the court remarked: “victim appears to be a woman of easy virtue and indulged in sexual activities. Her sole statement cannot be relied upon in absence of strong corroboration.”⁴⁹ [emphasis added]

However, there are cases to which these egregious comments can be contrasted. In the case of Khurram Shahzad,⁵⁰ the defence attempted to call into question the testimony of the survivor on the grounds that she had a questionable moral character. The court however, ruled otherwise, quoting an Indian case, *State of Punjab v Gurmeet Singh* (reported as 1996(2) SCC 384) as follows:

45 Abdul Razzaq alias Bhola v State 2007 PCrLJ 1788.

46 Pratiksha Baxi qtd. In Khalid, Sabreena. “Structuring Sexuality through Rape: A Study of the Biases in Medico-Legal Certificates of Rape Cases.” Unpublished.

47 Muhammad Imran v State 2014 PCrLJ 456 [Lahore].

48 Muhammad Imran v State 2014 PCrLJ 456 [Lahore].

49 Naveed Masih v State 2008 YLR 1062 at paragraph 5.

50 Khurram Shahzad v State 2015 PCrLJ 773 [Sindh].

“The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.”

In fact, it is an established position in Pakistani law that the sole testimony of a prosecutrix is enough to convict an accused if it inspires confidence. However, it is this latter test of ‘inspiring confidence’ that allows the testimony to be eclipsed by any and all other evidence or prejudices.

9.2.3 Women ‘invite’ rape by certain conduct

Another kind of prejudice is visibly at play when courts, lawyers, doctors and police assume that when a woman is in contact with a man for work, family ties, social relations, business transaction or any other relation, anything and everything that follows—be it a rape by the alleged paramour or by other persons—makes her guilty as well. She is merely trying to lie by stating otherwise. The defense routinely makes the argument in such cases that bail be granted because she is a woman of ‘bad character,’ frequently with success.

Kapur and Crossman describe this phenomenon as law mirroring the patriarchal society’s public/private divide. The crime of rape, then, is also subject to different legal regulations based on whether the sexual conduct of the survivor is ‘public’ or ‘private,’ i.e., ‘private’ when it conforms to the role that the family gives her—the dutiful, unsullied, virgin daughter or the loyal, chaste wife—and ‘public’ when the survivor exhibits behaviour that deviates from these given roles. Having male acquaintances falls into this ‘public’ conduct, and ‘public’ conduct lies outside the protection of the law.⁵¹

In *Muhammad Javed Iqbal v State*⁵², this is the prejudice that is at play when a woman is allegedly raped at the dera of the accused, while the accused’s wife and son allegedly guarded the door. The defense argued that she had gone there to meet her ‘paramour’ with whom she had illicit relations. The court not only accepted this argument, without considering other circumstantial evidence, but also commented that it is unbelievable that a wife would facilitate her husband in committing zina. Court is therefore proceeding with a fixed, idyllic understanding of how things are supposed to be, not the reality on the ground. So, if she went to meet a male acquaintance, she is likely to have invited intercourse too. Furthermore, why are courts unwilling to use the word ‘rape,’ which communicates the intensity and violence of the crime, and instead use the word ‘zina’ which ameliorates the intensity of the crime?

Similarly, in a case⁵³ where bail was granted to a father accused of raping his own three-year-old daughter while his wife slept, the court reasoned that it is improbable for a father to rape his own minor daughter and “I have applied my mind and in my view when the relations between the wife and husband are strained such allegations can be leveled at the instigation of some intriguer.” To further bolster this thinking, the court pointed out that the prosecution has failed to bring any independent and natural witnesses to the crime.

51 Kapur, Ratna and Brenda Crossman. “Subversive Sites: Feminist Engagements with Law in India.” Sage Publications: New Delhi. 1996. 96.

52 Muhammad Javed Iqbal v State 2010 YLR 1035 [Lahore].

53 Ali Muhammad v State 2010 PCrLJ 1950 [Karachi].

It is a wonder that the court feels that witnesses will be available to a crime occurring at 4 a.m. in the dead of the night. In Kapur's and Crossman's terms, this is an example of the law mirroring the public/private divide by immunising the patriarchal family from legal scrutiny.⁵⁴

In a similar case,⁵⁵ the court deemed it illogical that a father and son would be deemed of rape together, not considering the facts of the case and the circumstantial evidence that indicated otherwise.

In the case of an alleged gang rape,⁵⁶ police declared all four accused innocent, saying that the survivor had earlier eloped with one of them and developed liking for him. Police found a case of consensual sex rather than rape. The MLO recorded her as being in the habit of sexual intercourse. Even if her previous relation with one of the accused was true, the case now was of gang rape, involving four accused. This finding of the police facilitated the accused in getting pre-arrest and post-arrest bail by the trial court. These bails were later cancelled by the High Court. In its order, the High Court noted that the alleged abductee was found lying unconscious near her house, three days after the alleged abduction. Medical evidence of injuries on different parts of her body showed that the abductee had not gone of her free will but was subjected to torture.

These examples should be contrasted with a case where a juvenile accused was convicted for attempt to rape of an 8-year-old girl. Here, the High Court in the appeal against conviction commented: "Admittedly, the commission of offence in question was not more than an act of mere juvenile delinquency."⁵⁷

It would appear that these are instances of what has been called 'cognitive structures:'

*The fundamental premises that jurors bring to the courtroom are what psychologists call 'cognitive structures.' While cognitive structures allow individuals to learn new information, they tend to perpetuate themselves by screening out information that is inconsistent with what is already believed. Cognitive inflexibility is what prosecutors face in trying to convict rapists when jurors have cognitive structures based on rape myths. Jurors will strive to reach a verdict in a rape case that will not conflict strongly with the rape myth cognitions they hold at the beginning of the trial.*⁵⁸

Thus, judges too bring their own cognitive structures, grounded in rape myths, to court. However, cognitive structures notwithstanding, these comments stand diametrically opposed to judicial comments that no one would needlessly invite shame by lodging rape reports, as discussed earlier. This begs the question as to why these cognitive structures persist when society and social relations are evidently very diverse.

9.2.4 Rape as a crime of lust and desire

Courts also belie a prejudice that continues to see rape as a crime of lust and passion, rather than a crime of control. In one case, court rejected bail to an accused in a case of alleged abduction and rape of a stepmother and daughter. When commenting on the

⁵⁴ Kapur and Crossman, 96.

⁵⁵ Pervaiz v State 2014 PCrLJ 599 [Lahore].

⁵⁶ Muhammad Nawaz v Shaukat Ali Hayat and others 2011 YLR 904 [Lahore]

⁵⁷ Muhammad Akmal and others v State 2015 PCrLJ 1443 [Lahore], paragraph 16.

⁵⁸ M Torrey qtd in Khan, Ayesha and Sarah Zaman, "The Criminal Justice System & Rape: An Attitudinal Study of the Public Sector's Response to Rape in Karachi." War Against Rape, Collective for Social Science Research. Karachi.

inconsistencies of the account of the prosecution, the court commented:

“If we go by the statement of Shahnaz Bibi she involves all the accused persons in the commission of the offence. She states before this court that she is step mother of Mst. Tasmia Bibi and was subjected to Zina-bil-Jabr which seems highly implausible, irrational and unbelievable for the reason that both the abductees remained in the custody of the accused persons for about three months but Zina-bil-Jabr was committed only with Mst. Shahnaz Bibi, the step mother of Mst. Tasmia Bibi who is much younger in age than Mst. Shahnaz Bibi. Even if all the accused persons have to commit zina for that matter they would have committed the same with Mst. Tasmia Bibi and there was no reason for them to commit zina with Shahnaz Bibi who is an elderly woman.”⁵⁹

In a 2009 case, when granting post-arrest bail in a case of attempted rape and confinement,⁶⁰ the LHC observed:

“Story narrated in the F.I.R. prima facie appears to be implausible, illogical and unbelievable for the reason that when the petitioner goes to the extent of calling the complainant who happens to be his subordinate from her hostel to his house for the purpose of committing Zina-bil-Jabr then obviously there was no impediment in his way not to perform Zina-bil-Jabr with her...”⁶¹

9.2.5 Women of ‘easy virtue’

It is not uncommon for judges to comment on the so-called ‘unbecoming’ conduct of a rape survivor, often prompted by doctors’ findings in the MLC. In one case, bail was allowed to a man accused of raping a 15/16 year old girl because the “medico-legal report of the said girl annexed to this petition shows her to be a girl of easy virtue as according to the same, there was no marks of violence on her body and her vagina admitted two fingers easily and the hymen is torn old.”⁶² This is also an example of where bodily ‘evidence’ brings a survivor’s conduct into the ambit of ‘public’ conduct described by Kapur and Crossman earlier. For courts, forays of this ‘public’ conduct—real or perceived—are not to be granted protection of the law, even in the case of minors who are legally incapable of this conduct.

Similarly, in *Muhammad Akram v State*,⁶³ two men were accused of trespassing into the house of the complainant at night while the family slept and raping his daughter before his eyes. Even in such a heinous crime, the court observed, “The medical officer also opined that the examinee/victim was used to the act of coitus and she enjoyed the sex game habitually.” It is unclear whether these were the exact comments on the MLC or that she recorded the survivor as ‘habitual’ (a common but unnecessary finding) and the court converted that word into ‘she enjoyed the sex game.’

In this way, a clear pattern emerges of individuals’ biases being translated into institutional bias and further into the bias of other state institutions. High Courts and Supreme Court are guarantors of constitutional rights of citizens. In this role, they frequently direct other institutions to act in accordance with the Constitution, or in a manner that aids the courts in their function. Right to reputation has been recognized as a fundamental right as part of right to dignity and privacy. Here, instead of directing MLOs to act in a responsible

⁵⁹ Sarfraz Ahmed v State 2008 YLR 2838 [Lahore] at paragraph 3.

⁶⁰ Raja Khalid Pervaiz v State 2009 YLR 2068 [Lahore].

⁶¹ Ibid, paragraph 7.

⁶² Tahir alias Biloo and another v State 2010 PCrLJ 954 [Lahore], paragraph 3.

⁶³ 2012 YLR 1839 [Lahore].

manner, courts are not only accepting their biased language but making them a basis of rulings and multiplying damage from these findings further. Thus, the protectors of fundamental rights end up becoming party to a violation of the same rights.

9.3 Prejudices of MLOs

Due to a combination of lack of training, incompetence and biases, as discussed later, MLOs also do not guard against letting their biases slip into their opinion and findings of the Medico-Legal Exam where they provide aid to the rape survivor and collect evidence for prosecution. No MLO interviewed for this study saw any objection with examining the state of the hymen of the survivor, or the ‘two finger test’ (which measures how comfortably a vagina can admit phallus-like fingers to conclude whether the survivor was sexually active at the time of the assault or a ‘virgin,’ as perceived by society). Neither of these tests have any basis in medical sciences.⁶⁴ In fact, one female MLO was firm in her conviction that only women who are fabricating their charges would come for an MLE on the day of the assault, because a ‘normal girl’ would be too shaken to do so.⁶⁵ Overall, it was common to hear from MLOs that “majority of [rape] complaints are fake.”⁶⁶

Therefore, MLOs frequently use the derogatory word ‘habitual’ to refer to women whom they deem to be sexually active at the time of the assault. This language is riddled with gender biases, and immediately calls into question the character of the survivor. Furthermore, it assumes that a sexually active woman would easily consent for sexual activity with anyone (see section on Medico-Legal Examination of this report for a more detailed discussion). As already discussed earlier, this biased MLC then forms the basis of lenient and/or biased orders by court and sets up a hurdle that is very difficult for the prosecution to overcome.

9.4 Police and Prosecution Officials Incompetent or Acting on ‘Mala Fide’ Intentions?

How exactly police incompetence or mala fide actions can result in ‘abuse of the legal process’ may be seen from the case⁶⁷ that, in the words of the High Court was “text book example of incompetency on the part of the investigator, the SHO, the DSP and the District Public Prosecutor.” This was a writ petition for the quashment of criminal proceedings for alleged rape and kidnapping, where the survivor herself was made co-accused in her own kidnapping. The court while disposing of the writ petition remarked: “This is a novel case in which the male accused persons had been challaned to Court on the charge of abduction despite the fact that there was/is no abductee to support the charge.”⁶⁸

Police registered the case on the complaint of the father that his daughter was kidnapped by the accused and his accomplices. He claimed that his daughter’s nikah was performed with another man but no *rukhsati*⁶⁹ took place. The alleged abductee appeared before the investigation officer and stated that she was not abducted by any one. Instead she contracted marriage of her own free choice with the main accused and produced her nikahnama in support of her claim. It was dated a week before the alleged occurrence of her kidnapping. The main accused with who the alleged abductee contracted marriage

64 WHO Guidelines, 2003.

65 Interview with female MLO, 3rd November 2015.

66 Ibid. Interview with male and female MLO, November-December 2015.

67 Nazima Shahzadi and another v The State 2009 PCrLJ 751

68 Ibid see paragraphs 6 and 7 of the judgment

69 Ceremonial departure of the bride from her parents house to the husband’s house.

also joined the investigation. However, police charged the main accused for kidnapping and rape and forwarded the challan to the District Public Prosecutor (DPP). He in response wrote a letter to the SSP Investigation of the District to include the alleged abductee as an accused in the kidnapping and rape charges. The SSP directed the concerned SHO to do the needful on which the SHO submitted a supplementary challan showing the alleged abductee as an accused in the case. It meant that the police investigation report caused the woman who was allegedly kidnapped to be prosecuted for her own alleged abduction and rape.

The alleged abductee, now made accused in her own alleged kidnapping and rape, filed a Constitutional writ petition before the Lahore High Court for quashment of criminal proceedings pending before the trial court. In the proceedings before the High Court, SHO in his written reply submitted that the petitioners committed cognizable offences punishable under sections 494 [bigamy] and 497⁷⁰ PPC. He was not aware that section 497 had been repealed since 1979 and section 494 was made non cognizable by Protection of Women (Criminal law amendment) Act, 2006. High Court accepted the petition to quash proceedings pending before the trial court and imposed penal/compensatory cost of Rs.1 lac on the Investigation officer and the SHO, to be paid in equal amount to the two petitioners.

There are a variety of examples of police mala fide or incompetence. In the case discussed above, a woman who contracted marriage of her own choice was made accused in her own rape and kidnapping. In other instances, police in their final investigation report to the court absolved the accused of all allegations, even when all prima facie evidence connected him with the allegation of rape and other charges.

In one such kidnapping and rape case, the High Court, while refusing pre-arrest bail to the accused (declared innocent in police investigation) directed the District Police Officer (DPO) to initiate proceedings against the Investigating Officer of the case who made a dishonest investigation and without cogent reasons, declared the accused innocent. The court further directed the DPO to inform the court of his action against the delinquent Investigation Officer.⁷¹ However, instances of action against delinquent police officers are extremely rare in the over a hundred cases reviewed for this study.

In a recent Supreme Court judgment on another matter,⁷² the full bench directed the police forces of the federal government and all four provinces to submit comprehensive and effective plans to resolve citizens' grievances related to the police and the criminal justice system. The Supreme Court noted that any directions by Justices of Peace (JoPs) for police action are rarely implemented. Further, in Punjab, in only 20 cases, some major punishment (reduction in rank and pay) was given to delinquent officers as a disciplinary measure.⁷³

9.5 Rigors of the System Delay in Justice which may result in 'Denial'

It is seen that not only one state agency or department comes in the way of justice for rape survivors but at times all institutions seem to come from opposing sides.

⁷⁰ Adultery, this provision was repealed in 1979 by Zina (enforcement of Hudood) Ordinance, 1979.

⁷¹ Muhammad Faisal and another v State 2010 PCrLJ 1455 [Lahore].

⁷² Haider Ali v DPO Chakwal 2015 SCMR 1724.

⁷³ Ibid, paragraphs 7(A) and 7(D).

One survivor of rape had to approach the apex court of the country twice on different occasions for her case to proceed properly. She registered a case of rape against two persons. One of them managed to get criminal proceedings quashed from the Peshawar High Court. She moved before the Supreme Court against the said order and got it set aside. After this the same accused obtained pre arrest bail from the court of the Judicial Magistrate. The complainant survivor challenged the bail order of the Magistrate up to the High Court but both the Sessions Court and the High Court dismissed her applications. She then petitioned before the Supreme Court⁷⁴ which held that the Judicial Magistrate had no power to grant bail in offence under section 376. The Court cancelled the pre arrest bail. One year and nine months was lost in this battle since the registration of the case. Not many complainants/survivors would be able to go through protracted and costly legal battles to pursue justice. In this instance the court did not order the copy of the judgment to be sent to the subordinate courts nor to the two courts below that had upheld the Magistrate's pre-arrest bail orders which were not in his jurisdiction.

9.6 Cases of Statutory Rape: 'Non-Implementation' of Law

The law clearly states that sexual intercourse with a female under 16 years of age with or without her consent is rape. This is generally termed as statutory rape. Legal treatment of this provision seems to be seriously lacking and cases of alleged rape of females under 16 years of age are not determined on the basis of evidence of sexual intercourse, rather almost on the same criteria as adopted in cases not falling within this special legal category. Courts seem to consider the sexual history of young women and notion of virginity than passing a verdict on the allegation of forced sexual intercourse.

*Case of Azhar and another v The State*⁷⁵ raises many questions about treatment of such cases. Two boys were accused of raping a minor girl aged 10/11 years. Trial court convicted both of them and sentenced them with imprisonment for life. High Court accepted their appeal and acquitted both. The reasons for acquittal and courts remarks raise serious questions. One reason relates to the inability of the said minor to testify and answer court questions in relation to the accusation. This is discussed separately in section on trial of cases of minor survivors of rape but as it is closely related to the corroboration of medical evidence, it is briefly mentioned here. The court said, "the doctor admitted that the clothes were not stained with blood or mud or any type of fluid. He also admitted that the victim could possibly be habitual." About the medical evidence the court further observed that even medical evidence does not show any marks of violence on the private parts of the victim. DNA test of the vaginal swabs was not conducted, though they were found to have been stained with semen.

Not having the DNA test meant loss of the opportunity of authentic medical evidence. Too much emphasis on MLO's report that made unwanted comments about the state of the body of the minor is a matter of concern. Marks of violence on the body of the victim or her sexual history seem immaterial, as the law only requires evidence of sexual intercourse by the accused with the survivor irrespective of her conduct. Her consent too was immaterial as she was under 16 years of age and there was no dispute about her age. Instead, the court discarded her testimony on the basis of her inability to describe the details of the occurrence, and remarking, "even otherwise, a raped victim cannot possible

⁷⁴ Nasreen Bibi v Farrukh Shahzad and another 2015 SCMR 825

⁷⁵ 2013 PCrLJ 1716 appeal against conviction by two accused/convicts

forget the agony of the series of actual acts for her entire life.”⁷⁶

In another appeal against conviction⁷⁷ of the accused for rape of a minor aged about 13/14 years, the court relied heavily on the medical evidence of the survivor which prime facie showed her being ‘sexually active.’ Court quotes the medical report as, “Doctor... has categorically stated that hymen of victim was torn, tears were old and healed... and vagina admitted two fingers”. About survivor herself, the court recorded: “she has stated that she was not habitual but was subjected to sexual intercourse on many times” and on this basis, the court held, “it is obvious that she is person of dubious character. Her solitary statement was not sufficient to prove the allegation of commission of illicit intercourse with her.”⁷⁸

Accused took the plea that her father registered this case to extort money and she stated before the trial court in cross examination that she was making her statement on insistence of her father. In case the defense plea about her father was true and she was being “used” by her father, this too was a form of abuse for which she did not receive court’s solidarity but declared of dubious character. The survivor’s statement of being subjected to sexual intercourse meant assault, not consensual intercourse as she was less than 16 years of age.

Physical examination of the body of the minor survivor remained the focus of the entire case and her ‘admission’ in cross examination of being subjected to sexual intercourse appears to be the primary basis of the decision in the appeal of acquitting the accused. Legally sex with an adult of an under 16 years old is statutory rape it is surprising that the court did not take this into account; also, that there was no consideration given to the need of a DNA test or semen grouping or any other forensic evidence.

9.7 Cases of ‘Under-age marriage’ accepted by Court

In cases of alleged kidnapping and rape, there have been orders of the High Courts that seem contrary to the statutory provisions of the law, as well as precedents. In one such case of post-arrest bail, the accused took plea of marriage with a 13/14-year-old alleged abductee.⁷⁹ A nikahnama was also produced and as per case record, the girl recorded a statement under section 164 CrPC stating her free will. The alleged abductee’s father accused the petitioner of having raped his minor daughter, while the accused and alleged abductee seemed to have jointly taken the plea of marriage. The controversy was apparently ‘patched up’ by some local council of elders referred to as ‘arbitration council’ by the court. The said council burdened the accused with Rs. 3 lac out of which he had paid Rs. 1 lac as penalty for contracting marriage without the permission of the family elders. The court accepted the marriage and even made the said council’s decision the basis for granting post-arrest bail.

This case raises two controversies: firstly, is a girl aged 13/14 years capable of giving free consent and able to contract marriage under the Child Marriage Restraint Act, 1929? Secondly, can a self-appointed ‘arbitration council’ having no legal backing settle a criminal matter of alleged kidnapping and rape?

Furthermore, in making the actions of such a council a basis for grant of post-arrest bail,

⁷⁶ See paras 9 to 11 of the judgment.

⁷⁷ Ghulam Mohay Ud Din alias Baoo v The State 2012 PCrLJ 1903

⁷⁸ Para 7 of the judgment

⁷⁹ Muhammad Rafiq v Fazal Mahmood 2010 YLR 766 [Peshawar].

does it not amount to giving legal cover to a ‘non-legal’ forum?

In another case, a girl of the same age was allegedly abducted in a case of rape and kidnapping under the previous Zina Ordinance.⁸⁰ The Federal Shariat Court refused to acknowledge marriage on the grounds that a girl of this age was not capable of giving free consent for marriage. It was therefore a violation of the Child Marriage Restraint Act, 1929. In this case, the court elaborated the word ‘consent’ as:

“[C]onsent for marriage is distinct and different from all other types of consent e.g., common consent, mutual consent and implied or express consent. Consent for marriage is eloquent and declaratory, being more specific and express. The free consent for marriage does not mean merely exceeding to or saying ‘yes’ to the dictate of circumstances. It requires the ability and exercise of free choice, capacity and capability to use that capacity.”⁸¹

ability and exercise of free choice, capacity and capability to use that capacity.”⁸¹

The court resultantly refused to recognize this marriage and retained conviction on charges of kidnapping and rape

9.8 ‘Compromise’ in Rape Cases

Rape is a non-compoundable offence. However, gender biased ‘social practices’ and related pressures, parties do end up in effecting out-of-court settlements. Such compromises and settlements take two practical shapes: either witnesses are withdrawn, evidence is distorted resulting in acquittal of accused,⁸² or relief is sought from courts on the basis of such compromises.

The renowned Supreme Court case that made DNA tests mandatory in rape cases⁸³ was prompted by a compromise between parties in a rape case. The survivor in this case, aggrieved by the attitude of investigative agencies, had attempted to commit suicide. The issue was highlighted in the media and the Supreme Court initially took suo moto notice of the matter.⁸⁴ It is unfortunate that in this case, which was prompted by a compromise, the Supreme Court did not make an outright declaration on the compromise itself,⁸⁵ although the court issued several directions on the investigation of rape cases.

During the course of this study, there have been reported cases, which were negatively affected because of out-of-court settlements between the parties and did not prompt any action by the courts. In case of *Rustam v State*,⁸⁶ the survivor was driven to committing suicide after the rape. However, an out-of-court compromise between the parties resulted in the acquittal of the accused in appeal. The trial court mentioned that the evidence on record clearly proves that the incident had happened, but the complainant party tried to save the accused after compromise between the complainant and the accused persons.

80 *Muhammad Aslam v State*, 2012 PCrLJ 11 [Federal Shariat Court].

81 *Ibid*, at page 17.

82 In such cases, acquittal is based on lack of evidence or similar legal technicalities like prolonged trial with no production of evidence.

83 *Salman Akram Raja and another v Government of Punjab through Chief Secretary* 2013 SCMR 203.

84 HRC No. 13728-P of 2012.

85 In the petition, a prayer was made by the petitioner for such a declaration.

86 2013 YLR 2600 [Sindh].

All the prosecution witnesses turned hostile and resiled from their evidence, and the court gave no order against these hostile witnesses.

In another case, High Court reduced the sentence of a convict of rape case from life imprisonment to 10 years on the basis of an out-of-court settlement.⁸⁷

In the case of Hajan,⁸⁸ the court accepted revision application for acquittal as the two survivors filed affidavits of no objection if the accused was acquitted.

In a further case,⁸⁹ the Lahore High Court accepted the petition for suspension of sentence and release of convict/accused on bail on the basis of a compromise between the parties. The court even cited cases where lenient view was taken by higher courts on the basis of compromise between parties in non-compoundable offences.

This is alarming for cases of rape, which are faced with so many hurdles and difficulties. The judicial 'acknowledgement' of compromises encourages people to effect out-of-court settlements, which enhance the perpetuation of violence against women. On the other hand there are cases, however few, where at the bail stage courts have outrightly held that compromises between the parties have no bearing on the case.⁹⁰

9.9 Incest Cases: Allegations Later Withdrawn— Who to Blame?

Treatment of cases of alleged incest of minors is shrouded in mystery due to a combination of 'social practices' and non-performance of mandatory legal duties by state functionaries. In accepting a petition⁹¹ for acquittal⁹² by a father alleged of rape (incest) of his twelve-years-old daughter, the High Court observed, "It is true that the medical evidence does prove that Ms... was subjected to rape but the medical evidence does not lead to the person responsible for this offence and by no stretch of imagination connect the petitioner with the same. The medical evidence may be used merely for the corroborative purpose and cannot be made basis by itself for recording conviction under section 376 PPC."

The case is puzzling. The minor daughter who alleged rape and her uncle who reported the matter to the police resiled from their respective statements. The minor survivor stated before the trial court that her father never committed any immoral act with her and that she leveled the allegation of commission of rape against him at the instigation of his enemies. The judgment does not mention the nature of medical evidence brought before the court, but it appears to be so convincing that on its basis the court clearly stated that it is true that Ms... was subjected to rape.

If the medical evidence did not connect the crime to the accused, then it is clear that the prosecution did not preserve the evidence and requisite forensic tests were not conducted. The Court did not make any observation on this vital aspect of the case. A serologist report and DNA result would have been sufficient evidence that the father did

87 Manzoor Chachar v State 2015 PCrLJ 690 [Sindh].

88 Hajan and another v 1st ADSJ, Dadu 2014 PCrLJ 824 [Sindh].

89 Muhammad Irshad v State and another 2011 YLR 2445 [Lahore].

90 Zahir Hyder v State 2010 YLR 1960 [Karachi]. Mother of 7-year-old survivor pardoned the perpetrator but court held that rape is a non-compoundable offence, so compromise has no bearing on the case.

91 Ashiq Hussain v The State 2011 PCrLJ 933 [Lahore]

92 His application for acquittal under section 265K CrPC was rejected by the trial court and he filed revision against the order before the High Court.

not commit rape and it would be a foolproof method to establish that the statement of the twelve years old minor was not tutored or given under any coercion.

9.10 Victimisation of Choice Marriages: ‘Double Abuse’

Before the 2006 amendments, the *Zina* Ordinance served as an oppressive legal instrument frequently used by families against those women who exercised their legal right to contract marriage of their own choice. Cases of kidnapping/abduction often coupled with allegation of *zina* were common to obstruct a marriage of choice by couples. The situation has not changed much after the 2006 amendments. Though the 2006 amendments legally made it almost impossible to prosecute a couple under *zina* in case of a choice marriage; the tendency to register cases of kidnapping/abduction has continued when a woman contracts marriage without approval of her family.

After the 2006 amendments, the dangerous trend of using allegation of rape has been seen in cases reviewed in this report. Prior to 2006 amendments, when a woman contracted a marriage of her own choice, mostly her family leveled allegation of kidnapping/abduction against the man. Only in cases where the woman’s family wanted to punish her in addition to causing obstruction in her marriage, a false case of *zina* was registered. Cases of *zina* were often registered when a woman remarried after divorce and ‘former’ husband claimed to be still married to her, either disputing divorce or denying it altogether.

In 22 out of 96 cases of bail orders reviewed in this report, the male accused took plea of marriage. In a majority of those cases, he produced not only a duly registered *nikahnama* but also statement of the woman (alleged to have been abducted and raped) before a magistrate or an affidavit attested by a Notary Public of her marrying on her own free will.⁹³ Case details exposed that initially only charge of kidnapping/abduction was noted in the FIR; however on recovery of the woman either by the police or return of woman to her parents on the intervention of local *panchayats*, the woman was forced to deny her marriage and make a statement against the accused man.⁹⁴

There are also cases in which a woman has made two statements before the magistrate under section 164 CrPC: one of having contracted marriage of her own choice, and later under pressure of her parents/family of having been abducted and raped. Women were even forced to file suits of jactitation of marriage⁹⁵ under their parents’/families’ pressure.⁹⁶ However, these were dismissed by the Family Courts because of the registered *nikahnama* and other evidence proving factum of marriage with the person against whom jactitation was filed.

Lastly, there are cases⁹⁷ where it is claimed by the complainant (a parent or sibling of the

93 See, for example, *Munawwar Hussain and another v State and another* 2009 YLR 2305 [Lahore]. In the bail hearing, the Accused (husband) produced a registered *nikahnama* as well as the alleged abductee’s application to NADRA authorities for change of her name as per her *nikahnama*.

94 *Aamir v State* 2010 PCrLJ 961 [Lahore].

95 A suit of perpetual silence against a person who makes false claims of marriage.

96 See, for example, *Sajjad Ahmad v State* 2010 YLR 1061 [Lahore]. Here, the alleged abductee even stated before the court that her father had attempted to sell her to someone, and now was forcing her for divorce. Family Court decreed her ‘chosen’ husband’s suit of restitution of conjugal rights, while her jactitation suit was dismissed.

97 See, for example, *Saifullah alias Gappo v State and another* 2013 YLR 201 [Lahore].

allegedly abducted woman) that the abductee was already married, but a *rukhsati* had not yet taken place and she was still living with her parents. However, at the bail stage, this claim of earlier marriage is never *prima facie* proved in the cases reviewed. Neither such a *nikahnama* is brought on record, nor the person with whom she is allegedly married ever comes before the court or the police.

It appears that post-2006 amendments, leveling allegation of rape in cases of choice marriages and then actually getting that charge noted in the FIR (certainly not by fair means) became easier. Earlier, a charge of *zina* meant that the woman was also implicated for the crime—a disadvantage that has been eliminated now. The advantage of leveling such an allegation is that the families manage to “break” the marriage by implicating the man with such serious non-bailable charges and often succeeding in sending him behind bars for a longer period.

In the cases reviewed, only 1/22 male accused failed to obtain bail (he claimed to be converted to Islam from Christianity but there was evidence that he was still practicing his earlier faith), otherwise in rest of the 21 cases either pre-arrest or post-arrest bails were granted. This shows that the accused succeeded in proving that he was not *prima facie* connected with the crime alleged against him and his case required further inquiry.

In the appeal cases reviewed, there was not a single case where the accused took plea of marriage, meaning that majority of such cases were ‘false’ and did not go beyond the trial court.

This misuse of law makes women suffer a double abuse; first they suffer in breaking the social obstructions to marry and record their statements of free will or file affidavits as a precaution against such litigation and harassment from police on the behest of her parents/family. Later, they are ‘forced’ to accuse the man they had chosen to marry, of rape. Humiliation of forced litigation before the Family Courts for either jactitation of marriage or dissolution of marriage is an additional burden. The offences of rape and of kidnapping/abduction are meant to *protect* women, to be used as a shield. In actuality, these same provisions are turned around completely and used to victimise her for the exercise of free will, thus amounting to a social form of violence against women.

Furthermore, the general consensus around the crime of rape is that it is underreported because it puts the honour and repute of a woman and her entire family at stake. Courts, as we have seen, reinforce the idea of female pristine ‘honour’. One is therefore moved to ask: where is the ‘honour’ in the entirely ‘false’ cases of rape? Is not the woman’s and her family’s ‘honour’ tarnished when she is forced to pronounce herself a victim of rape? This in turn begs the question: is the risk to her honour greater in having exercised her choice to enter marriage than being seen as having been subjected to sexual violence?

9.11 Registration of FIR

In the majority of rape cases delay in lodging is a critical reason for the accused to get bail within weeks or months of registration of the case. In some cases even the High Courts have declared prosecution’s case doubtful because of the time difference between the alleged crime and it being registered with the police. Similarly, in the trials of rape cases, delay in registration of cases is considered a critical factor against the prosecution and the accused is given benefit on this basis.

There are several factors that cause delay in the registration of the case.

9.11.1 Police refusal in registering case

Police's outright refusal to register a rape case is not uncommon.

There are several examples where police outrightly refused to register a case in which rape is alleged and the complainant has to approach several higher offices of the police, Justices of Peace and even High Courts in order to register the case. This trend was noted by the Supreme Court as well. In the year 2011, out of 419,365 FIRs lodged in the province of Punjab, 28,787 (approximately 7%) were registered pursuant to the orders of JoPs. This means that in 554 cases, FIRs were not registered despite orders of the JoPs.⁹⁸ This results in irreparable loss of time, which ultimately affects the case. The accused get benefit of delay in FIR, and vital medical and other circumstantial evidence is either lost or becomes weak.

Case of *Farzana v SHO Police Station Khambhra*⁹⁹ demonstrates the obstructions that a complainant may have to encounter for registration of FIR in a rape case. Even if ultimately there is success in obtaining a favourable order the time lost is bound to effect crucial evidence which will go in favour of the accused. The petitioner of this case could not get her FIR of rape registered, was not successful before the Justice of Peace and ultimately had to approach the High Court. In her petition before the High Court she narrated that she was alone at her house on 15-04-2013 and the nominated accused with the help of his two accomplices raped her at pistol point. Her alarm attracted her cousin and another person. She went to the Police Station along with these two witnesses, but SHO refused to register the case. Her father sent an application to DIG Sukkur, who forwarded it to the area DSP. But no action was taken. She then filed an application in the Court of Sessions Judge, Sukkur for registration of her case. That was transferred to JoP Additional Sessions Judge of her Tehsil, but was declined (on 07-08-2013) on the basis of SHO report that such an incident did not take place. She was directed to file a private complaint before the Court of competent jurisdiction. She challenged this order of the JoP before the High Court praying for an order for registration of case and her medical examination. High Court set aside JoP order and ordered (on 11-11-2013) the SHO concerned to record petitioner's statement verbatim and thereafter immediately produce her for medical examination, and if any cognizable offence is made out, proceed further in accordance with the law.

The High Court observed that JoP committed a serious error as he neither considered allegations of the applicant nor examined the circumstances. The Court remarked, "it is unfortunate and painful aspect of our policing system that the aggrieved person suffers hardships by running from pillar to post for lodging FIR with concerned police which otherwise is the first and mandatory step to get machinery of the criminal justice system into motion."¹⁰⁰

It can be well imagined that after 7 months of alleged rape what quality of medical evidence will be left for effective prosecution. This kind of approach of the police and other relevant agencies does not evoke any confidence that a case registered after such efforts by the complainant would bring out true facts. Other than prolonged delay in case registration, attitude of the police is a real problem. In interviews police officials openly said that they do not pay real attention to cases registered under the orders of JoP. One police official said, "either we don't register such cases, or if we have to, then in majority of those we

⁹⁸ Haider Ali v DPO Chakwal, 2015 SCMR 1724.

⁹⁹ 2014PCrLJ 460 [Sindh].

¹⁰⁰ Ibid, paragraph 12 at 464.

manage to kill the case in investigation and even get cancellation of FIR.”¹⁰¹ The cases reviewed in this research support this comment. Public prosecutors were also of the view that the police don’t pursue cases properly when they are registered on intervention of JoP or a judicial authority. The Supreme Court’s findings in the *Haider Ali* case discussed earlier bolster this further.

9.11.2 Stereotypical FIR narratives

Complainants, when filing FIRs, attempt to fill in a particular script in vogue, which from practice is generally believed to be appealing, convincing and facilitative of building a case structure to be useful for an effective prosecution case.

This is due to a combination of factors, attributable to both the complainant party and the police. Following an incident of rape, the survivor is most likely to first tell a trusted friend or member of the family. In this process, a lot of facts are lost in detail or changed according to what the family as a whole thinks will best make a good case. Then, it is not uncommon for the family to seek the assistance of a person whom they think would be more knowledgeable about this for a written complaint, usually a lawyer. Here, a further attempt is made to have the ‘story’ fit a popular narrative, complete with witnesses. Lastly, the officers at the police station may intervene to mould the FIR to what they think will secure a conviction. In this process, the FIR version does not match the actual occurrence, resulting in contradictions between the ocular account and the circumstantial evidence.

A DSP (Legal)¹⁰² said that the case for trial is built upon the FIR. “We have to make out FIR keeping in view the trial, for that we have to make out the occurrence. If we do as is narrated to us then in 99 percent cases there will be no conviction.” The majority of FIRs in rape and even other cases seem similar for the reason that the police official looks at an old FIR and almost copies that for the next case, he told us. In reality, this futile attempt to ensure a strong case is what affects the outcome of the case negatively. Fake witnesses are added and too many details about the occurrence are mentioned, which fail at trial. Thus, in 20 out of 96 bail orders reviewed, bails were granted because of contradictions in the accounts of prosecution witnesses. It is obvious that rapes do not happen in the presence of eyewitnesses, so the witnesses must be falsely inserted into the FIR to begin with.

Generally, the contents of the FIR in almost all types of cases mention such details as if the complainant made a video film recording all the details. “How is it possible for a complainant whether eyewitness or injured person to describe details of nature of weapons used and mention exact points of injury?” remarked a Deputy Prosecutor General, Punjab.¹⁰³

A review of FIRs registered over the last few years (from Islamabad and Rawalpindi districts), reveals an interesting new trend. In urban areas, one finds that more and more women are approaching the police as complainants in their own cases. Previously, the overwhelming trend was for a family member (usually male) to act as complainant. At first sight, it seems that the matter reported in such FIRs is being narrated the way it happened, meaning, without trying

¹⁰¹ Multiple police officials, in conversation with the author and assistant. November 2015.

¹⁰² A DSP Legal (Islamabad), in conversation with the author. 3 November 2015. He has been in service for more than 22 years.

¹⁰³ Deputy Prosecutor General, Punjab in Lahore, in conversation with author and assistant. 23 November 2015.

to fit it to a popular narrative as described earlier. In this, complainants have also mentioned whatever acquaintance they have previously had with the perpetrator, including what lead up to the assault.

In certain instances, FIRs are delayed, being reported subsequent to any attempted blackmail by the perpetrator. It is also not uncommon for the survivor to first try to silence the perpetrator by giving in to the blackmail, and then report to the police when that fails. Increasingly, compromising videos and pictures of the survivor are part of this blackmail.

By way of example, in *Azhar Mahmood alias Moodi v State*,¹⁰⁴ a midwife was deceitfully taken from her home on the pretext of attending to a delivery. After being taken to an unknown spot where two more men were present, she was intoxicated by being served a fruit juice and raped. A video of the incident was made. She was warned about reporting the case and dropped at the city's District Headquarter Hospital. The main perpetrator blackmailed her further for sex, which she refused. Subsequently, the video was uploaded on the Internet and exhibited to people in her neighbourhood. At this point, one year after the incident, she filed an FIR for rape. It was good fortune that police managed to recover CDs of the film, which expert forensic analysis found unedited and untampered. Furthermore, two persons from the vicinity gave evidence that the video was exhibited in the area. The court therefore rejected the post-arrest bail of the main accused, condoning the delay in FIR on the basis of collection and preservation of evidence.

Condonation of delay has, however, been limited in light of the Supreme Court's decision in the Mukhtar Mai case:

“Now attending to certain legal and factual pleas raised by the learned counsel for the complainant which according to him also have nexus to the law, such as, the inferences drawn against the prosecution regarding delay in lodging the F.I.R. is against the settled law, because in cases pertaining to the present nature it is understandable that the victim' or her family is/are hesitant to report the matter and in certain cases delay of even upto a month has not been considered fatal to the prosecution. In our view, the above is not an absolute or universal rule and the delay in each case has to be explained in a plausible manner and should be assessed by the Court on its own merits; in a case of an unmarried virgin victim of a young age, whose future may get stigmatized, if such a disclosure is made, if some time is taken by the family to ponder over the matter that situation cannot be held at par with a grownup lady, who is a divorcee for the last many years; the element of delaying the matter to avoid Badnami may also be not relevant in this case because the incident according to the prosecution's own stance was known to a large number of people and there was no point in keeping it a secret from everyone.”¹⁰⁵

This judgement, in creating a bifurcation between an 'unmarried virgin victim of a young age' and an older woman, has negatively affected courts' tendency to condone delay in registration of FIR. Furthermore, the judgement assumes that 'honour' is only attached to the 'unmarried virgin,' while the self-respect of older women cannot be violated. There is also no consideration given to the trauma that results from rape.

While it is certainly a positive development that real facts surrounding rape incidents

¹⁰⁴ 2014 PCrLJ 1633 [Lahore].

¹⁰⁵ The State v Abdul Khaliq PLD 2011 SC 554, paragraph 23.

are being recorded in FIRs, given the tendencies of investigation (described below) and courts, the success of these cases remains a question mark. Police's approach to investigation remains fixated in rape myths and there is very little attention paid to circumstantial evidence. Owing to this, police are unlikely to be able to take the required approach to investigation of these rapes. As one police officer commented, such types of rape complaints arise "when there are previous relationships, and the men fail to fulfil these women's demands."¹⁰⁶

Furthermore, as we have seen, a previous liaison of the survivor drives courts to view her with suspicion, or worse, assume consent on her part. In this milieu, a successful outcome of the FIRs seems bleak.

9.12 Problems in Police Investigation

Police investigation, especially in cases of rape, remains steeped in stereotypical modes of collection of evidence. This either damages crucial circumstantial evidence or results in its complete destruction, due to the inability to collect the vital elements at the place occurrence. Interviews with Investigation Officers and Station House Officers revealed that collecting evidence from the site of a rape is unheard of. Scenes of murder crimes are viewed as 'real' crime scenes where evidence is worth finding while in rape scenes, this is seen as a futile and pointless exercise.¹⁰⁷ Similarly, the police lack the ability to track or retrieve evidence from mobile phones and other electronic devices, which is seen as a specialised task for intelligence agencies or the Federal investigation Agency (FIA), despite how common these devices are today.¹⁰⁸

This is partially due to a lack of proper training and partly due to a callous attitude. Investigation Officers interviewed claimed to be duly trained in collection and preservation of forensic evidence.¹⁰⁹ Therefore, one can assume that forensic training modules do not adequately cover the specialised nature of evidence to be looked for in sexual crimes. Even if police officers are trained in the theory of forensic evidence, they are absolutely clueless about the handling and preservation of the same. Further, because rape complaints are seen mostly as a nuisance rather than a crime worthy of the effort of investigation, police officers generally remain reluctant to investigate them properly. Because of this attitude, delays by the police in taking a complainant for MLEs and in collecting samples prepared by MLOs to the Chemical Examiner/Forensic Lab are commonplace.¹¹⁰ Benefit of these delays and poor investigations, then, goes to the accused, both at the bail stage and the trial and appeal.

The police officials interviewed claimed that they don't have any funds for investigation and have to spend from their own pocket to meet expenses, e.g., one investigator frankly admitted that even the officer who makes the site plan charges Rs. 7000. Such expenses are usually met with the 'cooperation' of the complainant party. Where such 'cooperation' is not forthcoming, Investigation Officers do not visit the site of occurrence and instead draw up site plans while sitting at the police station. This results in unsuccessful

¹⁰⁶ Multiple Police Officers, in conversation with the author and assistant, November 2015.

¹⁰⁷ *ibid.*

¹⁰⁸ Deputy Public Prosecutors and Deputy Prosecutor General, Punjab, in conversation with the author and assistant, November-December 2015.

¹⁰⁹ *Ibid.*

¹¹⁰ Male and female MLOs, in conversation with the author and assistant. November-December 2015

prosecution. For this and other reasons, recently, the Supreme Court¹¹¹ has also taken cognizance of this problem and directed that a separate budget be made for investigation and be available to police stations.

This therefore creates problems for the prosecution at trial. There is a clear division of duties between the police and the public prosecutors such that the police investigates and the public prosecutors handle the trial and the appeals—including the scrutiny of the investigation record. This is a clean and precise delineation on paper, but one that brings up a number of hurdles in practicality. Firstly, such a system can only work if there is close coordination between the prosecution and the investigation; in reality, prosecutors pointed out that coordination or any liaison between the police and the public prosecution services is non-existent.

Secondly, a case comes to prosecutors at the time when it has been challaned, i.e., when the investigation is complete, charges framed and persons either included as accused or declared innocent. At this point, prosecutors can hardly recommend any corrections in the record or the investigation as part of their scrutiny. Should they even put reservations on an investigation, it hardly amounts to any practical changes as the same file comes back to the objecting prosecutor with either cosmetic changes or a plea from the investigation officer to oblige him by accepting his investigated case.¹¹² Thus, prosecutors' involvement of an investigation should be at an earlier stage in the case, preferably at the stage of remand of suspects. Thus, the loopholes introduced in a case due to inadequate investigation are never rectified at any stage of the trial. In submissions before the Supreme Court in the *Haider Ali* case,¹¹³ the main issues presented by the provinces about flaws in investigation and trial included lack of cooperation between the police and prosecution at the investigation stage and absence of any standardised SOPs to guide the relationship between prosecutors and police officers to allow them to aid each other in the field for timely investigation.

9.13 Problems of Medico-Legal Examination

Medical evidence is key in rape, hurt and murder cases. While convictions in rape cases can take place on the basis of the sole testimony of the rape survivor, medical evidence remains the strongest piece of corroborative evidence. Out of 70 cases where pre-arrest or post-arrest bail were granted, five bails were due to an inconclusive medico-legal examination and six were cases where, *prima facie*, the survivor's account was not supported by medical evidence. Conversely, out of 18 appeals in the period 2006-2015, not a single conviction was on the basis of sound medical evidence.

9.13.1 Lack of Female MLOs

Medico-Legal Examination refers to the medical examination of a rape or hurt survivor, or a cadaver in a homicide case to assess the type of injuries sustained by designated MLOs. MLOs report to the Office of the Police Surgeon, which falls under the jurisdiction of the respective provincial health ministry. Only female MLOs can examine female rape survivors.

This immediately sets up a hurdle of capacity for these MLOs: there are nine public

¹¹¹ *Haider Ali v DPO Chakwal* 2015 SCMR 1724, 10, direction number 4.

¹¹² Additional District Public Prosecutor, in conversation with the author and assistant. 23 November 2015.

¹¹³ *Haider Ali v DOP Chakwal* 2015 SCMR 1724, paragraph 7(C).

hospitals serving a population of about 14 million in Karachi. Of these, only three hospitals (Jinnah Post-Graduate Medical Centre, Abbasi Shaheed Hospital and Civil Hospital Karachi) had at least one female MLO on staff in 2007.¹¹⁴ It is a requirement for both male and female MLOs to be available at the hospital around the clock. Regular shifts last for six hours each and night shifts for twelve hours. Practically however, female MLOs would be unavailable at night, or would have to be contacted via phone if a rape survivor comes for a MLE during the night shift.¹¹⁵ The latter is a rare arrangement and actually represents an improvement over the norm. It is no surprise therefore that an Additional District Public Prosecutor in Lahore revealed that a police station he previously handled in Barki, a rural area on the outskirts of Lahore, did not have a female MLO at the nearest Rural Health Centre. This trend is common in rural areas.

Lack of availability of female MLOs arises out of a number of factors. Duties as an MLO, with frequent court visits to depose medical evidence, late and inflexible hours, low pay, lack of equipment and infrastructure and frequent intimidation or bribery both from the public and from high ups in the department to alter MLCs creates a highly unsatisfactory job environment.¹¹⁶ This is exacerbated by the lack of on-job security (both at the hospital and in travelling to and from court) and absence of respect for the job in the eyes of the general public creating a job environment that male and female MLOs alike try best to leave quickly.¹¹⁷ A female MLO's interview for the purpose of this study revealed that daily court visits, and the brusque or rude conduct or intimidation MLOs have to face from lawyers are the primary reasons behind such few women staying in this job.

These factors, combined with frequent transfers of MLOs and their exit from the profession causes delays and prolong trials. Sometimes, the whereabouts of MLOs are not known at the time of trial as they have left their previous hospitals or health centres. Courts at times have to adopt coercive measures to seek attendance of MLOs, which often causes friction and is in no way helpful for the prosecution.

The problem of securing attendance of MLOs and their bitterness is quite old. In 1980, the Registrar of the Lahore High Court sent a notice to all provincial District and Session Judges, civil judges and magistrates, directing them to abstain from issuing non-bailable warrants to ensure doctors' attendance in court. Instead, it directed that doctors be contacted via their department.¹¹⁸ However, in 1985, the Registrar again sent a notice to the same officials mentioning that some presiding officers of the courts do not show enough courtesy to doctors attending court in their official capacity. The letter states that this leads to complaints and bitterness and the presiding officers were asked to be more courteous and polite to such witnesses in particular.¹¹⁹

9.13.2 Lack of Equipment and Infrastructure

Lack of equipment and infrastructure also compounds troubles for rape survivors. A 2007

114 Aahung. *A Research Study on the Medico-Legal Sector in Karachi*. (Aahung: Karachi, 2007). 15.

115 Female MLO, in conversation with author and assistant. November 2015.

116 Aahung, 54. Female MLO in conversation with the author and assistant, November 2015.

117 Deputy Police Surgeon (Punjab), in conversation with author and assistant, 11 November 2015.

118 Letter No.6316-Genl/XIX.A.10 dtd 30.06.1980.

119 Letter No.2780-Genl/XIX.A.10 dtd 9.03.1985. In this letter, three earlier letters dating back to 1973 were also referred.

study of medico-legal response system in Karachi found that Karachi hospitals lacked even basic amenities like lighting, an examination table, separate washrooms for female examinees to dress, undress and wash, and washrooms for female MLOs. This is serious shortcoming given the intimate nature of the MLE, and a frequent shortage of rubber gloves.¹²⁰ In a few instances, when female examinees came for MLEs, the MLO's office was hastily emptied and the survivor examined there. Equipment found lacking included: gloves, slides to collect samples, measuring scales, speculums, sterile swabs, lubricant or saline solution, blood tubes and containers. Evidently, these standards fall short of even the most basic equipment listed in WHO's '*Guidelines for Medico-Legal Care for Victims of Sexual Violence*' of 2003.¹²¹

Evidently, even equipment marked as essential by WHO is not always guaranteed at urban hospitals in Pakistan. As a result, it is not rare for MLOs to ask examinees to pay for their own slides, swabs and bandages.¹²² An MLO interviewed for this study reported being satisfied with the equipment and provisions of her current hospital in the federal capital over previous posting in Azad Kashmir, but admitted that even this equipment and infrastructure "is not hundred percent."¹²³ The interviewers observed that the hospital did not have a private washroom for the MLOs. Meaning, that the complete basic equipment cited by WHO is hardly available anywhere.

At the same time, there is no agreement among MLOs about the equipment required to perform an MLE. A small percentage of respondents in the Aahung study had argued that an MLE requires no equipment as it is conducted with the naked eye.¹²⁴ This is not unsurprising, given that MLOs are given no specialised training before undertaking or during the course of their jobs.

9.13.3 Training of MLOs

When questions about qualifications and training were put to a Deputy Police Surgeon, Punjab and multiple MLOs, it was learned that at the bare minimum, MLOs are inducted by the Office of Police Surgeon based simply on their MBBS qualification. This means that their only specialised training in this matter is the basic forensic medicine module of the MBBS, which is grossly inadequate while also being outdated, as discussed later. The Office of the Police Surgeon in Punjab does mandate a 3-month training period of both theory as well as on the job training, but it is an open secret that these trainings never happen.¹²⁵ MLOs also admitted that training and learning, even about forensic sciences, is something they have to undertake on their own, if at all.¹²⁶

In Karachi, too, Aahung found a similar landscape. There was absolutely no agreement among MLO respondents as to whether a training for the job is provided, and if provided, what is the duration of the training (answers ranged between 1-2 weeks and 6 months), nature (whether this is on-the-job training, theory only or combines theory with

¹²⁰ Aahung, 59.

¹²¹ The WHO's recommended equipment is annexed to this report as 'Annexure III'.

¹²² DSP (Legal) and male and female MLOs, in conversation with author and assistant, November- December 2015.

¹²³ Ibid.

¹²⁴ Aahung, 56.

¹²⁵ Deputy Police Surgeon (Punjab), in conversation with author and assistant, 11 November 2015.

¹²⁶ Female MLO, in conversation with author and assistant, December 2015.

demonstrations), and what is the content of such a training (e.g., conducting an internal exam, training on criminal law, law of evidence, legal procedure and law of evidence or how to present findings in court).¹²⁷ In all of these, a frequent response was ‘as doctors, we know how to conduct internal examination’ or ‘we learn by observing seniors’, indicating that MLOs themselves sometimes have an attitude that ranges from ill-informed to lackadaisical towards their functions.

In this context, it is not surprising therefore, that MLOs have a severely misunderstood concept of their role in the criminal justice process. Even a Deputy Assistant Police Surgeon, being a doctor by training, assumed that MLOs are expert witnesses, an attitude echoed in Aahung’s study when MLOs complained about Courts not giving MLOs the respect due as expert witnesses, or judges asking them very basic questions.¹²⁸ In reality, under the *Qanun-e-Shahadat Order, 1984*, the MLO is required to merely depose as to the contents of the MLC, so that prosecution and defence lawyers may cross-question the very person whose opinions are expressed on the MLC.

In addition, the problem of MLOs being unable to distinguish between hearsay and admissible evidence often brings up considerable hurdles for prosecution lawyers as MLOs tend to bring in third party’ comments on the mental state of survivor into the trial.¹²⁹

9.13.4 Government of Punjab’s 2011 Reforms

An attempt to address these very gaps was made in Punjab in 2011 with the formulation of the ‘Standard Operating Procedures for Medicolegal Examination of Women Victims of Violence’ and a revised format of the MLC by the Government of Punjab through Secretary Health and Women Protection Project in consultation with the German Agency for Technical Cooperation or GTZ (hereinafter referred to as the “2011 SOPs” and the “2011 MLC” respectively). Despite being forward-thinking and attempting to addressing some of the salient problems highlighted in the present report, both the 2011 SOPs and the 2011 MLC met almost immediate failure.

9.13.5 2011 MLC Format

The 2011 MLC is a 9-page detailed document that is very different from the one-page sexual assault MLC that has been in use since 1958. In trying to make the 2011 MLC comprehensive, the form has actually come to include a lot of unnecessary detail and confidential information that is prejudicial to the survivor, as pointed out by Ms. Hina Hafeezullah Ishaq, Advocate High Court in her article titled ‘Analysis of Medico-Legal Examination Certificate for Female Survivors of Sexual Violence’ published in PLD Journal 2013. Firstly, page two of the 2011 MLC carries ‘Statement on Oath and Consent.’ An oath is not required for MLEs and doctors are not authorised to administer oath, rendering this oath ineffectual. It is important to obtain informed, preferably written consent of examinees before their MLE, but not to be stretched to cover a ‘*shara*’ examination, nor an oath that previously no such examination has taken place.

¹²⁷ Aahung, 26-31.

¹²⁸ Police Deputy Surgeon (Punjab), Female MLOs, in conversation with author and assistant, November-December 2015.

¹²⁹ Hina Hafeezullah Ishaq (Advocate High Court, Senior Counsel-V Office of the Attorney General of Pakistan), in conversation with author and assistant, 9 November 2015.

Secondly, the 2011 MLC also requires the survivor's sexual, gynaecological and psychiatric history. These are no doubt important for medical aid, which is the first duty of an MLO, but it has no role in and need not be made part of criminal proceedings via the MLC. This is purely confidential information and the 2011 SOPs themselves bar the MLO from disclosing it without informed consent.¹³⁰ In fact, the recording of this information is likely to deter examinees from being honest and frank in answering the questions, rendering medical aid ineffective.

Thirdly, the section of the 2011 MLC that records general and specific physical examination should not include questions of the survivor's mental and emotional state (whether she is 'confused, shy, depressed, agitated, cooperative, intellectual, emotional state etc'). Such information does nothing but allow judges and the defense to draw negative and baseless assumptions about the character of the witness – e.g., if she is not absolutely traumatised, confused and devastated after the assault, it must have been a consensual act. In addition, as pointed out by Ms. Hafeezullah, this also exposes the survivor to degrading cross-examination in court and needless questions by the MLO that assume that no rape took place without being traumatised.¹³¹

Similarly, the description of the state of the hymen of the survivor has no place in the MLC as this is a completely irrelevant piece of information. Assuming that sexual intercourse or rape will always entail a violent rupture of the hymen presupposes that sexually active women cannot be raped—evident in reported cases where a married woman is raped but the defense still points out that the MLC reported that the hymen is 'old torn.'¹³² Furthermore, even among women who have never had sexual intercourse, the hymen is not always bound to be present. It can be ruptured due to sports or athletic activity—football, cycling, gymnastics and running being very common causes. Conversely, a hymen can be so flexible as to stretch and accommodate years of sexual activity without rupturing.¹³³ In a number of women, the hymen finally tears only in childbirth. Among children, penetration may not be deep enough to be able to damage the hymen tissue. Lastly, a small number of women are born without hymen tissues altogether.¹³⁴ Therefore; recording 'virginity' as indicated by the state of the hymen is a useless exercise, and one that can be classed as an egregious form of gender violence when done without the complete consent of the examinee.¹³⁵ This in turn means that judges', lawyers' and doctors' obsession with these virginity tests is also misplaced.

Fourthly, creating specific columns for description of physical injuries presupposes that every rape leaves visible indications of a struggle on the survivor's body. This immediately excludes cases where women are raped on gunpoint, under fear of death or hurt, under blackmail (increasingly common in the age of mobile phone cameras and internet, as

130 S.4 Principles of MLE, *Standard Operating Procedures for Medicolegal Examination of Women Victims of Violence*. Government of Punjab, 2011.

131 Ishaq, 53.

132 Muhammad Yaqoob v State 2008 YLR 2357 [Sindh]. In this case, the survivor was a 50-year-old married woman who, in her MLE, was not found 'virgo intacta.'

133 Mans, S. Jean. "Physical Examination of the Child and Adolescent." In *Evaluation of the Sexually Abused Child: A Medical Textbook and Photographic Atlas*, (Second edition, Oxford University Press). 61-65.

134 Ibid.

135 Amnesty International, "Turkey: End Sexual Violence Against Women in Custody!" (2000). 26-27. <http://www.refworld.org/pdfid/3f14411a4.pdf>.

in *Muhammad Imran v State*¹³⁶ where a married woman's cousin was able to rape her by threatening to release data stolen from her computer) or due to intoxication or being made unconscious. A victim is unlikely to resist rape simply due to shock and trauma; or due to a hope that if she does not resist the rape, her life might be spared by the attacker. Thus, the 2011 MLC encodes the myth that a 'true' rape is one where the survivor sustains visible cuts and bruises, vaginal tears and broken bones. In the words of Khan and Zaman, such legal artefacts do not understand rape as a crime violation of bodily integrity and sexual autonomy, but only bodily harm with severe injuries.¹³⁷

Fifthly, some columns of the 2011 MLC are simply misguided and incorrect. Column 8(a) asks for 'nature of injuries (under criminal amendment act).' It is unclear what criminal amendment act is being referred to here and why these injuries may be relevant to a crime of rape. Similarly, Column 1 (Patient Demographic Information) asks for the caste of the survivor. This is utterly irrelevant information that is not required to identify a person. This form forgets that the foremost duty of an MLO is to the survivor, and to collecting evidence for a criminal trial. It is the survivor's prerogative to pursue a criminal trial or otherwise.

9.13.6 2011 SOPs

The 2011 SOPs also suffer from similar defects. The most glaring defect is the inclusion of a definition of 'complete rape' as "the sexual act carried out by force or under threat in which a man's erect penis is inserted into the woman's vagina, usually followed by the ejaculation of semen." This definition is incorrect and does not match the definition under Pakistan's laws. The definition of 'rape' is given as 'sexual intercourse with a woman against her will or without her consent,' which is only half the definition as given in section 375 of the Pakistan Penal Code. Similarly, the age of consent via definition of minor is given as 16 for males and 18 for females, which is also not the age of majority in any law in Pakistan. Lastly, sexual intercourse is defined as 'the sexual act whereby the vulva/vagina is penetrated by the penis,' which is not backed by any law.

The 2011 SOPs also lack any specific guidelines for examining minors. This is a glaring oversight, which assumes that children are raped in the same manner as adults. The WHO's 2003 "Guidelines for Medico-Legal Care for Sexual Violence Survivors" takes pains to point out that sexual abuse of children usually happens via grooming, manipulation and coercion, so typical physical signs of rape are likely to be absent.¹³⁸ Furthermore, among pubescent girls, as estrogen levels in the body rise and the body changes, hymen tears and similar signs of penetration or violence on the anus and the vagina are likely to heal such that a doctor may not be able to identify them.¹³⁹ India's 2014 "*Guidelines and Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence*" issued by the Ministry of Health and Family Welfare, therefore, also mandate that "genital and anal examination should not be mechanically done."¹⁴⁰

At the same time however, it is commendable that the 2011 SOPs highlighted, clarified and standardized the process of collection of samples in cases of sexual assault. Swabs were

¹³⁶ 2014 PCrLJ 456 [Lahore].

¹³⁷ Ayesha Khan and Zaman, 8.

¹³⁸ Aahung, 78.

¹³⁹ Ibid, p 80.

¹⁴⁰ India's 2014 "*Guidelines and Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence*". 19.

to be collected from the mouth, vagina and rectal area. Moistened swabs were to be used to collect debris from underneath fingernails, foreign material on the body, bloodstains, seminal stains and other stains. These are to be dried, packed in paper envelopes (as glass jars and plastic bags can contaminate the samples) and sent to designated laboratories via the police. Blood (and sometimes urine) samples are to be taken to determine alcohol levels. These are mixed with given anti-coagulants to keep the blood from coagulating. The head of the survivor is to be combed for loose hairs and debris. Similarly, the pubic region is to be examined thoroughly to find a number of pieces of evidence including pubic hair, debris, bruises, abrasions and cuts. The survivor is required to undress standing on a sheet of cloth, which is meant to collect and loose debris or foreign particles on the survivor's body. This sheet is also to be sent for forensic analysis. Clothes worn at the time of the incident and bed sheets, where possible, are also to be collected, dried and packaged to be sent for analysis. Moreover, pregnancy tests and tests for venereal diseases are also made essential.¹⁴¹ These guidelines are essential at a time when MLOs openly admit that following "what we observed our seniors doing" is the extent of their MLE training.¹⁴²

No MLO or health professional contacted for the purposes of this study reported following the detailed methods of MLE mandated by the 2011 SOPs. As rightly pointed out by a Deputy Police Surgeon for the Punjab Police, such a drastic overhaul of the MLE requires training of MLOs across the province, which was never done. Thus, the 2011 SOPs recommendations and reforms never moved on to the stage of implementation.

In addition, confusion surrounds the status of the 2011 MLC. It is unclear whether the 2011 MLC was ever completely introduced across all districts of the province to begin with. Shortly after its introduction, a petition was filed in the Lahore High Court challenging it on grounds of violation of the right to dignity and privacy of the survivor, among other grounds. It is unclear whether a stay was issued on the use of the 2011 MLC as a result of the petition, but a number of MLOs and the Office of the Police Surgeon still acted with this understanding. An interview with petitioner in the case, Ms. Hina Hafeezullah Ishaq, revealed that she has subsequently withdrawn the petition on being appointed as an Assistant Advocate General for the Government of Punjab in 2013. However, some health professionals still proceeded under the assumption that the injunction remains in force, while at least one MLO reported having used the MLC while posted in a district. Public Prosecutors report having never seen the 2011 MLC in any case. Several MLOs and a Deputy Police Surgeon in Punjab were unaware that the petition had been withdrawn. Thus, there is no clarity on uniformity in use of the MLC even in the province of Punjab.

9.14 Forensic Evidence

In 2011, the Government of Punjab replaced the office of the Chemical Examiner with the Punjab Forensic Science Agency (PFSA), responsible for all kinds of forensic examinations including ballistics, polygraph tests and medical evidence. No official of the PFSA or the erstwhile Office of the Chemical Examiner could be reached for interview for this study.

Almost all MLOs and Prosecutors interviewed reported delays of an average of 6-8 months in receiving reports from the PFSA. According to one source, the PFSA has a backlog of

¹⁴¹ *Standard Operating Procedures for Medicolegal Examination of Women Victims of Violence*. Government of Punjab.

¹⁴² Female MLO, in conversation with author and assistant, 3rd November 2015.

over 85,000 samples. This is not surprising, given that it has only one functional facility in Lahore where samples from all over the province as well as Islamabad, AJK and sometimes other provinces are sent for analysis.

In fact, the lack of fully-functioning facilities sets up another hurdle as well. The PFSA's "*Policy Regarding Submission/Collection, Return and Disposal of Evidence in Punjab Forensic Science Agency*," available for public information on its website, states at number 9:

“In rape cases, the victim and suspect shall appear in Punjab Forensic Science Agency to obtain reference samples for comparison to the submitted sample and to establish the credibility of sample submitted as well.”

It is unclear how this is to be achieved. With only one fully-equipped facility in Lahore, can survivors and suspects (often more than one suspect in one case) from all over Punjab, AJK and Islamabad travel to Lahore to provide ‘reference samples’ to the PFSA? Further, given the backlog of cases at the PFSA, how soon will this be after the registration of FIR? What if the accused has already been released on bail by that time? The PFSA policy is silent on this. It is unclear whether the PFSA and investigative agencies have devised a different procedure to match DNA samples without the survivor and the accused having to physically travel to the PFSA facility.

Another big contributory factor for delays is the chain of conveyance of evidence from the MLO to the PFSA. Interviews with MLOs indicate that the police often delays collection and conveyance of evidence from the MLO to the forensic lab—sometimes by design and sometimes out of apathy.¹⁴³ The longer that medical evidence is stored, the more its quality suffers, leading to inconclusive forensic reports in court. PFSA's guidelines state that it will refuse DNA samples collected in rape cases after an elapse of three days for this reason.¹⁴⁴ Such a backlog and systemic delays immediately mean that benefit of such a delay goes to the accused at the stage of granting of bail. In fact, in several instances, this has benefitted the accused in the trial as well.

It is puzzling that samples from all over Punjab, Islamabad and AJK are sent to Lahore for examination when there are such labs in Islamabad and Karachi that have been mentioned in reported judgments. This long journey and overheads only inflates associated costs, which are often paid by the examinee or her attendees despite the fact that these tests are supposed to be free, directly for the government of Punjab, and where samples come from other provinces, the cost is to be settled between the governments of the concerned provinces/federation.

During the course of interviews with police officials of various ranks, prosecutors and MLOs, some frankly and some in veiled comments mentioned that these costs are often borne by the examinee or her attendees. This, in several instances, results in delay in tests, or that no tests are conducted at all. In the case of *Zafar Ali*,¹⁴⁵ a Federal Shariat Court decision on a case from Punjab, the lady doctor stated that the complainant could not deposit fee of Rs. 20,000 to pay for a DNA report. Evidently then, MLOs and police are able to extract fees—legitimate or otherwise—from the complainant party, sometimes

¹⁴³ Female MLO, in conversation with author and assistant, 3rd November 2015.

¹⁴⁴ PFSA, Policy Regarding Submission/Collection, Return and Disposal of Evidence in Punjab Forensic Science Agency. 1. http://pfsa.gop.pk/?page_id=56.

¹⁴⁵ *Zafar Ali v State* 2011 PCrLJ 1964 [FSC].

using the Government of Punjab Notification¹⁴⁶ that notifies costs of tests at the PFSA for other provinces/federation and private parties as 'proof.' The PFSA, for its end, has adopted a clear policy of not releasing any report without payment of due fees.¹⁴⁷

¹⁴⁶ Notification No.SO(PUR/FSA)4-93/2011 issued by the Government of Punjab, Home Department dated 25th February 2015.

¹⁴⁷ PFSA, *Policy Regarding Submission/Collection, Return and Disposal of Evidence in Punjab Forensic Science Agency*, point 15.

PART-III

SUMMARY OF FINDINGS

Despite considerable amendments in the law, access to justice for rape survivors does not seem to have substantially improved. Hurdles observed remain on the cards as institutionalised impediments to justice. Though survivors can now report rape without fear of being legally prosecuted for zina (illicit sex), be it on the basis of medical evidence or pregnancy outside of marriage, other hurdles still remain.

Gender prejudices in state institutions—police, prosecution, medical staff and even the courts—prevail, often obstructing or even denying justice to survivors. The sexuality of the survivor remains under scrutiny by all these state institutions. Courts often bring in the notion of stigma and honour being at risk because of simply filing a rape FIR in their orders. Cognitive structures rooted in rape myths and patriarchal notions of gender roles result in acquittals in a surprising number of cases.

Although age of consent has been introduced in the definition of rape, courts often not only disregard it, but survivors also suffer further humiliation by unwarranted remarks and findings of doctors and even the courts.

Delay in registration of FIR, poorly drafted FIRs, poor or no preservation of forensic evidence, outdated and stereotypical investigation methods and conveyance of forensic samples results in denial of justice to survivors.

At the same time, the number of number of cases of women (mostly educated, working women or students) complainants in their own rape cases seems to be rising. These FIRs do not follow the strictly stereotypical FIRs and seem to narrate actual incidents but success in investigation and trial still remains a question mark.

The use of intoxicants to sedate survivors and using compromising videos and pictures for blackmail in the aftermath of the attack is surprisingly common. This implies that silence is perhaps still the norm in reporting rape cases.

Medical and vital forensic evidence is not a priority—of neither the State nor the courts. This is evident from the number of bail orders and judgements discussed in the report that mention a lack of or faulty forensic and medical evidence as grounds of bail.

There are cases where perpetrators use condoms in the commission of the offence. This is recorded clearly in the FIR, but because investigation and evidence collection modes are outdated, investigation fails because it continues to circle around bruises and semen swabs. In 96 bails and 18 appeals, not a single case reviewed for this study mention circumstantial evidence like fingerprints, site plan and debris from the hair or body of the survivor as a piece of evidence. Courts and police focus heavily in the report of the Chemical Examiner and the MLC.

In the past few years, a split in opinion over the evidentiary value of DNA and its reliability perhaps was one factor that kept it from being used as a key piece of evidence. A 2013 Supreme Court decision has

settled that question in favour of the use of DNA evidence. However, its popular use and

acceptance was thrown in limbo by the reports of the Council of Islamic Ideology.¹⁴⁸ As a result, it has not seen widespread use as evidence in rape cases.

Lack of funds for investigation and limited facilities for forensic analysis weaken the case and the long delay in receiving results benefit the accused in seeking bails.

Lack of coordination foremost between police and prosecutors and also between medical and forensic examiners results in poorly investigated and poorly prosecuted cases and frequent acquittals.

Underpaid, ill-trained and ill-equipped Medicolegal Officers not only create a huge psychological toll on the survivor, but also result in irrelevant information harmful to the prosecution being recorded and sent to trial. This is further compounded by ill-advised reforms that are haphazardly implemented.

Compromises and out-of-court settlements create an intimidating atmosphere for survivors and unfortunately, even courts have been acknowledging such settlements.

‘Legal abuse’ of women contracting marriage of their own choice continues, as was a notorious practice prior to the 2006 amendments. The only difference is that cases of kidnapping were registered against the husbands and in certain instances, the couple was alleged to have committed zina, whereas now the provision of rape is added to kidnapping and the woman is pressured to resile from her marriage.

148 “CII Rules Out DNA as Primary Evidence in Rape Cases” DAWN (Pakistan). 23 September 2013. <http://www.dawn.com/news/1044879>.

PART-IV

RECOMMENDATIONS

Legislative and Policy Changes

1. Instead of current system of registration of formal FIR, in rape and sexual assault cases, there should be only an incident report. Distinction of offences as cognizable and non-cognizable in cases of sexual violence and other provisions of violence against women needs to be eliminated.
2. In rape cases doctors in the Medico-Legal Units be authorized to record statements of survivors, which should form the report for case investigation.
3. Circumstantial evidence, including medical and forensic evidence be made admissible as substantial evidence and not merely corroborative. For this purpose, appropriate amendments need to be made to Qanun-e-Shahadat Order, 1984.
4. Because so many cases are registered after a delay, or the medico-legal examination is delayed by at least a few days, medical and forensic evidence suffers. For this reason, due attention also be given to collection and preservation of circumstantial evidence.
5. For rape and sexual assault cases, time frame for completion of trial be fixed. If in the opinion of the court, trial is being delayed by the accused, the court may have the power to strike off the accused's right of cross-examination.
6. An amendment in Section 540 CrPC be considered for rape and sexual assault cases so as to prevent harassment of the survivor by being repeatedly summoned on application of defense for re-examination of witnesses.
7. Provincial Prosecution laws be amended to allow prosecutors to oversee and supervise police investigation.
8. All recommendations made by the Supreme Court in *Salman Akram Raja v Government of Punjab* 2013 SCMR 203 on page 218 be implemented.
9. Directions issued by the Supreme Court in *Haider Ali v DPO Chakwal* 2015 SCMR 1724 regarding training of police officials and funds for investigation, guidelines/ SOPs to foster coordination between prosecution and the police, funds for development of public prosecutors, witness protection and prevention in delay of trials be implemented.
10. Law on use of electronic gadgets be amended, including on posting of photos, videos, and filming and circulation of pornography, as the current situation discourages complainants.
11. In addition, an offence be added to the Penal Code for circulation, sharing, copying and exhibition of videos, photographs and such material used to blackmail, threaten or extort persons, or discourage complaint to police. This should cover that material which is created during or following an incident of sexual assault, or generally used to blackmail, threaten or intimidate a woman. This study found that in such cases, S. 292 PPC ('Sale etc of obscene books etc') is currently added

as the relevant offence, because no extant provision of the PPC directly covers this offence. In recent months, a similar amendment has been passed by the National Assembly, relating to child pornography, but unfortunately that covers limited offences and has not been expanded to cover other marginalised groups like women.

12. Penal Code be amended to include a new offence of sexual abuse, to cover incidents which neither fall under rape or attempt to rape, or any other offence of sexual assault given in the PPC.
13. Offence of rape in the PPC be amended to introduce a new category of statutory rape where a woman is raped while in the protective custody or care of any public institution.
14. Offence of rape in the PPC be further amended to introduce forced oral sex, or insertion of any object/body into an orifice of the body.
15. Irrespective of the debates around applicability of the provision of rape (s. 375 and 376 PPC) and unnatural offences/sodomy (s. 377 PPC), similar amendments be considered to protect transpersons and those of the third gender.

Administrative Changes

16. For trial of rape and sexual assault cases courts should be separate out of the main courts complex or area.
17. Multi-ministry and agency support and coordination be made available and a regular feature of rape investigation and trial.
18. Medicolegal services related to forensics be made a separate division in the health department for operational and financial autonomy.
19. Furthermore, forensic testing services be decentralised, not just in Punjab but across Pakistan, so as to expedite obtaining forensic results and preserve evidence as it travels to the forensic lab.
20. Basic trainings for MLOs be introduced. The training should include forensic sciences (forensic pathology, forensic radiology, forensic odontology and forensic toxicology) over and above what is taught as part of MBBS course, but also how and where to collect evidence, criminal law (e.g. age of consent, requirements of the offence of rape), and Law of Evidence (e.g., what is the role of a MLO in the criminal process, hearsay evidence, primary and secondary evidence).
21. Specific modules addressing the myths that surround women's sexuality and anatomy and rape in general. MLO's bedside manner in attending to survivors, particularly minors, requires training as well.
22. Refresher training should be devised for MLOs so that they may stay updated with this information, build their expertise further, and revisit these questions based on their on-the-job experiences.
23. Forensic science curriculum in MBBS be revised to update it and remove dated and discriminatory myths masquerading as medical science.

24. Key indicators be devised for training and monitoring of MLO's work.
25. Remuneration for MLOs be raised and cost of travelling to and from court should specifically be paid by the State. Similar key recommendations already introduced in 2005 in Sindh be implemented.
26. The 2011 SOPs be overhauled and new SOPs be introduced, covering examination of sexual assault of all genders—including the third sex.
27. On the MLC, previous history of the survivor and other past medical record (privileged information) should not form part of the report for criminal case, that be recorded only for any treatment of the survivor, doctors job be only to collect medical evidence and not give comments, evidence be objective and tangible.
28. Testing for pregnancies and venereal diseases be made a standard part of MLEs.
29. In cases where the survivor alleges having been sedated or intoxicated, intoxication report of the survivor be obtained.
30. Similarly, psychological care for the survivor, not just at the initial stage when survivor comes for the MLE but also longer-term care be made a standard step which follows the MLE.
31. MLOs be provided with adequate equipment and facilities at both major hospitals as well as Rural Health Centres that will ensure safe, private and hygienic examination of survivors.



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Annexures

Annex-I

List of Appeal Cases Reviewed

No.	Citation and Title	Court	Age of Survivor	Sentence	Time elapsed From registration of FIR
1.	Zafar Ali v State 2011 PCrLJ 1964	FSC	11 years	Life sentence [Retained trial court sentence]	1 year 10 months
2.	Khadim Hussain v State 2011 PCrLJ 1443	FSC	9/10 years	10 years RI + Rs. 50,000 [Retained trial court sentence]	2 years 10 months
3.	Jahangir v State 2011 YLR 2330	LHC	5/6 years	20 years RI + Rs. 50,000 [ATC trial court awarded 25 years]	1 year 6 months
4.	Noor Muhammad v State 2011 YLR 1250	SHC	3/4 years	Life sentence [ATC sentence retained. Appeal of 1 co-accused accepted and acquitted. Case involved murder and rape.]	3 years
5.	Zulfiqar Ali v State 2012 YLR 847	FSC	16 years	Death on three counts [Retained trial court sentence. Case of incest by father]	2.5 years
6.	Allah Bachayao alias Riaz v State 2013 YLR 866	SHC	16/17 years	25 years RI + Rs. 1,00,000 [Retained trial court sentence. Case of incest by father]	3 years 1 month
7.	Zakirullah & anthr v Mst. Safia Bibi & anthr 2014 PCrLJ 1542	FSC	Adult	20 years RI on 2 counts concurrently [Retained trial court sentence. Case of dacoity and rape]	2 years 2 months
8.	Mohammad Akmal & othrs v State & othrs 2015 PCrLJ 1443	LHC	8 years	10 years RI [Retained trial court sentence. Accused was juvenile]	2 year 11 months

No.	Citation and Title	Court	Age of Survivor	Sentence	Time elapsed From registration of FIR
9.	<i>Khurram Shahzad v State</i> 2015 PCrLJ 773	SHC	Adult	Quantum not mentioned.[Trial Court sentence retained]	6 years
10.	<i>Nadeem Masood v State</i> 2015 PCrLJ 1633	LHC	About 16 years	20 years RI + Rs. 1 million compensations to child born out of rape [Retained trial court imprisonment sentence only]	4 years 10 months
11.	<i>Manzoor Chachar & anthr v State</i> 2015 PCrLJ 690	SHC	Adult	10 years RI [Trial Court gave life sentence. Reduced due to compromise between parties]	3 years 5 months
12.	<i>Feroz Khan v State</i> 2015 YLR 703	PHC	Adult	10 years RI [Retained trial court sentence. Case of incest by father-in-law]	2 year 3 months

Annex-II

List of Bail Cases Reviewed

Post Arrest Bail Granted

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2008 YLR 2357	SHC	No mention	380 457 506-B/34 376	7.08.07	(1) "Counter case" to revenge. (2) Lack of evidence	No Chem Examiner Report.
2008 YLR 2351	LHC	5.05.07	376	11.06.08 (1y after arrest)	MLE unreliable after 6 mth. (2) FIR seems concocted, fabricated and unbelievable. (3) Challan submitted but no incriminating evidence.	6 mth after occurrence. Semen-stained swabs from vagina.
2008 YLR 2797	LHC	3.03.07	365-B 376	7.04.08 (Arrest 15.03.07)	Abductee changed her stances in statements. (2) Exonerated two accused in affidavit.	No mention
2008 YLR 2838	LHC	3.02.08	365-B 376	30.07.08	(1) Contradiction in alleged abductee statements. 1 abductee not interested in ME. (2) 1 abductee denied abducteeuction before HC.	Confusing

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2008 YLR 1062	LHC	19.12.06	363 376	12.06.07	Two contradictory 164 statements. Fails 2 finger test.	Late. Recovered 01.02.07, but MLE many days after
2008 YLR 690	SHC	10.05.07	376	4.09.07	Contradictions in Complainant Survivor statements about her return. (2) M Report in Court's view did not support allegation as there was no bleeding.	No mention
2009 YLR 1702	LHC	10.05.07	365-B 457 395 467 468 471 376	31.03.09 (1y 3m after arrest)	Plea of marriage. Jactitation by girl and no allegation of rape against Petitioner. Abductee married another man after jactitation. <u>Petitioner not required by police.</u>	No mention
2009 YLR 2068	LHC	6.12.08	342 420 468 471 376/511, 109	21.01.09	FIR story prima facie appears implausible, illogical and unbelievable. Defence: FIR motivated because of tussle b/w Accused DSP and DPO.	No MLE (unclear whether refused, or delayed)

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2009 YLR 1731	LHC	17.02.07	365-B 376	5.11.08	1 co-accused granted bail. Survivor in one 164 statement was forced by her father to state as per his wishes. Petitioner in jail for 11 mth, no progress in trial.	Vag swabs not sent to Chem Examiner.
2009 YLR 1180	LHC	2.12.08	376	3.03.09 (earlier bail of 22.12.08 by Sess Court)	No definite finding whether pregnancy from husb or accused.	No MLE.
2009 YLR 1573	LHC	24.06.08	376	20.01.09	MLE prima facie contradicts allegation.	Chem Examiner report not received.
2009 YLR 2305	LHC	10.10.07	376(2)	29.09.08 (Arrested 11.02.08)	1 petitioner claimed nikkah. Nikkahnama produced. Free will Affidavit of abductee. Application to NADRA by abductee for change of name. Accused petitioner's restitution suit decreed. Police declared both accused innocent. Discharge report prepared but trial court not agreed.	No mention.

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2009 PCrLJ 1155	LHC	14.04.08	496-A 365-B 363 (for minor child) 376	6.05.09	Abductee changed stances in two 164s. In one, complained against her complainant husband for being cruel and addict, compels her to adultery. Asked for Dar-ul-Aman. Secnd 164 compromise with complainant. Possibility of false implication cannot be ruled out.	No report of Chem Examiner. MLE on 3.06.08, after 18 days from recovery.
			376/511 337-A(ii)	2.09.08	Court holding prima facie contents of the FIR make case of further inquiry. IO unable to explain why he did not take notice of Petitioner's medicolegal record and probe matter in light of	
2009 PCrLJ 153	LHC	25.04.08	337-L(ii)/34	(arrested 25.04.08)	that. No incrimination material to connect accused with 376.	No mention
2010 YLR 1061	LHC	29.01.09	365-B 376	4.11.09	<u>Marriage claimed of 30.10.08.</u> <u>Abductee's 164 CrPC statement 5.11.08 where alleged father attempted to sell her to someone, forcing her for divorce.</u> <u>Accused got</u> <u>restitution 13.03.09. Abductee's</u> <u>jactitation dismissed on 17.09.09.</u>	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2010 YLR 294	LHC	2.03.09	376	30.04.09	Survivor and her husband exonerated petitioner via statement in court on 30.04.09, stating he was included due to error.	Chem Exam report negative, but no description what negative. 4d delay in MLE.
2010 YLR 1182	LHC	26.12.08	376	11.09.09 (arrested 17.03.09)	<u>Accused claimed marriage</u> , nikkahnama dtd 14.05.06. Woman jactitation suit pending. Trial commenced. Case of further inquiry.	No mention
2010 YLR 668	LHC	10.11.07	356/376/ 511	26.08.10	Court holds that its crystal clear that only an attempt was made. Requires due assessment and evaluation, can only be made at trial. Ulterior motive cannot be ruled out.	No mention
2010 YLR 735	LHC	10.10.08	365-B 376	23.02.09	Nikkah claimed of 19.06.08. Police declared accused innocent. <u>Abductee's non-recovery from petitioner and herself appearing to lodge FIR creates doubts about petitioner's involvement.</u>	No mention
2010 YLR 766	PHC	5.02.08	365-B 376/109	16.12.09	Court considered affidavit of survivor dtd 09.02.08, her complaint against her father u/ s.506, decision of some arbitration council which patched up matter. Def plea: <u>nikkahnama of 4.02.08. 164 CrPC statement of 15.02.08.</u>	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2010 YLR 1035	LHC	21.07.09	365-B 376	29.10.09	Police deleted 365-B on 6.08.09. Challan submitted on 20.09.09. Contradiction b/w FIR content and 161 CrPC statement. Def plea: alleged abductee has illicit relations w/ a man, went to meet him at dera of main accused.	Chem Exam Report awaited even after submission challan
2010 YLR 1960	SHC	12.07.09	376/377/ 511	13.11.09	Juvenile law.	No mention
2010 YLR 1426	LHC	8.06.09	365-B 376	4.11.09	Accused claimed abductee is his wife, produced Fam Court order of 27.06.09, rejecting jactitation, granting khula.	No mention
2010 YLR 1503	LHC	2.06.09	365-B 376(ii)	27.07.09	Police put accused in col 2. Magistrate discharged accused. Petitioner not FIR, nor abductee implicated him in any offence in 164 CrPC statement.	No mention
2010 PCrLJ 769	LHC	24.10.07	376	12.01.10	Both accused placed in col 2 of Challan. Trial not started. 1y detention of petitioners.	No mention
2010 PCrLJ 113	LHC	3.06.09	365-B 376 added	4.09.09 (arrested 3mth earlier)	Defence plea of marriage, <u>nikkahnama</u> of 30.12.08 placed on record. Woman suit of jactitation and accused of restitution pending. Def plea: pregnant because lived as wife, not b/c of rape.	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2010 PCrLJ 954	LHC	13.07.09	376	6.10.09	Para 3: Court on basis of MLC says “girl of easy virtue”, no marks of violence.	Menstruating, hymen torn old, 2 fingers admitted. Chem Exam and DNA reports awaited.
2010 PCrLJ 373	LHC	29.05.09	365-B 376 added	12.10.09	Nikkah dtd 20.05.09 w/ 1 petitioner produced. Abductee in 161 alleged kidnapping, and stated her nikkah performed subsequently. DSP held accused innocent, trial commenced. Court found case of further inquiry.	No mention
2010 PCrLJ 1782	LHC	12.06.09	365-B 376 added via supp statement	29.09.09	No direct allegation against petitioner by abductee. Challan submitted not required by police.	No mention
2010 PCrLJ 1881	LHC	15.09.08	496-A 376	16.07.10	Magt concurred discharge report of petitioner on 1.11.08. Trial Court issued warrants for petitioner, arrested 15.06.10. Prima facie case of enmity.	Vaginal swab not stained w/ semen.
2010 PCrLJ 1950	SHC	9.10.09	376/511	26.06.10 (arrest 09.10.)	No independent witnesses. Relation between husband and wife strained, and allegation may be levelled at instigation of outsider.	Mention of MLE, but no result/ report.

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2010 PCrLJ 961	LHC	12.04.08	365-B 376 added	24.09.09	Father+1 already on bail. Def case of Nikkah dtd 22.03.08. Girl affidavit available owning nikkah. Later girl resiled, divorce deed signed by alleged abductee 15.04.08 at Ansar Burni Trust KHI.	No mention
2010 PCrLJ 447	LHC	6.08.09	496-A 376 added Both substituted by 496-B	7.12.09	26.05.09 abductee applied to be placed in Dar-ul-Aman, granted. 03.06.09 applied for release, granted. 19.06.09, harassment app to JoP, direction to PS concerned not to harass. 17.06.09 marriage dissolution case dismissed for non-prosecution. Police declared all accused innocent, placed in column 2 of challan. Charge of 496-B which is bailable.	No mention
2011 YLR 2689	SHC	21.07.10	365-B 376		Story of FIR is shaky. If her brothers saw her when she was shouting from car, why did they not make more efforts to recover her after failed to chase car? Travelled 8h on highway with lots of police checkpoints, but raised no hue and cry.	MLE Done.
2011 YLR 2265	PHC	16.11.06	365-B 376 454 Zina Ord 10(2) 5 19(2)	3.01.11	Complainant did not produce nikkahnama to est marriage. In view of age of woman, claim of nikkah doubtful. Alleged abductee of 15.11.10 claims married Accused Petitioner.	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2011 YLR 193	LHC	11.05.09	302 376 /34	27.04.10 (arrested 28.05. 9)	Petitioner not originally named in FIR or PW's first statement. Juvenile, arrest for long. Bail grant.	No mention
2011 YLR 2445	LHC	No mention		No mention	App for suspension of sentence granted b/c complainant submitted affidavit that had no objection.	No mention
2011 PCrLJ 990	SHC	No mention	496-A 376	12.11.10	Delay not explained. No MLE on record, opinion of med officer is negative. In detention for 3y. Trial concluded.	MLE done. Not on record, but opinion -ive
2011 PCrLJ 421	SHC	7.10.10	376/ 511 506	12.11.10 (arrested 9.10.10)	No 161 statement of survivor. No MLE. Complainant claims Survivor now taken away by brothers and whereabouts not known.	MLE not done
2011 PCrLJ 1619	LHC	15.08.10	496-A 376	3.12.10	Alleged abductee. Sworn affidavit and stated before Trial Court, named another man and woman for abduction. None of the persons mentioned in FIR implicated by her for any crime.	No mention
2012 YLR 2228	LHC	3.01.12	376	15.05.12	Chem Report positive but b/c she is married with children, this is unreliable without semen grouping, DNA. No marks of violence found on her body. Petitioner is not required for investigation. Matter of further inquiry.	Chem Exam Report positive based on vag swabs, semen grouping and DNA not done

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2012 YLR 2642	LHC	1.11.11	365-B 376	1.08.12	Unexplained delay of 81d. Medical also delayed, taking place more than 60d after returned home. MLC says fabrication cannot be ruled out. 164 statemnt of survivor says got divorced from G Qadir, thereby establishing nikkahnama, verification of which is a matter for trial (nikkahnama dated 14.11.11 presented in court).	MLE done. Delayed. No marks of violence, no direc evidence of zina. Fabrication cannot be ruled out.
2012 YLR 1839	LHC	2.11.11	376	25.04.12	Case facts unconvincing as unlikely that robber/dacoit would ravish daughter in front of father. Ulterior motives cannot be ruled out. Medical evidence does not support ocular account. Doctor calls scratches fabricated and labelled survivor habitual. Eye witnesses also said they did not witness offence. habitual. Eye witnesses also said they did not witness offence.	Labelled habitual.
2012 YLR 1903	SHC	No mention	376 380 506 34	25.08.12	Survivor is divorced. During marriage, alleges that mother-in-law brought two men to her room who committed rape. Disclosed to survivor's mother after dissolution of marriage. Facts labelled shaky. Matter of further inquiry. Delay in FIR not adequately explained	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2012 YLR 1680	PHC	14.09.11	365-B 376	20.02.12	No one charged in FIR but only in 164 statement. Facts labelled doubtful as she left house alone at night to answer call of nature and was abducted from there and kept for 2mth, then instructed to implicate another man in FIR by Accused.	No mention
2012 PCrLJ 1321	LHC	16.03.11	376 452	29.02.12 (arrested 25.05.11)	Med account does not support ocular account or FIR account. According to MLC, she is not virgin.	MLE Done. Hymen old torn, vag admits 2 fingers. DNA negative. Chem Report received, result not mentioned.
2013 YLR 2642	PHC	16.02.13	376/506	8.04.13	Petitioner was named in App to DPO, but not in 164 statement. Prosecution plea that no bail as challan is completed is rejected based on SC judgement and b/c there is no principle that where evidence has been completely recorded, there can be no bail.	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2013 YLR 1825	LHC	2.10.12	376	14.02.13 (arrested 12.10.12)	nikkahnama verified, yet found Pet guilty. Further inquiry. Def plea: was recovered through panchayat.	MLE done, corroborates survivor
2013 YLR 911	SHC	2.07.12	496-A 376/34	12.11.12	Unexplained 9days delay in FIR. Contradiction in 161 and 164 statement of alleged abductee. Affidavit of complainant+his mother exonerating applicant accused (father of complainant). Petitioner was already arrested in narcotics case at time of incident.	No mention
2013 YLR 379	LHC	22.09.11	376 511 452	26.10.11	App for cancellation of bail rejected b/c ASJ order well reasoned, grounds for cancellation are narrow and this does not fall u/ those grounds (incl. tampering evidence, intimidating complainant, witnesses etc).	No mention
2013 PCrLJ 1782	LHC	3.07.12	376 511	20.11.12	Complainant in post-arrest bail of Main Accused stated that he was not the accused and stated an affidavit. That statement makes FIR story doubtful. Bail.	No mention

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2013 PCrLJ 1647	LHC	24.04.12	365-B 376	24.07.12	Complainant gave 3 versions of occurrence at diff forums. In 164, Survivor supported FIR story but refused DNA. Petitioner facilitated Survivor's paramour for taking her in bus.	MLE done. Aged 18/19y. Hymen old torn.
2013 PCrLJ 730	PHC	No mention	376 338-A	21.11.12	Girl arrested u/ 54CrPC for alleged abortion. She accused Pet of rape. MLC confirmed pregnancy and abortion. Contradiction in statements. Police prepared 2 site plans. Court: not believable that a person would commit rape in same house where wife residing.	No mention
2014 YLR 1161	PHC	19.02.13	365-B 376	30.04.13 (arrested 19.02.13)	FIR and alleged abductee's 164 statement indicate she left house on her own accord. Neither alleged abductee nor 6/7 tola gold was recovered from either petitioner. Chem Report and FSL report negative for	MLE and Forensic Report done. Both

Citation	Court	FIR Date	Section PPC	Date of Bail	Grounds of Bail/Reasons	Medical Evidence
2014 YLR 2137	LHC	13.01.14	365-B 376	5.06.14 (arrested 27.01.14)	FIR 14mth after alleged Abduction. alleged Abductee's conflicting statements before Magt. Nikkahnama w/ Petitioner dtd 26.08.13 on record. Abductee did not deny her thumb impressions on that when produced before court on 10.10.13 on habeas petition by father.	No mention
2014 YLR 1454	SHC	1.10.12	365-B 376 392 452 343 147 148	14.02.14	Petitioner was not in FIR, but in 161 CrPC statement of alleged abductee. Delay of 15d between FIR and 161. 3 named accused have been bailed b/c put in col 2 of challan. Alleged abductee was recovered from house of petitioner	No mention

Annex-III

WHO Guidelines for Medicolegal Care for Victims of Sexual Violence

1. Equipment and Infrastructure at the Ideal Facility

BOX3

The ideal facility

It is recognized that very few places will be in a position to provide and enjoy the perfect facility.

However, in the event that a health worker was consulted about service provision for victims of sexual violence, they might refer to the need for “a private, discrete suite with ready access to an emergency department of a teaching hospital”, comprising:

1. An examination room, equipped with, and laid out, as follows:
 - an examination couch positioned so that the health worker can approach the patient from the right-hand side; the couch must allow examination with the legs flopped apart o.e. in the lithotomy position);
 - thermally neutral (i.e. not too cold or too hot);
 - auditory and visual privacy (particularly for undressing);
 - clean bed-linen and a gown for each patient;
 - lighting sufficient to perform a genito-anal examination;
 - hand-washing facilities (with soap and running water);
 - forensic supplies;
 - a table or desk for documenting and labelling specimens;
 - a lockable door to prevent entry during the examination;
 - a telephone.
2. A separate room containing a table and chairs where a support person could talk with the patient, and facilities for offering patients refreshments and a change of clothing and also for children who may be attending as patients or accompanying an adult.
3. Shower and toilet for the patient.
4. A room for the police.
5. A reception area that could also be used as a room for waiting family and friends.

(See page 23 of the WHO 2003 Guidelines)

2. List of Equipment Required for Medicolegal Examination of Sexual Assault Survivors

Table 4 **Provision of medical and forensic services to victims of sexual violence: equipment list**

ITEM ^a	COMMENTS
FIXTURES	
Examination couch*	
Desk, chairs* and filing cabinet	For victim, accompanying persons and health worker.
Light source*	Ideally mobile.
Washing facilities and toilet*	Facilities should be available for the victim to wash at the conclusion of the examination. There should also be a facility for the health worker to wash the hands before and after an examination. Facilities should include a shower, a hand basin and soap.
Refrigerator and cupboard	For the storage of specimens, preferably lockable.
Telephone*	
Fax machine	
GENERAL MEDICAL ITEMS	
Tourniquet*	
Syringes, needles and sterile swabs*	
Blood tubes (various)*	
Speculums (various sizes)*	
Sterilizing equipment	For sterilizing instruments (e.g. specula).
Proctoscope/anoscope*	
Examination gloves*	
Pregnancy testing kits*	
STI collection kits	
Lubricant, sterile water normal saline*	
Sharps container*	
Scales and height measure	For examining children.
FORENSIC ITEMS^b	
Swabs (cotton wool or similar) and containers for transporting swabs*	For collection of foreign material on victim (e.g. semen, blood, saliva). Do not use medium when collecting forensic specimens.
Microscope slides*	For plating of swabs.
Blood tubes*	Blood is used for DNA or toxicological analysis.
Urine specimen containers*	For pregnancy and toxicological testing.
Sheets of paper (drop sheet)*	For patient to stand on whilst undressing for collection of loose, fine materials.
Paper bags*	For collection of clothing and any wet items.

^a Items marked with an asterisk are considered essential for providing a minimum level of service.

^b Can be held individually or as part of a pre-packaged rape kit.

Table 4 *Continued*

ITEM ^a	COMMENTS
Plastic specimen bags*	For collection or transport of other (dry) forensic items.
Tweezers, scissors, comb*	For collecting foreign debris on skin. Use scissors or comb to remove and collect material in hair.
TREATMENT ITEMS^c	
Analgesics*	A range of simple analgesics may be useful.
Emergency contraception*	
Suture materials	
Tetanus and hepatitis prophylaxis/vaccination	
STI prophylaxis*	
LINEN	
Sheets and blankets*	For examination couch.
Towels*	
Clothing	To replace any damaged or retained items of the victim's clothing.
Patient gowns*	To allow patient to fully undress for examination.
Sanitary items (e.g. pads, tampons)*	
STATIONERY	
Examination record or proforma*	For recording findings (see Annex 1).
Labels*	For attaching to various specimens.
Consent form*	This should be completed as required by local rules or protocols (see Annex 1).
Pathology/radiology referral forms	For referring patient for further investigation or tests.
Information brochure	Ideally the patient should be provided with information about the service they have accessed, methods of contacting the treating practitioner if required and details of follow-up services. These brochures should supplement any verbal information that the victim has been provided with. In addition to reinforcing important information that the victim may forget, brochures may provide information to other potential service users.
SUNDRY ITEMS	
Camera and film	Photography is useful but not necessarily an essential tool for injury documentation. Police or hospitals may also be able to assist.
Colposcope or magnifying lens	Useful for obtaining a magnified view of a wound.
Microscope	May be used by the practitioner to check for the presence of spermatozoa, particularly if no laboratory facility is accessible.

^c Patients may present with a range of physical conditions. There should be ready access to the facilities, equipment and items required to treat these conditions. If not held at the centre they should be available nearby (e.g. at a hospital or clinic). Other medications (e.g. for the treatment of insomnia and anxiety) may also be required.

Table 4 *Continued*

ITEM ^a	COMMENTS
Swab dryer	Forensic swabs should be dried before being packaged. This can be done with the use of a dryer or the swabs can be air-dried so long as they are protected from foreign DNA.
Measuring device (e.g. ruler, tape measure, calipers)*	For measuring the size of wounds.
Pens, pencils*	
Computer and printer	
Sterilization equipment	For medical instruments.
Children's drawing materials/toys	Useful to keep children occupied.

(See page 25 of the WHO 2003 Guidelines)



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