

THE CRIMINAL JUSTICE SYSTEM & RAPE

AN ATTITUDINAL STUDY OF THE PUBLIC SECTOR'S RESPONSE TO RAPE IN KARACHI



Ayesha Khan

Sarah Zaman



War Against Rape



Collective for Social Science Research



This project is funded by the European Union.

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Tax exemption certificate number:
JUD/CIT/COS-V/(ENF-DIV-II)/2007/5279

Certified by Pakistan Centre for
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WAR's programs are funded by:



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ACKNOWLEDGMENTS

This report is part of War Against Rape's (WAR) research and advocacy component. It has been researched and written in collaboration with the Collective for Social Science Research.

WAR would like to thank the following institutions and individuals for their time and cooperation that made this study possible:

The women who survived rape and sexual assault and shared their stories with us; they continue to inspire and motivate us to work on this issue. We also thank them for educating us on the problems they face in their everyday lives.

The strong and committed team at WAR who made various trips to meet with respondents and arrange interviews;

The bright and diligent students from SZABIST, for conducting and transcribing interviews with public officials. We thank Fatema Imani, Nida Noman, Noor Kamran, Sakina Imani, Sanam Kalhoro, Zarene Zuberi and Sheema Khawar for their keenness to learn and for lending their time and efforts to this study;

The staff at Collective for Social Science Research for providing venue and logistical support for the training of interviewers;

Senior Medico-legal Officer, Dr. Kaleem Sheikh, for providing useful information related to medical jurisprudence;

All our respondents, including male and female police officers, medico-legal officers, lawyers and judges;

Barrister Faisal Siddiqi for providing his valuable inputs and for writing the Preface for this study;

And Meera Hasan for the art work used on the cover of this report.

ABOUT THE ORGANIZATIONS

War Against Rape

War Against Rape (WAR), was founded in 1989 in Karachi, by a group of women associated with the Women's Action Forum (WAF). It endeavors to work on all social, legal, medical and administrative issues that could help either in the reduction of such acts of violence, or support, facilitate and improve human rights and conditions for survivors.

Presently, WAR is involved in investigating close to a hundred cases each year, which may or may not be reported to the authorities and providing services to women and child survivors of rape and sexual assault, including but not limited to:

- free legal aid to nearly 20 families annually (including assisting with the registration of cases with the Police, taking survivors for medico-legal examinations and legal counseling and prosecution of rapists);
- psychotherapeutic counseling;
- medical assistance; and
- rehabilitation and reintegration services.

WAR also has a robust advocacy, capacity-building and awareness-raising program, including working with communities on prevention and strengthening local response. Recently, WAR has gotten involved in research on legal and psychosocial aspects of rape and sexual assault.

Collective for Social Science Research

The Collective for Social Science Research was established in 2001 with a small core staff of researchers in the social sciences who have extensive experience conducting multidisciplinary research both in Pakistan and internationally. Its areas of research interest include social policy, economics, poverty, gender studies, health, labor, migration, and conflict. The Collective's research, advisory, and consultancy partnerships include local and international academic institutes, government and non-governmental organizations, and international development agencies. It is recognized for three main areas of innovation in the practice of applied social sciences in Pakistan: the introduction of a political economy perspective in macro- and micro-issues; the attention to informal collective action and social networks; and the combination of quantitative and qualitative research methodologies. The Collective's objective is to produce high quality academic research in the social sciences and to foster informed debate on social, political and economic issues and policies.

ABOUT THE AUTHORS

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PREFACE

Rape is a life shattering and traumatic experience. Many in Pakistan would argue that an equally life changing and traumatic experience is the rape survivor's encounter with the executive authorities and the criminal justice system in Pakistan. In other words, the denial of justice to the rape survivor occurs at two stages, i.e., when she/he is raped and then with regard to the structural and attitudinal barriers in the public sphere which guarantee only a minimal criminal conviction rate in most rape trials in Pakistan. This is why this study of rape survivors' encounters with the criminal justice system, especially the attitudinal dimension, is extremely relevant and important.

This study has been conducted by a collaboration of Sarah Zaman and Ayesha Khan, who represent their respective organizations namely, War Against Rape (WAR) and Collective for Social Science Research. WAR is one of those very few organizations in Pakistan which has consistently worked on the issue of rape and domestic violence not as a purely research organization, but mainly as an advocacy group closely working with rape survivors and their families as well as observing and analyzing the workings of the executive and criminal justice system in Pakistan. I must confess that my conversion into a pro-bono lawyer for rape survivors was partly due to my encounters with WAR. Usually, such studies by advocacy groups lack a rigorous social science approach and basis. But what is unique about this study is that it is a collaborative effort with one of the leading social science research institutes in Pakistan, namely Collective for Social Science Research.

Another time and intellectual space would be required for a comprehensive and critical review of this study, but a bird's eye view leads us to the following observations. First, it intends to analyze the most important areas of the criminal justice system, namely codified law, the executive authorities (police, medico-legal framework, prosecution) and the Courts, in their response to rape. Second, this study has been socio-scientifically structured within the rape survivors' perspectives. Third, as far as possible, this study has been made accessible to a larger audience because it has been written in a non-technical language and style. Fourth, its primary focus is on the sub-conscious attitudinal barriers against rape survivors, namely presumptions, pre-judgments and prejudices. Fifth, regardless of the specific merits and de-merits of the summary and recommendations given in the study, a bare perusal shows the empirical, realistic and pragmatic approach of its authors.

Taking an incident of rape to trial requires remarkable courage on the part of the rape survivor and her family. It is therefore important to promote structural and institutional reforms in

order to provide any necessary support to them, such as the kind identified and recommended by this study and others like it.

Faisal Siddiqi
Advocate
High Courts of Pakistan

I. INTRODUCTION

This study is an attempt to understand attitudes and perceptions about rape survivors and their cases, as held by members of the criminal justice system in Karachi.

WAR is a non-government organization that has handled hundreds of cases of rape and sexual assault from Karachi and some parts of interior Sindh since 1989. Women usually do not approach WAR directly for assistance. Instead, a substantial part of WAR's programmatic budget is dedicated to locating women and children who have been subjected to sexual violence.

In the year 2011, the Capital City Police (CCP) reported that 103 cases of rape and sexual assault were reported across Karachi. However, in community meetings held across Karachi by WAR in all 18 towns of the city, participants knew of over 50 cases that had never been reported to the police. The exact frequency of cases is impossible to establish. Over the last three years, the average age of rape survivors in Karachi, according to WAR figures, has fallen from 18 to 13. Out of the cases that do get reported, a small number end up in the courts. This suggests they are disposed of by investigation authorities as either non-cognizable offences, false reports or exaggerated claims.

There are many deterrents to the reporting of rape and pursuit of justice. A case of rape or gang-rape can take as long as 3-4 years before a verdict is reached in the courts. Another deterrent is that the process is so traumatic for the rape survivor that families take a decision to avoid it altogether. The conviction rate is also extremely low, only 2-4%, with death as the maximum sentence (for gang-rape). Further, litigation is costly, and since most rape survivors are of a lower socio-economic group they never turn to the courts. Most officials in the criminal justice system are men, lacking the necessary knowledge, sympathy, and skill for handling a crime that is most often committed against women and girls (Lari and Zaman 2011).¹ Yet, the criminal justice system is a part of our socio-cultural context, it cannot be separated, and as such it reflects the norms that govern gender and society in Pakistan.

¹ As of January, 2010, there were 10 (12%) women public prosecutors and 73 men. There were 77 male judges and 31 (29%) female. Out of 28 seats for judges at the Sindh High Court all were filled by men. (WAR 2010).

A. RAPE VICTIMOLOGY

The “fundamental premises that jurors bring with them 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 myths cognitions they hold at the beginning of a trial.”
(Torrey, 1991)

Contemporary literature on rape victimology speaks at length about the various myths around rape and victims that assert a negative influence on society’s perception of rape and survivors, the responsiveness of the criminal justice system, and the quality of care extended to survivors.

The power of rape myths lies in their utility to protect us from uncomfortable truths about the victims and perpetrators of sexual assault. The suggestion that a woman is lying about her assault, or that she “asked for it” allows people to protect themselves from the suggestion that they or their loved ones could be victims as well. Endorsing rape myths allows women to believe that they have control over being sexually assaulted by doing the normative “right” and “good” things (Franiuk 2008). Feminist literature argues that women are often led or socialized to believe that they are somehow responsible for getting raped, whether it is being at the wrong place at the wrong time, dressing ‘provocatively’, ‘getting drunk’, being a tease, having boyfriends, or being ‘easy’. Real rapes are perceived to involve a violent attack, to be met with such extreme resistance by the survivor that she ends up badly bruised or wounded. It should be followed by prompt complaint to the police, by a distraught survivor. Women of “good moral standing”, such as virgins, who report promptly and offer utmost resistance, are more likely to be believed and taken seriously.

Research that seeks to measure the intensity of these attitudes and beliefs is based on measurement scales. One well known example is the Attitudes Towards Rape (ATR) survey that ask respondents to respond to general topics, such as what causes rape, who is responsible, how does it affect the victims, how the victim should respond during the rape and how rapists should be treated (Field 1978). Another is the Rape Myth Acceptance Scale (RMAS) that measures “prejudicial stereotyped or false beliefs about rape, rape victims and rapists”. It consists of 19 items to which respondents indicate agreement or disagreement (Burt 1980).

The Attitudes toward Rape Victims Scale (ARVS) is the most popular and most widely used scale to assess attitudes towards rape survivors. It has been used in at least 14 different countries,

including Canada, US, UK, New Zealand, West Indies, Germany, Singapore, Israel, Turkey, Hong Kong, Mexico, India and Malaysia. A major reason for its repeated usage is its relative cross-cultural reliability (Ward 1992). It explores such issues of rape victimology as credibility, blame, responsibility, deservingness, denigration and trivialization (Lundgren 1998). When Ward and associates administered the ARVS in 1988 by gathering psychometric data from 13 different countries they found that psychologists and social workers who were also included as respondents demonstrated more favorable attitudes towards survivors, whereas police officers demonstrated least favorable attitudes toward survivors. They found that lawyers fell somewhere between the two extremes of very supportive and least supportive in their attitudes. In addition, they also found that negative attitudes toward rape victims were related to conservative attitudes toward women's roles, acceptance of interpersonal violence and adversarial sexual beliefs. (Ward 1992)

There are no published studies on rape victimology in Pakistan, however studies on violence against women are numerous, with some taking systemic stock of the underlying factors contributing to violence and impunity in Pakistan (Ali et al 2011, Ali et al 2009, Andersson et al 2009, Parveen 2011, Fikree et al 2006, Qureshi et al 2000). There is no attitudinal study on rape of women. Incidence studies have been conducted on violence against women and child sexual abuse, with national organizations such as Aurat Foundation, SPARC, Sahil, Azad Foundation, Concern for Children and Madadgar, working to collect and analyze data across Pakistan.

B. CONTENTS OF THE REPORT

The methodology of this research study will be introduced in Section II. That will be followed by Section III, a discussion of the legal framework within which rape cases are managed. Section IV is a close look at individual case studies that WAR has worked on. In Section V the police procedures, attitudes and perspectives are discussed, followed by an analysis of rape survivor's own views of their experiences with the police. Section VI explores the same with regard to the medico-legal sector and Section VII does so with regard to prosecutors and judges at the courts. In Section VIII we take a close look at judgments of rape cases and how they reflect attitudes and perspectives discussed earlier. Section IX will conclude with a summary of findings and recommendations to improve the experience of rape survivors within the criminal justice system.

II. RESEARCH METHODOLOGY

The fieldwork took place from April to June 2011, in the city of Karachi. WAR selected a group of university students to be trained in qualitative research methodology at the Collective for Social Science Research. Lead researchers from WAR assisted the group in developing interview guidelines for three separate groups of public servants, i.e. those involved in the medico-legal aspects of a rape case, the police, and judges and public prosecutors. Both male and female public servants were approached [see Box 1]. A total 16 respondents were interviewed.

Box 1: Respondents

Medico-legal (3)

Police Surgeon
Medico-legal Officer (male)
Medico-legal Officer (female)

Police (6)

Station House Officer (male)
Station House Officer (female)
Duty Officer (male)
Sn. Investigation Officer (male X 2)
Head *Muharrar* (male)

Judiciary (7)

District Public Prosecutor (male and female)
Assistant District Public Prosecutor (male)
Deputy District Public Prosecutor (male)

Judiciary Lower Court

- Additional District Judge (male)

Judiciary High Court

- Ex- Judge (female)
- Ex-Judge (male)

The guidelines were thematically the same for all three groups of respondents. That is, they covered procedures (respondents' role in case management, evidence required, and understanding of laws); belief and attitudes of respondents about rape, rapists, and victims; and how the respondent (subjectively) determines the veracity of the complaint being registered. Interviews were summarized and analyzed thematically.

Two more sets of data were collected from the archives of WAR and analyzed for this study. The first was a collection of twelve rape case studies that WAR assisted, 2009-2011. The second was a set of five court judgments pertaining to cases that WAR had pursued in recent years in the courts of Karachi. The case studies were selected to reflect the range of violations for which victims sought legal assistance. They included rape, gang rape, incest, and domestic violence cases. The analysis below is based on perspectives of rape survivors, public service providers, and the judiciary as interpreted from this material.

III. LEGAL FRAMEWORK

A. CONSTITUTIONAL GUARANTEES AND INTERNATIONAL PROTECTION

The Government of Pakistan (GoP) is signatory to almost all international conventions and agreements on violence against women and gender-based violence. The Constitution of Pakistan gives an equal status to women: "All citizens are equal before law and are entitled protection by law. There shall be no discrimination on the basis of sex alone. Nothing in this article shall prevent the State from making any special provisions for the protection of women and children". Article 34 of the Constitution states: "steps shall be taken to ensure full participation of women in all spheres of national life"². There is therefore, a constitutional guarantee of equality between man and women in the law and other aspects of personal life that requires protection from the state in order to safeguard the interests of women.

The GoP has taken various steps in the last two decades to infuse human rights principles into its statutes as well as policies and action plans. These initiatives include an inquiry commission on the status of women in 1997, national plans of action, policy initiatives, repeal of discriminatory laws and the passing of some pro-women bills. Recent examples include:

- The Protection of Women (Criminal Laws Amendment) Act, 2006
- The Protection Against Harassment of Women at Workplace Act, 2010
- The Prevention of Anti-Women Practices (Criminal Laws Amendment) Act, 2011
- The Acid Control and Acid Crime Prevention Act 2011

Despite these measures, there remain laws, policies and practices that fail to address women's issues and work to their detriment.

Pakistan ranked 145 out of 187 countries and territories in the 2011 in Human Development Index (UNDP 2011). There is a significant gap between the constitutional position and the institutionalization or 'engendering of laws', policies and practices at all levels with regard to economic empowerment, education, access to justice, social safety, health, political

² <http://www.pakistani.org/pakistan/constitution/part2.ch2.html>

participation, and public representation. Here we will concern ourselves with the criminal justice system and the barriers facing women who seek justice in the face of gender-based violence such as rape.

Rape is a form of gender-based violence perpetrated against women to reaffirm their subservience to men. In 2010, 928 cases of rape were reported across Pakistan. A report recently published by the Aurat Foundation states that as many as eight women- half of them minors- are raped in Pakistan every day (Parveen, 2011). War Against Rape (WAR) estimates that the conviction rate in rape cases is only between 2-4 %.

B. LAWS RELATING TO SEXUAL VIOLENCE IN PAKISTAN

The Pakistan Penal Code (PPC) traces its origins to the Indian Penal Code, originally authored by Lord Macaulay in 1860 on the behalf of the Government of British India. After the partition of India and Pakistan in 1947, Pakistan inherited this Code and introduced various amendments to fit its context. There are no explicit provisions in the PPC on specific forms of rape, such as rape with the use of objects, digital rape (or molestation), marital rape, incest, or necrophilia, among others. While many laws and legal provisions exist that can be interpreted to apply to a wide variety of sexual offences through statutory interpretation, they have not been used unless an offence explicitly falls in their ambit.

The PPC refers to rape as follows:

"Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape." (Section 375)

The law does not define sexual offence as a violation of bodily integrity and sexual autonomy and there is no gradation on the basis of harm in the various forms of rape itself.

The other forms of sexual violence explicitly addressed in the PPC and other laws include:

- Insulting Modesty or Causing Sexual Harassment (Section 509);
- Unnatural Offences (Section 377);
- Assault or Criminal Force to Women with Intent to Outrage her Modesty (Sections 354 & 355);
- Kidnapping, Abducting or Inducing a Woman to Compel for Marriage (Section 365B);
- Kidnapping or Abducting in Order to Subject Person to Unnatural Lust (Section 367A);
- Isqat-i-Haml (Forced abortion) (Sections 338A & 338B);
- Selling Person for Purposes of Prostitution, etc/ Buying Person for Purposes of Prostitution (Sections 371A & 371B);

- Procurement of Minor Girl/ Importation of Girl from Foreign Country (Sections 366A, 366B);
- Cohabitation Caused by a Man Deceitfully Inducing a Belief of Lawful Marriage (Section 493A); and
- Marriage Ceremony Fraudulently Gone Through Without Lawful Marriage (Section 496).

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

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

Supporting provisions which may be attached to these provisions in the event of rape include those on aiding and abetting, hurt, criminal trespass, criminal intimidation, forced detention, criminal force, inter alia, which may be considered preparatory or related offences.

The Law of Evidence (known as Qanun-e-Shahadat) Order, 1984, encompasses the rules and legal principles that govern the proof of facts in a legal proceeding. There are two main discriminatory provisions in the Law of Evidence pertaining to sexual offences:

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

This provision permits the person accused of rape or attempt to ravish to show that the woman levying charges of rape has a history of immoral behavior. Immorality in this case is linked to a casual attitude towards sexual intercourse, either in the form adultery or fornication and/or being sexually 'habituated' before marriage.

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

This allows courts to draw adverse inference from delay in reporting by survivors/complainants. The reasoning behind this inference stems from the belief that a 'real' rape would involve a prompt complaint to the authorities and delay constitutes scheming on the part of the survivor.

These two provisions allow the defense to contest the past sexual history of the complainant, to adduce evidence or put questions in cross-examination to the person assaulted and/or raped with respect to her past sexual history, character or conduct to establish consent or otherwise, and in effect, absolve the accused of whole or partial responsibility. Delayed reporting works against survivors and their intentions often viewed as 'mala fide', or negative, and taken to point towards concoction and conspiracy to falsely implicate the accused.

C. NATIONAL JUDICIAL POLICY

The National Judicial Policy Making Committee of Pakistan (NJPMC) was developed and passed the National Judicial Policy in June 2009, whereby special attention was given to delays and backlogs resulting in increased pendency of cases at all tiers of the judiciary. The Policy also stipulates that rape cases are to be disposed of within one year.

Higher convictions are generally being attributed to this Policy. In WAR's experience, the Policy has not so much contributed to improving the conviction rate as reducing the time span between which verdicts are achieved. Where 10 cases were previously won over a span of 5 years, they are now being won within 2-3 years. The Policy has faced serious criticism from senior lawyers across Pakistan for adversely affecting the quality of judgments handed down through hasty trials.

IV. CASE STUDIES

Below are three case summaries that have been carefully developed with a view to demonstrate the attitudes and behaviors of officials in the police and medico-legal sectors, in response to sexual and gender-based violence in Karachi. By no stretch are these studies the only ones that illustrate attitudinal and behavioral problems. They have been selected to serve as examples of attitudes that generally lend to a 'justice gap' (Krahe, 2008), i.e., an imbalance between reporting and conviction rates in rape cases. They also serve to show that, despite the Criminal Procedure Code (CrPC) laying down the procedure for police and medico-legal investigations (discussed in the following Sections), there is no homogenous application across cases.

Box 2: Case Studies

Case Study 1:

Date of Incident: May 10, 2009

Survivor: M, aged 30 years

Accused: 8 unknown men

M, age 30, had completed her secondary school (matriculation) and was the mother of four children. She was divorced from her husband, who had also taken custody of their children, and she was infrequently allowed to visit them. After her divorce, M started living with her parents. Her mother had a medical condition for which her father decided to take her to interior Sindh for guidance from a *pir*, or spiritual leader. M was alone at her parent's house, in the locality called Korangi.

When M started having some trouble with the water pump at home she called one of her cousins to come and try to fix it. At about 7:30 in the evening when M was in the kitchen making tea, a man climbed over the house wall and came inside. He unlocked the front door and seven other men entered. Upon seeing these men, M ran into a room and locked the door from inside. The men knocked the door down and entered; they also beat her cousin and knocked him unconscious. These men were all purportedly drunk or under the influence of some intoxicants, and were carrying bottles of liquor with them. M was gang-raped by three men, after which she fell unconscious. When she regained consciousness, the men were still in the house. Before they left, they took her cell phone and 25,000 rupees from a trunk she had for safekeeping. They threatened her not to tell anyone or else they would kill her, and one man told her he would be back and when he came she was to open the door for him. After they left her home, M went to her relatives' home nearby. Out of fear, she did not go to a hospital or the police.

Eight days passed and M contacted WAR, whose representative took her for a medico-legal examination (MLE) to a woman medico-legal officer (MLO) at a public hospital in the city on 18 May 2009. The MLO noted the details of bruising on M's body in her report, called the relevant police station and put in an entry for a complaint. Subsequently, the WAR team went to the police station and lodged an FIR with the Duty Officer and also gave him a copy of the MLE report. They were asked to wait for the senior duty officer to complete the process, who arrived five hours later. While waiting, the police officers spoke to them aggressively saying that people wait months to lodge their FIRs so they should have no issue with waiting a few hours.

At 8:00 p.m. the senior officer arrived and began to complete the FIR but took a lot of time in doing so. During this time, he asked M to reiterate details of the incident, questioning her continually about her reasons for divorcing her husband, how often she met him and why he left her. He also wanted to know if she has fought

with her husband and if that was the basis of their divorce.

Once the FIR was complete the senior officer asked M to take him to the crime scene. It was midnight. Before heading out, he said in a voice audible to all present at the station that M was a woman of bad morals and that this case was fabricated. The police team went to M's home, where they saw a liquor bottle and clothes thrown asunder, and they collected the bedding where M said she had been raped.

At 1:30 a.m. the WAR team took M to a women's shelter home, PANAHA. A week or so later, M decided to return home as her parents had come back and she was not comfortable living on her own at the shelter. She moved with her parents to the nearby relatives' home, feeling unsafe at her parents' house. They tried selling their home, but there weren't any buyers. M's family suspected that the rapists had a hand in this matter as well.

M's rapists started to come to her home and threaten her and her family so that they would not take them to court. The family decided to leave the area and they shifted somewhere else without informing anyone of their whereabouts. The WAR team was also not in contact with them for some period of time and after they were located, WAR tried to convince M to seek justice. The family said that they were so disturbed by the way that the police had treated them while filing an FIR that they did not wish to go ahead with prosecution. A few months later M re-married and did not make any further attempt to send her rapists to jail.

CASE STUDY 2:

Date of Incident: October, 2010

Survivor: S, aged 20 years

Accused: Maternal uncle of survivor.

S's family shifted from Punjab to Karachi after the floods. The women of the household began working as housemaids in a near-by locality. S, married, had gone to work as usual the morning of some day in October, 2010 (exact date unknown). Sometime in the afternoon, her maternal uncle came to her place of work and told her that her aunt (his wife) was very ill and S was to come with him immediately. S informed her employer and left with her uncle. En route, S noticed that her uncle was taking a route different from usual. He brought her to an unidentified locality that has rows of houses. The uncle took S inside one of the houses where she was met with a woman she had never seen before. The uncle took S to a room in the house, locked the door and raped her.

S was kept captive at this house for nearly a month. She didn't see anyone go in and out of the room except her uncle, who usually came to give her food or to rape her.

When S did not come home her family lodged an FIR for missing person.

One day, while her uncle was away and the other woman was in the restroom, S found the opportunity to escape. She took a *rickshaw* and went to her parent's house.

Upon her return, she told her family what had happened. They went to the local police who refused to lodge an FIR. After some time, the family shifted from their home without informing anyone where they were going.

WAR came to know of this case through a media report. A team of two went to visit the family at their old home but found no one. They left their contact information with the neighbors in case the family should want to contact WAR. The family contacted after a week of the visit and came over to the office to talk to the team.

A senior trial lawyer at WAR, called the Police station that had allegedly refused to lodge the FIR. A man who identified himself as a policeman received the call. When the lawyer gave the reference of this case and asked why a report had not been lodged, the angered officer replied, "This is a false case and your NGO and S are implicating an innocent man". He was quick to hang up the phone. Perplexed, the lawyer did not call again.

The District Inspector General (DIG) East was contacted upon whose intervention the Superintendent of Police

(SP) lodged the FIR on 24 December, 2010. He also called the Investigation Officer (IO) and admonished him for not having taken S for a medico-legal examination all this time.

S was taken for a Medico-legal Examination (MLE) on 29 December, 2010, at 10:00 am and after the Woman Medico-Legal Officer (WMLO) took N into the examination room, she sent a list of supplies to her family

outside, claiming that they needed to buy her supplies for the examination, since she did not have any at the office. The family gave the list to the WAR team, saying that they didn't know the nearest dispensary and didn't have any money either. The Police Surgeon was informed, who then went into the examination room and found that most of the supplies the WMLO had asked to be bought were in the room, except cotton swabs. WAR's team could not hear the words exchanged between the Surgeon and the doctor, except when the doctor screamed from inside that she was not asking for the things on the list for herself.

An officer from WAR went to get the swab but not finding them returned. Subsequently, the clerk at the Office was sent with Rs.100, paid by WAR, to get the swabs. Once the WMLO had all her supplies she completed the examination. After the examination the WAR team and S went to the Civil Hospital for S's urine test. WAR paid another Rs. 200 for the specimen bottle.

After the tests were completed S and the WAR team went to the Johrabad police station for recording S's statement. When the team and S, along her family settled down in the IO's office, the accused, already present at the premises, was brought into the room. WAR's team protested for him to be taken away and into the custody of the police. The accused was instead escorted out.

The statement was recorded and S was requested to take the IO to the place where she was held captive. S retraced her steps and took the IO along with WAR's team and her family to the house she believed she had been kept captive. The police knocked on the door and found the house occupied by a family. They claimed to be living there for many years and had never left. The other woman was nowhere to be found. S did not identify any of the family members as aiders.

All returned to the police station where S's father's statement was recorded and the WAR team returned at 9:30 pm.

Since an FIR was lodged, this case was taken further to court but it was classified as 'C' class by a judge for lack of evidence and witnesses. S's family was also not willing to come forward for a testimony. An application from WAR was given to the court to look into this classification but nothing could be done since there was neither evidence nor anyone willing to come forward to testify. The family later moved back to Punjab.

CASE STUDY 3:

Reporting Date: December 12, 2010

Survivor: P & G, aged 26 and 23 years, respectively

Accused: 6 unknown men.

In December, 2010, P, age 26, was married and lived with her sister-in-law, G, age 23, who was divorced. They both worked as housemaids and lived in a home that they had purchased. P's husband worked in Mirpur and only visited them once a month. One day while the women were away at work, a few men came to their house and tossed their furniture and belongings out. The neighbors phoned P and G and told them to come. When they arrived they found six men claiming property rights over the house, saying that they were the rightful owners of the plot of land on which their house had been constructed. P called the police helpline *Madadgar* for help and they arrived soon to investigate. Two of the six men who laid siege at P and G's home suddenly claimed that they were policemen as well and that they would sort out this matter, without the interference of more police officers. The policemen, who had come through *Madadgar*, advised all to sort out the matter peacefully and left without seeing any identification of the attackers. The neighbors went back inside

their homes.

After the police left, two men grabbed hold of P and G and dragged them inside the house. They raped the women inside the house, while the remaining four men stayed outside. (P's niece who was also present was also grabbed by one of the four men outside, who tore her clothes and slapped her repeatedly. She was not

raped.)

Hearing the screams the neighbors started collecting again. The men fled the scene. All three women, along with two neighbors, went to the nearest police station for help. The duty officer first refused to lodge an FIR and harassed the women stating that they were "already married and so they should not worry about what has happened to them". Amongst the group of officers present, one of the officers remarked that the women should find a suitable wife for him as well.

After a few hours, the police gave the women a letter and sent them to a public hospital for an MLE. There they were told they needed an FIR to conduct the exam, and that the letter that they carried from the police stated that it was a civil dispute case amongst two parties, which did not require an MLE. No first aid or medical attention was given to these women. They were also told to go to a different hospital after getting the FIR was lodged since they had no women MLOs.

P& G then went back to the police station, requesting a new letter to be given to them, stating that they had been subjected to criminal assault and rape. The police refused. A man dressed in civil clothing advised the women to go directly to court and find a good lawyer to take up their case. It is not clear whether the man was a police officer or a civilian. It was night so the women returned home.

The next morning, the women went to the City Court and met with a senior lawyer at WAR. The same day, the WAR team went with the women to the Korangi Town Police Office, where the Town Police Officer (TPO) commissioned the duty officer at the original police station to get the MLE done and to lodge the FIR without delay. Subsequently, the women and WAR team returned to the relevant police station where a request letter for MLE was made but an FIR was not lodged. The WAR team took the women for the MLE to the Police Surgeon's office, along with a police officer, where the examination was done. It bears mention that the women were dressed in the same clothes they were wearing at the time they were assaulted. The WAR team, knowing the procedure, asked both the WMLO and the police officer, if their clothes needed to be submitted. The police officer said yes, whereas the WMLO stated that since she had already made out the examination report, she would not take the clothes and that the police officer should take them instead. A relative of the women, who was also present, went to the nearby market and got two pairs of used clothes for the women to replace the clothes they were wearing. It was night and everyone went home from the hospital.

The next day, on December 14, the WAR team to the police station on the request of the police office to get the FIR lodged. The duty officer lodged the FIR and meanwhile started cross-questioning the women, and stated that they were only joking when they had said earlier that the women should not be bothered by this incident as they were married. When the duty officer was asked to read back the FIR as was written (FIRs are notoriously difficult to read as they are hand-written, even to those with good Urdu reading skills), he refused and got angry, tossing the FIR across the table, saying that he had written exactly what the women had narrated. Another officer present intervened, saying he would read it back. It was later discovered that he did not read it verbatim but rather skipped portions in the middle. The duty officer again intervened and accused the women of lying about being raped and said that this was a land dispute case.

Since the men were still not being apprehended, WAR eventually involved the DIG (East) and spoke to the TPO (Korangi) again. Despite the changes in investigating officers and police stations, the police are yet to apprehend the accused, who continue to live in the same house they appropriated from the women.

The 12 case studies summarized in Table 1 give us a great deal of insight into the kinds of cases WAR receives and the manner in which they unfold.

The details of the assaults on women may differ in most cases, but the accused and victim of the attack do have some sort of prior link with one another. That may be a family tie, such as in the case of N., 20, who was kept prisoner by her uncle for one month, or in the case of F, only a toddler, who is raped by her sister's husband. (Incest happens in Pakistan, whether or not the police are willing to admit it.) The link may also be a shared property interest, or living in the same neighborhood. In any of these scenarios, it is highly intimidating for a rape survivor/victim to pursue a case with the police and remain committed to a court case knowing that she and her family will need to continue dealing with the attackers and their threatening behavior.

The cases also reveal that there are many possible outcomes to the pursuit of justice in a rape case even when WAR steps in to help. WAR plays a key role in beginning the legal process, e.g., contacting police and getting the medico-legal examination carried out. However, the case studies show that the police are reluctant to intervene in what they perceive to be a domestic matter. In the case of N, age 16, whose husband wanted to sell her to another man, the police maintained this view until WAR got a senior Sindh government official to intervene. Despite confessing to the rape of his own daughter, B, age 18, the police did not register a case against him and reportedly "mediated reconciliation between complaining party and offender." In short, the police are violating the law since the arrangement of settlements outside the court is not permitted in the crime of rape.

WAR is equally helpless when a judge drops a case in favor of a settlement, as in the case of S, age 30, whose husband signed an undertaking that he would not mistreat his wife and charges were thereby withdrawn. Another judge brokered a financial settlement in the case of the rape of F, age 3.5 years, in lieu of forming a verdict.

WAR also sees cases fall apart when the police refuse to apprehend the accused, as in the case of P, 26 and G, 23, even though they remain in plain sight. There are too many incidents of police dropping an investigation because the accused are declared "absconders", such as in the case of R, age 60, and S, age 16. In the case of S, age 7, the police refused to complete their investigation because they could not find the accused at his residence; he absconds and then gets bail before arrest, which weakens the long and drawn out process of pursuing the case in court.

The accused are not the only ones who flee. Rape survivors and their families may engage with WAR and approach the police, but then decide that the level of intimidation from the accused party and the difficulties with the criminal justice system are too intense. In the case of N, 20,

her family filed an FIR but then refused to testify against her uncle and fled to the Punjab instead. In the case of M, age 30, who was gang-raped by three men, an FIR was filed and she was medically examined, the family decided to leave town because of intimidation by the police.

S. No.	Year	Survivor	Allegation	WAR	Medico-Legal	Police	Court/Outcome
1.	2009	M, 30, divorced, 4 kids (included as case study above)	While alone in house, gang- raped by 3 men out of the 8 that entered her house, and robbed.	M contacts WAR through Shirkat Gah, and is helped to lodge FIR, get the MLE done and taken to a shelter home.	WMLO conducts exam, finds bruising, informs police.	Lodges FIR after intervention of senior police officers. Asks victim for reasons of divorce. Police go to her home to collect evidence. Maintain that M was a woman of bad morals.	Victim's family is threatened by rapists not to take them to court. Family leaves town, saying intimidated by police. M remarries.
2.	2009	A, 60+, 2 sons	Rapist comes to her home, rapes and robs her, while she is alone.	WAR contacts R; WAR gets the FIR registered, the MLE done, meets with higher police officials for action, continues to be in contact with survivor till date.	WMLO insists rape impossible at age 60+, demands FIR first before examining survivor. WMLO succumbs, although Police Surgeon says they won't do it again. WMLO refuses to hand over report to survivor or WAR.	FIR lodged. Officer says woman's age and the fact that the accused's wife is young and beautiful makes it impossible to believe and charge the alleged rapist. Police find scarf with which survivor was choked and tied, cut it in two halves, give one half to WAR, and offers DNA test option. IO refuses to meet WAR again saying that he has done as much as he could.	Rapist declared absconder. SSP refuses to follow up case, says it is waste of time. Case never went to court. Survivor continues to visit WAR to ask for assistance in her case.
3.	2010	S, 20, unmarried (included as case study above)	Kidnapped and raped by maternal uncle when tricked into going out of employer's house with him. Kept prisoner for one month and raped repeatedly. Family files a missing person's FIR. Girl escapes and gets home after one month.	WAR makes contact with family and helps with registering of FIR and MLE. Meets with various higher police officials to push for appropriate action.	Under pressure from DIG, survivor is taken by IO for MLE one month after her escape. WMLO insists WAR pay for supplies. Police Surgeon intervenes.	Family files missing person FIR. Upon her escape police further refuse to file FIR for rape and kidnapping. Police tells WAR lawyer that they are implicating an innocent man. After MLE, WAR goes to police station where accused is present. Victim cannot identify the house where she was kept.	Family shifts home. Case registered as C category, i.e. no evidence, no witnesses. Victim's family refused to testify. Family moved to Punjab.
4.	2010	P,26 and G,23 (included as case study above)	Gang-raped at home by men claiming property rights.	Victims approached WAR in court. WAR helps with MLE and lodging of FIR after meeting with higher police officials.	Sent for MLE by police initially with a request letter stating it was a civil dispute case. MLE denied, but done after WAR's intervention. WMLO refuses to take	Came to crime scene when survivors called Madadgar. There they advised all present to sort out differences and left. Subsequently rape took place. Women and neighbors try to lodge FIR. Duty officer refuses to believe and mocks the women. Sends for	Police have yet to apprehend the accused, and the latter remain in the house they appropriated from the survivors.

S. No.	Year	Survivor	Allegation	WAR	Medico-Legal	Police	Court/Outcome
					clothing for chemical testing but issues a medico-legal certificate.	MLE with a request letter stating it is a civil case. Approached again with WAR and help of Town Police Officer. MLE and FIR lodged under pressure from WAR. Police cooperates reluctantly and duty officer accuses women of lying. Throughout, two police stations and three investigation officers changed on survivors' and WAR's joint requests.	
5.	2010	S, 30, 3 kids evicted by husband, illiterate	Remarries to a man who is already married. Husband tricks her into losing pregnancies. She discovers he lied. He becomes regularly violent. She leaves shelter to go back to husband so police can track him. After court order he starts to beat her again.	WAR helps with lodging of FIR and arranging a shelter for the woman and shifting of kids to an orphanage as survivor not allowed to keep kids with her at shelter.	No MLE needed or conducted.	S complains to police upon discovering her nikah not valid. Police tells husband to marry her legally and takes bribe. Later police can't locate him, so she returns home to aid them. Police eventually arrests him. Women police officers mock survivor for bearing children when not legally married and pressing charges when actually married to her husband legally. S eventually refuses to involve police or judiciary again and stays married.	Husband presented in front of court, signs undertaking he will not mistreat wife. Charges withdrawn. S maintains contact with WAR until now, continues to be beaten.
6.	2005	F, age 3.5 yrs	F's mother sends F to stay with her daughter and son-in-law. She is raped by son in law for about a month. Gets eye perforated with a scissor, gets limbs broken and suffers interval damage to uterus. Found be brother in dying condition, rescued by mother and treated for injuries.	WAR contacts family and survivor. Helps survivor get medical attention, including an artificial eye and other treatment. WAR continues to provide medical support and support for survivor's education.	Civil Hospital conducts MLE and concludes uterus of child is damaged due to rape.	Police go to arrest accused but he flees. Accused later arrests and remanded to jail.	Judge tells F's mother to accept money from accused as compensation for the crime. Accused mother begs judge to reduce amount from 1 lakh to 25,000 rupees. Case dismissed because F could not identify accused. No compensation paid to date. F's sister gets divorcé from accused.

S. No.	Year	Survivor	Allegation	WAR	Medico-Legal	Police	Court/Outcome
7.	2011	B, age 18 yrs, unmarried	Father rapes daughter at night.	While visiting women's police station WAR team told of nearby case of father raping daughter. Goes to other police station to investigate. Case registered. WAR meets family.	Due to mediated reconciliation police did not have MLE conducted.	Registers complaint, does not register FIR. The accused confesses to duty officer at KKB Police station. No FIR as police "mediated reconciliation between complaining party and offender".	B forced to go home with her father. Father promises to send her to Punjab. Family flees with no forwarding address.
8.	2010	S, age 16, married at 15	Girl subjected to severe regular physical abuse by mother-in-law, husband and brother in law. Hospitalized in critical condition.	WAR reads of case and goes to hospital. Offers to help, but family does not follow up. WAR visits S and her parents at home.	MLE details all marks of violence.	FIR lodged by girl's father. Husband apprehended, mother-in-law absconds. Girl's family wants to file separation and prosecute mother-in-law and husband.	S drops the case under threat from her own sister, whose husband said he would divorce her if the case was prosecuted. S gets separation. Husband released from custody mother in law never caught.
9.	2009	T, age 6	Attempted rape made against girl by resident of her apartment building. Rapist fled when girl started to bleed profusely.	WAR helped the girl in MLE. WAR contacts Police Surgeon who directs WMLO to conduct exam.	WMLO refuses examination saying it was originally a case of mobile theft and had to be report to the police first. When MLE takes place the report does not mention child's bleeding.	FIR had already been registered when the case was referred to WAR.	This case was won by WAR.
10.	2008	R, age 19, married	Gang-raped at Quaid's Mazar at night. Found by Rangers next morning.	Contacted by Police Surgeon's Office. WAR takes girl and family to police station. IO contradicts himself. Takes team to site along with WAR team and survivor.	MLE conducted by WMLO, concludes sexual assault and rape.	R identifies scene of crime. Evidence identified and collected for testing. R identifies accused. Semen identified.	Political parties and religious organizations, along with media, all get involved. All affiliated people put in jail and bailed out in 2010. R lives with in laws, beaten by husband, in laws consider her dead (since she was raped). No favorable verdict to date.
11.	2010	N, age 16 yrs, married no kids	N married off at 16 to be a second wife. Husband uses her as maid. Husband wants to sell her to another man.	Employer contacts WAR when N learns of husband's plan.	No MLE needed or conducted.	WAR tries to file case on behalf of N at women's police station. Has to go to male station instead. Sent back to women's station. Attempts to get senior police involved. Eventually calls Sharmila Farooqui for help. Next day duty officer refuses to file	N stays at shelter for 6 months, moved in with brother. Says WAR saved her life.

S. No.	Year	Survivor	Allegation	WAR	Medico-Legal	Police	Court/Outcome
						FIR since WAR are not blood relatives of N. Then says case not in his jurisdiction, and it is a domestic matter not police matter. Sharmila calls again. Police insist on bringing lady officers along. They go to N's house, she asks for help. At police station husband's family intimidating. N lodges report, N handed to shelter and separation case filed. Husband never apprehended.	
12.	2007	S, age 7	Child accompanies mother who works as housemaid. Left with an employer and raped.	WAR reads media report, contacts an employer of mother, goes with them to scene of crime. No signs of police investigation, although they had been to the scene of crime once. WAR meets DIG who asks to be briefed. He suspends the IO for negligence in apprehending the accused. The TPO fails to arrest accused saying, "if you (WAR) knows where he is, tell us and we will arrest him."	The survivor was escorted by the ASI in this case for the MLE. WAR does not have documented account of the nature and quality of examination.	Madadgar called by apartment residents. Police arrive, search apartment, find the girl's clothes and sandals in the accused's house. They also found S under the accused's bed in a semi-naked and semi-conscious state. They talk to the accused and tell him to drive himself to police station while they bring victim and mother in police vehicle. Accused never turns up. Another employer of child's mother files FIR. Police IO tells WAR no investigation could be done since accused not found at place of residence. WAR cannot follow up with IO.	Accused arranges bail before arrest. Police pressures victim's family to accept monetary compensation. WAR gets help from TPO to stop the pressure, and accused bail is cancelled although WAR warns them of absconding possibility. This happens. Police pressure continues, and no one is arrested. Accused gets bail again after one and a half years of case in court. Case still pending and at final stages, with persistence of WAR.

IV. THE POLICE

A. POLICE REPORTING & INVESTIGATION PROCEDURES

Cognizable offence

When a person comes to a police station and makes a statement regarding the commission of an offence, the police are bound to record it verbatim and *thereafter* only, review the contents to see if a cognizable offence has been committed. Both the court of law and law enforcement officers differentiate cognizable and non-cognizable offences in terms of subsequent action, i.e., a cognizable offence may lead to an arrest without a warrant from a magistrate, whereas, arrest in non-cognizable offence can be carried out with prior written approval in the form of a warrant approved by a magistrate. Rape is a cognizable offence, as are other offences on which legislation exist in Pakistan.

Role of magistrate

A magistrate is a judge working at the lowest level in terms of rank and authority. He or she oversees the workings of all police stations within her/his jurisdiction, which may be assigned according to zones, districts or towns by the district judge.

If a court takes cognizance of an offence, it may initiate judicial proceedings against an accused with respect to the offence. Cognizance is the consideration by the court of the facts and circumstances of a case. The court, in taking cognizance of an offence, has to consider:

- i. Whether the offence falling within its jurisdiction is made out or not;
- ii. Whether the offence is committed in its territorial jurisdiction;
- iii. Who are the persons responsible for the commission of the offence, and
- iv. Whether in the Court's opinion sufficient grounds exist for the commission of the offence.

Filing of First Information Report (FIR)

The Criminal Procedure Code (CrPC) does not award any discretion to the police to delay or refuse the lodging of an FIR by a complainant³. The purpose of lodging an FIR is not only to set the criminal law procedures in motion, but also to provide a basis for the police to investigate

³ 2010 PCrLJ. 231

the facts of an alleged offence. A third person or an eyewitness may lodge the FIR.⁴ For the formal lodging of an FIR, physical contact of the complainant with the police at a police station or vice versa is required. Prompt lodging of an FIR with the police has an assumption of truth attached to it.⁵ However, a *very* prompt FIR would suggest that the details of the case may have been pre-planned.⁶

The police officer is required to send a copy of the FIR to the magistrate and is authorized to investigate any cognizable offence without an order from a magistrate if he sees sufficient grounds. The magistrate is authorized under CrPC Section 156(3) to order investigation of a cognizable offence to the police and the submission of a *challan* (charge-sheet) if there is sufficient evidence against the accused. Under the same provision, the magistrate may direct the police to register a case, investigate the same and submit a *challan*⁷, which is the charge sheet submitted by the police prior to the start of a trial. The magistrate may also take action against officers who fail to perform their duties.

After an FIR has been lodged and the police have examined the place of incident, they call in the complainant and other witnesses to record what is called the 161 Statement under the CrPC. Here, the police orally ask questions regarding the incident and record the testimonies of all parties in support of the complainant. This documentation is kept as part of the police record to be submitted with the court.

If the offence is found cognizable and the complainant successfully identifies the offender, the police is bound to take the accused into custody through arrest(s). If the accused cannot be apprehended, Section 512 of the CrPC allows for evidence to be recorded in the absence of the accused and a trial to be held *in absentia* until he is apprehended.⁸

After these formalities, the police submit the *challan* in court, which is a charge sheet containing details of the offence, investigation findings, culpability of the accused, details of witnesses and their statements, along with medical report, place of incident inspection report, physical description of the accused and the FIR. If any documents or investigations are remaining, the police may submit an interim *challan*.

Section 164 of the CrPC, which pertains to recording statements and confessions of the accused, may be recorded prior to or after the submission of the *challan* by the police. Section 164

⁴ 1991 PCrLJ 2007; PLD 2000 Lah 364; 1997 PCrLJ 376

⁵ 2001 YLR 715; 1998 SCMR 1749 ref.

⁶ 2002 PCrLJ 2021

⁷ 2003 PCrLJ, 1282

⁸ *Pakistan Code of Criminal Procedure (1898) [As Amended by Act 2 of 1997]*.
<http://www.oecd.org/dataoecd/53/15/39849781.pdf?contentId=39849782>

requires the police to present the accused in court to record his plea of guilty or not-guilty, as well as any confessions related to the commission of the offence. The survivor has to be present for these proceedings, as well as the prosecution and defense counsels. The survivor is required to identify the accused as the offender(s).

The case after this process enters into litigation, with the role of the police limited to bringing the accused to trial hearings and other duties related to ensuring the presence of witnesses at hearings.

B. POLICE OFFICERS' PERSPECTIVES

It was curious that officers in police stations reported that they had either never come across a rape case in the past year in their areas, or that cases were reported only once or twice in as many years. While they all felt that rape was an extremely serious crime and was treated as a priority case when it was reported, they said hardly any cases ever come to their police stations. The fear of damage to their reputations within their families and communities was mentioned as a reason for the low reporting.

Police officers did not define rape the same way. Perhaps their lack of experience, if it is true, explains why one Senior Investigation Officer (SIO) defined rape as touching or physically abusing a woman without her consent, another SIO said the word “had many meanings attached to it”, and only one officer explained the crime with reference to relevant Sections of the Pakistan Penal Code. The only woman police officer who was respondent in our study, and posted at one of three women’s police stations in the city (established to facilitate women to report crimes), said she did not know the exact definition of rape or the relevant laws, and referred the interviewer to a regular police station.

Police officers handled the question of marital rape and incest in a variety of ways. One duty officer acknowledged that incest does happen in our society although he has never come into contact with such a case, and that rape could not occur within marriage. Another SIO admitted that rape does occur within marriage, although due to the marital union “it is not considered rape”. Yet another more junior officer insisted that incest does not take place and that marital rape is impossible since the man has legal right to have sex with his wife. The sole woman police officer who was a respondent in our study did acknowledge that incest takes place, as does the rape of children. Her view of marital rape was contradictory – first she stated that a husband cannot rape a wife, then added that in Islamic law a woman has the right to refuse sex.

When asked to describe the women who come to the station to report rape, officers agreed that they were usually poor, accompanied by someone, and uneducated, although one SIO said that due to the poverty of the communities in his area of jurisdiction hardly any cases were reported. He was also the sole respondent who described rape as a phenomenon that takes place across socio-economic classes and also within extended families.

Officers said that a substantial burden of proof rests almost completely on the shoulders of the alleged victims of rape. Factors that work in her favor include: arriving promptly at the police station “in a wretched state”, “confused and not normal”, being accompanied by someone, and having bruises and signs of physical violence on her. Factors that will predispose the police to disbelieve her include: lack of bruises on the complainant’s body, and dressing and speaking like a “second-rate woman”. If the woman has any previous history of a criminal case, that may work against her as well.

If and when the police decide to investigate a case, the scene of the alleged rape must also display signs of a struggle and some disarray. If it does not, then the police officers say they assume the woman is lying.

Respondents gave many reasons why a woman would give a false accusation of rape: she may have been caught having an affair and wishes to avoid the accusation and disrepute associated with unlawful relations with a man. She may be caught up in a property or money dispute, and using the allegation (or be raped) as a means to resolve the issue. The woman police officer said that most of the women who allege rape just “want to become independent” – although it is unclear what she meant by this.

What are the reasons that would induce a man to commit rape? A few officers said only a mentally ill man would do such a thing. All agreed that most rapists were married men. However the reasons given for rape include frustration at not having relations with a woman they desire, living in highly segregated environments, and reprisal for rejection in marriage.

C. SURVIVORS' EXPERIENCES WITH POLICE

“Get lost. Don’t bother us. You Seraiki people have got nothing better to do. Sort out your problems amongst yourselves.”

Police officer to woman seeking protection from husband

The experience of rape survivors and their families during the pursuit of justice is a continuation of the trauma of violence. The result is that despite the best efforts of WAR and legal counsel, survivors may flee the city or withdraw their cases. This seems to occur most frequently at the stage when police support and investigation are solicited.

Case files show that police officers are judgmental and often refuse to take action in spite of the procedures discussed above. One survivor, age 30 and divorced, who was gang-raped by three men in her home, was grilled by police officers about the reasons for her divorce before they were willing to file the FIR. She was then told by a senior officer that the case was fabricated and that she was of bad moral character. In the case of an older woman, age 60, the police did not believe her allegation, with one officer saying that the accused had a beautiful wife so why would he wish to rape an elderly woman? In another case, a woman escaped from a violent husband whom she had just discovered was already married to someone else. The woman police officer grilled her on the details of her marriage such that the complainant burst into tears. The police officer said she was just preparing her to face the questions that male police officers would ask before they filed the FIR. Case Study 3 [see Box 2] involved two women raped by a group of men. The duty officer at first refused to lodge an FIR, stating that the women were “already married so they should not worry about what has happened to them.”

In a domestic violence case involving a 16-year old girl, the police delayed lodging the FIR saying first that a blood relative of the victim had to be present, and then delayed it further by saying this was a family dispute and not their concern.

In a case handled by WAR in which an FIR against a violent man was eventually lodged after much difficulty, the male police officer noted that the representative from WAR must be “very bright” since she knew which sections of the law applied.

Even when the accused has been identified soon after the crime, the police are reluctant to take him into custody and sometimes appear to be protecting him more than the victim herself. In one case in which a woman was gang-raped and her house occupied by the rapists, the police refused to apprehend the accused saying that this was a property dispute and not a gang-rape case, thus they allowed her house to remain occupied indefinitely. In another case, that of the rape of a woman age 20 by her uncle, the police said to the woman’s lawyer that the case was false and they were implicating an innocent man, which was why no FIR had been lodged.

The accused are declared “absconders” more often than not, and therefore not pursued by the police. In the case of the rape of a seven-year old child, the police arrived at the scene of the crime. They told the victim and her family to accompany them to the police station in their vehicle and allow the accused to drive himself in his own car. It was not surprising, then, that he failed to show up at the station. The accused subsequently managed to obtain bail before arrest, which WAR had cancelled through the court, yet the police still refused to arrest the accused. The police instead put pressure on the complainant’s family to accept compensation money. Ultimately the family was harassed and driven out of Karachi.

Police officers appear keener to arrange a dispute settlement, particularly one that is financial, between the victim and accused, rather than pursue the matter through arrest, investigation, and the courts. In the case of the seven-year old child, mentioned above, the police tried to persuade the family for a period of five months to accept money to resolve the matter out of court, while the accused managed to obtain bail more than once. An incest survivor, age 18, made a complaint at the police station about her father, who confessed to his crime in front of the officers. When WAR followed up on the case the police officers concerned said that no FIR had been lodged since the police “mediated reconciliation between the complaining party and the offender.” The girl was forced to return home with her father.

In one case the police appear to have deliberately destroyed the admissibility of an important piece of evidence. WAR had managed to get a senior police officer involved in investigation of the case of the sixty-year old rape survivor. At the scene of the alleged rape they found her scarf. The police cut it into two pieces and gave one to the WAR staff, and then offered to split the charges of a ten thousand rupee DNA test on the scarf.

In a number of cases the police are only willing to lodge an FIR upon the intervention of a senior police officer at the behest of WAR. This includes requesting DIG Police officers or Town Police Officers (TPOs) from different parts of Karachi to phone the police stations concerned and insist the FIR be made and case investigated. In two cases analyzed for this report, it was only upon the intervention of a senior political appointee in the Sindh provincial government that the police cooperated. Inordinate delays in lodging of FIRs result in a weakening of evidence for the case.

The procedures for filing and investigating a case are relatively straightforward and there is no reason why they cannot work more smoothly. It appears the greatest impediment to their working is the attitude of police officers, who stall investigations based on their own assumptions regarding the veracity of the case and moral character of the rape survivor.

V. MEDICO-LEGAL

A. MEDICO-LEGAL PROCEDURES & SYSTEMS

The medico-legal sector includes the doctors, Chemical Examiner, and the Police Surgeon, whose task it is to establish the physical evidence of rape, and whose report is essential to the prosecution of a rape case. The police sometimes refer cases directly to medico-legal officers (MLOs) who are doctors working in designated Government hospitals, or to the Police Surgeon's Office. There are nine government hospitals in Karachi that have appointed MLOs, however, medico-legal services for women and girls are only available at three: Civil Hospital, Jinnah Postgraduate Medical Center, Abbasi Shaheed Hospital and the Police Surgeon's Office. Rarely, a rape victim may approach an MLO directly, after which he or she would need to involve the police in order to complete the process of established evidence collection and filing charges. It is the job of the MLO to write a report based on a medical examination of an alleged victim and to record the statement from the victim, both of which are subsequently submitted to the police.

Modi's Medical Jurisprudence and Toxicology is the text used in Sindh to guide medico-legal practice.⁹ It offers a very detailed explanation of procedures involved in conducting medico-legal examinations for both survivor and alleged rapist(s). There are certain assumptions in the text related to a woman's credibility and probability of a false charge of rape. These have been listed below:

Resistance: Ethnic and class differentiations have been made between women, which are considered during examination to judge the level of resistance offered. For example, women used to "hard labor" are assumed to offer a "good deal of resistance" while a woman belonging to "rich and middle class of an educated family and not habituated to go about alone by herself will not be able to resist for long and will soon faint or will be rendered powerless from fright or exhaustion" (Khan, 2010).

Credibility: Modi lists a host of cases in India which were found to be fabricated by the women or family members to implicate an 'enemy' or someone against whom there was animosity. He also mentions specifically in this context that it is "necessary to note the previous character of the girl and her relations with the accused".

⁹ *Modi's Medical Jurisprudence & Toxicology* has been adapted by Muhammad Akbar Khan, Advocate of the High Courts, Pakistan, to include relevant Pakistan law and other relevant information to meet the requirements of lawyers working in the criminal field in Pakistan. The original *Modi's Medical Jurisprudence* was first published in India in 1920 and it has been updated numerous times.

Modi also indicates that a woman who says she was anesthetized by chloroform over the mouth is not to be believed, as it is impossible for a woman to be rendered unconscious this way single-handedly. He also states that, "it is to be borne in mind that a woman, especially of an excitable and emotional temperament, during the stage of anesthesia, gets a dream or hallucination that she has been raped, and insists on the belief after the affects of anesthesia have passed off, so that she brings an accusation of violation against her medical attendant".

Promptness of Complaint: A woman raped in a state of unconsciousness is less likely to be believed if she delays reporting. Modi holds that a woman who has been raped in an unconscious state is "bound to complain about her condition (pain following rape) to her relatives or friend, who happens to be near her, but her story would be looked upon with suspicion, if she complained after the lapse of some time that she was violated..." Here the conditionality of prompt reporting to a family member or friend as a determinant of credibility and belief is the point of concern. Rather than attributing suspicion to a state of intoxication, Modi holds that reporting to a family member or friend is critical if the survivor is to be believed.

Past behavior: According to Modi, it is necessary to find out "if [a] woman has been accustomed to the use of [such] drugs It sometimes happens that a woman voluntarily takes an intoxicating beverage in excess which affects her self-control and power of judgment, when she permits her male companion to have sexual connection with her. But after its effects are worn off, she realizes her mistake, repents her conduct and tries to lay all the blame at the door of a companion".

Modi also notes that "homosexual women are generally mental degenerates". He claims that homosexual women are "so morbidly jealous of the women with whom they are in inverted love that they are sometimes incited to commit even murder".

Modi's book, although comprehensive in terms of explaining medico-legal procedures, is replete with gender prejudices that cast aspersions upon a woman's credibility as a witness to her own rape. If a medico-legal examiner is, from the outset, suspicious of the survivor and looks for ways to doubt her testimony, the MLE report submitted to the court will enhance the same bias evidence by the police.

B. PERSPECTIVES OF SERVICE PROVIDERS

The medico-legal officer (MLO) interviewed for this study defined rape as a sexual act that is forced on someone against their will, but then went on to explain it is an act that can be committed both with or without consent. He believes that intercourse outside of marriage ('illegal' sex), and intercourse with a minor both qualify as rape. The Police Surgeon interviewed defined rape as sexual intercourse against the will of an individual. He noted that in Pakistan marital rape is not recognized, although he believes that one percent of rapes are marital rapes.

The woman MLO (WMLO) interviewed was unable to quote any law under which the crime of rape falls, although she also said that the law does recognize marital rape. She also believed that incest does happen, and recounted a case of a 13-year old girl who was raped by her brother in-law, a *maulvi*, who was never convicted. In her entire career she does not know of a man accused of raping a woman ever getting punished. In fact, she believes there is always something done to tamper with evidence or disclaim the victim's statement.

The MLO does a physical examination of the complainant to check for bruises, cuts and other signs of resistance. The WMLO noted that the evidence that is important for a case included the clinical findings, samples from her nails and clothing, physical examination, bedding, vaginal sample, and history. The police do not bring her any evidence, it is sent directly to the court.

For a second opinion medical slides are then sent to the Chemical Examiner of internal swabs of the complainant taken by the MLO to check for semen. Semen will only be detected up to 72 hours after the alleged rape. The MLO explained that rape can only be established if there is physical evidence, otherwise he does not believe that rape has taken place. Other admissible physical evidence includes condoms or clothing with semen or bloodstains, recovered from the site of the incident. He did not believe that it made any difference to the credibility of the complainant if he or she was accompanied to the MLE .

The Police Surgeon added that if a woman comes in for an examination after the rape has been committed and any time before her next menstrual period that evidence may still be easily gathered in the form of sperm cells. Often girls come in for the medico-legal examination but are afraid of being examined in case it causes them pain. Girls usually want to wash themselves after the incident, and parents want to wash their children's clothing. This makes collection of evidence difficult.

The Police Surgeon held the view if a woman comes in for an examination in a calm and collected state, or if she is excessively emotional, or appears to be shy or coy, then she is regarded with suspicion. Those who are unconscious or badly injured are taken the most

seriously. He was of the view that a woman who is “raped” can be at fault for that as well. For example, it is usually her fault if she was alone at the time of the rape, knows the rapist, or had invited him over.

The WMLO said she figures out by the way a woman speaks whether she is telling the truth. If there are conflicts within her story it will show that she is lying. The woman is at fault if she gives men “certain indications” and when the parents entertain guests within their homes, such as neighbors, or relatives, thus making their daughters vulnerable. When girls are bold and go out of their homes to meet men, it means they come from unhappy homes and have working mothers and fathers who are drug addicts – increasing the odds of being raped. Real victims will not come in to the hospital alone, because they will be too distressed, so those that do are likely to have left home on their own initiative, indicating that no rape actually took place.

The Police Surgeon pointed out the difficulty in establishing the difference between the crime of rape (*zina-bil-jabar*) and the crime of fornication/adultery (*zina-bil-raza*), particularly if there are no bruises on the victim to indicate that there was a struggle. In fact, he claimed only three percent of the cases that reach MLOs are actually rape, and the rest of them are cases where the alleged rapist and victim “enjoy” the so-called rape.

The MLO observed that there are some ‘habitual’ victims of rape, such as prostitutes or street children, about whom evidence is difficult to gather although he does not deny that in some cases they may have been raped. Although he claimed not to handle women rape cases in his work, he described the profile of a rape victim as one from among the lower class, illiterate, and between the ages of 15 to 35. The Police Surgeon agreed and stated that two-thirds of rape survivors were under age 18 and mostly women, while the WMLO said that most cases she sees are between the ages of 7-11. If the girl has the ability to narrate what has happened to her and knows the rapist, she is likely to be murdered after being raped. If an older person, such as a woman age 30, comes to see the WMLO and alleges rape, it is likely to be for ulterior motives.

The MLO conceded that rape within marriage was possible. He connected sodomy with other so-called ‘unnatural offences’ such as homosexuality or intercourse with animals. The MLO claimed that rapists in Karachi were mostly of Pathan or Seraiki ethnic background, illiterate, and from working class backgrounds. The Police Surgeon said that rapists were usually men, working class and illiterate, but did not identify any ethnic group. According to the WMLO the rapist always knows the victim. He does not plan the act in advance, rather he is acting on an urge that suddenly overwhelms him, a “*shaitan*”, and he feels very ashamed afterwards.

The MLO said that not all alleged rape cases actually involved a non-consensual act. Sometimes girls find themselves compromised when discovered in a sexual relationship with a boyfriend and allege rape to protect themselves, and there are cases where parents allege rape of a

daughter when she marries out of her own choice or when a boyfriend refuses to marry her. The WMLO added that there may be a personal rivalry or family related enmity behind the allegation.

The Police Surgeon believes that 90 percent of reported cases are not actually rapes. Ulterior motives for reporting rape include monetary gains, personal enmity, or revenge. The problem has been further exacerbated by the effect of media, poverty, and internet cafes for making previously taboo subjects socially acceptable. He further explained that women had been known to be rapists as well and recalled once case where a man was gang-raped by three women. If an older woman is kidnapped and later alleges rape then, according to the WMLO, it is more likely to be true. She believes that young girls are not lying when they allege rape while older women have the tendency to lie [presumably if they weren't kidnapped first].

There is a stigma against reporting rape in our society, which is a reason that not many are reported. Work by NGOs such as Aurat Foundation and WAR to raise awareness about the issue may be the reason there is an increase in the number of rapes reported in a major Karachi hospital during 2011. The WMLO said that most rape cases do not make it to court and the accused is never punished. It was her belief that the punishment for rape is death, or up to seven years imprisonment. The WMLO believed that a victim should first come to her or get medical attention (ideally within 12-14 hours after the rape) before going to the police, because delay in the process results in problems in finding physical evidence. She said the survivor needs a safe environment in which she can give a complete statement to the MLO. If there is a need, she will refer the survivor to a gynecologist. Most of the time, the survivor never returns to her office and there is no follow up of her case.

C. EXPERIENCE OF SURVIVORS

The subjective views of medico-legal officials, as described above, have a strong impact on the survivor's pursuit of justice. In one case cited earlier, the WMLO argued that a 60-yr old could not be raped, and insisted police do the FIR first before she would conduct the examination. Eventually she did the MLE, but said she would not provide a written report to WAR without an FIR or written request from WAR, and then departed the scene. Other times the MLE takes place, but the police sabotage the investigation by sending the case for MLE too late to collect useful evidence. This has occurred in cases where WAR has had to request intervention from senior police officials or the Police Surgeon himself in order to get the examination done.

Corruption in the medico-legal sector is not unknown. In one case of a girl raped by her uncle, the WMLO would only conduct the examination if WAR staff paid for the supplies, such as cotton swabs. It took the intervention of the Police Surgeon once again for the procedure to take place.

The police can sometimes pressure the MLO not to conduct an MLE, as in the case of incest of an 18-year old girl, in which the police mediated a so-called reconciliation such that a case against the father was never pursued and no evidence needed to be collected.

There is sometimes confusion among police and medico-legal officers about what procedure should be followed. In the case of two women raped by men claiming property rights over their home, the MLO said she would need an FIR from the police before doing an examination, and argued that the case was actually a civil one – this despite meeting the survivors. In another case of the rape of a six year old, the WMLO refused to conduct the examination arguing that since a mobile phone was also stolen from the victim, this incident should first be reported to the police. When an MLE eventually did take place, the report failed to mention vaginal bleeding of the child.

VI. THE COURTS

A. COURT PROCEDURES & SYSTEMS

After the police have submitted the final *challan* in court, the judiciary comes into active play. The magistrate holds the *challan* and FIR for every criminal case, irrespective of the nature and severity of the offence. After putting all the documents and evidences in order, the magistrate is empowered under Section of 241A of the CrPC to supply the accused with statements and documents related to the charges. If he is authorized to try a case, he may do so. Otherwise, he may forward the case to the District and Session Courts.

Thereafter a charge is framed against the accused under Section 242 of the CrPC. In cases that are punishable with the death penalty, the charges against an offender have to be framed in the presence of his counsel, i.e., the defense lawyer as well as the accused. The offender is informed of the charges against him and asked if he accepts or rejects them.

In the event that he pleads not guilty, the case moves into the 'evidence' stage. Summons and notices are sent out by the court through the police to witnesses and complainant(s) to come to court on specific dates to record their statements. These statements are made through the prosecution lawyer, who guides the questions, calls witnesses and attempts to establish the guilt of the accused. After each witness, including police officers and medico-legal officers, the magistrate who recorded the statement, the survivor and the complainant(s), among others, have been examined by the prosecution, the defense counsel cross-examines every witness.

The accused is then given a chance to defend himself. The judge or magistrate conducts this session by posing questions to the accused and asking him to identify any person who may vouch for his innocence. Details of defense witnesses, if any are identified by the accused, are recorded and summons and notices sent. The defense counsel conducts the examination-in-chief of the witnesses while the prosecution cross-questions them. If the accused fails to identify any witnesses, he is offered to give his statement on special oath, which involves swearing on the Holy Quran to tell the truth. This action means the accused forfeits the right to appeal to an appellate court in the event that he is found guilty.

Thereafter, a case moves into the final arguments stage, where the defense and the prosecution make their arguments turn by turn in summation of the proceedings and evidence. Case laws are cited by both prosecution and defense, and salient evidence highlighted by each. The judge then reserves the right to make a judgment based on the facts of a case and supporting arguments. The judgments are required by law to be announced in an open court in the

presence of both lawyers and the accused. It is not mandatory for the complainant/survivor or other witnesses to attend.

The accused is sentenced and sometimes fined if he is found to be guilty. Otherwise he is acquitted and ordered to be released if he is not involved in any other case in the same court.

B. PROSECUTORS' PERSPECTIVES

Four public prosecutors were interviewed for this study. They held different views on the rate of rape cases in Karachi. One prosecutor said that he knew of no case in the first six months of 2011. Another said that he knew of 50-60 such cases per month. The only woman prosecutor interviewed said she receives one or two such cases per month.

Prosecutors are involved in settling rape cases outside of courts. Prosecutor A recalled that a settlement is illegal in rape cases, because the offence is not compoundable, but judges indulge in it and as a lawyer he has as well. In one case he helped a young girl from the Christian community who was gang-raped to marry, and thus put the rape and its legal battle behind her. In yet another case, a young domestic servant was raped by a *maulvi* who ran a *madrassa* from the home where she worked, and Prosecutor A said he thought it best to settle the matter out of court and get them married to each other.

The district public prosecutor A based his comments on certain clear assumptions. He believes most rape cases are not real, they involve some other disputes and false evidence of rape is submitted. Other disputes can mean land or property disputes, but also cases of girls eloping and parents filing rape charges to save face. In rural Sindh certain conditions prevail that have bearing on rape. For example, men don't work and lack sexual power over their wives on whom they depend. These women seek fulfillment of their needs with other men, and when they are found out they allege rape. Actual rapes do occur, though, since in rural Sindh girls mature earlier sexually.

The woman public prosecutor interviewed said that rape victims were either from the lowest or the highest strata of society. Middle classes seemed to be less affected by this crime, as are people in urban areas. As a woman herself, she felt that in general no woman lies about being raped since the admission destroys her life in any case (prostitutes being an exception). In addition, if a woman alleging rape has a past criminal record it will make a significant difference in how the case is viewed. Prosecutor C notes that the case should be judged solely on the basis of current evidence, but that this is not how a trial works.

There is no clear position emerging from these interviews about marital rape. The woman prosecutor first stated that marital rape is impossible, and then contradicted herself by saying that there is a law stating that a husband cannot touch even his wife without permission¹⁰. Another prosecutor said that marital rape is possible, when a husband has sex with his wife against her will, but that no such case exists to his knowledge.

Prosecutors were of the view that victims are young, usually ages 13-22, illiterate, and from a poor socio-economic background. They are hard to prepare for court appearances and the cross-questioning of defense lawyers. It requires much effort to make sure they repeat the details of the statement as filed at the police station earlier, and stick to facts of date, time and place. A survivor's presentation and demeanor in court have a major role to play in influencing her credibility. If she appears in a heightened emotional and distraught state she is more believable.

A major obstacle to the legal pursuit of rape charges, according to Assistant Public Prosecutor B, was the manipulation of evidence and high rate of corruption among the actors involved, in particular the defense lawyers. For example, they are known to supply false evidence, such as a medical certificate in defense of an accused claiming that he is impotent and therefore incapable of rape, and they also indulge in bribery of police officers to tamper with the investigation. Legal Prosecutor C added that medical and legal certificates are defective and police are not trained to carry out proper investigations. They don't know how to collect semen, bloodstained clothes, body hair, etc and preserve them for use in court. The problem of insufficient evidence is further complicated by the easy manipulation of whatever evidence there is. Not surprisingly, gang rapes are the most difficult to prove.

Suggestions for improvement

Some key interventions may help in the successful prosecution of rape cases.

- The quality of investigations needs to be improved and updated for use in a modern context. If women police officers accompany male officers during the investigation it may improve the outcome. Further, legal Prosecutor C argued that evidence supplied through DNA tests would go a long way to support the testimony of victims. It is expensive, though, costing Rs. 60,000 for one test, but he believes the government should pay for the tests since a) it helps to eliminate a criminal from society and b) the cost is a deterrent to people reporting the crime of rape.

¹⁰ The authors were unable to locate such a law.

- District Public Prosecutors often receive evidence two or three months after the initial FIR has been lodged although it is supposed to be sent within 14 days. During this time many survivors back out and reach “settlements” or accused vanish from the scene.
- It should become standard practice to hold in camera trials; so when victims are asked insulting or painful questions they have only the members of the court and family or friends present to hear their responses.
- Prosecutors and defense lawyers should be given guidelines for appropriate language and questioning in court.
- The courts do not provide the survivors with adequate protection, which leads them to become emotionally upset when giving testimony. For example, a witness or survivor may be seated next to the accused while waiting for the court to come to session, giving the accused a chance to threaten and abuse the victim.

If the public lobbies for such reforms, it may improve the odds that women report the crime of rape and increase the rate of conviction.

C. JUDGES' PERSPECTIVE

An Additional District Judge was interviewed for this study, who had limited experience with rape cases. One male and one female retired High Court Judge were also interviewed, both had extensive experience, the latter in particular having handled numerous rape cases.

The judge with the least experience held the strongest assumptions about rape cases. He divided them into two categories, the first involved cases that were actually “runaway marriages” and the second were actual rapes that mainly take place in rural areas. In urban areas, he said, rape mainly occurs among women who work in the private sector, thus reinforcing the stereotype that woman who enter the public sphere somehow invite or encourage rape. The two retired judges agreed that most cases come from the rural areas, but that those in urban areas come from among the poor, such as very young domestic servants, and that among the upper classes few rape cases are ever reported. This is presumably to avoid the damage such a crime does to the reputation/honor of the family of the victim.

The woman judge said that in our society men consider women to be weak, particularly in the rural areas. She cited an example where a mother of a boy was made to walk around the village naked as an informal punishment for her son’s affair with a woman from a different village. Tribal culture, illiteracy, and ignorance of women’s human rights, have all played their role in making such crimes possible.

The declining social environment in Pakistan, suggested the female judge, was linked with the decline of judicial process, ill treatment of women by men, and an increase in dependency on the informal justice system (*jirga* system).

She said that thousands of cases result in acquittals because someone bribes the policemen and the case never proceeds in the court. Amongst rape cases involving low-income victims, the media takes the most liberty and this is enough to make families decide not to register the crime. There are also cases when the police tell the victim's family not to report the case because it will affect the lives of their other daughters

Often investigations are not good enough to prosecute a case successfully, or else in many cases evidence is destroyed or tampered with. In the absence of concrete evidence that matches with the statement given in the FIR, judges are forced to acquit the accused. There is currently only a 5-10 percent conviction rate for all criminal cases.

In a rape case, the evidence required is the statement by the victim, the medical examination and an eye-witness. The victim herself may act as the eye-witness, so may anyone else who saw the rape or was in the vicinity when the crime took place.

One or two weeks of delay in reporting the rape can be accepted in court, but longer delays lead to the accused being given greater benefit of doubt. Delays also give more opportunity for the accused to run away.

The past criminal history of any person involved should have no bearing on the trial of a rape case. However, when a person is convicted the level of punishment may be influenced by whether or not they have a criminal record.

She maintained that marital rape does happen, and was written about in the 1997 Inquiry Commission Report on the status of women. She said it is recognized in the Pakistan Penal Code but not under Shariah Law.

Rape victims have to face difficulties at every stage in the pursuit of justice. For example, they may be harassed at police stations which is the first place victims will usually go to report a crime. The medico-legal officer or chemical examiner may also treat a woman disrespectfully and ask her awkward questions. In court an appellant is not given witness protection or a separate place to sit to avoid being threatened. The legal procedure is lengthy and the appellant and her family often tire of court appearances. Most seriously, rape victims and their families are very often too frightened to identify the accused in court. For example, in one incest case of a father who raped his daughters, all but one of them was willing to testify against him. But worst of all, even when a woman is committed to her case, as was Mukhtar Mai, her statement was contested and she was unable to get justice.

Suggestions for improvement

Judges suggested the following to improve the successful handling of rape cases.

- Judges must take into account the delays that happen during the investigation of a rape case. They need to decide whether these delays have any bearing on the case.
- In court the name of the victim should not be taken.
- Judges should restrict the attendance at a hearing to relatives of the victim or witnesses, so that a woman will more freely be able to tell her story.
- Hearings should be scheduled for after 1pm when the courts are finished with most rape cases.
- Media should not be allowed to enter because they disclose too much information about the case to the public, such as names and addresses of those involved.
- Witnesses must be kept in a separate area, not sitting out in the open where they can be easily identified.
- DNA testing would be the most efficient way to prove rape, it would allow for at least a 50-70 percent conviction rate.

D. EXPERIENCES OF SURVIVORS

Most cases never make it to court. Among the 12 case studies examined, the outcomes that emerge reflect the attitudes and perspectives of the public sector as discussed above and the concerns expressed by the judges. [See Table 2] Family members are threatened by the accused and instead of pursuing a case flee their homes and seek shelter in another city altogether. Police are quick to declare accused as “absconders” and refuse to follow up on cases well before they make it to court. Accused remain in plain sight but police refuse to arrest them and the survivors remain intimidated such that they never pursue charges. Families pressure survivors to drop charges – in one case a victim of severe domestic abuse dropped charges against her husband under pressure from her own brother-in-law. One case, that of a child rape, was won, while two cases are still pending.

While cases do make it to court and occasionally accused are tried and sentenced for their violent crimes, it is noteworthy that the criminal justice system appears to be biased in favor of out of court settlements, preferably in monetary form. This interest in out of court settlements is not limited to the police. In the rape case of a F. aged three, in which her uncle was implicated, the police said the accused could not be arrested because he had “absconded”. While the case did eventually make it to court, the judge told the child’s mother to accept financial compensation of one *lakh* rupees while the mother of the accused pleaded for a lower amount. This discussion was obviously premised on the assumption of guilt of the accused, yet somehow he evaded arrest and never did have to pay any compensation to the victim’s family.

In one case of domestic violence that made it to court and involved sustained support from a women’s shelter and WAR staff, the judge scolded but did not punish the accused for attacking his wife. Instead he made him sign a legal undertaking that he would not do so in the future. Once the charges were withdrawn the beating resumed. In other cases, charges were either dropped or withdrawn by the complainant/survivor, reportedly due to unsupportive response from the police, judiciary or medico-legal officer.

VII. Judgments

Below are five judgments of cases of rape and gang-rape, tried in the Session Courts of Karachi, in which WAR assisted prosecution. But first, a brief list of the directly relevant Sections of the Pakistan Penal Code under which the cases were considered is as follows:

Section 375: Rape and Gang-Rape

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

- i. against her will
- ii. without her consent
- iii. with her consent, when the consent has been obtained by putting her in fear of death or of hurt
- iv. with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
- v. 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.

Section 376: Punishment for rape

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.

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.

Section 377: Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Section 496A Enticing or taking away or detaining with criminal intent a woman

Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. The State versus M. Akram, Case No. 431 of 2008

The survivor, F, claimed she was raped by her brother-in-law, i.e., her sister's husband, when she was alone at home. He returned and raped her again the next day, armed with a gun, while his wife was out of town.

She did not report the rape the first time. After the second time she went to the police station but the officer would not lodge her complaint. She then approached a WMLO directly for a medical examination. She showed marks of violence including injuries over lips, thigh and breast, without any injuries near her genitalia. Subsequently she was able to lodge an FIR against Akram.

The trial took place under Section 376 of PPC. The accused pleaded not guilty to the crime. He did not produce any defense witness and neither did he give his testimony under oath.

The Court acquitted the accused for two reasons:

- i. Unexplained delay of 6 hours in lodging of the FIR with the Police;
- ii. Uncertainty over whether F handed over her clothing to the Police Officer or the WMLO. F claims she handed it over to the Police, whereas the WMLO claims that F handed it over to her.

Regarding the first point, in the statement recorded by F, she had approached the police the second time her brother-in-law raped her. The police then reportedly turned her away and refused to lodge the FIR. This aspect has been included in the judgment, although not factored in the verdict. Regarding the second point, the judge explains, "There is a settled law that any slide of single doubt comes to the record then always benefit goes in favor of accused in any case." The court also took cognizance that F is a married woman, who has borne children. Since her genitals do not carry signs of force or injury, her claim of rape cannot be corroborated.

Discussion

A DNA report was never received or presented in court although the Chemical Test Report states that the two articles received from the police for chemical examination, including the vaginal slide and the clothing, both contained human sperm. Since F was a widow and given that the clothing was the most important piece of evidence in this case, the verdict was nonetheless announced without ascertaining to whom the sperm belonged. It also says in the judgment that there is confusion about which is the *shalwar* she was wearing at the time of the attack and which was examined by the WMLO and police. This confusion underscores the importance of the judges' recommendation (Section VI above) that DNA tests be made available.

The survivor followed legal procedure to her best ability. She reported the rapes promptly, facilitated the police in searching the scene of the crime, and presented them with her soiled *shalwar*. One major reason cited for the acquittal of the accused was her delay in filing of the FIR, although according to procedures discussed above this is not a significant delay. The judge does not query why the police refused to lodge F's complaint, yet he states that her delay in lodging an FIR is enough to create doubt regarding the guilt of the accused.

The defense lawyer argued that F. was a "bad woman" and "habitual", accustomed to implicating people in false cases, however no evidence of that was provided. The absence any marks of injuries over her body, as noted by the WMLO, and the confirmation that she had been pregnant before, reduced her credibility in the eyes of the court. Cultural and social assumptions regarding the kind of person who falls victim to rape favour the profile of a victim who is young and sexually inexperienced, and show marked doubt regarding the vulnerability of older married women to this crime.

The judge noted there was no eyewitness to the incident and no witness produced by the survivor. As data from Section VI shows, a rape survivor can serve as her own eyewitness, and prosecution witnesses are very frightened to testify in an open court. In this case the judge did not consider her testimony sufficient to establish guilt of the accused beyond a reasonable doubt.

2. The State versus M. Asif. Case No. 836 of 2009

In this case, N, 18, was raped by her landlord's son, while she was alone at home with her younger sister, aged 10-11 years.

The FIR was lodged the same day. No incriminating evidence was gathered from the scene of the crime, other than the girl's *shalwar*. A medico-legal examination took place as well, the report of which stated that N. was not "virgo intacta" and the police arrested the accused the following day after inspecting N.'s house. A medical examination of the accused found that he was capable of performing sexual intercourse.

The trial took place under Section 376 (i) of the PPC. The accused stated he had been falsely implicated in the case, however, he did not allow himself to be examined under oath. The prosecution did not examine any independent witness.

The accused was found guilty. The judge noted that the FIR was lodged promptly and that the survivor's statement inspires confidence. He says, "It is not number of witness, but quality and credibility of evidence is to be considered". He found the testimony of N. to be consistent and accepted her as "a victim and natural witness" to the crime.

Her sister's testimony also remained consistent with that of N. The medical evidence, ie of sperm collected from N.'s *shalwar*, corroborated their testimony even though no marks of violence were found on the victim's body. The alibi of the accused was not accepted.

Discussion

WAR won this case. The accused was sentenced to rigorous imprisonment for fourteen years and fined Rs. 50,000.

Although judgments like these are rare, particularly in the lower courts, the important thing to note is that in comparison to other judgments discussed herein, this case did not represent any dramatically unique set of facts that led to conviction. There were no signs of physical injury, and no third party witness was produced in court. Again, a DNA test would have confirmed the guilt of the accused. Nevertheless it was the consistency of the prosecution's evidence nonetheless, that convinced the judge.

The judge held certain assumptions about the characteristics of a young girl who would allege rape. He writes:

“Moreover, in such circumstances, the pleas of false implication of accused is also not sustainable as no girl would stake her future by stating that she has been raped, or even no parent could manipulate such a vulgar story against her own daughter of 18 years of age only as much to stand his younger daughter of 10/11 years of so tendered age. As a girl having such history is always looked down and loses respect in society. Another factor, which appeals to common sense is that a girl of young age of 18 years have got no such mental power to create such type of mind or fake planning or story to implicate anyone in such type of heinous crime.” [p.17]

“Inherent bashfulness, innocent naivety and feminine tendency to conceal the outrage of masculine sexual aggression are relevant factors which had rendered improbable the hypothesis of false implication of the accused in the case.” [p.18]

The judge chooses to emphasize the innocence of young girls whereas in other judgments it has been their budding sexuality or the immoral character of their mothers that has been used to disbelieve their testimonies.

3. The State versus Mehmood Ahmed, Case No. 399 of 2009

This was a case of incest. A. lived with her two uncles and their families. She was 14-15 years of age. One uncle raped her at home when no one else was present. Two months later it recurred. The uncle threatened her with death if she told anyone. Shortly after, A. fled the house, leaving behind a letter.

Assalam o aleikum. I am going very far away from you, please forgive me. Because I have created a problem in this house and if you are upset please forgive me. I love all of you and I also love my mother and dear ones very much. Now I have to go very far from here, it is better for everyone that I do. Someone like me cannot remain in this house, who has become a catastrophe for you. For God's sake please do not miss me because I am not worthy of anyone's love. This is why I ask forgiveness from everyone and until I make myself worthy I cannot come back to this house. I understand that my home is being destroyed and why would I want to destroy someone's life and destroy their home? So please forget about me.

She managed to contact her mother, who approached the police for help.

The police refused to file the FIR despite repeated efforts; they sent her for a medical examination first, which took place 15 days after the last rape. The medical report found her

not “virgo intacta” and the chemical examiner report did not detect human sperm. Eventually the FIR was filed at a women’s police station, after which the accused was arrested and identified. The police visited the place of the incident and submitted their findings in court.

The trial took place under Section 376 of the PPC. The accused alleged that the mother of the complainant had implicated him in a false case. He did not provide any witness in his defense nor did he agree to examination under oath. The complainant argued that her uncle had paid the police not to file the FIR. She also said that her uncle first raped her at age five and that she had told her grandmother about it. The counsel for the complainant argued that she would not risk her own reputation to allege rape, and the medical report supported her evidence, while the chemical examiner report was made too long after the incident to provide help to the case.

The judge placed emphasis on the letter A. had written, writing that it “shows the emotionality and frustration, annoyance and disappointment of the victim.” He concluded that the letter did not allege any act of rape, and instead it indicated she was sexually frustrated. He noted that in her testimony and statement the number of alleged rapes was inconsistent, and doubted that if she were raped at age five she would only tell her grandmother and no one else about it. Since the medical evidence about rape was inconclusive and the complainant’s story was not absolutely believable, the benefit of doubt went to the accused.

Discussion

The cultural assumptions about rape victims depict girls or women in one of two extremes along a spectrum. They are either sexually frustrated and/or of bad character (lying about rape), or too naïve and wedded to their unsullied reputations to charge anyone with rape (not lying about rape). In this case, the complainant, whom the medical examiner found had not yet started menstruating, falls in the category of the former. It is also possible that in this case procedure was manipulated by the accused in an attempt to stop the police from filing the FIR. Had the procedure happened more smoothly then evidence of sperm may have been gathered from the complainant.

4. The State versus M. Rehan, Case No. 1286 of 2004

This was another incest case. S, age seven, claimed that she was raped by her cousin, Rehan, aged 17 years. Rehan had come to S’s house in the presence of her mother, who left to go grocery shopping with one of S’s sisters. He remained at the house. At noon, he took S to an

adjacent plot and sodomized her. When she started bleeding, he changed her clothes and took her to a hospital. Then he brought her back home and left. When the mother got home, she was told that S was not feeling well. Upon inquiry caused by her persistent crying, S informed her mother that Rehan had sodomized her.

S's mother went directly to a local Councilor, who helped with the lodging of the FIR. A medico-legal examination was conducted thereafter at a major hospital on the same day. The following day the police visited the site and collected evidence. Three days later they arrested the accused. The next day they recovered the *shalwar* of the child in presence of her mother and husband. There is lack of clarity as to whether the police obtained her signature on a statement regarding the collection of evidence.

The trial took place under Section 377 of the PPC. During the trial one prosecution witness testified that the neighborhood (*mohalla*) residents had collected in the street of the complainant to listen to a heated argument between the accused and complainant parties, who were cousins. He testified that "the character of the complainant [S.'s mother] is not good". The mother and father of S also testified in court that on the intervention of the *mohallah* residents the aggrieved party had forgiven the accused and were still interested in further proceeding against the accused.

It is important to note that the medico-legal certificate presented as evidence in Court in this case, contains the WMLO's opinion that an attempt to sexual assault had been made on S. The shirt belonging to S had been found soaked in blood. The police later found S's *shalwar* as well, with blood stains on them.

This case was dismissed in Court. The judge considered the following:

"The complainant [has] disposed in her cross-examination that she [has] forgiven the accused in the intervention of *mohalla* (community) persons and made compromise on the intervention of *mohalla* people and she is not interested in further proceedings against the accused."

Benefit of doubt was granted to the accused.

Discussion

Unlike cases of murder, rape is not a subject in which 'forgiveness' can be granted in exchange to any kind of compensation (like blood money under Islamic laws). Although universally the aggrieved hold the right to settle matters out of court, it is rare to see a judge bring it on

record. If there is forgiveness by the aggrieved party, guilt for the offence may be presumed but yet it is ignored. This case is a good example of the culture of out of court settlements taking precedence over the quest to establish the guilt or innocence of the accused.

This is yet another case in which a DNA test was never conducted, although the case could have been resolved satisfactorily if such evidence were made available. Meanwhile the complications related to collection of evidence such as items of clothing and sealing of the same emerged as another reason to acquit the accused.

Rehan stated both that he not committed rape and that the complainant and victim had forgiven him. There is no curiosity in the court about pursuing the possibility of his guilt, and the assumption of bad character of the complainant, S's mother, was accepted as a reason for doubting her statement. The child, S, was not produced in court, for reasons that are not clear but may have to do with issues related to hostile court environments and a fear of reprisals felt by complainants as raised by respondents in Section VI.

5. The State versus Rabia, M. Ghaffar and M. Athar, Case No. 56 of 2007

The rape survivor in this case is S, age 21, who was divorced and living with her parents. Her own sister Rabia invited her one evening to come over to her in-laws place for the evening. After dinner she went upstairs to sleep and during the night Rabia's own husband and his brother raped her. The next morning, bruised and hardly able to walk, she arrived home. Her family first went to the house of the accused where they were threatened and challenged to approach the police.

S went to the police, who filed an FIR with her mother as the complainant. A medico-legal examination took place. The accused were arrested, and they were found through medical examination to be capable to perform sexual intercourse. Survivor, S., was found to not be a virgin, and to have a bruise on her arm where one accused had bitten her. The chemical examiner confirmed that indeed intercourse had taken place.

The case was tried under Sections 496-A and 375 of the PPC. The prosecution produced seven witnesses. The father of S said that accused Ghaffar had admitted the offence and apologized to him when they went to the house of the accused after the rape. The defense denied the allegations and said they were being falsely implicated "due to matrimonial affairs". They did not testify under oath nor lead any evidence in their defense.

The judge acquitted all three accused. Certain aspects of the testimony raised doubt in his mind about the veracity of the prosecution. One, the victim stayed all night in the house. Two, she may have refused a marriage proposal from one of the accused, as both families were after all related. Three, no one in the house heard her cries for help. Four, the judge found that in the report of the chemical examiner the color of her clothes were noted as slightly different from the color noted by the police investigator. Five, the prosecution did not have any independent witnesses. Six, she did not have any marks of resistance on her body other than one bruise from a bite.

Discussion

This is yet another case in which DNA analysis would have helped the court to reach a decision. Here the judge does not raise the question as to why would S. and her family expose themselves to the humiliation of involvement with a rape case. It is possible, although not explicit in the judgment, the court's view of S. as a divorcee may have had a negative impact on the proceedings. Procedures and investigations appear to have been followed fairly smoothly, yet one inconsistency over the color of the victim's *shalwar* became a major reason for doubting the prosecution. The accused argued that "matrimonial affairs", not clearly defined, was behind the case, which may also have supported the assumption held by many police, lawyers and judges that charges of rape are often linked to disagreements about marriage proposals.

VIII. Summary and Discussion

What follows are the highlights of the preceding discussion:

Cultural assumptions and biases

The view of women taken by members of the criminal justice system, even those who are female, is an extreme one. On the one hand, a woman is viewed as pure or innocent and naïve, who would never risk her reputation on falsely charging rape. On the other hand, a woman is viewed as being of bad character and over-sexed, so that her testimony cannot be relied on to be truthful. Such views of women, when they become the basis for judgments involving rape, only enhance stereotypes and reinforce the prejudices that make women easy prey to such crimes. Judges and prosecutors have noted that a woman's past criminal record should have no bearing on her ability to testify to rape, yet in truth it does happen.

The police and medico-legal officers also make their own judgments about the character and credibility of the complainant and/or survivor, such that the case is quashed before it ever gets to court. The MLO training is built upon value judgments about women's morality and mental competence, so it is no wonder that often the collection of evidence at the early crucial stages of an investigation will be ignored by officials who have already written off the veracity of the incident. A sane and balanced view of women needs to be taken by all sectors of the criminal justice system and the crime of rape must not be linked to the perceived morality of the survivor.

If a woman knows the rapist

The MLOs training and attitudes, along with those of the police, implicitly blame the woman for her own rape if she is alone at the time and if she knows the rapist. Yet WAR cases show that in most cases the rapist is known to her, and is in fact someone she would trust to be alone with. While police have stated they preferred not to investigate cases within the home and violate domestic sanctity, this approach is misguided and has resulted in survivors being sent back to the very place that is least safe for them. In some cases WAR has been successful in placing women at shelters until they find another place to live, but this is not the norm and the number of such shelters is inadequate in a city the size of Karachi.

Informal settlements

There is a broader cultural context to the practice by members of the criminal justice system of preferring to engage two parties in settlement to resolve a rape allegation. The informal legal system of *faislo*, as it is known in Sindh, or *jirga/panchayat* system as it is referred to in other parts of Pakistan, is the de facto conflict resolution institution. Conflicts are referred by community members to a group of tribal elders, always male, whose role it is to settle the matter in such a way that aggrieved tribes, or families/communities involved, come to a negotiated settlement. The types of crimes that are taken up may range from land and other resource-based disputes, theft of crops or livestock, murder, kidnapping, and personal disputes. Often a woman is given in compensation for any kind of dispute, or to restore balance/harmony, between the two parties. "The informal justice system basically emphasizes on compensation rather than imprisonment or detention. The standards of compensation may vary from jurisdiction to jurisdiction and tribe to tribe." (Akhtar et al 2009: 32)

The formal justice system attempts to establish individual guilt and dispense justice through punitive measures. The delays in the legal process and perceived corruption in the system, have strengthened the role of informal justice systems in recent years with government programs, such as the Musalehat-e-Anjuman committees, coming into operation that attempt to bridge the gap between the two systems rather than do away with the latter entirely. With this in mind, if members of the criminal justice system, such as lawyers, negotiate out of court settlements to avoid lengthy trials, they stand to be financially compensated by at least one grateful party and the matter is deemed to be amicably resolved. The settlement, as we have seen, does not serve the interest of the rape victim necessarily, but reflects the customary view that reduction in loss of honor and reputation to both sides is best achieved through such a process. Hence we find that a prosecuting lawyer may be pleased to negotiate for the marriage between the rapist and survivor. In the formal legal system rape is a crime against the state and therefore cannot be resolved through negotiation under Qisas and Diyat, even if the parties would wish to do so.

Confusion over process

In many of the cases discussed above, the survivors have unwittingly gone straight to hospitals for medical examinations, without a reference from a police station, and have been told they must first get a police report and then have themselves examined. But in yet other cases, survivors have gone straight for medico-legal examinations and been issued reports even if the FIR was only filed subsequently. There is lack of clarity on the part of police and medical officers as well, which leads to inconsistent practice. This fuels the suspicion that deliberate mishandling of cases takes place in order to materially benefit officials of the criminal justice system.

Granting Bails

Although rape in a non-bailable offence under the Women's Protection Act, 2006, judges grant bail on the basis of circumstantial evidence, often prior to the commencement of the trial. Bail-before-arrest is also quite common in these cases. Universally, the defendant in a criminal case has a right to bail under the premise of 'innocent till proven guilty', casual bails cause extreme distress to women who think that the accused has been acquitted or the court does not believe them. Additionally, bails result in the accused returning to his home, which is usually in close proximity to the survivor's residence. This leads to harassment and intimidation to the survivor. It was observed in a case handled by WAR (Section VII, 1, The State versus M. Akram, Case No. 431 of 2008), that despite the survivor submitting various applications to the police and court for intimidation and death threats by the accused who had been granted bail, he was not remanded back to police custody and the applications were treated as a documentary burden. They were not entertained by either the police or the court; instead the survivor was mocked for being in the habit of filing useless applications and 'acting like a lawyer'.

Difficulty in pursuing a case

The judges have complained about lack of commitment to a case on the part of the complainant. This is in part due to the intimidation caused by the legal process and threatening behavior towards the aggrieved party by the accused. We have also seen from the case studies discussed that even with the full support of WAR when survivors try to engage with the criminal justice system they are discouraged after encountering the attitude of police and medico-legal officers. One can only guess at the numbers of cases that never make it to the attention of WAR and the criminal justice system, and the high level of fear and intimidation that prevails and renders the survivor unable to take any action on her own behalf in the formal justice system. Additionally, judges often dissuade complainants from attending proceedings that do not require their attendance, such as recording statements, giving evidence, etc. This discouragement does not help alleviate the disorientation litigants suffer because of lack of information regarding the legal process and their sense of involvement in their own cases. Further research needs to be conducted into the informal justice system and the extent to which it is handling rape cases.

An important element in the threat and intimidation meted out to survivors is the fact that in many, if not most incidents, the rapist is known or related to the victim. Incest is a reality in Pakistan, despite the protestations by police officers that no such thing exists in a Muslim society. The accused may also be known to the survivors through other contacts, such as the case of the woman who was raped by her landlord's son. In some cases only is the motive for rape some other conflict between the parties.

Dangers of media

While it is important to draw the public's attention to sexual violence, media focus can frighten complainants away from pursuing justice. The names and faces of complainants and survivors, once in the media, only render them more vulnerable to threat and intimidation from the accused party. Intense media attention does not necessarily lead to successful conviction; in fact it may have the opposite result.

Inclusion of relevant sections in the FIR

Many times, the police do not include relevant sections under law in an FIR when a case is reported to them. In case 8 in Table 1, where the survivor had been raped with the use of sticks besides being burnt with a hot iron and beaten with sticks, the police registered the case under section 324/2 (attempt to murder, by multiple people). As there is no legal provision for object rape in Pakistan, the element of sexual violence was not considered by the police. Additionally, the provision for rape was not included either. As attempt to murder and murder are pardonable offences under Qisas and Diyat laws, it was not surprising to see that the accused would be acquitted if the family forgives him under pressure. Had the provision of rape been incorporated in the FIR, the chances of the accused being acquitted would have reduced substantially.

Recommendations

After a reading of WAR case files, interviews with police, prosecutors and judges, and examination of judgments, some pathways to improving access to justice for rape survivors emerge.

- The government must fund and standardize DNA tests to confirm allegations of rape and improve the conviction rate.
- A clear set of guidelines can be established for cases in court. These include a witness protection system, ethical guidelines for the questioning of witnesses and survivors and in camera court proceedings to protect the identity and safety of the survivors.
- Courts must ascertain the proximity of the accused to the survivor prior to granting bail. Bail orders must carry the conditionality that in the event that he harasses, threatens or intimidates the survivor/complainant, his bail would be revoked. Restraining orders also need to be made mandatory for the protection of survivor(s)/complainant(s) and for ensuring that litigants do not back out of legal proceedings due to pressure.

- The formal legal system, not the informal system, is the place where a woman's voice is more likely to be heard and her human rights protected. Efforts should be made to make this system more accessible to women, and the practice of out of court settlements for rape should be made punishable for the lawyers and judges who broker such settlements.
- More often than not, accused abscond with the police seemingly unable to apprehend them. WAR is aware that there are resource constraints cited by police officials, including uncoordinated tracking of offenders within national borders. Lack of police escort cars and mobiles have also been identified as constraints to transporting offenders under security. Tracking systems as well as transportation systems need to be improved as well.
- There is a need to review the curriculum and training material for police and medico-legal officers eliminate gender bias and discourage officers from making their own judgments a priori before investigating verdict in a case.
- Human rights courses must be mandatory for graduating lawyers and not only for post graduation law students.
- Women police stations need to be made more accessible and effective. Cases involving women are not transferred to women police stations and officers unless explicitly requested by the survivor/complainant. Currently there are no women posted at male police stations. There exist 101 regular police stations and only three women police stations in Karachi.
- Procedures need to be improved in the medico-legal sector in terms of the quality and comprehensiveness of examinations conducted. Often, MLOs do not consider a head-to-toe examination necessary, which leads to non-documentation of vital evidence, which in turn weakens the quality of prosecution in court.
- The definition of sexual violence need to be expanded under law, particularly under provisions of rape and sexual assault. Forms of rape and sexual assault that are non-penile penetrative, such as digital rape (molestation) and object rape (rape with the use of objects) need to be defined, explained and prescribed penalties.
- Section 151(4) and 21(j) of the Qanoon-e-Shahadat need to be repealed as they are discriminatory towards women, unconstitutional, and award undue concessions to rapists under the law. The police and MLOs, being aware of this provision, use it to take into account the past history of a survivor and the promptness of the complaint before they register an FIR or conduct an investigation/medical examination.
- Incest cases need to be given special treatment in courts, with the relationship of the accused to the survivor taken to be an aggravating factor in sentencing. Additionally, because the psychological trauma resulting from incestuous rape is more severe than in cases of stranger or acquaintance rape, especial measures need to be taken to ensure that the survivor is not forced to go back to living with the accused (in cases of fathers, bothers, etc), in the event that he is given the benefit of the doubt and acquitted.
- Use of screens during the identification process in court needs to be made mandatory, especially in cases involving minors.

- The number of women in the criminal justice system should be increased to create a gender balance in the public sector. This extends to women prosecutors and judges, police and medico-legal officers.

A great deal more research and analysis in Pakistan, not only in Karachi, is needed in order to deconstruct the attitudes and prejudices that prevail and make prosecution of rape so torturous. We know enough already to make some concrete changes in the criminal justice system that would improve the quality of investigations and lead to a higher conviction rate. These would set in motion attitudinal changes to make the criminal justice system responsive to complainants charging rape and other forms of sexual violence, and in the long term lead to a safer and more peaceful society for all.

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Cover Design by: **Meera Hasan**



This project is funded by the European Union.