

# *With an End in Sight*

**Incest in Pakistan: A Legal & Socio-cultural Analysis**



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## **ABOUT THE ORGANIZATION**

War Against Rape (WAR), was founded in 1989 in Karachi, by a group of women associated with the Women's Action Forum (WAF). It endeavours 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, providing free legal aid to nearly 20 families annually, providing psychotherapeutic counselling and running a robust advocacy, capacity-building and awareness-raising program.

### **Strategic Objectives**

- 1) Increase general awareness on and understanding of the issue of sexual violence;
- 2) Strengthen the capacity of stakeholders in responding to the issue of sexual violence, such as but not limited to communities, police (including women police), judiciary, medico-legal personnel, civil society organizations, media, educationists, and different state departments;
- 3) Advocate for efficient and dignified State services for rape survivors (including police and medico-legal support) in Pakistan;
- 4) Research on national laws to determine their impact and policy/ procedural problems affecting women and child survivors of rape in Pakistan;
- 5) Lobby for change in discriminatory policies/ working procedures and laws relating to sexual violence in Pakistan;
- 6) Network with other NGOs, government departments and agencies that have objectives similar to WAR;
- 7) Develop and continually improve an integrated legal support system that provides legal services that are responsive to the needs to rape survivors, free of cost;
- 8) Liaise with media (print and electronic) for the purpose of highlighting case-related problems and gaps in State-sponsored services and for offering legal and sexual rights education to the general public.





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## ABBREVIATIONS

<b>DDA</b>	Deputy District Attorney
<b>DNA</b>	DeoxyriboNucleic Acid
<b>DSP</b>	Deputy Sub-inspector of Police
<b>FIR</b>	First Information Report
<b>FSC</b>	Federal Shariat Court
<b>IO</b>	Investigation Officer
<b>LJCP</b>	Law & Justice Commission of Pakistan
<b>MLO</b>	Medico-legal Officer
<b>NGO</b>	Non-governmental Organization
<b>PCrLJ</b>	Pakistan Criminal Law Journal
<b>PCO</b>	Public Calling Office
<b>PLD</b>	Pakistan Law Digest
<b>PPC</b>	Pakistan Penal Code
<b>SC</b>	Supreme Court
<b>SCMR</b>	Supreme Court Monthly Review
<b>SHO</b>	Station House Officer
<b>WAF</b>	Women's Action Forum
<b>WMLO</b>	Woman Medico-legal Officer

## GLOSSARY OF TERMS

<b>Idath</b>	Prescribed period of four months and ten days for which widows must wait before they remarry.
<b>Mahram</b>	Males whom a woman cannot marry at any time in her life.
<b>Zina</b>	Adultery / fornication.
<b>Ta'zir</b>	Islamic prescribed punishment for offences not covered under Hadd and Qisas.
<b>Qatl</b>	Murder
<b>Shalwar</b>	Trousers worn by men and women as part of the national dress in Pakistan.
<b>Muhsan</b>	A male who has had intercourse within a valid marriage.
<b>Hadith</b>	Reports of statements or actions of the prophet Muhammad (PBUH), or of his tacit approval or criticism of something said or done in his presence.
<b>Hudood (or Hadd)</b>	Islamic prescribed punishment for any offense.
<b>Zina-bil-jabr</b>	Rape
<b>Qazf</b>	The crime of making a false accusation against a woman's character.
<b>Jabr</b>	Force
<b>Mohallah</b>	Neighborhood or community.
<b>Ramadhan</b>	Islamic month of fasting
<b>Roti</b>	Bread



Image ©Wendy Marijnissen, 2011

***Incest in Pakistan: A teenager was found guilty for abducting, raping and killing his 5-year-old cousin. After sexually assaulting her on the rooftop of the house where they both lived, he strangled her to death and dumped her body in the football ground, being used by locals as a garbage dump.***

(Caption by the photographer)

## INTRODUCTION

Sexual violence against women and children in Pakistan is an insidious problem that has reached epidemic proportion in recent years. Within the ambit of sexual violence fall not just the most obvious and aggravated forms such gang-rape, rape and sexual assault, but also the less recognized forms such as forced marriages, forced abortions, under-age marriages, forced prostitution and trafficking for commercial sex trade, among others.

A report on Violence Against Women (VAW) by the Aurat Foundation asserts there were a combined 1002 cases of sexual assault and rape/gang-rape against women reported across Pakistan in 2010. A 2011 report by the same agency claims that 8 women are raped everyday in Pakistan, half of whom are minors (Parveen, 2010).

A report by Pakistani NGO, Sahil, reports that out of the total 2,252 cases of child sexual abuse reported all over Pakistan in 2011, there were 138 cases of incest. Of these, 24 cases were those where the perpetrator was an immediate relation of the survivor (including the father or bother), whereas 114 cases were those committed by 'relatives' (including cousins, uncles and others) (Sahil, 2011).

Sahil's statistics show that from the 2,303 reported cases of child sexual abuse in 2011, 3,028 (63%) of the perpetrators were acquaintances (i.e., known to the child) while 1,374 (28%) were strangers. It further asserts that 444 of the abusers were from within the child's family (Sahil, 2012).

Various reports by different agencies including those of War Against Rape (WAR), suggest that sexual violence against women and children is a severely underreported matter in Pakistan. WAR estimates that between 60 to 70 percent cases are never reported anywhere and constitute the larger 'hidden numbers' that keep society from seeing the severity of the problem.

A large portion of these unreported cases comprise inter- and intra-familial sexual abuse, perpetrated most commonly against very young children, particularly minor girls, i.e. under the age of 16, and by someone who holds a position of authority and is trusted by the child. These kinds of cases are called 'incestuous sexual abuse', 'incestuous rape' or simply 'incest'.

The perpetrator in such cases usually has easy access to the child or young adult due to family relations. Sexual abuse in this setting are typified by underreporting, either because the child does not or cannot disclose abuse to an adult who can take action to prevent or stop the abuse, s/he is afraid s/he would not be believed, which is an exercise in self-preservation because disclosure may lead to a blame and insult, or because of her/his relationship with the abuser. They may also be underreported because the person whom the

child informs lacks the agency to act, has a close relationship with the perpetrator, and is embarrassment, ashamed or afraid of retribution.

The psychological effects and social persecution that follows incest have been found by various researches across the world to be substantially worse compared to stranger or acquaintance rape (Courtois, 1988).

### **Incest Victimology and Criminology**

Traditionally, incest was defined as any forced contact, sexual in nature, which is perpetrated against a person who is a close or blood-relative. However, in order to truly understand incest one must look not only at the blood relationship between the perpetrator and the child, but the emotional bond between them. The important criterion is whether or not, in the child's experience there is a real relationship with the perpetrator (Blume, 1998).

In accordance with the later, today many jurisdictions, including Turkey, Egypt and France, among others, extend the ambit of incest to include perpetrators who although not related by blood or affinity, may hold a position of trust or authority over the survivor, or their family. This would include secondary caregivers (such as doctors and teachers), religious leaders or clergy, care-takers and foster/adopted parents. These jurisdictions treat incest as an aggravated form of sexual assault, mainly due to the added trauma it imposes on the survivor. This is mainly caused by the betrayal of trust and sense of helplessness that accompanies incest. As Vanderbilt asserts, "While a child molested by a stranger can run home for help and comfort, a victim of incest cannot" (Vanderbilt, 1994).

Victims of incest are often reluctant to reveal that they have been or are being abused for fear of being disbelieved, blamed or punished if they do. Often the incest victim her/himself does not understand or denies that anything is wrong with the abuse they are experiencing (Vanderbilt, 1994).

Pakistani psychologist Asha Bedar explains that in the case where a person is sexually abused by a stranger, she will always have bad feelings towards him. However, when the perpetrator is somebody with whom the survivor has a close relationship, it is not always easy for the survivor to hate that person even though she may well want to, for example when the perpetrator is her father. These conflicting emotions, along with the betrayal of trust and the loss of control and power over one's own behaviour that the survivor feels as a result of the violation leads to increased trauma in incest cases.

Regarding typical profile of abusers in Pakistan, Bedar opines that perpetrators do not have a set profile and in any event, pathological studies are routinely conducted after the discovery of incest. However, there is one commonality: abusers feel a general lack of control over their lives, or a certain aspect of their lives.

From her many years of counselling survivors of sexual abuse and rape, as well as the findings of a research study by Aangan (Aangan, 1996), Bedar says she can almost bet that a person who commits incest, especially against a child, has most probably himself experienced sexual abuse growing up and has not resolved his resultant feelings. She stresses on the importance of a survivor dealing with the emotional aspect of the abuse, as unresolved emotional trauma will perpetuate the cycle of violence through self-denigration or harm to others.

### **Islamic Prohibition on Incest- Prohibited Degrees of Marriage**

Islamic Law specifically prohibits marriage to certain relations or affinities<sup>1</sup>, which are a person's:

- Fathers and mothers,
- Sons and daughters;
- Brothers and sisters;
- Father's brothers or sisters;
- Mother's brother or sisters;
- Daughters of your brothers and sisters;
- Your milk mothers, who nursed you; and
- Your brothers and sisters through nursing.
- Your wives' mothers; and
- The daughters of the wives with whom you have consummated your marriage
- The husbands and wives of your children

These relations are collectively known as a person's *Mahrims*; which includes those males whom a woman cannot marry at any time in her life (Sultan)<sup>2</sup>.

Islamic law, which states that a woman may not appear "freely", i.e., without covering herself as per the stipulated regulations, amongst other things, in front of men is relaxed when it comes to a woman's *Mahrims*. These are thus the men that she is allowed interaction with.

Islamic law also poses duties of protection and providence of women on *Mahrims*. These duties primarily rest upon a husband who must provide for his wife and children. If the father is deceased or unable to provide, and the mother is also unable to provide food and shelter to her children, then this duty falls upon their *Mahrims*, who, if they are able, should look after this woman and her children.

According to comments received from Maulana Muhammed Taqi Usmani regarding prescribed punishment for incest in Islam, he postulated as below:

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<sup>1</sup> Surah Nisa, Surah No. 4, Ayat 23. *The Holy Quran*. Retrieved from: <http://www.thequranrecitation.com/an-nisa.html?verse=23> on 14 March 2012.

<sup>2</sup> Retrieved from <http://www.islamicinformation.net/2008/07/mahram-in-islam-explained.html> on 14 March 2012.

*“If the person committing incest (zina with a person with whom he is not married) is a married person (having all necessary requirements of muhsan), the punishment is stoning to death. But if the person committing incest is not married (or muhsan) his or her punishment is 100 lashes but keeping in view the severity of the crime, the culprit may be awarded the sentence of death also by way of ta'zir. Support is sought by some jurists from an event reported by Imam Tirmidhi:*

*Hazrat Bara bin Aazib (عنه ت عالی الله رضي) narrates that my maternal uncle Abu Burdah bin Niyar (عنه ت عالی الله رضي) passed by me with a standard. I asked him "where do you intend?" He said, "The Messenger of Allah (و سلم عليه الله صلى) has sent me to bring him the head of a man who married the wife of his father". (Tirmidhi, Hadith: 1362)*

*Here the person had married the wife of his father. If incest is committed without marriage, the punishment of death may be awarded by way of ta'zir with greater force.”*

### **Contents of the Report**

The methodology used for this study is explained in the next section. Following are the different types of incest that are typically reported in Pakistan and analyzed in the study. Chapter I looks at available case law on incest in Pakistan, with judgements from 1981 to 2002. Chapter II looks at various case studies and highlights the circumstances prior and subsequent to incestuous abuse and rape within families in cases WAR handled between 2004 and 2010. Chapter III reproduces relevant sections related to incest in Pakistani law. Chapter IV explores incest laws in other Islamic countries and Chapter V concludes the study with discussion and recommendations to improve the social and legal response to incest in Pakistan.



## METHODOLOGY

Four sets of data were analyzed for this study:

First are a set of 5 judgements in incest cases that went on appeal to the Federal Shariat Court, Pakistan.

Second are 12 case studies that serve as examples of the range of problems faced by survivors in their pursuit of justice and were handled by WAR between 2004 and 2010. Cases where the perpetrators were cousins were excluded as cousins do not fall within the prohibited degrees of blood, i.e., marriage is permissible to cousins under Islam and practiced widely in Pakistan.

Second are 4 judgments of the same cases that were discussed in the case studies. One of them remains under trial.

Last are a set of interviews with 4 survivors and their families that went through the criminal justice system in pursuit of justice. All the survivors interviewed had their cases tried under the session courts in Karachi. Survivors and families were asked to narrate their experiences with the criminal justice systems as well the psychosocial consequences of both the abuse and pressing charges against the abuser. They were also asked for recommendations to improve social and legal support for incest survivors in Pakistan.

Additionally, psychologist Asha Bedar was interviewed to facilitate the understanding of the psychological problems and maladjustment presented by survivors, as well as factors that lead to the perpetration of incest.

Finally, Maulana Muhammad Taqi Usmani, who served as a judge on the Federal Shariat Court of Pakistan from 1981 to 1982 and the Shariat Appellate Bench of the Supreme Court of Pakistan between 1982 and 2002, gave his comments over email.



# **COMMON FORMS OF INCEST REPORTED IN PAKISTAN**

## **Father and daughter incest**

Incest between fathers and daughters (as well as step-father and step-daughter) is a commonly reported form of this kind of abuse. Often the abuse in these situations starts as early as when the child is a few months old, and carries on for many years. In such situations, the child grows up believing that the actions of the abuser are a normal part of the relationship.

## **Brother and sister incest**

Incest between siblings includes such conduct between those related by blood, adoption, fosterage (adoption) and marriage (brother-in-law).

## **Extended Family**

In joint-family systems, practiced widely in the South-Asian subcontinent, parents, children, spouses (particularly the son's) and grandchildren live in the same household. For the minors, this means having not only their parents as figures of authority but also uncles, aunts and grandparents who share their home. Some of the cases reviewed in this study are of incest committed by members of the extended family that live in the same household or have unrestricted access to the survivor.

### **Unreported Case in Incest, 2007**

*In 2007, WAR was referred to a victim of incest, Tahira, whose father first started molesting her when she was in her pre-teens. At the time she was referred, she was an undergrad student at a local university. She reported that her father had started have sex with her when she was a teenager.*

*Tahira's father, who was a retired military officer, used to keep a close watch on her activities. She reported that he often acted like 'a jealous boyfriend', who would make a fuss every time she was on the phone for too long with someone he didn't know or if she stayed out late.*

*Tahira told her mother about the rape and abuse many times, only to be disbelieved. Tahira said that her father was a heart patient and she confessed that she loved him dearly. But she could no longer tolerate the abuse. She simultaneously said if she were to leave him, she was afraid that he would die of grief.*

*Judging that Tahira was not ready to press charges, WAR moved to shift her to a local shelter with her consent. Thereafter, counselling sessions were held for the entire family in an attempt to arrive at a solution which would have to be suggested and agreed by the entire family.*

*The father said that he repented his actions and Tahira eventually succumbed to emotional blackmail by her father who promised to be good from thereon.*

*After Tahira moved out of the shelter to go back home, WAR lost touch with her. Until today, WAR does not know if Tahira's father continues to rape her or whether she has been successful in stopping the abuse.*

- Source: WAR's case files

# CHAPTER I: CASE LAW ON INCEST IN PAKISTAN

Although there is plenty of positive case law dealing with incest in Pakistan, they have been sparsely cited at sessions courts where most of the cases reviewed were tried. Whilst courts have frequently recognized and denounced incest and imposed austere punishments on perpetrators, in other instances courts have demonstrated a strong bias in their approach, at times utterly rejecting the possibility of the occurrence of incest in Pakistani society (Burney, 1999).

## Federal Shariat Court of Pakistan

The function of the Federal Shariat Court (FSC) is to examine and decide on the question of whether or not any law or provision of law is repugnant to the injunctions of Islam. Law includes any custom or usage having the force of law (not including the Constitution, Muslim personal law or any law relating to the procedure of any court or tribunal).

The FSC has exclusive jurisdiction<sup>3</sup> with respect to the offenses prosecutable under the *Hudood Ordinance*<sup>4</sup>. The decisions of the FSC are binding in law over the lower Sessions and Trial Courts.

Some case laws available on incest cases have been discussed below. These cases were registered under the Offence of Zina (Enforcement of Hudood Ordinance), 1979, sections 10(2) and 10(3), the text of which has been provided below. Laws under which other cases reviewed were registered are also listed below:

### 1. Section 10: Zina or zina-bil-jabr, liable to tazir<sup>5</sup> Offence of Zina (Enforcement of Hudood Ordinance), 1979

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- 1) Subject to the provisions of section 7, whoever commits *zina* or *zina-bil-jabr* which is not liable to *hadd*, or for which proof in either of the forms mentioned in section 8 is not available and the punishment of *qazf* liable to *hadd* has not been awarded to the complainant, or for which *hadd* may not be enforced under this Ordinance, shall be liable to *tazir*.
- 2) Whoever commits *zina* liable to *tazir* shall be punished with rigorous imprisonment for a term which may extend to ten years and with whipping numbering thirty stripes, and shall also be liable to fine.
- 3) Whoever commits *zina-bil-jabr* liable to *tazir* shall be punished with imprisonment for a term which (shall not be less than four years nor more

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<sup>3</sup> PLD 2011 Federal Shariat Court, page 1.

<sup>4</sup> The Offence of Zina (Enforcement of Hudood) Ordinance 1979.

<sup>5</sup> This section was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006).

than) twenty-five years and shall also be awarded the punishment of whipping numbering thirty stripes.

- 4) When *zina-bil-jabr* liable to *tazir* is committed by two or more persons in furtherance of common intention of all each of such persons shall be punished with death.

## **2. Section 375<sup>6</sup>: Rape**

---

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

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

## **3. Section 376<sup>7</sup>: 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.

## **4. Section 377: The Prohibition against 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.

## **5. Section 496-A<sup>8</sup>: 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,

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<sup>6</sup> Sections 375 installed by the Protection of Women (Criminal Laws (Amendment) Act (VI of 2006), 2<sup>nd</sup> December 2006.

<sup>7</sup> Sections 376 installed by the Protection of Women (Criminal Laws (Amendment) Act (VI of 2006), 2<sup>nd</sup> December 2006.

<sup>8</sup> Section 496-A installed by the Protection of Women (Criminal Laws (Amendment) Act (VI of 2006), 2<sup>nd</sup> December 2006.

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **I. MUHAMMAD LATIF VERSUS THE STATE, 1981**

A<sup>9</sup> was five years old when her brother raped her. Her mother, Hanifan, had, a few days before, seen her underwear full of blood, but decided to remain silent in order to protect her son. Four days later, Hanifan returned home and found the neighbours congregated at her house. They informed her that A. had been 'violated' again by her brother and her *shalwar* was full of blood. Although Hanifan was not inclined to report the matter to the police, she did so upon the insistence of her neighbours.

A medico-legal examination was conducted, and the medico-legal officer (MLO) concluded that A. had been subjected to sexual intercourse since her vagina was torn and required stitches.

The sessions court judge, upon hearing the evidence and testimony of 2 witnesses who saw the accused running from the scene of the crime, sentenced the accused to 5 years imprisonment.

The accused filed an appeal against his sentence and conviction.

The Judge of appeal explained: "This is a case of *incest* since the charge against the appellant is that he committed sexual intercourse with his own sister A. who is five years old"<sup>10</sup>.

The appellant court noted that in the circumstances, and particularly when the offence has been committed upon a child of nearly 5 years of age, there was no extenuating circumstance to favour the appellant. The court observed that the punishment imposed by the trial court was "too lenient" for the accused who should have been sentenced to the maximum punishment of 25 years' imprisonment and 30 stripes.

The court also noted that, "A case of incest according to *Sharia*, is liable to be punished with death"<sup>11</sup>.

#### **Discussion**

In this case, the mother was reluctant to file charges against her son for repeatedly raping her daughter. She moved a complaint with the police when pressure was applied from within the community.

In the judgement, the Federal Shariat Court draws on unnamed sources in *Sharia*

<sup>9</sup> \*Name omitted to protect identity of survivor.

<sup>10</sup> At para 1 of judgment.

<sup>11</sup> At para 12 of judgment.

that prescribe the death penalty for committing incest. The judge used the word 'incest' to refer to the offence committed by the accused, and supplied meaning to the term by referring to the actions of the accused. At the time this verdict was given there was no explicit law on incest in Pakistan, neither was the term existing in legal language. This case represents a very early understanding by the judiciary of what incest is and that the relationship between the survivor and accused and her age (5 years) acted as exacerbating circumstances.

The judge of the appellant court in this case also commented that if he had the power to raise the sentence of the accused, he would have awarded him with the maximum punishment prescribed by the law, being 25 years imprisonment and 30 stripes.

## II. MASOOD AZIV AND ANO VERSUS THE STATE, 1989

N. was around 10 years old and lived with her father and siblings after her mother's death. Her paternal grandfather and uncle lived next door, and their houses had a shared wall.

In March 1987, N. woke up one morning and made breakfast for her brothers and father. When she went in to wake her father up for breakfast, instead of coming outside, he locked himself in the room with N. When N. came out about 30 minutes later, her *shalwar* was filled with blood and she was sobbing. When her brother inquired as to what had happened she said she would tell him after their father left. A few minutes later, the father left the house without having breakfast and N. confided in her younger brother and told him that their father had raped her. The two siblings informed their maternal uncle, who lodged a police report on behalf of N.

A medico-legal examination was conducted, and the report stated that N. had irregular vaginal bleeding and bore 3 vaginal tears of 1.5cm each, and the vaginal swabs that were taken contained semen and blood. No other marks of violence were found on her body. The MLO concluded that N. had been raped.

After the medico-legal exam, N's uncle and his wife took her in and she stayed at their house for a month. Previously, their father, who had an estranged relationship with his dead wife's family, had forbidden them to have any contact with them.

The accused claimed that the charges against him were false and his two younger children had been influenced by their uncle to concoct this story against him. He further claimed that it was his brother-in-law's wife who had caused the damage to the girl's vagina with her finger.

The trial court judge ruled against the accused and sentenced him to 25 years imprisonment and 30 stripes.



On appeal the accused choose not to testify, but on his behalf brought forward 4 witnesses: his father, brother and 2 other neighbours, whose testimony served to verify that the houses in the neighbourhood were in close proximity and none of the neighbours heard the child scream during the rape, and that there was in fact enmity between the accused and the family of his wife.

The appeal court took cognisance of the following irregularities in the testimony of the complainant and her brother on the following points:

1. Whether or not they had gone together or alone to report the incident to their *mamu* (maternal uncle); and
2. Both the minors were more inclined towards their maternal family, who had poisoned their minds into believing that their father was responsible for their mother's death and they must avenge her by implicating him in this case.

The court held that the chain of events as reported by the complainant seems unbelievable, in that it seems impossible that a 9 yr old would continually be subjected to abuse and the grandfather and uncle would not come to her aid; and further that Pakistani society is not so demoralised [*sic*] that an incident such as this could have occurred.

Based on the above, the court of appeal ruled that the prosecution had failed to prove the charges against the accused beyond a reasonable doubt, and thereby acquitted him.

### Discussion

The survivor in this case was removed from her home by her uncle and aunt who also assisted with registering a case of rape against the survivor's father. Typically, as we shall see later in this study, the victim is displaced before she can move to register a police report against the alleged abuser.

The judge cited irregularities in the survivor's testimony, whose silence over being subjected to rape by her father during and subsequent to multiple rapes was deemed 'impossible' by the judge. The judge also noted the impossibility of the charge being true given the incident happened in an Islamic society, where such incidences are assumed never to occur.

The witnesses the accused presented in court served to testify on two counts: that the houses in the neighbourhood were closely joined and that there was enmity between the accused and the uncle and aunt. Here, the court seems more inclined to believe what the accused's father and brother, who were obviously closely connected by blood to the accused, and two neighbours had to say, over what the girl's maternal uncle and aunt supplied as evidence. Pre-existing enmity was used as one of the factors to discredit not only the prosecution witnesses but also disparage the account of the survivor herself. In effect, the

survivor's testimony became suspect in the eyes of the court for the choice of people whom she approached for help.

The fact that no one ever heard N. scream when she was being raped is based on the assumption that when attacked, a victim would offer 'utmost resistance', i.e. when attacked, the victim would scream and call out for help. Interestingly, this point is not contested in any other case law studied for this report where sometimes judges have acknowledged that the relationship position of power and authority that a father has over his child would make lack of resistance likely (see next case).

### **III. MUHAMMAD ASHRAF VERSUS THE STATE, 1997**

This case is an appeal lodged by the accused against the verdict of the lower court, dated 10<sup>th</sup> June 1994, which sentenced him to 25 years imprisonment for raping his daughter, under Section 10(3) of the Hudood Ordinance, 1979.

According to the facts of the case noted in the judgement, S., 15/16 year old, daughter of M. Ashraf, lived in Lahore with her parents, two brothers and 3 sisters. The incident took place whilst her mother was staying at a hospital with her older daughter, who had had an operation. S. and her younger brothers were at home with their father, the accused in the matter.

According to S., one night, whilst her brother was asleep in the same room, her father forced himself into S.'s bed and laid down with her. S. tried to raise a noise when he touched the string of her trouser, but he put his hand on her mouth and raped her.

After this incident, the accused would rape S. whenever her mother was at work and he had the chance. He threatened her to keep quiet and not tell anyone, especially her mother. He would also ask her about her menstruation cycle.

S. narrated that her father raped her about 6/7 times and after that her menstruation stopped and she informed him. Her father then took her to a lady doctor to have the pregnancy terminated. When S. and her father came back home that day, S. told her mother everything. On her mother confronting her father, they quarrelled and he threatened to kill them both. S. and her mother took refuge in their neighbour's house and contacted a local legal aid office.

The legal aid lawyer accompanied 4 police officers (including DSP incharge of Lady Police Centre) to the accused's residence. The survivor's statement was recorded and forwarded for the registration of FIR. Statements of witnesses was also recorded and the accused taken into police custody.

In his statement, the accused denied the allegations against him and said that his daughter had become pregnant from having illicit relations with her cousin.

Further, that when he discovered the pregnancy, he reprimanded his wife and daughter due to which they ran away from home and filed a false charge against him.

The medico-legal exam showed no signs of violence on S. It did, however, corroborate her version of events in relation to the pregnancy and abortion.

The trial court held that the accused's guilt had been proven beyond a reasonable doubt and sentenced him to the maximum punishment of 25 years. An appeal was allowed.

On appeal Counsel for the accused raised the following points:

1. That the whole story against the accused had been concocted by his wife, and his children had testified against him under their mother's influence;
2. That the fact that S. did not confide in anyone after the first incident should be interpreted to mean that she was a *consenting party as she did not protest against her father's advances*;
3. That the medical evidence corroborated the above point, as there were no marks of violence found on the complainant.

In its ruling, the court discussed, inter alia, the concept of *Ikrah*, which can be inferred from the situation in which a person may find herself unable to protest or where the faculty to determine her course of action is so affected that she has no control over the action or the event, or that she would not have acted that way if she were to make a choice.

The court went on to say that even in the event that no threat was made against the life of the complainant, "the very position of command, supervision, sustenance, shelter and protection which [a] father possess[es] as against his daughter constitute[s] sufficient compulsion that resistance or abstinence cannot be expected. The helpless girl as such was subjected to *jabr* as otherwise she would not have on her own offered herself for the satisfaction of the lust of the culprit, father."<sup>12</sup>

And further that, "this was not a case of satisfying the lust under bastardly compulsion once, but of repeated assault. Such a conduct deserves to be punished severely".

The court ruled in favour of the complainant and dismissed the appeal, upholding the maximum sentence of 25 years imprisonment for the accused.

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<sup>12</sup> PCrLJ 1997, page 1366.

## **Discussion**

In this case, the survivor did not report sexual abuse and rape to anyone inside or outside her family and was repeatedly raped by her father over an extended period of time. Silence was ensured by the abuser through direct threats. Upon disclosure and confrontation, the survivor and her mother were threatened by the father, which led to their dislocation from their home. Only after the survivor and her mother had safely moved away was the FIR lodged with the police. Neither the survivor nor her mother reported being asked if they needed an alternate place to stay by public officials, including the police or medico-legal officers despite reports indicating threat to their lives and well-being.

In court, the defence argued that the survivor was involved in an 'illicit relationship' with her cousin which caused the pregnancy and the mother and daughter had conspired to implicate him in a false case.

This judgement is in direct contrast with the preceding case where the judge refused to believe that a father could rape his own daughter in an Islamic society and acquitted the accused.

## **IV. SHAHID MAOSOOD SIDDIQUI VERSUS THE STATE, 2002**

This case was lodged on behalf of 12-year old S., stating that three years earlier whilst she and her family were residing in Saudi Arabia, the accused, her father, raped her for the first time. S. told her mother of the incident, but since they were living in a foreign country, her mother advised her to keep quiet. A year later, the family shifted back to their home in Sarghoda, where S.'s father continued to rape her, and threatening to kill her if she told anybody.

About 2 months before the lodging of the FIR, S. was asleep in her room when her father came in and attempted to rape her. When she raised a noise, her mother came in and caught him in the act. The accused threatened both S. and her mother with a pistol to remain silent about the incident. Two weeks later, he arranged for S. to be married to his nephew.

However, the day after her wedding, he brought S. back home under the pretext that she needed to study for her examinations. Once again, while S. was studying, her father entered her room, gagged her and attempted to rape her.

S. raised a cry, which made her mother and sister rush to the room and catch the father in the act again. The accused threatened the girls of dire consequences and left the house. The mother and daughter, out of fear of embarrassment in front her new in-laws, kept quiet so as not to affect S.'s future life.

A week later, the accused once again caught hold of S. in an attempt to rape her, but S made a noise and this made him flee the scene. At this point, S. and her mother narrated the story to S.'s brother, who took them to a local police station

to lodge a complaint. The accused was subsequently charged and arrested.

The Sessions Court, whereby the accused was convicted for commission of Zina<sup>13</sup> and sentenced to rigorous imprisonment for 25 years.

The following points were raised on appeal:

1. That the charges against the accused were false and had been concocted by his wife and her brother, in order to get some monetary gain;
2. That the complainant was a girl of immoral character, which is why he had arranged for her to be married to his nephew.
3. That there was no medical evidence to link the accused to the commission of *zina* with the complainant.

The court referred to the Supreme Court judgement<sup>14</sup>, where it was held that the “mere opinion of a doctor would not weaken the testimony of the survivor and would not for that reason necessitate any further corroboratory/supporting evidence for basing the conviction on her statement, if otherwise she appears to be reliable and her testimony inspires confidence”.

The court thus ruled that despite the fact that the statement of the complainant has not been corroborated by the medical evidence as such, there was other sufficient evidence, including the testimony of the complainant’s sister to corroborate her version of events. Accordingly, the appeal was dismissed and the verdict of the trial court upheld.

### Discussion

S. was raped by her father for three years on various occasions. The mother who was informed did not make an attempt to report matters to anyone, unsure of what to do in a foreign country. Moving back to their country of origin, Pakistan, S. continued to be raped and threatened by her father. When caught in the act and confronted by the mother, the father used a pistol to threaten and quieted both survivor and mother. Only when violence, fear and frequency of rapes increased did the mother confide in her son, who moved to lodge a case with the police.

The mother kept the matter private first due to her families’ migrant status in a foreign land when she first came to know of the abuse. Thereafter, she continued to remain quite so as not to affect her daughter’s marriage. All this while, they continued to live with the accused in the same house.

Defence argued that the survivor and her mother where in fact women of ‘immoral character’. The court noted that while the survivor did not have any

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<sup>13</sup> Under Section 10(3) of the Offense of Zina (Enforcement of Hudood) Ordinance, 1979

<sup>14</sup> The State versus Muhammad Akram PLD 1989 SC 742

marks of violence on her body, the fact that there were eye-witnesses (mother and sister) was enough uphold the punishment awarded by the lower court.

Immigrant status increases not only vulnerability to abuse but also the chances that the immigrant will not be able to seek assistance from the usual justice systems. In effect, it restricts her access to legal protections enjoyed by natives as they may not be culturally relevant or sensitive. Fear of deportation plays a critical role, especially if the motivation to immigrate was predominantly economic, in addition to the support systems and social safety nets the family left behind when they emigrated. It is likely that victims and their support person would either approach informal resolution systems to seek solutions to their problems or keep matters hidden, as evident in this case.

Simultaneously, because incest is often not understood or recognized as a problem in Pakistan, families and survivors are often forced to maintain a shroud of secrecy so as to be accepted by society. Survivors are perceived to be either guilty by association or 'abnormal' for what happened to them over which they actually had no control.

#### **V. S. P.\* VERSUS MUHAMMAD BASHIR, 2004**<sup>15</sup>

This case is an appeal against the judgement of the trial court, dated 4<sup>th</sup> February 2002, which had acquitted the accused of all charges of raping his daughter.

Muhammad Bashir had been charged with raping his daughter continually over a period of 7 or 8 years, from the time that she was about 16 years old. S. alleged that the first incident had occurred whilst her mother was in hospital to look after one of her other children. The accused had come into bed with her and started caressing her body. He was armed with a pistol and threatened her not to raise hue and cry, otherwise he would murder her, and then committed *zina* with her [*sic*]. She further described that these sort of incidents occurred over 7/8 years. On the date of the last incident, S. having now become fed up with her life swallowed a number of sleeping pills in an attempt to commit suicide. Before doing so, she warned her younger sister, K., who had now become of age and whom she feared might become the subject of abuse by their father, to "save herself from him, as his character was not good".

On the morning of 19<sup>th</sup> August 2000, K. found her sister, S., lying unconscious in her room and told her mother. S. was taken to a nearby dispensary and had her stomach pumped, which saved her life. On the 7<sup>th</sup> of October 2000, K. told her mother that S. had taken the pills to commit suicide as their father used to "treat her as his wife". Her mother sought confirmation from S. after which she informed her son, who was in the army and had been previously disowned by

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<sup>15</sup> Name omitted to protect identity of Survivor.

his father. He accompanied his mother and two sisters to the police station and registered a case against the accused.

A medical examination of the accused showed that the accused was fully capable of sexual intercourse. The complainant's examination showed that sexual intercourse had been committed with her frequently.

The accused denied the account put forward by the prosecution. He countered that he was actually impotent and not capable of performing sexual intercourse for the last 8/9 years. He further stated that his wife and daughters used to indulge in an immoral and indecent life and the house had depicted a picture of a prostitution den which he tried to check and prevent. He asserted that he had caught two persons at bed with his daughter, the complainant, in objectionable and compromising condition and that this enraged him to the point that he was going to kill the whole family. It was in order to save their skin and to continue with immoral acts that his family had falsely involved him in this case.

The court called this a shocking case, in which a girl has levelled allegation of commission of *zina* with her by her real father, and that too repeatedly over a period of seven/eight years.

The court referred to the principle regarding appeal against acquittals<sup>16</sup>, and ruled that this was indeed a case where the reappraisal of evidence was called for.

The court noted that the trial judge was swayed to a great extent by the fact that since the family consisting of 15 members all lived in one small house it was not possible that the respondent could have the opportunity to criminally assault his daughter time and again [*sic*]. The trial court had also held that the solitary statement of the complainant is not confidence inspiring from any independent evidence.

The appellat court ruled that the trial court had misread the facts regarding the prevailing condition in the house, which made it entirely possible for the accused to, whilst using the threat of fire-arms, to satisfy his "satanic sexual urge" with his daughter. The court went on to say that because of the abuse there was an "uneasy, rather bitter atmosphere, prevalent in the house [which] was not taken into consideration by the learned trial Judge while deciding about the guilt or innocence of the respondent".

Further, that, "Learned Sessions Judge has erred in throwing out the testimony

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<sup>16</sup> "Whereby a reappraisal of the evidence is not permissible and the impugned judgement could only be interfered with in the cause if the said judgement is found to be perverse, or the outcome of gross misreading or non-reading of the material evidence available on record or the finding sought to be interfered with was found to be wholly artificial, shocking or ridiculous" - *Khadim Hussain v. Manzoor Hussain Shah and Others*; 2002 SCMR, 261.

of [complainant] with a general observation that her solitary statement could not be accepted so as to connect the respondent with the heinous crime alleged against him. It was his duty to evaluate carefully the intrinsic worth of her testimony, keeping it uppermost in his mind that it was the daughter who was alleging commission of *zina-bil-jabr* by her father with her. Why a daughter would implicate her own father in a crime of utmost degradation of character, in the absence of compelling evidence, or strong motive to falsely implicate him, was a consideration which was glossed over by the trial court, while rejecting the testimony of [the complainant]"<sup>17</sup>.

The court further held the trial court should not be unjustifiably swayed by the fact that it was highly improbable for a father to commit rape with his own daughter, despite the fact that there was unimpeachable evidence on record to prove the guilt of the respondent beyond doubt.

The appeal of the complainant was upheld and the accused was sentenced to ten years rigorous imprisonment and a fine of Rs. 50,000 as compensation to the survivor.

### **Discussion**

In this case, the father sexually abused and raped his daughter over a period of 7-8 years. He used death threats and used a pistol to keep S. silent. Driven by helplessness S. ingested multiple sleeping pills in an attempt to end her life. This medical emergency led to disclosure and a case was registered against the father.

As in other cases discussed above, in order to counter the charges against him the accused asserted that it was the survivor (and the mother) who were 'immoral women', and when he admonished them for their actions, they levied a false charge of rape against him.

The court's 'shock' over the nature of the allegation drove it to appraise the facts of the case that were found to misread by the lower court.

It is important to note that while the facts of this case were similar to those discussed before it and while the court was 'shocked' over the charges, the sentence in terms of jail time in this case was substantially less. Whereas, in most cases where the accused was found guilty by the appellant court and the appeal dismissed in favour of that of the lower court, the accused in this case got 10 year imprisonment, where others had been sentenced to 25 years. Further, the survivor in this case had been suffering abuse and rape longer than in cases the cases discussed before, i.e., 7-8 years. Also important to note is that the judgement of the lower court came many years after positive case law had been documented in incest cases.

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<sup>17</sup> PCrLJ 2004, page 1124.



## CHAPTER II: CASE STUDIES - SURVIVORS' EXPERIENCES OF ABUSE AND THE CRIMINAL JUSTICE SYSTEM

Below are twelve case studies that briefly track the progress in incest cases that WAR handled between 2004 and 2010. These case studies have been developed as narrated by survivors and their support persons within the family. They are presented here to reflect the treatment meted out to incest cases at all levels in the criminal justice system as well as social and psychological problems connected with incestuous abuse. The conclusion of a case in court has also been mentioned, where available. Otherwise, mention has been made of what eventually happened to the survivor and her family.

To better understand and present the experiences of incest survivors, WAR also conducted interviews with 4 survivors and their mothers (in cases where the child was too small to give an interview). The discussion following the case studies attempts to capture some of their experiences.

### I. FARIHA'S CASE, 2004<sup>18</sup>

This is the case of 11-year-old Fariha, who used to live with her mother Bilquis and step-father, Sarfaraz.

Her mother, Bilquis came home from work one day and found her daughter weeping. When Bilquis inquired, Fariha told her that her stepfather had raped her and threatened to kill her. She narrated that after he had raped her, he used a piece of cloth to clean her body, as well as his own. Upon hearing this, Bilquis called over her relatives, as well as the accused's parents and told them of the incident. The accused swore upon the Holy Quran and said that he had done no such thing. Bilquis decided to believe the accused who was her second husband and stepfather to two of her daughters.

A few days later, the accused repeated the same act. When Bilquis came home, the accused told her that he was unwell and went to bed. The next morning, Fariha told her mother that her stepfather had raped her again. Bilquis called all her relatives, as well as the accused's parents, home to speak to the accused, but he "ran away to Punjab". Fariha also told her family that her stepfather had "done these sorts of things with her before", but she had not told anyone because he had threatened to kill her. The accused's parents advised Bilquis to not allow him back in the house, but also to keep silent on the matter. Bilquis followed this advice. However, a few days later, the accused returned from Punjab and began staying at his parents' house. At first, the accused sent apologetic messages to

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<sup>18</sup> *The State versus Sarfaraz S.C. 233 of 2004*

Bilquis, but when she refused to accept his apology, he threatened her with 'dire consequences'. At this point Bilquis presented an application against the accused to the area Nazim, with the help of which she lodged an FIR with the police. The accused was charged under Section 10(3)<sup>19</sup> of the Hudood Ordinance 1979.

A medico-legal exam was conducted, and confirmed that Fariha had been raped. The accused denied the charges against him and claimed that he had been falsely implicated due to enmity.

The court noted that the girl had made an accusation, not against a stranger but against her stepfather, which in fact cannot be ordinarily believed but when it came from the mouth of a daughter having no apparent reason to falsely entangle her father in such a heinous offence, it obviously seemed to be true<sup>20</sup>.

The accused was sentenced to rigorous imprisonment for four years and a fine of Rs. 10,000/.

*WAR last came into contact with Fariha's family a few days after the judgement when they came to WAR's office. They thanked WAR's staff for its support and assistance and informed them that Fariha, who had been engaged to one of her relatives, was soon to be married. WAR was not able to trace the family for an interview for this study.*

## II. MARIAM'S CASE, 2005<sup>21</sup>

Shafeeqan, a widow, lived alone with her four year old daughter, Mariam. Her older daughter was married to Kamran, and there were no children of that marriage. Kamran had asked Shafeeqan many times, to give Mariam up for adoption to him and his wife, but Shafeeqan did not allow this. Shortly after her husband's death, whilst Shafeeqan was in her *Idath*<sup>22</sup> period, Kamran took Mariam to his home for a visit. Mariam's sister and brother-in-law kept her with them for many days, but Shafeeqan thought it would be inappropriate to ask them to return her, as this was an emotional subject in the family. Kamran was a religious man and was respected in the community. Although his wife was not allowed to leave the house, he would visit his mother-in-law from time to time and would tell her that Mariam is doing well and is very happy.

After a few weeks, Shafeeqan was told by another family member that they saw Mariam at a hospital with Kamran and that her arm was fractured. When Shafeeqan went to visit her daughter, Kamran told her that Mariam had fallen down in the bathroom which caused her arm and leg to be fractured, and whilst

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<sup>19</sup> This section was repealed by the Criminal Law Amendment (Act VI of 2006), and has been replaced by Section 375 of the Pakistan Penal Code.

<sup>20</sup> Page 6 of judgment.

<sup>21</sup> *The State versus Kamran* S.C. 332 of 2005

<sup>22</sup> Prescribed period of four months and ten days for which widows must wait before they remarry. During this period they remain indoors and do not mix with men.

playing had injured her eye with a door knob. Shafeeqan took her four-year-old to a nearby clinic for medical aid, and was referred to the Civil Hospital immediately. At the civil hospital she was informed that Mariam had been subjected to sexual abuse, and her uterus had been completely damaged as a result.

Shafeeqan went to the police to lodge an FIR against her son-in-law under Section 10(2)<sup>23</sup> of the Hudood Ordinance.

After Kamran's arrest Shafeeqan found out from her older daughter Saira that her husband had been abusing Mariam and had threatened her into silence. He had pushed Mariam down a hill, and had gouged out one of her eyes with a pair of scissors, presumably in an attempt to kill her. Subsequently, Saira left Kamran's house and filed for divorce.

Meanwhile, Mariam who was four years at the time was suffering from trauma and would have a panic attack every time she saw any person with a beard like Kamran's.

At the time of trial, when Kamran was presented in the identification parade, for the now four-year old to identify, he appeared clean shaven. Mariam who associated her abuser with a beard was not able to identify Kamran in court. In chambers the judge advised Shafeeqan to accept monetary compensation and settle the matter. Kamran's mother pleaded with the judge to reduce the amount of money, until the compensation amount was reduced to Rs. 25,000.

In the judgement, the court cited that the prosecution was not able to prove the accused guilty of having perpetrated the offence, since Mariam was unable to identify Kamran. Furthermore, Saira and Shafeeqan, who had in their statements identified Kamran to be the perpetrator, changed their testimony and their initial statements could not be used as evidence against him.

*Mariam now lives with her mother in a joint-family home. Her mother and brother, who are not educated, earn a minuscule income to run the household. Mariam needed extensive medical treatment after the incident and WAR has been with the family every step of the way. Mariam is now enrolled in a school and is currently studying in Class 4. Her education is being funded by one of WAR's supporters.*

*Although Mariam has managed to repress some of the trauma associated with the experience, she continues to live with the prospects of never getting married and starting her own family due to the fact that she cannot conceive children, and has a false eye.*

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<sup>23</sup> This section was repealed by the Criminal Law Amendment (Act VI of 2006), and has been replaced by Section 375 of the Pakistan Penal Code

### III. SHAMIM'S CASE, 2005<sup>24</sup>

Shamim was married to Muhammad Hanif for about 6 months. Her husband worked as a food vendor and her mother-in-law, Zainab worked at a bungalow and would come home after every 15 days. One day, whilst Shamim was at home, her father-in-law came into her room and locked it from inside. He told her that if she did not oblige with his requests, he would kill her and would disgrace her husband and her family. He forced himself on her bed and removed her clothes and raped her. Afterwards he told her that she would “become his wife twice a week” and warned her not to tell anyone. Shamim did not disclose the incident to her husband out of fear. However, the next time her mother-in-law came home, she confided in her and told her what had happened. When she confronted the accused, he blatantly said he will do as he pleased and nobody could do anything to him. The mother-in-law advised Shamim’s husband to stay with her at all times, but did not tell him about the incident. Hanif started working from home, but one day when he went to deliver an order, the accused again went to Shamim and raped her.

This time she confided in her husband and told him about what had happened. They waited for Zainab to come home and discussed the matter with her. They decided to seek help from their neighbours, and discovered that the accused had also committed rape with other women under the pretext of being a spiritual healer. None of these women had lodged a formal complaint. The neighbours roughed the accused up and took him to the police station, where an FIR was lodged and he was arrested.

A medico-legal exam of the accused, who was about 60 years of age, showed that he was able to perform intercourse.

*After the arrest of the accused, Shamim and the rest of the family moved away from their home, and WAR lost touch with them. Due to the non-appearance of the complainant at trial, the accused was acquitted and released.*

### IV. AYESHA'S CASE, 2008<sup>25</sup>

Ayesha, who was 12/13 years old, had been living with her mother, Sabra, and stepfather, Iqbal, for about 3 years. Her stepfather had been sexually abusing her for about 1.5 years. Ayesha had not told anybody about the incident since he had told her that if she did he would throw acid on her face. Whilst her mother was aware of the scenario, she felt she had no choice but to remain silent out of fear.

In July 2008, the family went to stay at their relative’s house and everybody was sleeping on the roof due to the heat. The accused took his stepdaughter down

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<sup>24</sup> *The State versus Yusuf Khi*. Sessions Case No. 656 of 2005

<sup>25</sup> *The State versus Muhammad Iqbal* S.C. 414 of 2008.

stairs and locked her in the room with him. He tied up her hands, took off her clothes and raped her. Thereafter the accused slept with Ayesha locked in the same room. When Sabra realized that her daughter was not there with her, she went downstairs and knocked on the room door. The accused took some time to open the door and Sabra found her daughter sitting in the corner and weeping. Ayesha told her mother that her father had raped her. When she confronted her husband he threatened to throw acid on both their faces.

Even though Ayesha's mother was aware of the occurrence, she could not do anything at the time. Later that day, she found an opportunity and stole away to the nearby police station and lodged an FIR against the accused.

In court, the accused denied all the allegations against him, and said that the reason why his wife had lodged this false complaint against him was to get away with poisoning him. He counterclaimed that Sabra used to live in his neighbourhood and was involved in "illegal activities", when the accused proposed to provide shelter to her and her daughter, in the hopes that they would discontinue with "such life". He further alleged that Sabra "did not change her mind and habits" which is the reason for the dispute between them, as a result of which she has implicated him in a false case.

Sabra later told WAR that when the police arrested him, he took a narcotic substance, and that nobody had poisoned him. Sabra also told WAR that the accused was involved in drug use even before this incident.

The medico-legal officer who conducted Ayesha's examination testified that the day Ayesha came for her medico-legal examination, it was her first day at work and she was not experienced in the protocols of duty. She went on to say that the complainant arrived for the examination with only her mother (without any police officer accompanying them). She further said that she was unable to take her weight, as they did not have a weighing machine available on that day. At the time of the examination, no documents relating to the identity of the complainant were provided to her, neither was any letter containing the FIR number for the case of the complainant. She instead wrote down the address of complainant on the medico-legal report, as was told to her.

Her medico-legal report stated that the complainant had been subjected to forceful intercourse approx 48/72 hours before and that visible marks of violence were present on her body. She further stated that the girl had been subjected to intercourse for about 1 year before the examination.

The Investigating Officer (IO) testified in court that he had in fact produced the letter and the complainant before the MLO.

The court ruled that counsel for the victim had failed to prove the allegation of the charge on the basis of inconstant and contradictory statements of the victim.

There was no proof of the fact that the person whose medico-legal report was being presented in court was in fact Ayesha's.

The court thus found the defence version, stating that the accused had been falsely involved in this case as he tried to restrain his wife and daughter from living an "immoral life" and they poisoned him, to be more believable<sup>26</sup>. The accused was hence acquitted of all charges against him.

*This case came to WAR for legal aid when the trial was already underway. The survivor and her mother had already been examined, but the examinations of the Magistrate, Investigating Officers and MLO were pending.*

*Although an appeal was allowed by the trial court, Ayesha's mother Sabra was not inclined to further pursue the matter and the file was closed.*

*WAR last came into contact with Ayesha's mother around 2010. She said that Ayesha was now "happily married" and had children. Sabra asked WAR not to contact Ayesha as she wished to protect her daughter's marriage. Her wishes were respected.*

## V. ALIYA'S CASE, 2009<sup>27</sup>

Aliya, after her parents' divorce, lived with her paternal grandmother whilst her father, who was mentally unsound, had left home. Aliya told WAR that as a child, her paternal uncle, Mehmood, who lived in the same house, would behave inappropriately with her, and she had told her grandmother about this. Her grandmother started keeping Aliya close to her at all times, but did not confront her son over it. Aliya's grandmother passed away in 2000, and Mehmood got married in the year 2003. Aliya continued living with her uncle, and his wife.

One day whilst his wife was out, Mehmood forced Aliya into a room, locked it and raped her on the bed, whilst his two children were playing in the house. Aliya tried to raise a noise, but the accused slapped her and threatened her and told her that if she told anyone he would kill her. Three days later, whilst the accused and his wife were asleep, Aliya left the house and went to the aunt's sister's (*Khala's*) house. She left behind a letter, which read<sup>28</sup>:

*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*

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<sup>26</sup> At page 16 of judgment.

<sup>27</sup> *The State versus Mehmood Ahmed* S.C. 399 of 2009.

<sup>28</sup> Translated from Urdu by Ayesha Khan; Ayesha Khan, Sarah Zaman. *The Criminal Justice System & Rape: An Attitudinal Study of the Public Sector's Response to Rape in Karachi*. Karachi: War Against Rape, 2011.

*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.*

Aliya's *Khala* took her to the police station to lodge an FIR, but the police did not register the complaint, neither did they give her a request form for a medico-legal examination. About 20 days after the incident and with the guidance of a few people, A's medico-legal examination was conducted, and an FIR lodged.

Meanwhile Aliya's *Khala* also got in touch with her mother, and Aliya moved in with her mother, who was staying with her brother and his family.

In court, Aliya revealed under cross-examination for the first time, that her uncle had been molesting and raping her since the age of 5 and she had told her grandmother about it.

The accused denied all the charges against him and contended that Aliya's mother had implicated him in a false case.

The medical evidence showed that Aliya, who was 14/15 years old at the time, and had not reached puberty yet, had been engaged in sexual intercourse. There were no marks of violence or semen found, as the medical exam was conducted 20 days after the incident.

Whilst the prosecution put forwards Aliya's testimony as confidence inspiring, and cited that "there was no reason why a 14 years old girl will involve her real paternal uncle in such a heinous crime without any whim and reason which may also cause disgraceful for her" [*sic*]<sup>29</sup>.

Counsel for accused suggested that the delay in the lodging of FIR allowed the survivor and her family to fabricate the story against the accused to settle an old score as her mother was divorced by the brother of the accused. The defence presented no other evidence, and the accused did not testify under oath.

The court held that the letter that Aliya had left at the accused's house "put blame to no one but to her because she felt frustrated due to her lack [of] sexual look" [*sic*]<sup>30</sup>. Furthermore, the court found it unbelievable that a girl at age 5 would tolerate sexual assault and tell no one, except her grandmother. The court held that, "The victim had been changing the number of sexual assaults with her on each of the statements, and from the letter she left at the house of the accused, she seems to be sexually frustrated and further that the medical evidence about

<sup>29</sup> At Para 13 of *Reasons for Judgment*.

<sup>30</sup> At Para 17 of *Reasons for Judgment*.

the rape remains inconclusive ... The benefit of the doubt is therefore in favour of the accused.”<sup>31</sup>

*Aliya now lives with her mother at her uncles' house with him and his family. Her mother now of some age, is ill and unable to work. In order to support herself and her mother, Aliya works at a school in the Korangi, Karachi, earning Rs. 1000 per month. Aliya is hoping to enrol to give her matric examinations in 2012.*

*Like most survivors of incest Aliya battles to come to terms with the betrayal of trust by the perpetrator. As she told WAR in an interview, “Chachu (paternal uncle) is supposed to be like a father; it is a relation of respect. He used to tell me himself that I should call him “papa” (father) but then he raped me as well”.*

## **VI. HINA'S CASE, 2008** <sup>32</sup>

This is the case of Hina who was 31 years old when she was raped. She was divorced, living in her parents' home in Karachi.

On 21<sup>st</sup> June 2008, Hina was alone at home one day when her brother-in-law showed up. Armed with a gun, he threatened Hina and raped her. His wife, who was Hina's sister, was out of town at the time. Hina did not disclose the incident to anyone. The next day, he returned and raped her again. Akram was armed with a pistol and told Hina that he would be coming often and that she must oblige. He also told her that he would marry her, but Hina told him that such a union would be illegal.

When Akram left Hina's house on the second day she went to the police station but the officer would not lodge her complaint.

On the 24<sup>th</sup> of June, she 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. The same day, Hina was able to lodge an FIR against Akram.

However, Akram managed to arrange pre-arrest bail for himself, and the bail order was further confirmed by the session's court.

Once out on bail, the accused would regularly threaten Hina that he would kill her and pressurize her to withdraw the case. On the 7<sup>th</sup> of July 2008 WAR, on behalf of Hina made an application to the DIG Investigation, requesting that the investigation of this case be transferred to another branch of the Police, since Akram had friendly relations with the I.O. of the Sohrab Goth police station and was not taking due action.

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<sup>31</sup> Ibid.

<sup>32</sup> *The State versus M. Akram*, S.C. 431 of 2008.



Subsequently, the Investigating Officer apologized to Hina and promised to arrest the accused.

The trial took place under Section 376 of PPC. The accused pleaded not guilty to the crime. He did not produce any defence 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 Hina handed over her clothing to the police officer or the WMLO. Hina 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 Hina, 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 favour of accused in any case." The court also took cognizance that Hina is a previously married woman, who has borne children. Since her genitals do not carry signs of force or injury, her claim of rape cannot be corroborated.

*Hina was highly dissatisfied with the judgment of the sessions court. Her family has disowned her as according to them she has brought shame upon them, by going to court and making their private affairs public. She now lives in another area of Karachi with her 16 year old son.*

*Hina requested WAR to lodge an appeal against the sessions court judgement. The appeal is currently on going in the Karachi High Court.*

## **VII. SAMIRA'S CASE, 2004<sup>33</sup>**

Samira, age seven, was raped by her cousin, Rehan, aged 17 years. Rehan had come to Samira's house in the presence of her mother, who left to go grocery shopping with one of Samira's sisters. He remained at the house. At noon, he took Samira to an adjacent plot and sodomized her. When she started bleeding, he tied a cloth around her pelvis and 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 Samira was not feeling well. Upon inquiry caused by her persistent crying, Samira informed her mother that Rehan had sodomized her.

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<sup>33</sup> *The State versus M. Rehan*, S.C. 1286 of 2004.

Samira's mother went to a local Councillor, 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 *mohalla* (neighbourhood) 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 [Samira's mother] is not good". The mother and father of Samira 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 Samira. The shirt belonging to Samira had been found soaked in blood. The police later found her *shalwar* (trouser) 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* (neighbourhood) 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 and he was acquitted. The court exercised its power to acquit the accused under section 245(i) of the CrPC, as the family had reached a 'compromise'.

*WAR was unable to locate the family and survivor for an interview.*

## VIII. ZAINAB'S CASE, 2007<sup>34</sup>

The rape survivor in this case is Zainab, age 21, who was divorced and living with her parents. Her 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 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.

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<sup>34</sup> *The State versus Rabia, M. Ghaffar and M. Athar*, S.C. 56 of 2007.

Zainab 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, Zainab, 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. Zainab's father testified that accused Ghaffar had admitted the offence and apologized to him when they went to the house of the accused after the rape. However, in court, the defence 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 defence.

All three of the accused were acquitted on the ground that certain aspects of the testimony raised doubts in the mind of the judge 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 colour of her clothes were noted as slightly different from the colour 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.

*WAR was not able to locate the survivor and her family for an interview.*

## **IX. RABIA AND RUKHSANA CASE, 2008<sup>35</sup>**

Abid Hussain was the second husband of Rubina bibi. From her first marriage she had two daughters, Rabia and Rukhsana, and a younger son, and from Abid Hussein a daughter.

When Rubina bibi approached WAR, she narrated that her husband was unemployed and made no efforts to find work. She, along with her three daughters worked at a factory to run the house.

As soon as the women came home from work, Abid would make one of the two elder daughters massage his legs. If one would get tired, he would make the other one take over. Rubina told WAR that her husband would touch the girls inappropriately whenever he felt like, and if she tried to stop him, the situation would erupt into physical violence.

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<sup>35</sup> *The State versus Abid Hussain Khi*. Sessions Case No 293 of 2008.

Eventually, Abid raped one daughter and then the other. At times he would make his wife leave the room and call in one of the daughters. Rubina discovered that her daughters were being raped when one night Rabia didn't return from her stepfather's room till past midnight, and she went in to check on her. When she walked in the room, she saw her daughter and Abid naked, and that he was raping her.

The accused beat his wife and threatened her not to tell anyone. There were times when his wife would be present in the room and lying down facing the other way whilst the accused was raping one of her daughters. Resistance would lead to more violence.

Around the same time, Rubina noticed that her husband, having now "spoilt" the two older girls, was now beginning to touch the younger daughter, who was his own blood inappropriately as well. This perturbed Rubina immensely.

After about one and a half months of Rubina walking in on her husband, she finally confided in a young man, who was a co-worker at the factory. This young man, Nadeem, helped Rubina to lodge an FIR against the accused, on the morning of the 15<sup>th</sup> of May 2008. That same evening, the accused was arrested from his house, where the police also collected the girls' trousers and the accused's underwear as evidence.

Nadeem also accompanied Rubina to WAR's offices where she narrated the incident.

*At the time, Rubina was looking for financial aid to get the girls married and not interested in prosecuting. WAR subsequently lost touch with the family and last heard that both the girls were married in the following 6 – 8 months.*

*When WAR tried to contact the family for the purpose of this study, it was discovered that the matter had actually proceeded in court and the following information came to light:*

Both Rabia, aged 20 at the time, and Rukhsana, aged 18 years, went for medico-legal examinations. The medico-legal reports of both girls stated that they were not virgins, but that there were no marks of violence on their bodies to indicate whether they had been raped. *Vaginal slides were prepared and sent for DNA testing, but no further information could be accessed about the results.*

In their statements before the Judicial Magistrate the girls revealed that their stepfather had been raping Rabia for about two and a half years, and Rukhsana for about one and a half years prior to reporting. Rukhsana also revealed that their stepfather used to monitor their menstrual dates closely and that she had become pregnant once, which is when he took her to the house of a lady doctor for an abortion.

In court, the accused denied the allegations against him and stated that the charges filed against him were a conspiracy due to some dispute between him and his wife.

The court held that the evidence presented before it corroborated the version of the prosecution. And further that the accused is the stepfather of the complainants and that no one can take such type of stigma on her face falsely [sic].

The judgement was delivered on the 17<sup>th</sup> September 2010, wherein the accused was convicted under Section 376(1) of the PPC and sentenced to imprisonment for 10 years and Rs. 50 000/- fine.

*WAR was unable to get in touch with the survivors or their mothers for the purpose of this study. Court documents revealed that the accused has filed an appeal against his conviction. The appeal is pending in lieu of a lawyer being assigned to the accused by the state.*

## **CASES UNDER TRIAL**

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### **X. MAHA'S CASE, 2008<sup>36</sup>**

Maha was 13 years old and the oldest of 9 children. Her family lived in the Korangi area. Her father was involved in editing, selling and privately exhibiting adult movies, whilst her mother used to collect leftover *rotis* outside shops during the day, so that they could eat them in the evening.

From the year 2006, Maha started complaining to her mother that her father would speak to her inappropriately, touch her in random places and then eventually started sleeping next to her without any clothes on. When her mother confronted him about the issue, he denied the entire situation.

By 2008, her father started showing Maha some of the movies that he was editing. He would make her younger siblings leave the house, to go play outside so that he could be alone with his oldest daughter. He would tell Maha to follow what was happening in the movie and do the same sort of acts with him. He would threaten her by saying that he won't give her food, or that he would hurt her mother and siblings if she did not follow what he said.

That year Maha kept all her obligatory fasts in the month of *Ramadhan*. Her mother noticed that Maha did not menstruate in the entire month. Her mother took her to the doctor. At the clinic, it was discovered that Maha was five

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<sup>36</sup> *The State versus M. Tahir Khi*. Sessions Case No 744 of 2008.

months pregnant. The lady doctor at the clinic advised Maha's mother to register an FIR against the accused.

Maha's mother approached a local welfare trust for assistance in the matter.

A medico-legal examination was conducted, and confirmed that Maha was five months pregnant. The Police Surgeon recommended that DNA sampling be done, in order to confirm paternity of the child. The Trust bore the cost of the test whose results confirmed that Maha's father was indeed the father of her child.

The accused was arrested from his house on the same day that the FIR was registered. He is still in jail.

WAR investigated this case when informed by the office of the Police Surgeon. Due to the fact that the matter was being handled by another NGO, WAR did not intervene.

*WAR last came into contact with Maha's mother in 2009, about 2 months before Maha was due to give birth. The family was struggling to feed itself, as their main breadwinner was in jail, and dependant mostly on begging for survival. WAR later on also found out that they have told Maha that her baby was born dead, whilst actually her mother had given him up for adoption.*

## **XI. SHARMEEN'S CASE, 2010<sup>37</sup>**

Fourteen year old Sharmeen lives the Purani Sabzi-Mandi area of Karachi.

In 2010, she went to stay with her sister, Saeedah, and her husband, Akhtar, for a few days to take care of her sister who was pregnant, and not feeling well at the time. During her stay there, the three were invited for lunch to a relative's house. Akhtar first took his wife and dropped her and then came back for Saedah since there was not enough space on his motorbike.

When he came to the house, he locked the house up, took a knife and kerosene oil and threatened Sharmeen that if she did not oblige him he would set her alight. Akhtar played music on a high volume and then raped Sharmeen. Afterward he directed her to take a bath and repeatedly threatened her, saying that if she told anyone he would kill her, and her sister.

Akhtar then took her to the lunch and kept a close eye on her to make sure that she didn't talk to her sister. When her sister asked Sharmeen about some injuries that she has sustained on her face during the assault, Sharmeen told her that she had fallen down.

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<sup>37</sup> *The State versus M. Akhtar Khi*. Sessions Case No. 658 of 2010

After the lunch, when they all came back home and the accused had gone to the washroom, Sharmeen told her sister everything. Her sister started weeping and this made Akhtar suspicious. He threatened to cut her stomach open with scissors and started hitting both the sisters. At this stage Saedah who was pregnant at the time, fainted and had to be taken to a nearby clinic. Saedah called her family from a PCO near the clinic and told them of the incident.

When the family came back to Akhtar's house from the clinic, he was not there.

The family then took the sisters to the Mochko Police Station, where they first narrated the story to the officials in the reporting room. Thereafter they were taken to the Station House Officer's (SHO) room, and narrated the incident to him again. The SHO then questioned Sharmeen, her sister as well as other family members about the specifics of the incident.

At this time, there were other people, including a tea vendor, present in the room. While Sharmeen's mother narrated the story they kept saying "*tauba tauba*" repeatedly. Sharmeen and her family found it very odd to answer these questions in front of "so many men", but they recognized the fact that it was the police's duty to ask and their duty to report the crime that had been committed.

An FIR was registered against Akhtar on charges of commission of *zina*, in terms of Section 375 of the PPC. By this time, it was past 12 am, and Sharmeen was to be taken for a medico-legal examination the next day. The medico-legal examination confirmed that that Sharmeen's hymen was torn and there were bruises and lacerations in that area. Akhtar's medico-legal examination confirmed that he was capable of performing intercourse at the time.

This case is still under trial.

Sharmeen has already testified in court. She told WAR that she saw him outside the court and was very afraid of having him there. On days when they meet in court Akhtar threatens Sharmeen and her family.

Her sister Saedah has also testified in court. She says that Akhtar was standing next to the witness stand during her testimony. He kept making threats such as "*You are talking so much here, I will see to you once I get out and you come back to my house*" and "*I will kill your uncle Mobin, who has done all this*". Saedah tells WAR that he was speaking softly so that no one else in the court room could hear him, but the other prisoners who were tied to the same chain as him could hear what he was saying, as they were all smiling. "*Such a man should be hanged to death*", she says.

In June 2011, Akhtar applied for bail to the Sessions Court, on the basis that the charges against him were false and fabricated by Sharmeen due to some enmity between the families. However, the court rejected this application for bail, citing

that the accused had failed to establish adequate grounds for granting of bail.

*Sharmeen, her mother tells WAR, had always been a quiet girl who has become even more withdrawn since after the incident and is always a bit nervous. Sharmeen says she does not trust anybody anymore and is scared to leave the house. She used to study at a nearby madressa before the incident, but has since stopped going there.*

*Their father, Nazir Ahmed, is a labourer. The two sisters have started a small business from home, in which they sell snacks from a small shop. They use this income to run the household.*

## **XII. SAMEEN'S CASE, 2006<sup>38</sup>**

Sameen aged 16 years, used to live in Ittehad town, with her parents, three sisters and two brothers. Her father, Pervez, was a labourer, who built houses, whilst her mother, Shamim, worked as a housemaid.

In May 2006 Sameen's mother went to Attock to attend a family wedding for ten days. During this time, her father Pervez arranged for her other siblings to go out somewhere, so that he could be alone with Sameen. He threatened Sameen with a knife, as well as a naked wire, saying that if she did not obey him, he would electrocute her to death. Her father then raped her and also warned her not to tell anyone, particularly her mother, or he would kill them both.

The abuse continued even after Sameen's mother returned home. She had brought Pervez's sister, Nasim Bibi with her from Attock who stayed with them as well. About five months later, Pervez told his wife to take his sister Nasim with her to work as well. The next day Shamim went to work, without taking Nasim with her, thinking it would not be appropriate to take a guest with her to work. When Shamim returned Pervez was angry at the fact that Shamim did not oblige with his request and beat her with some wooden sticks.

The next morning, when Shamim was leaving for work alone again, Pervez got a hold of her and started the violence again. He didn't allow her to leave the house for work and he did not allow anyone to light the stove in the house and kept the entire family, including the young children, hungry the entire day, out of his anger. In his rage, whilst beating and yelling at Shamim he said that *she doesn't trust him with their daughter*<sup>39</sup>. This made Shamim very suspicious.

Shamim questioned Sameen, who kept denying there was anything wrong. Upon her mother and Aunt Nasim's insistence, Sameen finally confided in them, and told them about what had been happening for the past five months. She confirmed to them that he wanted Nasim to go to work with her mother, so that

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<sup>38</sup> *The State versus Pervez* S.C. 633 of 2006.

<sup>39</sup> Reproduced from Shamim's statement in terms of Section 161 CrPc.



he could be alone with her daughter and rape her again.

The next morning Shamim left the house with all her children and Nasim, and went to stay with her relatives in another area.

Shamim sought help from her employer who took her to the police station to lodge an FIR against Pervez. Pervez was arrested the same day from his house in Ittehad town. The naked wire and the knife, used to threaten Sameen was also found in the house.

Sameen's medico-legal examination was conducted on the same day. The reported cited her as being "non virgo intacta". The medico-legal report of the accused confirmed him to be able to perform sexual intercourse.

Nasim Bibi confided in her sister-in-law, and told her that when she was younger and not married, her brother had called her in to his room on the pretext of giving him clothes and locked the room. He struck her on her face to scare her and raped her. Thereafter, he gave her Rs. 100, and told her not to tell anyone. Nasim however, took the money to her mother and told her what her brother had done. Her mother did not believe Nasim, and told her that she has lost her mind. Two days later, he raped her again after which Nasim made sure that she was never alone at home with him<sup>40</sup>. Nasim never lodged an FIR against her brother.

In court, the accused contended that the charges filed against him by his daughter were false, and in fact she was involved in an illicit relationship with someone and upon the accused raising objection to this, his wife and daughter left home and filed this false charge against him.

The case is pending in court for delivery of judgement.

*Sameen is in a highly disturbed state of mind. She stays at home all the time and does not like to meet anybody from outside her family. If any outsider comes over, she locks herself in her room. She is particularly upset about her neighbours finding out about the incident and has limited social interactions.*

*She often quarrels with her mother, saying that it would have been better if she had died, as they would not have to suffer all these hardships. She feels that if she had died, nobody would have found out the truth and they would not be suffering this way.*

## **Discussion**

A few patterns emerge from a comparison of the circumstances in which abuse occurred. These are discussed below:

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<sup>40</sup> This incident is recorded in Nasim bibi's statement in terms of Section 161 of CrPC.

### **1. Repeat abuse**

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Incest is a predatory offence where one-time commission is rare unless abuse is reported promptly and action taken against the abuser. Silence around abuse increases the chances of repeated violence over a period of time. In almost all cases discussed in this chapter, sexual abuse and rape was committed against the survivor over an extended period of time- in some cases years- before the matter was reported to the police or any other authority.

### **2. Susceptibility in age and over time**

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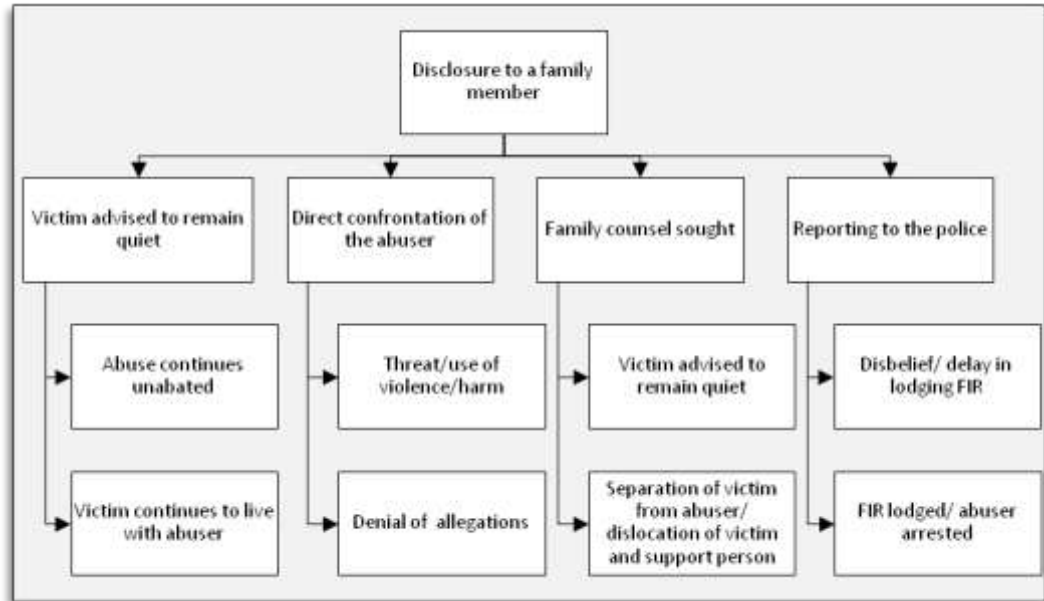
It is common for abuse to continue from a very young age into adolescence or adulthood unabated. In fact, most cases reviewed in this study presented evidence that abuse starts very early, when the child is least able to resist or make sense of the situation and continues sporadically over days, weeks, months, or years. The intensity of abuse usually increases, starting with inappropriate touching and molestation and leading to rape accompanied by other forms of violence. For example, in Maha's case (see Chapter II), the abuse started with the father speaking to her inappropriately, showing her pornographic movies and eventually led to rape. The same was observed in the case of Rabia and Rukhsana (see Case ix).

### **3. Determinants and consequences of reporting**

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Most cases of incest were not reported to anyone, even within the family, till some time had passed and until the abuse reached a certain threshold, such as the use of threats and physical violence.

Disclosure is usually made to a woman in the family. In most cases, this woman was the mother of the survivor. However, cases reviewed showed that disclosure can lead to different situations, as depicted in Box 1 below:

**Box 1: Consequences of disclosure of sexual abuse**

#### 4. Agency of the person informed about the abuse

Often, the woman confided in by the survivor is unable to press charges against the offender. Women are often afraid of the ramifications of disclosing or reporting abuse (such as threat of 'dire consequences'; acid burn as threatened by the accused; loss of income should the accused be the main bread-earner for the family; and pressure from family members or community to keep the matter private). In the case of Ayesha, her mother was forced into not taking any action against her husband for repeatedly raping his step-daughter because he threatened to disfigure both her and Ayesha by throwing acid on them.

In most cases, mothers avoided disclosure to the police or anyone in the family as they were scared for their own safety and the safety of the child that was being abused.

In addition to lack of agency and fear of harm, survivors also face deliberate inaction by those they entrust with knowledge of abuse. In the case of Fariha, the mother chose to believe her husband when he swore by the Quran that he had not raped Fariha. In Shamim's case, the mother-in-law advised her son to stay with her at all times to avoid her being left alone with the father-in-law, who had been raping her, instead of reporting matters to the police or anyone else. The second time her father-in-law raped her, Shamim confided in her husband, knowing that her mother-in-law would not be able to do much to help her. In Shamim's case her mother-in-law, and in Aliya's case her grand-mother, despite knowing about the abuse tried to guard the girls from the perpetrators themselves by keeping them close-by; they both managed to ward off the perpetrators for some time but not indefinitely. On the other

hand, in the case of *Muhammad Latif versus The State* (Chapter I), where the perpetrator was the brother, her mother felt the need to protect her son and not report the incident to the police. She only did so upon her neighbours' insistence.

## **5. Silence leads to repeat abuse and escalation of violence**

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In most cases reviewed, survivors were hushed into silence, either by the person confided in or the persons consulted, such as relatives or community members. This resulted in not only continuation of abuse but also an escalation in its frequency and intensity. In the case of Aliya, she continued to suffer sexual abuse and rape for nearly 10 years, before she sought legal help. In Fariha's case, she reports to have been raped and sexually abused by her stepfather on numerous occasions over a period of time. The families' decision to 'keep matters inside the home' when they finally found out worked to Fariha's detriment as she was neither removed to a more secure location, nor was the abuser apprehended, with the result that Fariha was raped again soon after. Only when there was imminent threat to her life did Fariha's mother move to register a case against her husband.

## **6. Confiding in someone makes matters worse without legal action**

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It has been observed that reporting matters to another person in the family may make matters considerably more dangerous for both the victim and the support person, particularly in the absence of legal action. In most cases reviewed, the abuser (most often the father and in one case the brother-in-law) threatened not only to harm the survivor further if she reported to the police or anyone else, but also the person that sided with her or spoke on her behalf. For example, in Sharmeen's case, her brother-in-law threatened to cut open her pregnant sister's stomach if they told anyone about him raping Sharmeen. He then beat up both his wife and sister-in-law to silence them.

## **7. Threats of violence/ harm and intimidation**

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Threat and intimidation of the survivor and support person is common. In all cases, except one discussed in this chapter, death threats and threats to harm were made to the victim by means of pistols, acid, naked electric wires, stabbing and beatings, etc, to scare her into silence and submission. Often, if someone in the household attempted to take the abuser to task for his actions, they were also threatened with 'dire consequences', as discussed above.

## **8. Importance of family counsel**

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Family counsel holds immense importance in matters of sexual abuse. Victims tend to avoid direct confrontation of the accused due to their relationship with the abuser. Matters are usually reported to police after securing the support of a *male* member of the household or community.

Chances of reporting to the police seem to depend on and be directly proportionate to disclosure to a family member. In effect, when a woman confides in someone in her family, the chances of reporting to the police are higher. However, if the person confided in does not have the agency to act of her own accord, it is likely that she would not be able to seek help on behalf of the victim. As this person is usually a woman, who lacks agency in a patriarchal society like Pakistan, the victim is likely to continue being abused.

In very few, if any cases, did the victim herself move to report matters to the police and there too reporting was mostly done with someone's physical and moral support. Although age of the survivor is an important determinant in lodging of a police complaint, family support is critical to taking a stand against another family member's transgressions. Survivors also weigh their chances of being believed in the outside world against how members of the household respond to their claims.

## **9. Psychological effects of incest**

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Dr. Asha Bedar (Bedar, 2012), who was interviewed for this study, explains that girls who have suffered incest usually over a long period of time often develop border-line personality disorders and display other symptoms including low self-esteem, low self-respect, and difficulty trusting people, which later on lead to relationship issues, particularly where intimacy is involved. Other symptoms include the need to please men all the time (as they relate to men differently than other people), tendency to get involved in other abusive relationships, self-mutilation and/or drug abuse, and suicidal tendencies. The gravity of the disorder depends on length of the period of abuse, frequency, and the survivor's relationship with the perpetrator.

Dr. Bedar notes that a survivor of incest can recover from the trauma, if they are given support and have other positive experiences (such as some form of achievement) in their lives. On the other hand, survivors who belong to low-income families are not educated and do not possess any vocational skills are most likely to not recover from the trauma, she asserts.

Distinct from the psychological effects of rape by strangers and acquaintances, incest survivors interviewed by WAR reported to have battled with unique circumstances, including the inability to break the

cycle of abuse, higher degree of insecurity and confusion due to a betrayal of trust, and living in a state of constant fear of the next episode. Since abusers within a home have easier access and more control over the victim, she is in a perpetual state of anxiety as to when she would be molested or raped next. Unable to tell anyone or get away, incest survivors suffer a greater loss of control over their lives. Additionally, the fact that they are closely related to the abuser, they suffer from constant confusion regarding the best course of action to correct or reverse the balance of power.

## 10. Economic considerations

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Other than the psychological trauma to the survivors of incest, many also suffer financially. Where the perpetrator is the father of the survivor, the family suffers economic hardship due to the loss of the breadwinner, in the event that he is convicted and sent to prison. A survivor who pressed charges against her paternal uncle and entered the criminal justice system narrated that,

*“My mother’s second husband divorced her because he saw her and my picture appear in the newspaper, in relation to my case”.*

As most abusers are fathers of the victim who make significant financial contributions to the household, the survivor and/or support person have to consider the implications of reporting abuse for fear of loss of income. As Sameen’s mother told WAR,

*“These people say that I made a false claim against my husband who was raping my daughter! Why would I lie? All the problems I am having now are because I spoke the truth. It is the price I have to pay for telling the truth. I have children that need my support; I work seven days a week; I need to get my girls married. Why would I lie, if I knew that telling the truth would deprive me of all financial support?”*

She was forced to leave her husband’s house when he was granted bail by the court for insufficient evidence and sent home. Although her daughters’ well-being took precedence over the loss of income, she battled with immense financial hardship.

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## Public sector’s response to incest

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The level of care and quality of services provided by the public sector often serve to exacerbate survivors’ plight. Surmounting the trauma and mustering the courage to report is often met with insensitive handling and suspicion from the police, medico-legal sector and the judiciary.

Inadequate and inefficient medico-legal procedures lead to non-collection and non-documentation of vital evidence that can assist prosecution in court. In the

case of Ayesha, the court ruled that there was nothing to connect the medico-legal report to Ayesha as the report had neither been issued in Ayesha's name, nor had a police complaint number been assigned to the case. This ruling came despite the testimony of the medico-legal officer who admitted that it was her first day on the job and that she was not previously experienced in conducting such examinations. She also admitted to lack of resources for conducting the examination such as the absence of a weighing machine. Important to note is that the MLO stated in her report that Ayesha had been subjected to sexual assault 48 to 72 hours prior to the examination. It also bears mention that an MLE can precede an FIR in any event. In Ayesha's case, the FIR had been lodged prior to the MLE. The only thing missing was mention of the FIR number in the medical certificate, as Ayesha had not been escorted by a police officer for the medical examination.

Survivors interviewed for this study cited complete lack of privacy when they approached the police or MLOs. Aliya's mother reports that the doctors kept discussing what had happened to her daughter amongst each other, over and over, and it was embarrassing and made them feel awkward.

Most reported feeling like nobody was interested in what they had to say and spoke to them like they did not believe them. Many had to wait long periods of time for the complaint/FIR to be lodged. Aliya had to go back and forth with her mother for 20 days until a medico-legal exam was conducted and the FIR lodged. They were also made to narrate the incident while people were present in the room who were listening and staring. As Aliya told WAR,

*"The attitude of the woman doctor who examined me was better. She asked my mother to get some things for the examination. She explained to me beforehand how she was going to conduct the examination. I was really scared but she consoled me. But the male doctor was trying to scare me. He said, "If you are lying, a case can be made against you in court!" I told him I wasn't lying, but he kept telling me to stop lying".*

Sameena's mother reports that when she went with her daughter to register a case with the police, there were other people, including a tea vendor present in the room. Everybody sat or moved around while they narrated what had happened. The SHO was so scandalized by the allegations that kept saying, "*tauba, tauba*" ("for shame, for shame"), which made Sameena very uncomfortable.

### **Disbelief and assumption of 'immorality' tied to reporting**

In court, the defence is often seen attempting to establish the innocence of accused by bringing a counter-charge that the survivor (and sometimes her support person, most commonly the mother of the survivor), are women of 'loose morals'. In the case of Ayesha whose stepfather had been sexually abusing her for a year and a half, both she and her mother found themselves being

declared unworthy of credit by the court for “leading an immoral life” and falsely implicating the father as he tried to reprimand them. The case was lost in court.

Additionally, women and children that do report are often considered immoral just for reporting to the authority and/or coming forward. They are branded as ‘shameless’ or ‘immoral’ for disclosing what should be considered private. In Aliya’s case, she was admonished by a doctor to “stop lying” because of the nature of allegations.

### **Dislocation of survivor and support person**

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Often it is the survivor and her support person that is dislocated or relocates to a safer place before initiating legal proceedings- none of the survivors reported being asked if they needed an alternate living quarter by a public official, including the police or medico-legal staff. In Sameen’s case, the family had to shift out of their house when her father was granted bail due to lack of evidence. Aliya had to leave her abusive uncle’s house in order to get support for filing an FIR. Sameen was taken away by her mother to a relative’s house before she could move a police complaint against her father for raping her.

In the event that there isn’t enough evidence, or the survivor’s claim cannot be corroborated in court, the likelihood that the abuser will return home to abuse this victim further is very high.

### **Judgements in incest cases**

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Courts have drawn on unnamed sources in *Sharia* that prescribe the death penalty for committing incest, as in the case of Muhammad Latif versus The State (Chapter I).

Sometimes, courts have ignored material evidence on the grounds such as physical injuries to and bleeding from the survivor’s genitalia in an effort to discern the credibility of a charge of incest. In the case of *Masood Aziv and Ano versus The State* (Chapter I), the Federal Shariah Court looked for inconsistencies in the testimony of the survivor, such as whether she went with her maternal uncle to file the FIR or not, and whether the complaint was lodged by way of revenge because the mother of the survivor had a turbulent relationship with the father, the accused in the case. The court in that case did not order an inquiry to find who, if not the father, was responsible for the injuries sustained by the survivor.

There is a tendency of courts to deny the occurrence of incest as it represents immorality, which judges may believe does not exist in Pakistan. The language of the judgements also suggest that judges are more often surprised by the charges, where the actions of the abusers are described as, “lust under bastardly



compulsion", "satanic sexual urge", and sometimes overt rejection as in the case of *Masood Aziz and Ano versus The State* (Chapter I): "Pakistani society is not so demoralized that an incident as such could have occurred". The connection to the criminality of the alleged actions of the accused is thus lost, with courts taking a moralistic view of the impossibility that a father could rape his own daughter.

In other instances, such as the case of *S. P\* versus Muhammad Bashir* (Chapter I), the FSC held that despite the absence of compelling evidence, the trial court should not be alarmed and 'swayed' by the fact that a father could rape his own daughter. The FCS instead relies on the testimony of the survivor and lays deeper emphasis on circumstantial evidence, which led to the conviction of the rapist that had not been made by the trial court.

It can be observed from the cases discussed above that the treatment of cases in terms of sentencing has been inconsistent. Where most convicted rapists got 25 years for the offence(s) they committed, in the case of *Muhammed Latif versus the State*, the accused was sentenced to 5 years' jail term (see Chapter I).

In an attitudinal study (Khan, Zaman 2011) conducted by WAR and the Collective for Social Science Research in 2011, judges and prosecutors, while noting that a woman's past sexual history should have no bearing on her ability to testify to rape, have allowed for it to be contested in court. In three cases mentioned above, the prosecution was allowed to attempt absolving the accused of responsibility by showing that the survivor was of 'bad moral character', despite the young ages of the survivors. As the age of majority in consenting to sexual intercourse was puberty under the Hudood laws, it was permissible to try to establish consent for survivors younger than 16 years, prior to 2006 when rape laws changed in Pakistan through an amendment to the Pakistan Penal Code that repealed the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

The Law of Evidence (Qanoon-e-Shahadat Clause 21(j)), allows for the complaint against the accused to be relevant if the survivor reports to the authorities shortly after the incident. As there is no law on incest in Pakistan that allows for special consideration for delayed reporting given the relationship between the accused and the survivor, incest survivors were seen to lose almost all protection under the law if they 'hide' the fact they have been abused over an extended period of time. This is direct contradiction to the fact that in most cases, survivors and their support person(s) are intimidated, threatened and/or beaten by the abuser in an effort to keep them silent.

Courts have been seen to attempt to broker financial settlements between the survivor/complainant and the accused. In the case of Mariam, the courtroom became haggling ground for the accused's mother, the judge and the survivor's mother over accused's freedom. Under the Qisas and Diyat Ordinance, while blood money can be taken by the aggrieved party whose relation has been

murdered, financial compensation alone cannot be awarded to survivors of rape. As rape in a non-compoundable offence, meaning that the matter cannot be 'settled' privately between the accused and the aggrieved, financial settlements are not permissible by law. Compensation alone, i.e., without a jail term, is even less acceptable in incest cases where the survivor is most likely to end up living with the accused again in the event that he is acquitted.

## CHAPTER III: PROVISIONS RELATING TO INCEST IN PAKISTANI LAW

Whilst the Pakistan Penal Code does not specifically deal with the issue of incest, there are a few provisions indicating that the concept of incest is defined in our law.

### 1. PPC Section 299. Definitions:

In this Chapter, unless there is anything repugnant in the subject or context:

(g) *ikrah-e-tam*" means putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death or instant, permanent impairing of any organ of the body or instant fear of being subjected to sodomy or zina-bil-jabr;

(h) "*ikrah-e-naqis*" means any form of duress which does not amount to *ikrah-i-tam*.

### Discussion

A bare reading of Section 299(g) shows that through *ikrah-e-tam* the law provides a defence to the person who kills another when put in fear of *inter alia* death or rape, of not only himself but also his immediate blood relatives, thereby reinforcing the higher degree of responsibility or care that a *mahram* has for his close blood relations. Therefore, a person who kills as a result of the fear manifesting from *ikrah-i-tam*, will be allowed this defence<sup>41</sup>.

However, in a 2002 case<sup>42</sup> the court ruled that the culprit for the commission of this offence would be a person who puts any person, his spouses or any of his blood relations within the prohibited degree of marriage in fear of instant death or instant permanent impairing of any organ of the body or instant fear of being subjected to sodomy or *zina-bil-Jabr*. This section, therefore, is not a defence, but in fact it describes the punishment for the person causing such fear.

Accordingly, Section 303 should be looked at as a punishment of 299 (g), which prescribes the following punishment:

*Whoever commits qatl, under ikrah-i-tam shall be punished with imprisonment for a term which may extend to twenty-five years but shall not be less than ten years and the person causing 'ikrah-i-tam' shall be punished for the kind of qatl*

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<sup>41</sup> 1998 PCrLJ 1700

<sup>42</sup> 2002 YLR 4008

*he commits.*

The difference between the two is the intention, i.e., in the former, the culprit must have the direct intention to kill the victim; while in the latter, the accused will be tried according to the kind of *qatl*<sup>43</sup> he commits.

However, what is realized through these sections is that there is a recognition given in the law of the act of incest, however the punishment thus far is only given if incest or marital rape results in death. What the PPC does not provide for, however, is a separate category for the punishment of abuse, rape, or sodomy that is perpetrated by a close blood relative, or *mahram*, of the survivor.

Therefore, it can be put forward that where the PPC pronounces rape to be punishable by death, or imprisonment for a period of between 10 – 12 years, it can follow that the punishment for rape in the form of incest should be similar or more severe.

## 2. Anti-Terrorism Act

The Anti-Terrorism Act<sup>44</sup>, was first enacted to prevent terrorism and sectarian violence, and for the speedy trial of heinous offences. A heinous offense is an offense which is “wicked, atrocious, cruel and offensive”.

Under the definition of a terrorist act, it is stated that:

6. *A person is said to commit a terrorist act if he,*  
...  
(c) *Commits an act of gang rape, **child molestation**, or robbery coupled with rape as specified in the Schedule to this Act;*

Although the term ‘Child molestation’ is not defined under the act, the Supreme Court<sup>45</sup> took notice of this issue and defined child molestation as follows:

*Sexual molestation of child could be of various types. It could be fondling of the genital organs of the child, or it could be showing him nude photographs to arouse his sexual emotions or it could be in form of physical nudity with the object of sexually provoking or exploiting a child. Most of the foregoing acts have not been specifically made offences in our criminal law nor the rape of a child has been separately catered to.*

*The rape of a child or "Zina-bil-Jabr" is an aggravated form of child molestation and a person who is proved to have committed the offence would be punished in terms of the punishment provided in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.*

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<sup>43</sup> Refer to Sections 300-324 of the Pakistan Penal Code, for the different kinds of *qatl*.

<sup>44</sup> Anti-Terrorism Act 1197, as amended by the Pakistan Anti-Terrorism (Amendment) Ordinance, 1999.

<sup>45</sup> PLD 2000 Lahore 449.

*The effect of Anti Terrorism Act, 1997 is that this alleged offence of child rape would be tried by a Special Court under the afore-referred. The offence substantially remains the same, only forum of trial has changed.*<sup>46</sup>

The Supreme Court went on to take notice of the rising numbers of cases of child abuse, referring to NGO Sahil's data on child sexual abuse for the preceding year noted that there is a need to suitably amend the penal law with a view to make certain act/wrongs against children punishable.

The court noted that Section 6(c) appears to have been drafted in haste and that the expression "child molestation" in its various connotations has not been defined and no punishments have been prescribed for other forms of child molestation. The court directed that a copy of the judgment be sent to the Secretary Law, Government of Pakistan, Islamabad to examine the desirability of some affirmative action in the light of the observations made<sup>47</sup>.

Following this judgement, a proposed amendment to the PPC was drafted for the addition of the "**Offence of Molestation**"<sup>48</sup> to the statutes. The report, prepared by the Law and Justice Commission of Pakistan (LJCP) states that "a perusal of our criminal statutes reveals that there is no specific law on the subject to meet various situations and acts of molestation". The report goes on to highlight some provisions in the PPC who partially touch upon the subject<sup>49</sup> but concluded that they do not fully cover the acts of molestation.

The LJCP submitted the following amendment to the PPC:

*354-b- Molestation with sexual motive: Whoever with sexual motive resorts to act of fondling, stroking, caressing, pornography, exhibitionism or inducing or intimidating any person, with or without his knowledge, to submit for such act, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.*

This proposed amendment was submitted by the LJCP to the Law, Justice and Human Rights Division for implementation in April 2002 in the form of a bill for placing before the Parliament. The authors of this report could not contact a relevant person in the Ministry to get a status update on the proposed bill.

For a draft of the bill, see Appendix 1.

<sup>46</sup> Ibid

<sup>47</sup> PLD 2000 Lahore 449, at 457 C

<sup>48</sup> Addition of the Offence of Molestation to the Pakistan Penal Code 1860, Report 42, *Law and Justice Commission of Pakistan*. Retrieved from: [www.commonlii.org/pk/other/PKLJC/reports/42.html](http://www.commonlii.org/pk/other/PKLJC/reports/42.html) [Accessed on 5th December 2011].

<sup>49</sup> Such as section 354; 354-A; s 366-A; 509, of the Pakistan Penal Code.

## **AWAITING JUSTICE: 'INCEST' VICTIM, FAMILY FACE LIFE THREAT**

*Published in The Express Tribune, June 20th, 2011*

***A disturbing story of incest has emerged from Golra Sharif where a man has been charged of sexually assaulting and attempting to murder his 18-year-old daughter. The victim fears for her and her family's lives if her father, Tauqeer Shah\*, currently in police custody on attempted murder charges, is granted bail.***

*The 18-year-old girl, Razia Bibi\* was moved out of her house by a human rights lawyer, Faisal Iqbal Khan, soon after the victim's brother registered a case against his father at the Golra police station. She is being treated for extreme fear psychosis.*

*Talking to The Express Tribune, the lawyer said the Golra police have registered a case against Shah\* only on charges of attempted murder but are resisting charging him of incest under the Hudood law. He said a medical test has been conducted on Razia\* but the result is not being revealed by the police. He said he has lodged a complaint with Additional Session Judge Rifat Sultan Sheikh.*

*The Golra police, however, claimed they do not have enough evidence to charge Shah of incest.*

*The rape victim disclosed her ordeal in a signed statement addressed to Golra police station in-charge, accusing her father of raping her for three days, after which she informed her older sister of the incident.*

*Razia's elder sister took her husband into confidence, who then spoke directly with Shah, but he denied the allegations. However, he opened fire at Razia, but she remained unhurt.*

*Her brother-in-law informed Razia's brother of the incident, who immediately went to the Golra police station demanding his father's arrest. Shah was taken into custody and is in Adiala jail awaiting court appearance.*

*The lawyer alleged that Shah's brother may be pushing the authorities to suppress the medical report and releasing him on bail. He feared "Shah's release may seriously jeopardise lives of Razia, her brother, mother and brother-in-law.*

*Khan said that there is enough evidence to prove that Shah was already involved in other criminal activities and that he was violent and abusive.*

## CHAPTER IV: DISCUSSION AND RECOMMENDATIONS

Below are some of the key findings and recommendations emerging from the preceding discussion.

### Discussion

#### – Legal

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- **Sentencing-** The cases of incest have received a mixed response from the judiciary; whilst in some cases judges have rejected even the possibility that incest could occur in Pakistan (*Masood Aziz & Ano versus The State*), others have sentenced the accused to life imprisonment, observing that it should be punishable by death. In some instances, courts despite recognizing the case to be one of incest, have awarded accused minimal jail time. For instance in the case of *The State versus Muhammad Latif*<sup>50</sup> even though the medico-legal officer submitted to the court that the survivor had been raped, as her vagina had tears which had to be stitched, the judge of the sessions court awarded the accused 5 years' imprisonment.

While sentences have been inconsistent despite similarities in the nature of the offence(s), the relationship between the victim and the abuser should be considered an aggravating rather than an extenuating circumstance when sentencing the accused. Evidence for this lies in the multiple psychological problems and severe trauma victims of incest suffer usually over a long period of time. Additionally, sentences should be commensurate with the gravity of the offence, taking into consideration threats, intimidation, deprivation and other forms of abuse/violence as exacerbating factors to the main offence.

- **Amendments to laws-** Under section 375 another subsection (vi) should be added which establishes that if rape has been committed by a person within the prohibited degrees in relation to the victim or by a guardian, then an added element of high psychological trauma should be assumed and added as a charge automatically. Furthermore, under section 376 the punishment of rape in which incest factors in should be extended to not less than twenty years at the very least, along with a restraining order for the accused not to come within a certain distance of the survivor or a protection order for vital witnesses, including the survivor herself.

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<sup>50</sup> PLD 1981, FSC 317

Incest can also be included in the context of being intercourse for carnal pleasure 'against the order of nature with any man' and hence should be added along on a charge under Section 376 as a double offence, if subsection (vi) is not added to Section 375.

Alternately, a provision describing incest and prescribing harsher punishments for incestuous rape should be introduced in the PPC, taking into account factors such as: i) age of the survivor; ii) relationship with the abuser; iii) the nature of the abuse; iv) use of force; and v) the frequency and duration of the abuse, when sentencing the accused.

- **Removal of discriminatory laws-** Pakistani laws discriminate against survivors of rape by allowing victims past sexual history in court, as well requiring that she report to the police promptly lest her intentions be considered suspect. These two legal provisions (Qanoon-e-Shahadat clauses 151(4) and 21(j)) apply equally to incest cases, as they are also tried under the rape laws of Pakistan. Thus, the evidence called for is the same.

Given that reporting in incest cases is almost always delayed by days, if not by months or years, special considerations should be extended to incest survivors to avoid manifest injustice. Additionally, as we have seen that incest is often accompanied by threats to hurt or harm as well as other forms of intimidation and physical abuse, delay in reporting should not be allowed to undermine the efficacy of the charges against the accused rather a factor that led to delayed disclosure.

The past sexual history of a survivor should have absolutely no bearing on the charges of incest. Past sexual history should be banned in the court of law as it allows attention to be diverted from the main charge and unequivocally lays the responsibility of rape on the victim herself.

- **Removing shock-value-** There seems to be a certain subjectivity involved in court handling of incest cases. Incest seems to be condemned by courts on religious grounds or as acts of moral turpitude rather than on the basis of human rights. In many cases, previous case law is disregarded and the judgement passed seems to be emerging in a legal vacuum. The quality of judgement is dependant solely then on the prudence (and repulsion) of the court and the understanding the judge has of the issues involved. However, prosecution's ability to bring case law into its arguments cannot be understated.

Courts have sometimes not concealed their 'shock' over a charge of incest (*S. P\* versus Muhammad Bashir*- Chapter I). This amazement may lead to two extreme situations: either the court sentences the accused awarding him rigorous imprisonment, expressing outrage over his actions in no



subtle terms (*Muhammad Ashraf versus The State*- Chapter I); or it probes for substantiating evidence that undermines the efficacy of the charges. This could include such things as the past conduct of the victim, who she approached for help and their relationship with her and the accused (*Masood Aziv and Ano versus The State*- Chapter I)), and whether she delayed reporting (*Aliya's case*- Chapter II). Some of these factors lay in direct opposition to how a victim would typically act, as we have seen in various case studies: she would delay reporting, and she is likely to confide in and take support from those in the family who are most likely to believe her, who may or may not be on the best of terms with the accused.

Orientations and training sessions need to be held for the judiciary on how to best handle such cases in an impartial manner. Trainings should include case studies that illustrate the continuum of abuse and the circumstances around and following abuse to ensure more sensitive and fair treatment. Recognition needs to be built around the issue to humanize the problem and remove shock-value.

- **Prosecution-** Despite plenty of positive case law in Pakistan on incest, very few prosecutors have been able to cite them in their arguments. From the judgements that were reviewed, hardly any references had been made by prosecution to similar cases in the past that had resulted in convictions. Trainings and resources must be made available for prosecution that allow for higher standards of legal practice and maximum utilization of positive case law to build a stronger case.
- **Bails and protective custody-** There is abundant evidence to suggest that reporting is delayed by victims of incest due to two main factors: their relationship with the accused, and the use of intimidation, threats and violence by the abuser to keep the victim silent. In this scenario, the granting of bail to the accused in the initial stages re-allows him access to the victim within her home. This is especially true when the accused is the father or the brother of the victim living in a joint-family home. Bails should be granted with the utmost caution and not without restraining orders for the accused or taking the victim into protective custody. This is to minimize the accused's access to the victim while respecting his right to be deemed innocent till proven otherwise.
- **Expeditious trials-** Trial of incest should conclude at the earliest, without compromising due process. As the trauma of incest is more severe and long-lasting than other forms of rape, protracted trials only serve to exacerbate the trauma. Of the cases handled by WAR between 2004 and 2010, on average it took almost two years for courts to reach a verdict.

## - Courts

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- **Waiting rooms-** Separate waiting areas for victims and accused need to be provided during court hearings. Accused should not be allowed to lurk close to the victims and other prosecution witnesses so that the chances of intimidation/harassment are reduced and to provide the most comfortable environment possible. As most survivors of incest may be very young and their relationship with the accused a close one, having the accused's presence in the courtroom alone can frighten and intimidate the child. Similarly, other under-trial prisoners should be kept at bay so as not to upset witnesses (see *Sameena's Case*- Chapter II).
- **In-camera trials-** Related to the point above, incest case hearings should always be done with close-door proceedings/ in-camera trials so that the victim can testify at ease. Due to the greater level of stigma attached to incest, no unnecessary person should be allowed to present to 'look on' while witnesses are being heard. Similarly, screen should be used to avoid psychological trauma to survivors while identifying an accused in court.

## - Service Provision- Medico-legal & Police

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- **Privacy-** Privacy for survivors and their support persons must be ensured at all costs when they take the first step toward legal redress, i.e., report matters to police or medico-legal officers. On-lookers and irrelevant person should be removed or the complainant(s) taken to a more private room where she/they can narrate her/their story at ease. Instances where survivors narrate their story in front of tea vendors and multiple police officers and doctors descending upon a survivor and her support person to 'listen in', should be completely unacceptable (see *Sameena's Case*- Chapter II).
- **Trainings-** Police officers and medico-legal staff should be trained how to respond to cases of incest, without overtly or covertly casting aspersions or value judgements on the complainant. Additionally, MLOs should be well-equipped to be able to provide comprehensive care, both in terms of physical examinations and counselling. A major contributory factor to Ayesha's case (Chapter II) being lost was the incompetence of the MLO who testified to the same in court but the case was dismissed on the grounds that there was nothing to connect Ayesha to the ML report.

Frequently, police are the cause of delay in reporting by survivors, which is used to draw a negative inference against the survivor them in court by the defence. For example in Aliya's case, discussed above, the medico-legal examination was conducted 20 days after the incident, as Aliya and

her family were not properly guided by the police which eventually led to the accused's acquittal.

Officials must also be trained to respond professionally and without prejudice to cases coming to them, particularly because complainants' further engagement with the criminal justice system will depend on how they are received initially.

- **Resources-** Medico-legal centres must be stocked adequately to be able to function efficiently. In the case of Ayesha, the medico-legal officer testified to not having a weighing scale to complete the requirements of the examination. In the case of Aliya, the doctor requested her mother to get the supplies she needed.

WAR's interaction with the medico-legal sector has shown that there are too few women medico-legal officers for the city that can do thorough examinations. At the time of the publication of this report, there were just 5 WMLO for the entire Karachi, working out of three hospitals. The sector, which comes under the Health Ministry, needs adequate allocation of budgets and resources, in order to make it more effective.

#### – **Rehabilitation**

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- **Loss of income-** in most cases reviewed in this study, the alleged perpetrator was the father or stepfather of the victim. Given that most households' survival depends on the income of the father as the head of the family, charges of incest are hard to bring due to the fear of loss of income if he is sentenced. This loss needs to be supplemented by the state to encourage victims to report.
- **Shelter-** In many cases, it was observed that alternate living arrangements or protective custody was not arranged by the state to restrict the abuser's access to the victim. The state needs to provide support to families that report incest. Support can be for basic amenities as well as arranging for free shelters to accommodate members of a family that are dislocated as a result.
- **Counselling-** Survivors and their families must be provided on-going counselling to recover from the trauma. None of the survivors interviewed in this study reported being referred to a counsellor. Instead, additional secondary trauma was imposed by the criminal justice system by sheer mistreatment.

It needs to be appreciated that victims of incest are more likely to be suffering from long-term emotional, psychological and physical abuse,

which calls for more concerted counselling efforts. In most cases, all family members would have to be counselled to recover simultaneously from the trauma of abuse and anxiety of separation, if action is taken.

- **Day-care centres-** Women who take a stand and press charges against an abusive member of the family need the support of the state. For mothers who are forced to leave their married lives in order to protect their children from abusive fathers, free-of-charge or minimal-fee day-care centres should be established so that they can support their family without worrying about the security of their children. The state should also assume responsibility for supplementing the income of single mother who come within the category of ‘perpetually poor’.

#### – **Role of Community**

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- In some cases, it was observed that the community played an active role in responding to a case of incest when it came to their knowledge. It was observed that neighbours helped in lodging of FIRs with the police as did Counsellors and Nazims. Communities must be strengthened to talk about and play an active role in identifying, reporting on behalf of and providing support to incest victims. In this regard, community dialogue and interaction, along with public service messages could help provide necessary information about support services available and the most effective and safest course of action.

## APPENDICES

### APPENDIX 1: ADDITION OF THE OFFENCE OF MOLESTATION TO THE PAKISTAN PENAL CODE 1860

#### Report 42

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##### *Introduction and Rationale:*

The Lahore High Court, while disposing of an appeal (State V Abdul Malik, PLD 2000 Lah 449) reproduced the following observation of the Special Court constituted under the Anti-terrorism Act 1997 in a case pertained to sexual abuse of a 7 years old girl child:-

“The offence against the accused under Section 10 (4), Offence of Zina (Enforcement of Hudood) Ordinance 1979 is not made out. As regards the offence under Section 7, Anti-terrorism Act 1997, no such case against the accused is made out from the facts and circumstances of the case. As regards contention of the learned D.D.A about the allegation of child molestation against the accused, the said offence is neither punishable in any Section of Pakistan Penal Code nor any amendment has been made to make that offence punishable under Offence of Zina (Enforcement of Hudood) Ordinance 1979 and mere mentioning of the word ‘child molestation’ in the Schedule of the Anti Terrorism Act 1997 does not make the case against the accused triable by this court”.

The High Court further observed:

“As proponent of Islamic faith which lays special stress on the welfare of family and child, as a member of the United Nations and in accord with the afore-referred mandate, it is our religious, moral and constitutional duty to bring the required legislative and structural changes to honour our commitments to the rights of child and family. There is need to suitably amend the penal law with a view to make certain acts/wrong against the children punishable. There is need to create socio-economic institutions to fully realize the objectives of the International Convention. There is need to give a new and a fair deal to the child”.

The Court also observed that child molestation which is sometimes used as synonymous to child abuse is committed in the following forms:-

- I. physical beatings to a child or subjecting him to severe beating, burns, strangulation, or human bites;
- II. neglecting a child by not providing the basic necessities of life including refusal or delay in providing food, clothing, shelter, medical care, education as well as abandonment and inadequate supervision;
- III. emotional abuse including constant criticizing, belittling, insulting, rejecting and providing no love, support or guidance; and

- IV. sexual exploitation of a child, including rape, incest, fondling of the genitals, pornography, or exhibitionism.

A perusal of our criminal statutes reveals that there is no specific law on the subject to meet various situations and acts of molestation. Some provisions of the PPC touch the subject only partially e.g:

- I. **S. 354. Assault or criminal force to woman with intent to outrage her modesty.** Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both;
- II. **S. 354-A. Assault or use of criminal force to woman and stripping her of her clothes.** Whoever assault or uses criminal force to any woman and stripes her of her clothes and, in that condition exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine;
- III. **S. 366-A. Procreation of minor girl.** Whoever by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and with fine; and
- IV. **S. 509. Word, gesture or act intended to insult the modesty of a woman.** Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or fine, or with both.

The above provisions of law do not fully attract various other forms/acts of molestation as observed by the High Court, hence there is need to enact a specific law on the subject. This need is also highlighted in the report of "National Workshop on Child Sexual Abuse and Exploitation in Pakistan", organized by the Lawyers for Human Rights and Legal Aid (LHRLA) in April 2000 at under the action aid programme of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP). The report states that, "sexual abuse involves any violation of the rights of a child including severe forms i.e. rape or sodomy and also includes other activities of sexual nature that fall short of rape or sodomy e.g. acts, like fondling, stroking, exposure to adult genitalia, caressing, etc. The report further highlighted that "the crucial difference between abuse and exploitation is that when a child is exposed to or abused for the purpose of monetary gain. So the trafficking of children, sale for prostitution or any other purpose would categorize as exploitation".

In 1997, the Economic and Social Commission for Asia and the Pacific carried out a study on sexually exploited and abused children. The study was conducted with data and research from 12 countries in the South Asia Region including Pakistan. The purpose was to confirm the incidence of child sexual abuse and its redress in all provinces of the country and to follow a campaign of creating general awareness about this neglected issue. The study was carried on

children under 18 and, was carried out by the National Commission for Child Welfare and Development (NCCWD) and the provinces were delegated to various N.G.Os working within the indigenous areas. This study uncovered child sexual abuse and exploitation to be one of the least acknowledged and most neglected area of development. The study revealed that there exists no monitoring bodies to investigate complaints on any level within the country and that there is a shocking lack of awareness as regards this issue. It was further stated that sexual abuse is a taboo subject, more so if girl child is the victims, and in some areas, such incidents are suppressed. Moreover, in many areas, child sexual abuse is accepted as 'normal' and child sexual exploitation is also condoned in the name of tradition. The study goes on to state that girl children are married off, boys and girls 'sold' into prostitution and surprisingly, despite being illegal, it is a very openly conducted vice. Certain localities and venues were found to be more renowned for such practices for example local hotels, parks, brothels, shops and transport depots. The effects of this accepted cultural trend on children's physical and mental health were found to be more disturbing, with no knowledge of HIV testing or AIDS despite the thriving demand for unprotected sexual practice being the norm.

The study identified certain factors as contributing to the exploitation and vulnerability of children including the prevalence of large-scale illiteracy and lack of education in both adults and children, which further deteriorate the situation.

This study finally gives recommendations for devising a national strategy and plan of action to ensure the recovery and reintegration of the victims of this practice and taking preventive measures to eradicating this evil<sup>51</sup>.

In an Article published in the News dated 19 September 2001, it is mentioned that, "child sexual abuse plays a vital role in deforming a society's moral and emotional health. It is now scientifically proven that sexual abuse suffered during childhood causes significant harm to adult survivors of such abuse. In short child molestation should be acknowledged as not a domestic problem but a social problem".

The United Nations Convention on the Rights of the Child 1989, which Pakistan ratified in 1990, stipulates that:-

#### **Article 19**

1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the

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<sup>51</sup> National Workshop on Child Sexual Abuse And Exploitation, April 2000 P-3 & 4

child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment described hereafter, and, as appropriate, for judicial involvement.

### **Article 33**

State Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs, and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### **Article 34**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent-

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful practices.
- c) the exploitative use of children in pornographic performances and materials.

### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

The judgment of the High Court (State vs Abdul Malik) has also referred a survey report published in the DAWN dated 13th February, 2000 as under:-

#### **“945 Children abused last year.**

Report by our Official Correspondent.

Islamabad, February 12, A spokesperson for Sahil, an NGO working against child abuse, told a press conference here on Friday that during 1999 as many as 945 children were sexually abused by 1,629 men.

Sahil put out these figures by monitoring media for cases of child sexual abuse. The N.G.O. monitors 11 Urdu and English Newspapers regularly.

The Spokesperson for the Sahil said that out of the 945 reported cases, 56 per cent pertained to girls and 44 per cent to boys.

According to the statistics of the Sahil, out of 1,629 abusers, 1219 were acquaintances. About murder after sexual assault, the N.G.O, said 15 girls were gang-raped and 120 boys were assaulted before murdered. It said that 169 girls were gang-raped and 117 male children were sodomised.

Sahil’s data shows that 21 cases of incest were reported during January-December, 1999.



This is a confirmation for those who deny that incest occurs in Pakistan.

According to Sahil's figures, during this period, the abusers have targeted a majority of boys between the ages of 5-10 years and 10-15 years".

According to a recent study conducted by Sahil (NGO) reported in the DAWN dated 26th April 2001:

"As many as 201 cases of child sexual abuse were reported from all over the country during the period from January to March, 2001.

According to a study, conducted by 'Sahil', non-governmental organization (NGO) working against child sexual abuse, 47 per cent of the cases were reported from rural areas while 53 per cent from urban areas.

According to the research report, 419 men along with 11 female abettors sexually abused these children. Out of these 419 abusers, 357 (85 per cent ) were acquaintances, it said.

The study report revealed that out of the total sexual abuse cases, 89 (42 per cent) were reported from Sindh and 57 (28 per cent) from the Punjab while the remaining 55 from the other two provinces.

Giving further break up, the report said 107 (53 per cent) female children and 94 (47 per cent) male children were sexually abused during the said period. Moreover, 25 female children had been gang raped, the report further said.

He said that these 945 cases were just the tip of the iceberg. Sahil maintains that the majority of the cases go unreported due to social tendencies of denial and silence.

During the same period seven female children and eight male children were murdered after being sexually assaulted, the report further said. The NGO stated that the abusers mostly targeted (75.5 pc) male children and females (89 pc) between the ages of 16-18 years.

During this period, 98 cases of female children and 74 cases of male children were reported in police stations".

The offence of molestation in any form is an act of indecency but to commit this act with a child is highly undesirable which must be severely punished. It may be further stated that the offence of molestation is not only confined to children, it may also be committed against women and adults and as it is not expressly provided in the Pakistan Penal Code therefore, the offenders went unpunished. The Secretariat of the Pakistan Law Commission proposed an amendment in the Pakistan Penal Code to incorporate the act of " molestation" as offence and placed the proposal before the Commission reading as under.

**Section 354 B. Whoever does, with any person, any of the following acts**

- (i) bothers such person with sexual motive; or
- (ii) interferes with such person specifically sexually; or

- (iii) sexual exploitation of such person, which includes sexual perversion, fondling, stroking or caressing, pornography, or exhibitionism; or
- (iv) administers to such person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant or other similar substance and thereby renders, such person unconscious and engages in sexual act, or
- (v) persuades, induces, entices, or coerces such person for making sexual contact;

shall be guilty of an offence of molestation and shall be punished with rigorous imprisonment for a term which may extend to ten years and shall be also liable to fine.

The proposed amendment was considered by the Commission in its meeting held on 30th March 2002. The Commission agreed with the proposal in principle, and constituted a committee headed by Syed Afzal Haider, and comprising of a Mr. Abdul Qadir Halepota, Members of the Commission and Dr. Faqir Hussain, Secretary of the Commission to improve the expression of the proposed legislation and to make it more explicit. The said Committee held its meeting in the Secretariat of Pakistan Law Commission on 18th April, 2002 and revised the proposal reading as under:-

Whoever with sexual motive resorts to act of fondling, stroking, caressing, pornography, exhibitionism or inducing or intimidating any person, with or without his knowledge, to submit for such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

The issue again came before the Commission in its meeting on 18th May 2002, which approved the proposed amendment along with the consequential amendment in the Code of Criminal Procedure 1898.

The Commission also approved the following administrative measures which may help in diagnosing and curing the victim of child abuse.

- I. A well trained pool of child psychologist may be established for special care, rehabilitation of the victim of child abuse at national, provincial, district and tehsil level;
- II. the social welfare departments should mobilize their resources to create general awareness about child sexual abuse;
- III. Child abuse even if complained some time later the process of investigation should not be hampered on technical grounds;
- IV. special provisions should be made for compulsory psychological assistance from trained staff and separate health care and rehabilitation centers may be established for sexually abused children both male and female;
- V. there should be a national policy and plan of action against child abuse and the media should be involved to launch campaign for awareness as regards this issue of vital importance;
- VI. the NGOs may contribute in establishing child protective regime, raising awareness as most of the crimes committed against child are said to be crimes of omission or general societal ignorance;

- VII. appropriate steps should be taken to rehabilitate those helpless children who are exposed to all kinds of societal brutality ranging from drugs addiction to molestation and from begging to theft;
- VIII. more stress should be laid on incorporating training of sexual abuse victims in the curriculum of medical colleges, and medical students be taught how to deal with victims of child abuse.
- IX. child sexual abuse rehabilitation and treatment should be included in the syllabi for police, judicial officers, lawyers and medical doctors;

The recommendations of the Commission are sent to the Government for amending the Pakistan Penal Code and taking the required administrative measures. Draft amendment Ordinance is at Appendix -I.

### **Appendix-I AN ORDINANCE**

Further to amend the Pakistan Penal Code 1860 and the Code of Criminal Procedure 1898

**WHEREAS** it is expedient further to amend the Pakistan Penal Code 186 (Act XLV of 1860) and the Code of Criminal Procedure 1898 (Act V of 1898) for the purpose hereinafter appearing;

**AND WHEREAS** the President is satisfied that circumstances exist which render it necessary to take immediate action;

**NOW, THEREFORE**, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

**1. Short title and commencement.** -- (1) This Ordinance may be called the Criminal Law (Amendment) Ordinance 2002.

(2) It shall come into force at once.

**2. Insertion of Section 354-B, Act XLV of 1860.** In the Pakistan Penal Code 1860 (XLV of 1860), after Section 354-A, the following new Section shall be inserted, namely; -

“354-B. Molestation with sexual motive.- Whoever with sexual motive resorts to act of fondling, stroking, caressing, pornography, exhibitionism or inducing or intimidating any person, with or without his knowledge, to submit for such act, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

4. **Amendment of Schedule II, Act V of 1898.** In the Code of Criminal Procedure 1898, (V of 1898) in Schedule II, after the entries relating to Section 354-A, the following new entries shall be inserted, namely: -

1.	2.	3.	4.	5.	6.	7.	8.
354-B	Molestation with Sexual motive	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years or with fine or both.	Ditto

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President of Pakistan

## APPENDIX 2: INCEST LAWS IN OTHER ISLAMIC COUNTRIES

### **Egypt**

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Egypt's history carries many examples of marriages between siblings amongst all classes. Even after it was outlawed in other parts of Rome, marriages between close-blood relatives were allowed in the Egyptian province for about a century more.

The current law, as contained in the **Egyptian Penal Code**<sup>52</sup>, has the following provision on rape and incest:

*Any person who copulates with a female without her consent is punished by penal servitude for life or for a certain period of time. If the offender is related to the child or responsible for the child's upbringing or having authority over the child or serving her against salary or one of those previously mentioned, penalty of penal servitude of life is inflicted.*<sup>53</sup>

The law takes into account the age of the aggrieved, as well as the degree of closeness in the relationship between the survivor and the perpetrator.

### **Malaysia**

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Malaysian law defines incest as follows:

*A person is said to commit incest if he or she has sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under law, religion, custom or usage applicable to him or her, to marry the other person.*<sup>54</sup>

The offence of incest is punishable under **Section 376B (1)** of the Malaysian Penal Code, which provides:

*Whoever commits incest shall be punished with imprisonment for a term not less than six years and not more than twenty years, and shall also be liable to whipping.*

The Malaysian penal code goes on further to provide a defence to the charge of incest, in **Section 376 B (2)**:

*It shall be a defence to a charge against a person under this section if it is proved:*

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<sup>52</sup> Egyptian Penal Code No. 58 of 1937

<sup>53</sup> Article 267(i), *Penal Code No. 58 of 1937* [Egypt], August 1937, retrieved from <http://www.unhcr.org/refworld/docid/3f827fc44.html> on 13<sup>th</sup> December 2011

<sup>54</sup> Section 376(A) of the Penal Code of Malaysia, retrieved from <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf> on 13<sup>th</sup> December 2011.

*That he or she did not know that the person with whom he or she had sexual intercourse was a person whose relationship to him or her was such that he or she was not permitted under law, religion, custom or usage applicable to him or her, to marry that person; or*

*That the act of sexual intercourse was done without his or her consent.*

The law further provides under **Section 377E**:

*Any person who incites a child under the age of fourteen years to any act of gross indecency with him or another person shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to whipping.*

## **Turkey**

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The Turkish Criminal Code<sup>55</sup> deals with incest in cases of sexual molestation of children by imposing harsher punishments where the perpetrator is related or affiliated to the child.

Under **Child Molestation, Article 103 (1)** states:

*1) Any person who abuses a child sexually is sentenced to imprisonment from three years to eight years.*

*Sexual molestation covers the following acts:*

- a) All kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack of ability to understand the legal consequences of such act,*
- b) Abuse of other children sexually by force, threat or fraud.*

Subsection **(3)** deals with incest:

*In case of performance of sexual abuse by antecedents, second or third degree blood relations, step father, guardian, educator, trainer, nurse and other persons rendering health services and responsible from protection and observation of the child, or by undue influence based on public office, the punishment to be imposed according to the above subsections is increased by one half.*

The article imposes punishments as follows;

*(4) In case of execution of sexual abuse against the children listed in paragraph (a) of first subsection by use of force or threat, the punishment to be imposed is increased by one half.<sup>56</sup>*

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<sup>55</sup> Turkish Criminal Code, Official Gazette No. 25611 of 2004.

<sup>56</sup> Article 103, Turkish Penal Code, Law No 5237 of 2004. Retrieved from

...

(6) *In case of deterioration of corporal and spiritual health<sup>57</sup> of the victim as a result of offence, the offender is sentenced to imprisonment not less than fifteen years.*

## **Uzbekistan**

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Criminal Code of the Republic of Uzbekistan<sup>58</sup> defines Rape under **Article 118** as follows:

*Rape, that is, a sexual intercourse committed by force, threats, or abuse of helplessness – shall be punished with imprisonment from three to seven years.*

The Article goes on to read:

*Rape:*

- a) of a person known to be under eighteen years of age;*
- b) of a close relative;*
- c) committed by a member of a mass disorder;*
- d) committed by a special dangerous recidivist;*
- e) that resulted in a grave consequences,*

*shall be punished with imprisonment from ten to fifteen years.*

*Rape of a person known to be under fourteen years of age – shall be punished with imprisonment from fifteen to twenty years.*

Whilst the law does not define 'close', it can be assumed that it would include people within close degrees of blood.

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<http://www.justice.gov.tr/basiclaws/CriminalCode> on 13<sup>th</sup> March 2012

<sup>57</sup> Meaning bodily and mental health

<sup>58</sup> Criminal Code of the Republic of Uzbekistan, No. 2012-XII of 1994, (as amended in August 2001). Retrieved from: [http://www.ctbto.org/fileadmin/userupload/pdf/Legal\\_documents/nationalprovisions/UzbekistanCriminalCode220994.pdf](http://www.ctbto.org/fileadmin/userupload/pdf/Legal_documents/nationalprovisions/UzbekistanCriminalCode220994.pdf) [accessed on 13th December 2011]

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