




RESOURCE PACK FOR ORIENTATION OF

JUSTICE

SECTOR STAKEHOLDERS ON GENDER-BASED VIOLENCE LAWS

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LIST OF ACRONYMS

BPfA	Beijing Platform for Action	MLO	Medico-Legal Officer
CARAM	Coordination of Action Research on AIDS and Mobility	MLR	Medico-Legal Report
CBO	Community Based Organization	MNH	Madadgaar National Helpline
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	NADRA	National Database and Registration Authority
CHIP	Civil Society Human and Institutional Development Programme	NCHR	National Commission for Human Rights
CNIC	Computerized National Identity Card	NCSW	National Commission on the Status of Women
CRC	Convention on the Rights of the Child	NGO	Non-Governmental Organization
CrPC	Criminal Procedure Code	NPA	National Plan of Action
CSO	Civil Society Organization	NR3C	National Response Centre for Cyber Crimes
DC	Deputy Commissioner	PECA	Prevention of Electronic Crimes Act
DCO	District Coordination Officer	PPC	Pakistan Penal Code
DNA	Deoxyribonucleic Acid	PPWVA	The Punjab Protection of Women against Violence Act
DWPC	District Women Protection Committee	PPWVA	Punjab Protection of Women against Violence Act
DWPO	District Women Protection Officer	PTA	Pakistan Telecommunication Authority
ESCAP	Economic and Social Commission for Asia and the Pacific	SDC	Swiss Agency for Development and Cooperation
ESP	Essential Services Package	SDG	Sustainable Development Goal
EVAW	Ending Violence against Women	SHC	Sindh High Court
EVAWG	Ending Violence against Women & Girls	STD	Sexually Transmitted Diseases
EWCA	England and Wales Court of Appeal	UDHR	Universal Declaration of Human Rights
FIR	First Information Report	UK	United Kingdom
GBV	Gender-Based Violence	UN	United Nations
GO	Government Organization	UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
HRCIP	Human Rights Commission of Pakistan	UNDP	United Nations Development Program
ICAT	Inter-Agency Coordination Group against Trafficking in Persons	UNESCO	United Nations Educational, Scientific and Cultural Organization
ICCPR	International Covenant on Civil and Political Rights	UNHCR	United Nations High Commissioner for Refugees
ICCS	International Classification of Crime for Statistical Purposes	UNICEF	United Nations International Children's Emergency Fund
ICESCR	International Covenant on Economic, Social and Cultural Rights	VAW	Violence against Women
INL	Bureau of International Narcotics and Law Enforcement Affairs	VAWC	Violence against Women Centre
IOM	International Organization for Migration	VAWG	Violence against Women and Girls
IT	Information Technology	WHO	World Health Organization
KP	Khyber Pakhtunkhwa	WPO	Women Protection Officer
LHRLA	Lawyers for Human Rights and Legal Aid	WPU	Women Protection Unit
MDG	Millennium Development Goal		

MESSAGE FROM UN WOMEN

Violence against women is the most pervasive violation of human rights worldwide. Many women endure violence every day, be it physical, sexual or psychological, and everywhere whether it's their home, workplace, educational institutions, or public place. Violence cuts across all ages, cultures, social and faith groups.

While hundreds of cases of gender-based violence occur every day but only a few are highlighted and reported. Law enforcement agencies require to deal with GBV cases in a very serious, sensitive and compassionate manner, but, on the contrary, lack of awareness and recognition of gender-based violence, and of the existing laws already in place to protect women from violence lead to a constant neglect and disregard.

People who work in justice sector are usually not fully aware of the laws and proper interpretation of laws when it comes to supporting the GBV survivors and facilitating women and girls in the process of getting justice. Unfortunately, in addition to lack of awareness, insensitivity and apathy – by police officials to interrogators and medical examiners – contribute to increase the trauma the GBV survivors go through. A sensitive, systematic and coordinated response from the formal state system, and the judiciary, legal community and other members of the justice system is important to help change the situation for GBV survivors.



Right mechanism to prevent and address the issue of VAW at both federal and provincial levels is imperative to ensure speedy justice for GBV survivors. There's a dire need to strengthen the response mechanism and support services for survivors in order to bring perpetrators to justice and help survivors rehabilitate and reintegrate in society with confidence and agency.

The Constitution of Pakistan guarantees equality before the law and equal protection for every citizen. In recent years, Pakistan has worked towards creating progressive legal frameworks to curb Gender-Based Violence and safeguard the rights of women and girls.

For real change on the ground, implementation of laws remains imperative. To support translation of laws into means for change, we have partnered with specialists to develop this Resource Pack for orientation of justice sector stakeholders. This Resource Pack will help the justice sector stakeholders in understanding that violence against women is not just a personal matter but a structural and institutional issue, as it holds back half of the country's population from achieving their basic human rights and reaching full potential, and doing no or minimal efforts to control violence against women and girls is violation of Pakistan's international commitments, national and provincial laws and constitutional guarantees. The Resource Pack is an important instrument to build capacities of stakeholders in understanding the process of legal advice and assistance, dealing with GBV survivors, and handling and management of cases of GBV for speedy and effective dispensation of justice.

We are committed to deepening our efforts for ensuring that justice sector stakeholders understand GBV laws clearly and implement them effectively. I am confident that the justice sector and legal fraternity will be with us as we move towards achieving our shared goals of ending violence against women and providing protection and access to justice. Together we can create an equal and just society where women and girls live a life free from violence and with dignity and agency.

Sharmeela Rassool
Country Representative
UN Women Pakistan

MESSAGE FROM LAWYERS FOR HUMAN RIGHTS AND LEGAL AID (LHRLA)

“Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world”¹. “World Economic Forum ranked Pakistan 151 out of 153 countries in its most recent Gender Gap Report (2020)”².

Access to Justice and Fair Trial are two of the most fundamental and indispensable rights recognized by the Universal Declaration of Human Rights and enshrined in the Constitution of Pakistan. However, it is a sad reality that Pakistan ranked 120 out of 128 countries on the World Justice Project Report 2020 on the Rule of Law Index. This score places Pakistan at 5 out of 6 countries in the South Asian Region (WJP 2020).

We can fathom from the above-mentioned statistics that women and girl survivors of violence face many difficulties in accessing justice in Pakistan. This can be attributed to various factors including lack of awareness among duty bearers in the justice sector on the rights of survivors of violence in light of the pro-women laws and amendments that have been enacted at the national and provincial levels.

This Resource Pack will serve as an important tool since such information and knowledge regarding Gender-Based Violence (GBV) is critical to justice sector and this will contribute towards enhancing women and girls’ access to justice by building capacities of those who are the gatekeepers, facilitators and protectors of this fundamental human right.

I am thankful to UN Women for providing LHRLA this opportunity to develop this Resource Pack, which reflects UN Women’s commitment to gender equality and reinforcing the prevention and protection of women and girls from GBV across the globe.

From the LHRLA team, I would like to acknowledge Mr. Muhammad Ali Bilgrami, Programme Manager, for technical contributions; Mr. Muaz Shah for the content compilation; Mr. Abdul Hadi Advocate for his legal feedback in case-laws and legal insights on pro-women laws in Pakistan; Ms. Sana Jalbani, and legal interns including Mr. Qazi Ali Kamal, Ms. Yousra Akbar, Ms. Neha Zia, Mr. Nameer Patel, Ms. Meyral Sheikh and Ms. Ayesha Siddiqua for their input.

I would also like to acknowledge the authors, co-authors, editors and publishers of all content that is referenced, cited and used in compilation of this Resource Pack as outlined in the next section. Most importantly, we acknowledge the women and girl survivors in Pakistan who had the courage to come forward and fight for justice against all odds.

Zia Ahmed Awan
President



1 United Nations Sustainable Development Goals. Goal 5: Achieve gender equality and empower all women and girls (n.d.). Retrieved January 27, 2020, from <https://www.un.org/sustainabledevelopment/gender-equality/>

2 World Economic Forum. “Global Gender Gap Report 2020”. Geneva: The World Economic Forum, 2019.

ACKNOWLEDGEMENTS

This Resource Pack was designed and commissioned by UN Women Pakistan and developed and field tested by Lawyers for Human Rights and Legal Aid (LHRLA). It was finalized under the technical supervision of Saman Ahsan, Portfolio Manager, Ending Violence Against Women, Governance and Human Rights, UN Women Pakistan with support from Hafsa Mazhar, Ayesha Wadood and Kapil Dev from UN Women Provincial Sub-Offices and Muhammad Younas Khalid, Yasir Khan, Umer Ehsan and Habib Asgher from the Country Office. This Resource Pack also benefited from a thorough technical review by legal expert Benazir Jatoi.

We gratefully acknowledge the generous support of the Bureau of International Narcotics and Law Enforcement Affairs (INL), US Department of State for supporting this Resource Pack designed to provide the Justice Sector actors with a better understanding of Laws related to ending violence against women, thereby improving women's access to justice in Pakistan.

WORKS CITED

A lot of work has gone into the development of training materials in Pakistan and globally. In order to build upon these efforts, rather than reinventing the wheel, this Resource Pack has used extracts from the available and relevant materials. The following websites/ publications are cited heavily in the below-mentioned sections of this Resource Pack and we would like to acknowledge the authors and institutions that have published them:

- 1- Duban, Elisabeth and Dr. Ivana Radacic. "Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice", Council of Europe, 2017.

https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf

- ◆ Section I: Violence against Women/ Gender-Based Violence – An Overview. Session 1.
- ◆ Section II: The Conceptual Framework – Principles. Session 3.
- ◆ Section II: The Conceptual Framework – Principles. Session 4.

- 2- War Against Rape (WAR). "Sexual Violence Fact Sheet. Jan-Jun 2010". Karachi.

http://war.org.pk/WAR%20Webfiles/PDFs/fact-sheet-jan-jun-_2010.pdf

- ◆ Section I: Violence against Women/ Gender-Based Violence – An Overview. Session 1.
- ◆ Section II: The Conceptual Framework – Principles. Session 3.

- 3- Pakistan Law Site

www.pakistanlawsite.com/.

- ◆ Section III: National and Provincial Legal Frameworks on Gender-Based Violence/ Violence against Women and Girls. Session 5.
- ◆ Section III: National and Provincial Legal Frameworks on Gender-Based Violence/ Violence against Women and Girls. Session 6.
- ◆ Section III: National and Provincial Legal Frameworks on Gender-Based Violence/ Violence against Women and Girls. Session 7.
- ◆ Section III: National and Provincial Legal Frameworks on Gender-Based Violence/ Violence against Women and Girls. Session 8.

- 4- UN Women. "Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines". New York. 2015.

<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-en.pdf?la=en&vs=3648>

- ◆ Section I: Violence against Women/ Gender-Based Violence – An Overview. Session 1.
- ◆ Section II: The Conceptual Framework – Principles. Session 2.
- ◆ Section II: The Conceptual Framework – Principles. Session 3.
- ◆ Section II: The Conceptual Framework – Principles. Session 4.

Other sources, as well as those mentioned above, are cited where used in the footnotes.

INTRODUCTION

Background

“Violence against Women is one of the most pervasive violations of human rights in the world, one of the least prosecuted crimes, and one of the greatest threats to lasting peace and development.”³

“Violence directed towards women can, and does, take many forms and can have fatal consequences. It can be overt or subtle, verbal, psychological or physical, and can be directed towards any member of a community. Its forms can include sexual, physical, exploitative, economic, emotional or religious/ spiritual abuses. It may involve trafficking, forced marriages, rape as a weapon of terror or ethnic cleansing, or be experienced as harassment. The violence may take place in the home, at work, or in public institutions, and can occur across the lifespan of a woman. It cuts across all ages, cultures, social and faith groups.”⁴

The Constitution of Pakistan has certain guarantees towards all citizens including women, additionally, Pakistan has also signed several international commitments to ensure women’s rights and gender equality in the country.

“Sustainable Development Goal (SDG) No. 5 of the 2030 Agenda exclusively deals with achieving gender equality and empowering women and girls.”⁵ “This SDG is targeted to eliminate all forms of harmful practices and violence against women and girls and appropriate targets are set.”⁶

A great deal of progress has been made and many pro-women laws have been promulgated at the federal and provincial levels (which will be discussed in greater detail in this Resource Pack); however, GBV/VAW is still widespread and deep-rooted and its impact is greatly underestimated. On a daily basis, many cases of GBV especially VAWG are brought to light through the justice sector, legal community, human rights advocates as well as the media, but very seldom does justice prevail. This is mainly due to lack of awareness and recognition of gender-based violence and of the existing laws already in place to protect women from violence.

There is still no policy to prevent or address VAW at the federal or provincial level and the response and coordination mechanisms for victims seeking formal redress or support from state institutions are weak. Justice sector representatives are often unaware of the laws and even when they have the knowledge, they are unable to interpret the law to support survivors of violence who are seeking justice. Lack of gender sensitivity is another challenge and besides the legal community, other justice sector actors such as Medico-Legal Officers (MLOs) also are not sensitized about violence against women and its dynamics. Once the violence has occurred, survivors often face a second instance of harassment/ violence within the justice system that is otherwise obligated to protect and serve them. This diminishes their will and spirit to pursue justice for the wrongs done to them. The problem requires systematic and coordinated response from the formal state system, and the judiciary, legal community and other members of the justice system can play a significant role to help change the status quo.

This Resource Pack will help the justice sector stakeholders in understanding that violence against women is not just a personal matter but a structural/ institutional issue, because it holds back half of the population from achieving their basic human rights and reaching their full potential. Secondly, violence against women and girls is in violation of Pakistan’s international commitments, national and provincial laws and constitutional guarantees. And finally,

3 Puri, Lakshmi. “It is time for action to end violence against women: a speech by acting head of UN Women at the ACP-EU Parliamentary Assembly”. 18 June 2013. Brussels. <http://www.unwomen.org/en/news/stories/2013/6/it-is-time-for-action-to-end-violence-against-women-a-speech-by-lakshmi-puri>

4 Handbook on Effective Police Responses to Violence against Women, Criminal Justice Handbook Series (United Nations Publication, Sales No. E. 10. IV. 3) https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

5 Yadlapalli, S. Kusuma. Bontha V. Babu. “Elimination of violence against women and girls as a global action agenda”. National Institute of Health. 2017. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5556627/>

6 Bontha V. Babu. Yadlapalli, S. Kusuma. “Elimination of violence against women and girls in the Sustainable Development Goals”. National Institute of Health. 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5209644/>

that violence against women and girls is incorrectly justified under layers of cultural and religious explanations and defenses and only the judiciary has the capacity to unwrap and disassociate it from culture or tradition.

The Resource Pack

This Resource Pack has been developed to orient justice sector officials in Pakistan for understanding the process of legal aid/ assistance/ advice, client handling, and management of cases of GBV/ VAW for better dispensation of justice. It details pro-women laws and legislative provisions and serves as a reference guide that can be adapted to respond to the needs of each particular audience.

It is essential to understand that this Resource Pack will need to be adapted to the specific needs of the audience. Some sessions will be more or less relevant depending on the composition of the participants group, their existing knowledge or experience and the needs for further information. A sample agenda has been annexed to this document, however, the trainer will need to further adapt it to respond to the audience for each Orientation Session.

The Resource Pack is meant to be a contribution towards building a better understanding of structural violence and the capacity and commitment of the justice sector to address gender-based violence. It further aims to improve ways in which GBV/ VAW survivors can access justice sector institutions and individuals with more ease and convenience.

Objectives

- ❖ To increase awareness and knowledge of GBV/ VAW, its forms and underlying dynamics, and influence attitudes and behaviors.
- ❖ To enhance understanding of laws and legal provisions relating to GBV/ VAW in Pakistan.
- ❖ To equip justice sector officials for improved handling of GBV/ VAW cases by providing them with appropriate tools for ensuring proper, fair and full access to justice.
- ❖ To prepare the participants for responding to survivors of violence in a gender-sensitive, supportive and empathetic way.

What's Inside

This Resource Pack contains 3 substantive Sections as briefly described below. Under each Section, there are several sessions on different topics and within each session there are different parts. Each part begins with overall guidance to the facilitator on the methodology for conducting the session. This is followed by an elaboration of key concepts including definitions and relevant legislations. Definitions falling under case law are further elaborated to understand the laws in light of their interpretations in previous cases. There is then an explanation of the elements of GBV/ VAW under the respective laws. Lastly, case studies are provided for some sub-sections as per the requirement of the methodology.

- ❖ **Section 1: Introduction to GBV/ VAW** – While exploring the definitions of GBV and VAW from across the world, this Section explains the concept as a whole. It also discusses the ground realities of Pakistan with regard to GBV/ VAW.
- ❖ **Section 2: The Conceptual Framework & Principles** – This part of the Resource Pack delves into the foundations of justice, equality, and other principles in particular terms of GBV/ VAW cases. The Section also highlights best practices and takes guidance from the Essential Services Package (ESP) Guidelines developed by UN Women and other UN agencies. GBV/ VAW sensitivities have also been highlighted in order to achieve the objective of justice.
- ❖ **Section 3: The International, National & Provincial Legal Frameworks on GBV/ VAW** – This Section expounds ratified international laws, conventions, and human rights standards that specifically relate to the protection of women and children from violence, and includes national and provincial legislations on GBV/ VAW as well.

Guidelines for the Facilitator

As such, this is a Resource Pack and not a training manual, even though it does provide some guidelines for facilitators. It is expected that the facilitator(s) leading the sessions will be trained in both facilitation and training skills and in the legal aspects as the laws are very technical and require a thorough understanding for a facilitator to conduct the sessions.

General

- ◆ Engage with participants in an open, honest and participatory manner.
- ◆ Keep in mind that the aim of this orientation is to share knowledge and most importantly help participants develop their own understanding about the topics covered. Having a better understanding will help change their attitudes, behaviors and practices.
- ◆ Be clear, straightforward, respectful and approachable.
- ◆ Respect the views and feedback of the participants, encourage them to speak up and take part in discussions actively.
- ◆ Develop a rapport with participants by engaging with them through effective communication and facilitation skills to enrich the learning process and allow two-way learning.
- ◆ Focus on those showing less participation through the sessions; try to ascertain from their body language and other cues if they are following and understanding the topics being covered. Without putting them on the spot, try to engage them and speak up.
- ◆ Review the content of each session carefully and completely before the orientation. There is a facilitator's note at the beginning of each session for your guidance that helps you prepare for the orientation well in advance.
- ◆ Manage your time effectively. The duration of the orientation is short and there is a lot of content to be covered. The topics might spark lengthy discussions and also go off-track. Lead the sessions forward while keeping the participants satisfied that they are being heard.
- ◆ Provide copies of the laws mentioned herein (either print or electronic versions) to the participants for their quick reference during the orientation and in their practice.

Group Dynamics

The audience of this Resource Pack includes different actors from the justice sector including Judges, Prosecutors, Court Staff, Lawyers, Law Students, Medico-Legal Officers, Federal and Provincial Ombudsperson Offices Staff, Women Development and Social Welfare Departments, other Helplines and organizations working in the justice sector.

Some of the content in this pack may not be relevant to all groups. The facilitator's note at the beginning of the session will help you if the content is relevant and can be delivered to the group you are working with.

Gender Dynamics

When working with diverse groups, you need not only to sensitize them on issues related to gender but observe and address the gender dynamics of the group as well, which may fluctuate throughout the sessions. Norms and stereotypes being discussed could also be rooted in participating groups. Some conversations may act as a trigger for certain participants. Try to create a safe space for all participants. Observe and address comments or behaviors that may dismiss what a participant may be feeling. Never allow dismissive or disrespectful attitudes or comments. A participant may be a survivor or witness of abuse dealing with traumatic emotions, while another may realize he is a perpetrator and feels ashamed. Some participants may find it difficult to reflect on a certain topic within a diverse group and would prefer smaller groups of others belonging to the same sex or other identity. A safe space must be established to make sure that every participant is heard and respected. Hold the space, allow for people to keep quiet or even step out if they feel uncomfortable with the conversation, look at their body language and

non-verbal cues to assess whether to continue a discussion or give a break, reach out to participants who may seem quiet to ask if they are doing all right. Have a list of resources including psycho-social counselling and mental health support to share with participants who may need it.

Content Delivery

You may plan your sessions according to your requirements, resources and the group you are working with. A sample plan is provided for assistance.

Number of Participants and Seating Arrangement

As a general rule of thumb, the ideal number of participants for a training is between 12 and 30. More participants could be included in one batch if the level of their prior knowledge is high and is of the same level. In cases with low level of knowledge or large variety among the participants, the number should be kept smaller.

Seating arrangements will depend on the number of participants. A U-shaped or roundtable seating style is recommended if attendance is more than 15. This will provide the facilitator and co-facilitators a comfortable space to move around and interact with the participants. A circle arrangement is best suited for a training with 15 or less participants to make them comfortable and open during the discussion.

PowerPoint presentations:

This document is accompanied by a set of PowerPoint presentations with supplementary material to aid the facilitator. These presentations do not always correspond exactly to the Resource Pack and just summarize key points, i.e. the Resource Pack does not reflect a simple reading out of the PowerPoint presentations but contains additional information. The PowerPoint presentations are supporting material and facilitators, based on their training method, can determine if they would prefer to use all or some of the presentations.

What the participants should know after the orientation session:

- Awareness of Pakistan's international commitments and obligations as well as national and provincial pro-women laws, both criminal and civil.
- Recognition that violence is not a one-off or private incident but is part of a vicious cycle that has a wider impact on the family, community and the nation.
- Improved understanding of how the judicial procedures in a courtroom must take into account the social and psychological impact faced by a GBV survivor and how to best deal with this while ensuring fairness and justice.
- Awareness that the courtroom staff need to know and comply with the rules/ guidelines on how to deal with GBV survivors who seek recourse to the courts.
- Willingness to share the lessons learnt through the orientation with other colleagues to create a culture in the justice sector that is more conducive to appropriately dealing with GBV/ VAW cases.
- Understanding the need for commitment to work towards transforming policies at an organizational level (where relevant) to bring gender sensitivity not just to GBV/ VAW survivors but also female colleagues for encouraging and supporting them.
- Understanding of the importance of spreading awareness in general about gender equality in the wider public particularly regarding GBV/ VAW and its impact on overall society.



**SECTION I:
GENDER-
BASED
VIOLENCE/
VIOLENCE
AGAINST
WOMEN -
AN
OVERVIEW**

Objectives

Section I introduces the participants to the concept and international definitions of GBV/ VAW under different treaties and covenants, and also covers the acts and practices that are considered as GBV/ VAW and prevalence of GBV/ VAW in Pakistan while highlighting structural and institutional violence and discrimination against women.

Primary purpose of this Section is to make participants realize the existence, extent and impact of GBV/ VAW in Pakistan. A more specific purpose is to increase understanding of the terms and definitions among participants.

Note for the Facilitator

This Section is primarily aimed at sensitizing the participants and relates to all trainee groups.

As a general guideline, while delivering the content in this Section, the facilitator should first initiate discussion around terms and topics, then share the content herein using PowerPoint slides with the participants and ask for their feedback through a participatory discussion.

Introductory Session – Welcome & Introductions, Background, Ground Rules and Pre-test

Notes on Methodology:

The facilitator will open the session with a welcome note to the participants and encourage them to mark their attendance and complete the pre-test questionnaire in their materials.

Next the facilitator will introduce him/ herself and ask the participants to introduce themselves so that all participants are aware of who's who in the room (name, organization, designation, and brief information about area of work).

Following the introduction, the facilitator should set the ground rules with the help of participants to ensure smooth running of the orientation. These rules should be displayed in the orientation area with maximum visibility. During the orientation, the facilitator or participants may refer to the rules where deemed befitting.

Then the facilitator will introduce the orientation and its objectives, the Resource Pack, the project and organization implementing the orientation to the participants.

Facilitation requirements for session:

Co-facilitator to distribute materials listed below.

Attendance Sheets, Pre-test Questionnaires, charts, whiteboard and board markers.

SESSION 1 - GENDER EQUALITY, NON-DISCRIMINATION AND GBV/ VAW

Notes on Methodology:

The facilitator will ask the participants to divide themselves into groups of 3-5 members each and select a group leader to present their work in the plenary. The groups should discuss the following according to their understanding or experience.

- a) Gender equality and non-discrimination
- b) Definitions of GBV and VAW
- c) Difference between a victim and a survivor
- d) Types of gender-based violence prevalent in Pakistan

Once the groups have completed their work, the facilitator will ask them to present it one by one in the plenary. After the presentations, the facilitator will share the content on the above questions with the group and ask the participants to highlight the difference between the shared content and what they had presented.

This discussion should explore what stereotypes the participants have, how they learnt these ideas, how gender stereotyping by justice sector actors undermines women's struggle to access justice and how to address the situation.

Key Concepts and Definitions:

Non-Discrimination and Equality on the Basis of Sex/ Gender

Gender Equality is one of the fundamental values of the international legal framework. Almost all human rights covenants prohibit discrimination on the basis of sex or gender.

At the national level, the Constitution of Pakistan guarantees equality to all its citizens and addresses non-discrimination in the following article:

“Article: 25: Equality of citizens clause in the Constitution states:

25. Equality of citizens.—

- 1 All citizens are equal before law and are entitled to equal protection of law.*
- 2) There shall be no discrimination on the basis of sex.*
- 3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”*

Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to which Pakistan is a signatory, defines discrimination in its Article 1 as;

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

This means that women and girls should be protected against all forms of discrimination – direct or indirect. Direct discrimination is when a person is treated differently based on their sex than another who has been or would be treated under similar circumstances. For example many countries practice nationality laws that directly discriminate

against women and children. Fathers are allowed by law to transfer their citizenship to their children but mothers cannot. Without citizenship the children are excluded from healthcare, education and other services offered to citizens.

Indirect discrimination comes from gender neutral laws and policies which seem to give equal opportunities and access to both men and women but in practice women are disadvantaged due to historical discrimination caused by the patriarchal system. For example a newspaper company is hiring an editor and invites both men and women reporters to apply with condition that the candidate must have past experience of all news-desks including crimes desk. But this indirectly disqualifies all the women reporters as there is another policy that disallows women from serving on the crime-desk due to the high risk involved. As a result, no woman can apply for the job.

It is important to keep in mind that non-discrimination for women must exist both de jure (by Law) and de facto (by taking into account and address historical discriminations that prohibit women from enjoying their rights).

Justice sector professionals should be sensitized not only about differences between genders, but also to gender subgroups having certain vulnerabilities that put them at risk for certain human rights abuses. For example, the practice of forced marriages of Hindu girls in Sindh illustrates how gender discrimination overlaps and intersects with another form of discrimination that is religion in this case.

Gender Stereotypes

“Gender stereotypes are preconceived ideas whereby females and males are arbitrarily assigned characteristics and roles determined and limited by their sex.”⁷

Gender stereotypes stem from cultural and social norms and values about the status and functions of women and men in a society.

“Gender stereotypes can be categorized as follows:

SEX STEREOTYPES – a general view about the physical, including biological, emotional and cognitive, attributes of women and men (e.g. women are prone to lying, men are expected to be aggressive and mentally strong)

SEXUAL STEREOTYPES – a general view about sexual attributes of women and men (e.g. the notion that women want to be sexually possessed)

SEX ROLE STEREOTYPES – views about male and female roles (e.g. women take care of children and men are heads of households)⁸

Gender-Based Violence

CEDAW refers to the term *Gender-Based Violence (GBV)* as *“any acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect women because they are women or affect women disproportionately.”⁹*

It should be noted that men can also be victims of GBV in a similar definition.

The Council of Europe defines GBV as *“Violence that is directed against a person because of that person’s gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim”¹⁰*

7 Council of Europe Gender Equality Strategy 2014-2017, page 9.

8 Duban, Elisabeth and Dr. Ivana Radacic. “Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice”. Council of Europe. 2017. https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf

9 CEDAW, General Recommendation No. 19, para. 6, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

10 DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 - establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. <https://eur-lex.europa.eu/eli/dir/2012/29/oj>

The United States Strategy to Prevent and Respond to Gender-based Violence Globally, defines GBV as *“violence that is directed at an individual based on his or her biological sex, gender identity, or perceived adherence to socially defined norms of masculinity and femininity. It includes physical, sexual, and psychological abuse; threats; coercion; arbitrary deprivation of liberty; and economic deprivation, whether occurring in public or private life. Gender-based violence takes on many forms and can occur throughout the life cycle.”*¹¹

Violence against Women

The term Violence against Women (VAW) refers to *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*¹²

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, provides the following definition of violence against women:

*“Violence Against Women’ (VAW) is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of Gender-Based Violence (GBV) that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*¹³

Gender-Based Violence OR Violence against Women?

*“The terms “GBV” and “VAW” are often used interchangeably, since most gender-based violence is perpetrated by men against women. GBV, however, includes violence against men, boys, and sexual minorities or those with gender-nonconforming identities. As such, VAW is one type of GBV. While violence against the other groups mentioned is often rooted in the same gender inequalities and harmful gender norms, this resource guide will focus on VAW. This emphasis acknowledges the heightened vulnerability of females from childhood throughout their lifecycle and the profound, long-term impacts of sexual and physical violence on women and girls throughout their lives.”*¹⁴

Having said that, good practices can apply for cases of GBV against men as well.

GBV/ VAW and the Justice System

According to UN Women’s Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines, *“formal justice systems are justice systems that are the responsibility of the State and its agents. They include government supported laws, and institutions such as police, prosecution services, courts, and prisons that have the responsibility to enforce and apply the laws of the State and to administer the sanctions imposed for violations of laws.”*¹⁵

International human rights instruments also provide guidelines for the formal justice system on dealing with GBV/ VAW. The Beijing Platform for Action (BPfA) calls on national governments to:

*“Promote an active and visible policy of mainstreaming a gender perspective in all policies and programs related to violence against women; actively encourage, support and implement measures and programs aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, ... and develop strategies to ensure that the re-victimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices.”*¹⁶

‘Victim’/ ‘Survivor’

The terms ‘Victim’ and ‘Survivor’ are used to refer to the person who is the subject of any type of violence. Often

11 https://pdf.usaid.gov/pdf_docs/PDACT888.pdf

12 United Nations 1993, Declaration on the Elimination of All forms of Violence against Women, United Nations: Geneva, Article 1.

13 Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://rm.coe.int/168046031c>

14 World Bank, “Violence Against Women and Girls - Introduction <https://www.worldbank.org/content/dam/Worldbank/document/Gender/VAWG%20Resource%20Guide%20Introduction%20July%202014.pdf>

15 UN Women. “Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines”. p. 9. New York. 2015.

16 Beijing Platform for Action, Section D, Para. 124(g), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

these terms are used interchangeably, however there is a nuanced difference between them. ‘Victim’ connotes an attempt to recognize *“the enormity of the system of gender-based discrimination that women and girls face”*. Whereas the term ‘survivor’ is used *“as a way of reflecting the agency, resilience and courage of women and girls subjected to violence.”*¹⁷

Distinguishing between the terms, victim and survivor, Council of Europe notes the following:

*“Increasingly, the term survivor is used to describe a woman who has been subjected to gender-based violence. This term is preferred, especially in the context of support and other social services, because it is more empowering. However, in the legal context, the term victim is appropriate to refer to the injured party, whether or not they have survived violence, and, therefore, it is the term used often legally. In the manual since we encourage a survivor-centered approach, “survivor” is used more often.”*¹⁸

Forms of GBV/ VAW prevalent in Pakistan

GBV is now widely recognized as a global epidemic that holds back individuals, families and communities and its widespread impact burdens the health and economic infrastructures of any country. Pakistan is no different. There are many forms of GBV/ VAW prevalent in Pakistan.

“The National Commission on the Status of Women has identified the following as forms of violence against women and girls in Pakistan:

- *Physical violence which includes burning and/or throwing of corrosive substances, disfigurement, nutritional deprivation, forced abortion, castigation of women for not having produced a son and ‘heir’; depriving girls of adequate levels of nurture, nutrition or education; domestic violence; bonded labor.*
- *Harmful practices that include honor killings, Vani/ Sawara (under whatever local/ cultural name it may be done), forced conversion and marriage of girls, stoning, forced and early childhood marriages, marriage to the Quran, female genital mutilation.*
- *Sexual violence including rape, sexual harassment, commercial exploitation, sexual and reproductive violence, trafficking and kidnapping (internal and cross border) for sexual servitude and domestic labor, violence and abuse against women in prisons/ police custody,*
- *Psychological and economic abuse including violence, which includes emotional abuse; denial of financial resources/ income; inheritance deprivation of women.*
- *Violence against women in the political arena including denial to attend political gatherings; to vote; political participation at any level of the political process.”*¹⁹

Types of GBV/ VAW

Out of the various forms of violence, this Resource Pack will focus on the following:

- ◆ Sexual Violence: Rape and Sexual Assault
- ◆ Physical Violence: Physical Assault
- ◆ Harmful Practices: Forced Marriage
- ◆ Psychological and Emotional Abuse

17 A Practitioner’s Toolkit on Women’s Access to Justice Programming, MODULE 3: Ending Violence Against Women, p.12, https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module3.pdf

18 Duban, Elisabeth and Dr. Ivana Radacic. “Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice”, Council of Europe, 2017. https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf

19 National Commission on the Status of Women: Standardized Indicators on Violence Against Women in Pakistan, 2015.

SESSION 2 - TYPES OF GBV/ VAW

Notes on Methodology:

The facilitator will ask the participants to divide themselves in 4 Groups and then assign each group one of following topics:

- Group 1: Rape & Sexual Assault
- Group 2: Physical Abuse
- Group 3: Forced Marriage
- Group 4: Psychological/ Emotional Abuse

Then the facilitator will ask each group to prepare responses to the following questions in respect to their topic:

- Define the type of violence assigned to your group.
- Describe behaviors towards survivors of the type of violence assigned to your group by family, community, police, prosecutors, defense lawyers, court staff and judges.
- Describe problems faced by survivors of this type of violence in reporting the crime, investigation, medico-legal and court procedures and proceedings.
- Propose solutions to problems you identified especially relating to the nature/ classification of your group and field.

The facilitator should also advise the groups to select a group leader to present their work in the plenary. Once the groups are done with their assignments, the facilitator will ask them to present in the plenary.

After the group presentations, the facilitator will share the content related to their assignments and take feedback on the differences they find between the two. The facilitator will engage the participants in discussion especially regarding the facts and figures shared in the content.

Facilitation requirements for this session:

Co-facilitator required for managing the multimedia in case a slide clicker is not available, noting down important points and to distribute material listed below:

Charts, and board markers.

Key Concepts and Definitions:

Rape

Rape is a form of GBV, usually involving sexual intercourse. The International Classification of Crime for Statistical Purposes (ICCS) defines rape as a *“sexual penetration without valid consent or with consent as a result of intimidation, force, fraud, coercion, threat, deception, use of drugs or alcohol, abuse of power or of a position of vulnerability, or the giving or receiving of benefits.”*²⁰

Rape is usually perpetrated by men against boys, women, and girls; women are usually assaulted more often than boys and girls and usually by someone they know. Rape may cause severe physical injury or have additional effects on the physical health of the victim, such as acquiring a sexually transmitted infection or becoming pregnant. In addition to physical harm resulting from the act, victims of rape can be severely traumatized and may suffer from post-traumatic stress disorder.

20 European Institute of Gender Equality, ANALYSIS OF NATIONAL DEFINITIONS OF RAPE: Report on the quality of the GBV data in the Database October 2016; https://eige.europa.eu/sites/default/files/documents/database/gbv_natdefn_ipv.pdf

It is estimated that *“during her lifetime, one in five women in the world will become a victim of rape or attempted rape.”*²¹ According to the American Medical Association (1995), *“sexual violence, and rape in particular, is considered the most under-reported violent crime.”*²² The rate of reporting, prosecution and convictions for rape varies considerably in different jurisdictions. According to a study by Human Rights Watch, *“there is a rape once every two hours”*²³ and *“a gang rape every eight hours.”*²⁴

In Pakistan, actual figures on rape incidents are very difficult to come by. Rape is often not reported by survivors for fear of stigma, lack of support system and the belief that justice will not be served. Therefore, the figures quoted below are not considered definite, and rights activists and organizations working on the ground, believe that these figures are only the tip of the iceberg and far greater incidents of rape take place but remain unreported.

War Against Rape (WAR), an NGO with a mission to publicize the problem of rape in Pakistan, has documented the severity of the rape problem and the indifference on part of the police in Pakistan. As reported by WAR in 2008, some of its members were assaulted by a religious group as they tried to help a female victim of gang-rape identify her assailants. According to Aurat Foundation, reported cases of rape/ gang rape were 1,515 in 2014. The Human Rights Commission of Pakistan in its 2017 Annual Report noted that the number of reported rape cases was 3,238. According to Punjab Commission on Status of Women, 10,000 rape cases were reported during 2014-2017 in Punjab.

Legal provisions of the rape law are detailed in a later part of the Resource Pack.

Post-Rape Violence

Following a rape, a victim/ survivor may continue to face violence or threats of violence from the rapist, and, in many cultures, from the victim’s own family and relatives. Violence or intimidation of the victim may be perpetrated by the rapist or by friends and relatives of the rapist, as a way of preventing the victim from reporting the rape, punishing her for reporting it, or forcing her to withdraw the complaint. On the other hand, perpetrators could be the relatives of the victim, bent upon punishing her for “bringing shame” to the family. This is especially the case in cultures where female virginity is highly valued and considered mandatory before marriage; even in extreme cases, rape victims are killed in the name of honor. Victims may also be forced by their families to marry the rapist in order to restore the family’s “honor”.

Threats or fear of violence after rape is another widely known reason why survivors of rape do not come forward to report the incident. Structural support mechanisms like psychological support, safe homes for survivors facing dangers to their life and appropriate healthcare are also weak or non-existent. Medico-legal processes can further traumatize the victim and in most of the cases, Medico-Legal Officers do not provide concrete conclusions leaving rape survivors without any proper evidence in a court of law to support their claim.

Sexual Assault

Sexual assault is defined by World Health Organization (WHO) as *“any unwanted or forced sexual act committed without consent”*.²⁵ It is a form of sexual violence that stops short of rape or attempted rape i.e. that does not necessarily involve penetration. For example, it could include sexual touching and fondling, groping, child sexual abuse or the torture of the person in a sexual manner. Genital mutilation of any sort would also fit in this category.

Perpetrators of sexual assault can be strangers, intimate partners (husband, fiancé and boyfriend) or even family members. This can include what is defined as date violence as well as domestic violence. Such incidents occur both in public and private spheres, with survivors from all socio-economic, ethnic, racial backgrounds and age groups.

21 United Nations Development Fund for Women, “Violence against women: facts and figures”, November 2007, www.unifem.org/gender_issues/violence_against_women/facts_figures.php

22 AMA (1995). Strategies for the treatment and prevention of sexual assault. Chicago, Illinois: American Medical Association, OCLC 33901581.

23 Gosselin, Denise Kindschi (2009). Heavy Hands: An Introduction to the Crime of Intimate and Family Violence (4th ed.), Prentice Hall. p. 13. ISBN 978-0136139034.

24 Foerstel, Karen (2009). Issues in Race, Ethnicity, Gender, and Class: Selections. Sage. p. 337. ISBN 978-1412979672.

25 WHO Sexual Exploitation and Abuse Prevention and Response Policy and procedures, March 2017; https://www.who.int/about/ethics/sexual-exploitation_abuse-prevention_response_policy.pdf?ua=1

Issues of power and control are at the heart of sexual violence. The perpetrator uses such acts of violence, especially when repeated as a series of behaviors to feel and exert power and dominance.

Physical Assault

This refers to any act of physical violence that is not sexual in nature. Examples include hitting, slapping, choking, cutting, shoving, burning, shooting or use of any weapons, acid attacks or any other act that results in pain, discomfort or injury. The Pakistan Penal Code (PPC) covers a plethora of these acts within this definition and there have been legislative measures otherwise to address more specific acts of physical assault (i.e. acid attacks via the Acid Control and Acid Prevention Act 2011).

Forced Marriage

A forced marriage is a marriage in which one or both of the parties are married against their will. Forced marriages are common in South Asia, the Middle East and Africa. The customs of bride price and dowry that exist in many parts of the world, contribute to this practice.

A forced marriage is also often the result of a dispute between families, where the dispute is “resolved” by giving away a female from one family to the other, known as Vani or Sawara. The custom became illegal in Pakistan between 2005 and 2011 (different actions from different courts and the government were taken during this time period), however, it still continues on the ground. Recently, courts in Pakistan have begun taking serious note and action against the continuation of this practice. *“The Supreme Court of Pakistan took Suo Motu notice in October 2012 to help stop Vani of 13 minor girls by a Jirga²⁶ in Dera Bugti, Balochistan. The Jirga was held by Mir Tariq Masroor Bugti, a Member Provincial Assembly of Balochistan. A three-member bench ordered Chief Secretary Balochistan, Deputy Commissioner Dera Bugti to present the girls and persons responsible.”²⁷*

Another form of forced marriage is child marriage, which is legally prohibited under the national Child Marriage Restraint Act 1929 (No XIX), introduced by the founder of Pakistan, Muhammad Ali Jinnah while he was a member of the British Indian Legislative Assembly. Under Section 2 of the Act, minimum age for marriage is 18 years for a male and 16 years for a female. The Sindh Child Marriage Restraint Act 2013 comes as the only provincial law to increase the age limit to 18 years for both male and female. At federal level, the Amendment Bill for the Child Marriage Restraint Act 1929 was passed by Senate in 2019; however, its passage by the National Assembly and endorsement by the President is still awaited; hence, the legal age of marriage for females is still 16 years in Capital Territory. Regrettably, owing to the lack of a proper implementation mechanism, the occurrence of child marriages is widespread throughout Pakistan.

Psychological/ Emotional Abuse

This is infliction of mental or emotional pain or injury. Examples include: threats of physical or sexual violence, intimidation, humiliation, rejection, forced isolation, stalking, verbal harassment, unwanted attention, bullying, abusive remarks, gestures or written words of a sexual and/or menacing nature, destruction of cherished things, etc. It can also include financial abuse which is defined as *“Any act or behaviour which causes economic harm to an individual. Economic violence can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony. The control mechanisms may also include controlling the victim’s access to healthcare services, employment, etc.”²⁸*

As mentioned above, while it is difficult to generate statistics with regard to GBV incidents, it is believed that a *“staggering 32 per cent of women have experienced physical violence in Pakistan and 40 per cent of ever-married women have suffered from spousal abuse at some point in their life.”²⁹* Some studies even indicate higher numbers in Pakistan – *“70-90% women have suffered some form of domestic violence in their lifetime.”³⁰*

26 Jirga: Feudal landlords and other community leaders hold local council meetings (known as Panchayats or Jirgas) in Pakistan to settle feuds and impose tribal penalties on perceived wrongdoers, including fines, imprisonment, inflicting harm or injury, or even at times death.

27 Web Desk. “Supreme Court takes suo motu notice of Balochistan Vani incident”, The Express Tribune 9 Oct. 2012; Tribune 7 Jul. 2019, <https://tribune.com.pk/story/449068/supreme-court-take-suo-motu-notice-of-balochistan-vani-incident/>

28 EIGE’s Gender Equality Glossary & Thesaurus. <https://eige.europa.eu/thesaurus/terms/1096>

29 UNFPA Pakistan. <https://pakistan.unfpa.org/en/topics/gender-based-violence-6>

30 Gosselin, Denise Kindschi (2009). Heavy Hands: An Introduction to the Crime of Intimate and Family Violence (4th ed.). Prentice Hall. p. 13. ISBN

In a 2017 study, it was noted that *“70% of women and girls experience physical or sexual violence in their lifetime by their intimate partners and 93% women experience some form of sexual violence in public places in their lifetime.”*³¹ Even though these figures are alarmingly high, statistics do not accurately represent the full extent of cases. In addition, it has been found that *“One in two Pakistani women who have experienced violence never sought help or told anyone about the violence they had experienced.”*³²

Structural Violence and Discrimination

In addition to the forms of violence discussed above, there is another form of violence known as **“structural violence”**, which is also referred to as institutional violence. Unlike physical violence, which is often tangible, **indirect or structural violence** is more intangible and therefore, difficult to recognize and counter in most of the cases. According to the UN Special Rapporteur on violence against women, institutional or structural violence is *“any form of structural inequality or institutional discrimination that maintains a woman in a subordinate position, whether physical or ideological, to other people within her family, household or community.”*³³

The concept was first introduced to mean a social structure that prevents a person from meeting their basic needs. Structural violence helps to explain *“the multiple and often intersecting forces that create and perpetuate inequality on multiple levels, both for individuals and communities.”*³⁴ These limitations placed on individuals could be political, economic or social. Structural violence would therefore include gender and family violence, state violence and police violence.

In Pakistan, GBV/ VAW is committed both in its physical and structural dimensions. Denial of rightful resources, opportunities and services are a form of discrimination but it is so systemic and repetitive it is also considered structural violence as it leads to women being and remaining in disadvantaged positions in both public and private spheres of their lives. Some examples of structural violence in Pakistan include the practice of denial of women to inheritance despite being decreed by religious and temporal laws; economic disenfranchisement including earnings forcibly taken by an intimate partner or family member; a woman being prevented from using contraceptives; restriction on accessing education; non-recognition of women farmworkers and payment of lesser wages to them; sexual harassment at the workplace; discriminatory laws; and biased attitude of state institutions such as the police or judiciary towards women victims/ survivors. Institutional violence also includes physical violence in the home such as domestic violence because the family structure is also an institution.

While the Government of Pakistan has passed various laws to redress survivors of gender-based violence, *“the conviction rate for violence against women and girls sits at only 1-2 %.”*³⁵ Resources and services required for women survivors of GBV/ VAW in addition to the police and judiciary, remain scarce. Health services personnel are inadequately equipped, referral systems are limited, and insufficient training on GBV/ VAW combined with low investment in human capital enhance the vulnerability of women. In addition, the judiciary’s procedures and attitude towards survivor do not take into consideration the underlying causes of violence, the discrimination that exists against the survivor, and the difficulties - structural and social - that she had to face to come forward. These gaps exist on the backdrop of a structurally and culturally patriarchal society, where social norms promote gender-based abuses, disclosure to violence is discouraged and women are often blamed for their abuse.

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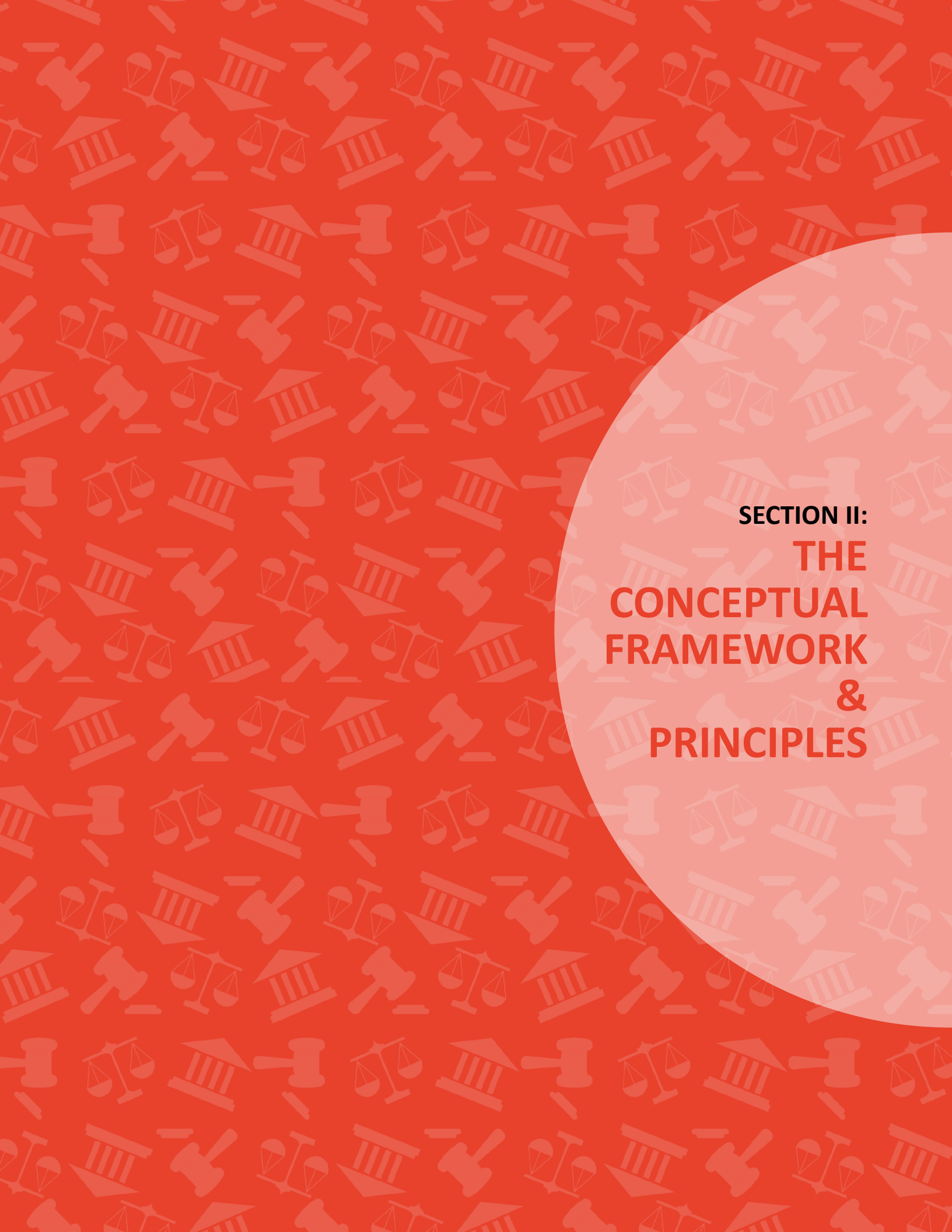
31 Kazi, Mudaser. “93% of Pakistani women experience sexual violence”. The Express Tribune 8 Mar. 2017: Tribune. 7 Jul. 2019, <https://tribune.com.pk/story/1348833/93-pakistani-women-experience-sexual-violence/>

32 UNFPA Pakistan. <https://pakistan.unfpa.org/en/topics/gender-based-violence-6>

33 Report of the Special Rapporteur on violence against women 2011.

34 What is structural violence? <https://www.thoughtco.com/structural-violence-4174956>

35 UNFPA Pakistan. <https://pakistan.unfpa.org/en/topics/gender-based-violence-6>



**SECTION II:
THE
CONCEPTUAL
FRAMEWORK
&
PRINCIPLES**

Objectives

Section II introduces core concepts that explain women's access to justice and formulate the framework of this orientation session. It aims to help trainees gain an understanding of variety of the aspects that are instrumental in achieving the goal of enhanced women's access to justice. Guidelines from the Essential Services Package on Justice and Policing have also been introduced in this section. These guidelines have been developed through the United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence, a partnership by UN Women, UNFPA, WHO, UNDP and UNODC, that aims to provide greater access to a coordinated set of essential and quality multi-sectoral services for all women and girls who have experienced gender-based violence.

Note for the Facilitator

This Section primarily focuses on women's access to justice and relates to all trainee groups. As a general guideline, the facilitator should first share related slides using PowerPoint and then generate discussion around discussion points within the topics.

Suggested activities include quick brainstorming session leading towards plenary discussion.

SESSION 3 - CORE PRINCIPLES

Notes on Methodology:

The facilitator will generate a discussion by asking the following questions in the plenary from all participants.

- Who are duty bearers in the Justice System?
- Who is a rights holder in GBV/ VAW cases?
- What is a survivor-centered approach?
- What is gender equality?

The facilitator will further expand discussions by asking follow-up questions on each topic from the participants. He/ she will then complement the information provided by the participants with additional information from the notes below.

Facilitation requirements for this session:

Co-facilitator required for presentation control, noting down important points and to distribute material listed below:

Charts and board markers.

Key Concepts and Definitions:

Human Rights-Based Approach

Violence against women and girls is a grave human rights violation. As a human rights issue enshrined in the CEDAW, and other international and regional human rights instruments, it should be recognized that this phenomenon violates the principle of equality between men and women and persists because of this inequality. As such, approaching violence against women from a rights perspective requires that gender inequality is addressed as a root cause, and that women's rights and freedoms as articulated by CEDAW are upheld. States are obligated to promote and protect these human rights and all interventions should be designed and implemented with this understanding.

A human rights-based approach requires developing the capacities of 'duty-bearers', on the concepts of human rights and gender, what they mean and how they can be applied in the context of violence against women. These include the judiciary, which interprets the legislators' intentions in the law to ensure that the justice is served, as well as those that implement the law including the security/ police, health and education personnel, among others.

Examples of ensuring a human rights-based approach include:

- ❖ Justice sector procedures take into account the gender-based nature of this crime and the fact that women survivors face stigma and discrimination, financial constraints, as well as physical limitations with regard to accessing a police station or a court of law that may deter them from reporting or filing a case right away.
- ❖ Women's safety, confidentiality and anonymity is maintained at all times.
- ❖ Judges ensure that court staff are well-versed with the sensitivity of GBV/ VAW case, the vulnerability of the victim, her family and witnesses, and fulfil their responsibility towards the survivor as formal institutions of the state.
- ❖ Healthcare providers uphold a woman's right to make her own decisions related to reporting abuse or taking legal or any other action.
- ❖ Police understand that it is their duty to intervene in domestic violence situations, even when it occurs in the privacy of a home.

A human rights-based approach also requires developing the capacities of ‘rights holders’ (i.e. women and girls), so that they can avail themselves the rights to which they are entitled. In practical terms, examples include:

- ❖ Ensuring services are available, accessible and known to women and girls.
- ❖ Implementing awareness-raising campaigns on zero tolerance for violence to reduce stigma and change attitudes that tolerate this human rights violation.
- ❖ Undertaking legal rights training for women and girls.
- ❖ Engaging with customary, traditional and religious leaders and influencers (who ascribe to human rights and gender equality) to reach communities especially underserved populations, such as the elderly, women with disabilities, immigrants and ethnic minorities, with whom they have frequent interactions.

Survivor-Centered Approach

A survivor-centered approach means that all those concerned with the incidents of violence against women in any form or capacity, prioritize the rights, needs, and wishes of the survivor. Essentially, a survivor-centered approach applies the human rights-based approach to ensure that survivors’ rights and their needs are put first and foremost. The survivor has a right to:

- ❖ Be treated with dignity and respect instead of being exposed to victim-blaming attitudes.
- ❖ Choose the course of action in dealing with the violence instead of feeling powerless.
- ❖ Privacy and confidentiality instead of exposure.
- ❖ Non-discrimination instead of discrimination based on gender, age, race/ ethnicity, ability, sexual orientation or any other characteristic or on the basis of the type of violence that a survivor has been subjected to.
- ❖ Receive comprehensive information to help her make her own decision instead of being told what to do.

According to UN Women’s Essential Services Package (ESP) Guidelines, Victim/ survivor-centred approaches place the rights, needs and desires of women and girls at the centre of focus of service delivery. This requires consideration of the multiple needs of victims and survivor, the various risks and vulnerabilities, the impact of decisions and actions taken, and ensures that services are tailored to the unique requirements of each individual woman and girl. Services should respond to her wishes.

The survivor-centered approach is based on a set of principles and skills designed to guide professionals - regardless of their role - in their engagement with women and girls who have experienced sexual or other forms of violence. It aims to create a supportive environment in which the survivor’s rights are respected and in which she is treated with dignity and respect. The approach helps to promote the survivor’s recovery and her ability to identify and express needs and wishes, as well as to reinforce her capacity to make decisions about possible interventions (UNICEF, 2010). Providers must have the resources and tools they need to ensure that such an approach is implemented.

Advancing Gender Equality and Women’s Empowerment

Gender equality is a fundamental human right as guaranteed in Pakistan’s Constitution and the empowerment of women and girls is critical to building peace, reducing poverty, growing our economy, and achieving sustainability.

As a global community, we have made some significant progress in many areas yet we can and must do more. The realization of true gender equality and women’s empowerment remains a critical challenge in Pakistan. The power dynamics of gender are still present in the home, in the workplace, in politics, in government, in commerce, and in our everyday relationships. In a recent analysis by Women, Peace, and Security Index; *“Pakistan came in a dismal 4th from last out of 153 countries analyzed at rank 150 – the 4th worst country for women.”*³⁶

36 Georgetown Institute for Women, Peace & Security. “Women, Peace & Security Index”. 29/11/2017, <https://giwps.georgetown.edu/wp-content/uploads/2017/10/WPS-Country-Ranking.pdf>

Eliminating inequality requires the transformation of social norms, power structures and power relations. Not only that, but we must re-examine and challenge our existing social, political, legal, and economic structures. In order to do this, we must change attitudes and behaviors, recognizing that the gender stereotypes and subtle sexism we encounter every day are part of the problem. These stereotypes, norms, and practices too often determine what opportunities and resources women, men, and gender-diverse people have access to, limiting their participation in communal decision-making.

Age Appropriate and Culturally Sensitive

One size does not fit all. This should be given serious reflection when approaching the issue of GBV/ VAW in any community. Understanding cultural and age appropriate sensitivity enables us to learn about and understand people whose needs may be different from ourselves, thereby becoming better able to serve them within their own communities.

Often, it can be seen that imposing an external norm may cause friction and worsen a situation. Similarly, this is the case when dealing with different age brackets – not all solutions can be used for different age groups. **Mostly, young girls are subjected to the same harmful practices as women, such as early marriages, giving birth as young girls or more violent crimes such as acid attacks, rape, etc.** Yet, younger survivors have increased sensitivities and **different needs** in comparison to an older survivor of the same crime. For example one should:

- ❖ Ensure that children are always interviewed by those trained in age-sensitive interviewing and counselling techniques
- ❖ Ensure that child survivors are not subjected to unnecessary multiple interviews
- ❖ Use verbal and non-verbal techniques that can be used to help children feel safer and more comfortable with expressing themselves
- ❖ Provide direct and quality psycho-social care interventions for child survivors and their family members

Safety is Paramount

Ensuring the safety of the victim/ survivor and her family is essential at all times. Duty-bearers and service providers must remember that the victim/ survivor may be frightened and require assurance of their personal safety. In all cases, they need to ensure that she is not at risk of further harm by the assailant or by other members of the community. If necessary, assistance should be sought from police, or other law enforcement authorities, field officers, or others. Need for the safety and security of the people helping the victim/ survivor, such as family, friends, community service or healthcare workers should also be kept in mind.

Services need to ensure that all interventions prioritize the safety and security of survivors. Safety must also be provided for all staff, judicial and otherwise, that deal with the survivor and may be at risk. Potential safety risks

The centrality of gender inequality and discrimination, as both a root cause and a consequence of violence against women and girls, requires services to ensure that gender-sensitive and responsive policies and practices are in place. Services must ensure that violence against women and girls will not be condoned, tolerated or perpetuated. Services must promote women's agency, where women and girls are entitled to make their own decisions, including decisions that refuse essential services.

UN Women. ESP Guidelines.

Culturally and age appropriate and sensitive essential services must respond to the individual circumstances and life experiences of women and girls taking into account their age, identity, culture, sexual orientation, gender identity, ethnicity and language preferences.

Essential services must also respond appropriately to women and girls who face multiple forms of discrimination - not only because she is a woman, but also because of her race, ethnicity, caste, sexual orientation, religion, disability, marital status, occupation or other characteristics – or because she has been subjected to violence.

UN Women. ESP Guidelines

have to be evaluated and routine safety assessments and specific safety planning need to be carried out with the survivor of violence. General services such as health facilities, social services or general shelters are often not adequately provisioned to comprehensively protect and support women survivors of violence and their children. Specialized services, such as women's shelters/ refuges, are necessary from a safety perspective, since they provide women survivors of violence with anonymity (keep their whereabouts secret) and don't allow men to enter.

Perpetrator Accountability

"There is no excuse for violence" – this should be a defining principle. Countering violence means adopting a clear stance and condemning GBV/ VAW in all its forms as well as holding the perpetrator accountable under legal provisions. Trying to remain neutral about what has happened means running the risk of tolerating violence. Adopting a clear stance against any form of violent behavior expresses condemnation of violent acts (but not condemnation of the perpetrator as a person).

The safety of women and girls is paramount when delivering quality services. Essential services must prioritize the safety and security of service users and avoid causing her further harm.

UN Women. ESP Guidelines

Perpetrator accountability requires essential services, where appropriate, to effectively hold the perpetrators accountable while ensuring fairness in justice responses.

Essential services need to support and facilitate the victim/ survivor's participation with the justice process, promote her capacity of acting or exerting her agency, while ensuring that the burden or onus of seeking justice is not placed on her but on the state.

UN Women. ESP Guidelines

SESSION 4 - ACCESS TO JUSTICE

Notes on Methodology:

The facilitator will divide the participants into three groups and ask them to prepare a presentation defining:

- a) Access to justice,
- b) Barriers to justice
- c) The core requirements of the rule of law.

The facilitator should also advise the groups to select a group leader to present their work in the plenary. Once the presentations have been completed in the plenary, the facilitator will share the content from the Resource Pack, ask participants to identify the differences between the shared material and their presentations. The facilitator should also initiate discussion regarding different aspects of the topic by asking follow-up questions.

Facilitation requirements for session:

Co-facilitator required for presentation control, note-taking and to handle materials mentioned below.

Materials: Multimedia, charts, and board markers.

Key Concepts:

Access to Justice

“Democratic societies are built on respect for the rule of law, which is itself a system of neutral laws that are “equally enforced and independently adjudicated.”³⁷ Core requirements of the rule of law are good governance and “a functioning justice system that carries out its duties fairly, without bias or discrimination”³⁸ and which is accessible to all. The conceptualization of access to justice has evolved over time. Older approaches focused on the means by which individuals could protect their rights under the law through courts and tribunals, and initiatives centered on the development of legal assistance and specialized, and often simplified, legal procedures.

Over time, access to justice has come to mean an approach that is concerned with ensuring “that legal and judicial outcomes are themselves ‘just and equitable’”³⁹, with a greater emphasis on reforming the justice institutions themselves “in order to simplify them and to facilitate access to them.”⁴⁰ The concept of ‘access to justice’ is not limited to the efficiency of the justice system. It encompasses processes to ensure that the whole system is sensitive and responsive to the needs and realities of both women and men and empowers them throughout the justice chain.”⁴¹

Essentials for Access to Justice

UN Committee on the Elimination of Discrimination against Women in its General Recommendation No. 33 for CEDAW, has recommended the following essentials for access to justice for any judicial system that is gender-sensitive:

“Justiciability requires the unhindered access by women to justice as well as their ability and empowerment to claim their rights as legal entitlements.

Availability requires the establishment of courts, and other quasi-judicial bodies, in urban, rural and remote areas, as well as their maintenance and funding.

37 UN Women. “Progress of the World’s Women 2015-2016: Transforming Economies, Realising Rights”. p. 11. New York, 2015. http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf

38 Ibid.

39 Jeremy McBride for the Council of Europe European Committee on Legal Co-operation. 2009, Access to Justice for Migrants and Asylum-seekers in Europe. Para 9, <https://rm.coe.int/1680597b1a>

40 Council of Europe Gender Equality Commission, 2013. Feasibility Study: Equal Access to Justice for Women. Para 6, <https://rm.coe.int/1680597b1d>

41 Duban, Elisabeth and Dr. Ivana Radacic. “Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice”, Council of Europe, 2017. https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf

Accessibility requires that all justice systems are secure, affordable and physically accessible to women, and they are adapted and appropriate to the needs of women, including those who face intersectional or compounded forms of discrimination.

Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. Justice systems should be contextualized, dynamic, and participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women.

Provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer.

Accountability of justice systems is ensured through the monitoring of the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and holding them responsible if they violate the law.”

Barriers to Justice - Overview

Women face multiple obstacles with respect to accessing justice within and outside the criminal justice system. Some of the barriers are listed as under:

- ❖ Discriminatory or gender insensitive:
 - ◆ Laws and/ or legal provisions
 - ◆ Legislative/ Judicial interpretations
 - ◆ Implementation of the law
 - ◆ Legal procedures
 - ◆ Gender stereotyping and bias by justice actors
- ❖ Lack of:
 - ◆ Awareness on legal rights and legal procedures
 - ◆ Financial resources
 - ◆ Support from family and community
 - ◆ Legal Aid

Barriers to Justice in Pakistan

In Pakistan, women’s access to justice is restricted from the outset because survivors cannot disclose what has happened to them without inviting public scrutiny and shame onto themselves and their families.

If they do find the courage to speak out, they are often disbelieved or reprimanded for being partly, if not entirely responsible. Their first point of contact with the formal system is often through the police (though it should not be, given the importance of medical intervention at the initial stage), that is usually apathetic and often turns the offense around by blaming the woman for inviting trouble onto herself. Even before the first point of contact with the formal system, it must be kept in mind that the majority of cases of violence are unreported due to family and societal pressure, low awareness of one’s rights and mechanisms available, and other constraints hindering women’s access to justice. “In Pakistan, the conviction rate in rape and sexual assault cases is abysmally low, under 3%, estimates the Karachi-based War Against Rape (WAR)..”⁴² A handful of women police stations exist in Pakistan, with the aim to make it easier for survivors to report violence, but a woman needs to file an application for the transfer of her case to these stations.

42 <https://www.globalvillagespace.com/conviction-rate-in-rape-cases-under-3-in-pakistan-report/>

Trials are often held in open court, with nothing barring onlookers from making gestures of mockery and ridicule. Even minors are not awarded special care, as they are neither shielded during the identification process nor given in-camera trials as a matter of routine. The defense is free to probe the victim's sexual history, again in open court, and often there is lack of medical evidence or inadequate procedures to prove absence of consent. Bail is granted casually when the crux of the evidence is based on medical findings, particularly visible marks of violence in the woman's body. Offenders once released find ways to torment the victim and her family, against which the state often fails to award any tangible protection.

*"Trials are lengthy, arduous and have high direct and indirect costs, including opportunity costs of lost wages from days spent in court."*⁴³ It is very normal for police, judges and lawyers to broker a 'compromise' or out-of-court settlement, which, if accepted, ends in dismissal of the case and release of the offender. This has also happened in cases where the offender was the victim's father. A substantial percentage of victims and affected families are forced to relocate due to tremendous social pressures and ostracism. The Government does not provide for alternate housing and often, families shift deliberately to disappear into anonymity and escape persecution.

*"The conviction rate for rape in Pakistan has been less than four percent, prompting protests and legal reforms."*⁴⁴
*"In selected data between January and August 2018 there have been no convictions in the recorded 141 child rape cases registered in Lahore."*⁴⁵

There are very few shelter homes against the number of women seeking refuge. Further, going to a shelter home is still considered taboo and perceived as the last resort of women who have been turned away by so-called 'respectable' society. There is no existing long-term rehabilitation plan for victims of violence supported by the Government. Even within the Government, many cases have been reported of undue political interference in cases and often seizing of such cases for political mileage.

On the other hand, informal justice systems lacking the legal protections of institutionalized justice systems persist, especially in rural areas, and often their decisions result in further human rights violations. Feudal landlords and other community leaders hold local council meetings (known as *Panchayats* or *Jirgas*) to settle cases of violence. Such councils settle feuds and impose tribal penalties on perceived wrongdoers, including fines, imprisonment, inflicting harm or injury, or even at times death. Women are often sentenced to violent punishments or death for 'honor'-related crimes. Many tribal councils have instituted harsh punishments, such as the death penalty, 'honor killings,' or watta-satta marriages (exchange of brides between clans or tribes). *"At times women were victims of various types of societal violence and abuse, including honor killings; facial, bodily, and genital mutilation; forced marriages; imposed isolation; and being used to settle disputes. Women often were treated as chattel, and perpetrators were often husbands and other male family members."*⁴⁶

While formations of *Jirgas* vary by province, women are consistently excluded from all such forums. Women cannot be members of a *Jirga*; they cannot be present even when they are the main accused or victim in the case in question. If she is accused of a crime, her 'advisors' may present her point of view. It is a purely male institution which neither sanctions women as members nor as witnesses or complainants. Women may access a *Jirga* only through a male relative. In case of grievances against her male relatives, there is no recourse whatsoever. *"Jirgas function on local traditions and belief systems of men, of which honor is a critical component. In cases of adultery, where a man's honor is violated, the single testimony of a husband, brother or father is enough to condemn a woman. A woman marrying of her freewill (against family's wishes) is also considered same as an adulteress because male honor is similarly besmirched. Even if the marriage has been legally solemnized, it remains a violation of the honor code and hence punishable by death. Pakistani courts on the other hand, have ruled that a woman does not need the consent of either her parents or guardian to marry."*⁴⁷

43 Social Policy and Development Centre (SPDC), 2012.

44 "Pakistan Moves to End Impunity for Rapists." Pakistan Moves to End Impunity for Rapists | Inter Press Service, www.ipsnews.net/2017/02/pakistan-moves-to-end-impunity-for-rapists/.

45 Chaudhry, Asif. "Official Data since January 2018: No Conviction in 141 Child Rape Cases Reported in Lahore so Far." DAWN.COM, 10 Aug. 2018, www.dawn.com/news/1426078.

46 United States Department of State, 2012 Country Reports on Human Rights Practices - Pakistan, 19 April 2013, available at: <https://www.refworld.org/docid/517e6df418.html> [accessed 1 July 2019]

47 Brohi, Nazish. "Women, Violence and Jirgas: Consensus and Impunity in Pakistan". Islamabad: National Commission on the Status of Women, 2017. <http://www.ncsw.gov.pk/previewpublication/63>

A research conducted in Balochistan by Shah, Ali & Mahmood finds that, “Even if in rare cases, it is proved that the woman killed by declaring her *kari* was in fact innocent, there are no convictions, and most of the accused literally get away with murder on the basis of *razinamas* (‘reconciliation’ agreements) presented to and accepted by the police. Any person who has committed such heinous crime is also set free in the case of *razinama*, which happens to be in the form of payment of cash or girls in marriage to the aggrieved party.”⁴⁸

“There are no official statistics on the occurrence of *Jirgas*, and no government line ministry or official agency records *Jirga* verdicts or incidence of.”⁴⁹

Article 8 of the constitution prohibits a custom or law that violates citizens’ rights therein ranging from due process and fair trial etc. which is absent in the *Jirga* system. In addition, the Government of Pakistan introduced the Prevention of Anti-Women Practices (Criminal Law Amendment 2011) with a new Section 310A to discourage such practices. This law is further discussed in detail in Section III of this Resource Pack.

“The Sindh High Court (SHC), Sukkur bench on April 24 2004, explicitly banned the holding of *jirgas* in the province and declared them illegal and unconstitutional.”⁵⁰

Despite these laws and judicial rulings, hundreds of women were reportedly victims of honor killings. Many cases went unreported and unpunished. “The Aurat Foundation reported 2,341 honor killings between 2008 and 2011 and estimated that less than 2 percent of all honor killings were reported. Because honor crimes generally occur within families, many go unreported. However, police and NGOs reported that increased media coverage enabled law enforcement to take some action against a limited number of perpetrators.”⁵¹

The conviction rate in honor-killing cases is extremely low, next to nothing. This is mainly because of legal lacuna in relation with *Qisas* and *Diyat* Law.

“The *Qisas and Diyat Ordinance (1991)* simply elevated elements of traditional justice to statutory law and encouraged out-of-court settlements in accordance with local customs, often involving monetary compensation or exchange of marriageable girls, although the latter is invalid but not outlawed.”⁵² While there were a few forward-looking positive cases with regard to honor killings, the majority of cases came out with conclusions unfavorable to the survivor. Seemingly, the courts took advantage of the lack of clarity in the laws to interpret it in line with their own conservative and anti-women biases, as opposed to providing justice to all citizens. “The result was that honour killings seldom led to conviction and imprisonment, which could be an important reason for the subsequent rise in honour killings since the promulgation of the *Qisas and Diyat Ordinance in 1990*.”⁵³

The above-mentioned information shows that barriers within the justice chain must be studied in order to understand exactly where the problems occur and how to address them. Such analysis could be the basis of law reforms and policy development.

The practice of ‘*karo-kari*’ or ‘*siyah kari*’ has continued across the country. *Karo-kari*, a Sindhi term, is a form of premeditated honor killing that occurs if a family, community, tribal court, or *Jirga* determines that adultery or some other “crime of honor” has occurred. *Karo-kari* means ‘black male’ (*karo*) and ‘black female’ (*kari*), metaphoric terms for someone who has dishonored the family or is an adulterer or adulteress. Once a woman is labeled as a *kari*, male family members have the self-authorized justification to kill her and any co-accused *karo* to restore family honor. In many cases the *karo* is not killed or is able to flee. With the help of UNDP, Sindh Police established *Karo-kari* Cells in year 2010 with a toll-free telephone number in the districts of Sukkur, Ghotki, Khairpur, and Nausharo Feroze for persons to report *karo-kari* incidents.

48 Shah, Ali, Mahmood, Sardari. “*Jirga & Local Government System in Balochistan*”. Lahore: Edar-e-Tadrees, Lahore, 1994.

49 Brohi, Nazish. “Women, Violence and *Jirgas*: Consensus and Impunity in Pakistan”. Islamabad: National Commission on the Status of Women, 2017. <http://www.ncsw.gov.pk/previewpublication/63>

50 Samar Minallah, Judiciary as a Catalyst for Social Change, Supreme Court 2006, <http://www.supremecourt.gov.pk/ijc/Articles/9/2.pdf>

51 Department of State. “Country Reports on Human Rights Practices for 2011”. US Government Printing Office. Washington, 2014. <https://books.google.com.pk/books?id=4-KPN8YcOAC>

52 Knudsen, Are. “License to kill: Honour Killings in Pakistan”. Bergen: Chr. Michelsen, Institute of Development Studies and Human Rights, 2004.

53 Ibid

SESSION 5 - THE ROLE OF JUSTICE SECTOR IN ENSURING ACCESS TO JUSTICE

Notes on Methodology:

The facilitator will ask the participants to divide into groups according to their numbers and then ask them to prepare a presentation answering the following questions:

- What role can justice sector actors, in particular, judges and prosecutors play in ensuring access to justice for women?
- What special considerations should the prosecution or courts give at each step of the process of attending to a case of GBV/ VAW
- How can Justice Sector actors coordinate to enhance access to justice for women?

The facilitator should also advise the groups to select a group leader to present their work in the plenary. Once the presentations have been completed in the plenary, the facilitator will share the content from the Resource Pack on the topic and ask participants to identify the differences between the shared material and their presentations.

The facilitator should share best practices focused at prosecution and the court/ judges, lawyers and/or other justice sector actors. The facilitator should highlight such essential services, elements and guidelines to the participants for clarity of utilization in their practices.

The facilitator should expand the discussion by asking follow up questions.

Facilitation requirements for session:

Co-facilitator required for presentation control, note-taking and to handle materials mentioned below:

Materials: Multimedia, charts, and board markers.

Key Concepts:

The Roles and Duties of Judges and Prosecutors for Ensuring Access to Justice for Women

Judges and prosecutors have different roles, but both have a great deal of influence over the extent to which the rule of law is upheld in their particular jurisdiction. As State authorities, both professional groups can send powerful messages to society that violations of women's rights will not be tolerated and will be treated no less seriously under the law than any other human rights abuses. The acts of individual judges and prosecutors contribute to the overall identity of the justice system and whether it is perceived as impartial, fair and just. Judges and prosecutors also have important oversight authority and should provide leadership and expertise to other justice professionals, including the police, parole and probation staff, and lawyers.

In order to ensure that women have equal access to justice, judges and prosecutors should adopt a gender-sensitive approach in their work and ensure that they interpret the law in line with substantive notions of equality and international human rights. Practitioners should be aware of such issues as the disparate impact of laws on women; how inequitable distribution of resources leads to unequal distribution of power; and when it is legitimate to use differential treatment in law and policy in order to ensure an equitable outcome.

Prosecutors and judges should take a proactive approach to ensuring that barriers that women face in accessing justice are removed. For example, prosecutors dealing with cases of violence against women must build a strong case against the perpetrator that does not hinge entirely on the testimony of the victim herself. The prosecutor should actively pursue a range of other forms of evidence. Judges should consistently apply a gender perspective in their work, and being proactive means ensuring that subordinate staff members (of prosecutor's offices or courts) receive training in gender-sensitive approaches or take part in reform processes to develop gender-oriented policies and guidance.

The justice system can play a crucial role in challenging patriarchal gender norms and upholding the value of gender equality in society. Judges and prosecutors have a responsibility to uphold the fairness and integrity of the justice system and to eliminate gender bias. Taking a gender-sensitive approach to justice may at first glance appear to conflict with judges' duty of impartiality. In fact, impartiality does not require a gender-blind approach.

Justice Sector: UN Women ESP Guidelines

The role of prosecutors and judges, and judiciary at large, has been further elaborated and clarified in Module 2: Justice and Policing of the ESP for Women and Girls Subject to Violence: Core Elements and Quality Guidelines. These guidelines are based on and complement international standards and reflect recognized best practices in responding to gender-based violence. The following areas are covered by the ESP regarding prosecutors and judges within the criminal justice system. Detailed guidelines are included in Annexure 3 of this Resource Pack and the modules can be obtained from UN Women for further reading on integrating quality essential services in the following:

1. Pre-trial
2. Trial/ Hearing
3. Post-trial
4. Safety and Protection
5. Support and Assistance
6. Perpetrator Accountability and Reparations
7. Communication

Pre-trial (Essential Service 4) *“Pre-trial/ hearing processes in criminal justice matters include bail hearings, committal hearings, selection of charges, decision to prosecute and preparation for criminal trial. In civil and family matters, they include interim child custody/ support orders, discovery procedures in civil cases, and preparation for trial or hearing. In administrative law matters, such as criminal injuries compensation schemes, it is recognized that this can be pursued in the absence of or in addition to criminal and/or civil cases and include providing supporting documentation for applications.*

Criminal, civil, family and administrative pre-trial/ hearing processes that are non-biased and sensitive to the specific needs of victims and survivors of intimate partner violence and sexual violence are essential to guaranteeing their right to justice. Essential pre-trial criminal justice services reflect the international obligation on the state and its justice service providers in exercising primary responsibility for investigation and initiating prosecution while balancing the importance of empowering victims and survivors to make informed decisions regarding their interactions with the criminal justice system. Essential pre-trial/ hearing civil, family and administrative justice services emphasize the importance of timeliness, affordability and simplified and easy-to-use procedures.

Core Elements

- 4.1 *Coordinated and integrated approaches to criminal, civil, family and administrative law cases*
- 4.2 *Primary responsibility for initiating prosecution*
- 4.3 *Correct charge and approval of the charge made quickly*
- 4.4 *Accessible, affordable and simplified procedures to access justice*
- 4.5 *Prioritization of cases*
- 4.6 *Application of fair procedures and evidential standards in all pre-trial processes*
- 4.7 *Victim/ survivor centered, empowerment oriented and rights based pre-trial processes*

4.8 Readiness for trial

4.9 No forced mediation, alternative dispute resolution in cases involving violence against women

4.10 Special considerations for victims/ survivors who are suspected or accused of criminal behaviour”⁵⁴

Trial/ Hearing (Essential Service 5)

“Trial/ hearing processes include presentation of evidence and verdict or civil judgment, as well as submission of evidence to administrative board and the board’s final decision.

Victims and survivors of intimate partner violence and sexual violence who are involved at the trial stages in criminal and civil justice processes can feel vulnerable, overwhelmed by the unfamiliarity of the justice system or re-victimized through the insensitive or discriminatory treatment of justice service providers. International norms and standards call for measures to prevent further hardship and trauma that may result from attending the trial itself and to ensure that trial processes maximize the survivor’s cooperation, promote her capacity to exert agency during the trial stage while ensuring that in criminal matters, the burden or onus of seeking justice is on the State. The justice services that are considered essential during the trial processes reflect internationally agreed upon model strategies, including friendly and enabling court environments for survivors to feel safe and comfortable recounting of what they have experienced; procedures to minimize re-victimization; and the application of evidentiary rules in a non-discriminatory manner.

Core Elements

5.1 Safe and friendly courtroom environment

5.2 Protection of privacy, integrity and dignity

5.3 Opportunity for full participation

5.4 Opportunity to give details of the impact of the crime

5.5 Nondiscriminatory interpretation and application of evidentiary rules

5.6 Special considerations for victims/ survivors who have been charged with criminal offences”⁵⁵

Perpetrator Accountability and Reparations (Essential Service 6)

“Reparations means to wipe out, as far as possible, all the consequences of an illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Reparations cover two aspects: procedural and substantive.”⁵⁶

“Procedurally, the process by which arguable claims of wrongdoing are heard and decided by competent bodies, whether judicial or administrative need to be women-centered, available, accessible and adaptable to the specific needs and priorities of different women.

Procedures need also to counter the traditionally encountered obstacles to accessing the institutions that award reparations. Substantively, remedies consist of the outcomes of the proceedings and, more broadly, the measures of redress granted to victims. This includes reflecting upon effective ways to compensate victims for harms suffered, including tort law, insurance, and trust funds for victims and public compensation schemes and including non-economic losses which generally affect women more negatively than men. There are many forms of reparations, including: restitution; compensation; public acknowledgement of the facts and acceptance of responsibility;

54 UN Women. “Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines”. New York. 2015. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-en.pdf?la=en&vs=3648>

55 Ibid

56 Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22, 19 April 2010.

prosecution of perpetrators; restoration of the dignity of the victim through various efforts; and guarantees of non-repetition. While the notion of reparation may also include elements of restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violence against women to occur, there was no agreement as to how to reflect the structural transformative reparations in the essential justice services. Reparation measures should ensure that remedies are holistic and not mutually exclusive.

The vast majority of perpetrators of intimate partner violence and sexual violence face no legal consequences. When they are held accountable, too often the sanctions, whether criminal, civil, or administrative, are very low. In addition, the reparations that women receive from the perpetrator and/or the state following the violence often do not reflect the realities of the harm suffered by women and girls, particularly the patterned use of coercion, intimidation and the use or threat of violence. From a survivor's perspective, accountability and reparations can mean many things, from a criminal sentence to civil damages, state compensation and public condemnation of the violence, as well as redress for the state's failure to provide essential justice services. The essential services relating to accountability and reparations reflect the international obligation of due diligence of imposing appropriate sanctions to hold perpetrators accountable for their actions and providing for just and effective remedies to the survivors for the harm or loss suffered by them.

Core Elements

- 6.1 Justice outcomes commensurate with the gravity of the crime and focused on the safety of the victim/survivor*
- 6.2 Participation of victims/survivors at sentencing hearings, in applicable jurisdictions*
- 6.3 Available and accessible options for reparations*
- 6.4 Reparations that cover consequences and harms suffered by victim/survivor*
- 6.5 Enforcement of remedies*
- 6.6 Redress when essential justice services are denied, undermined, unreasonably delayed, or lacking due to negligence"⁵⁷*

Post-trial (Essential Service 7)

"Post-trial processes include corrections as it relates to protection of the victim/survivor, minimizing the risk of re-offending by the offender, and the rehabilitation of the offender. It also covers prevention and response services for women who are detained in correctional facilities, and for women in detention who have suffered violence against women.

The justice system can play an important role in preventing future violence, both by sending a strong message to the community that violence against women will not be tolerated but also in its role in ensuring the accountability and rehabilitation of perpetrators and reducing recidivism. The international norms and standards urge States to develop and evaluate treatment and reintegration/ rehabilitation programmes for perpetrators that prioritize the safety of the victims as well as to ensure that compliance is monitored. These standards also urge States to ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason.

Core Elements

- 7.1 Interventions that prevent re-offending focus on victim/survivor safety*
- 7.2 Prevention of and response to violence of women who are detained for any reason*

⁵⁷ UN Women. "Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines". New York. 2015. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-en.pdf?la=en&vs=3648>

7.3 Reduction of exposure to violence of female offenders in detention and post detention services⁵⁸

Safety and Protection (Essential Service 8)

“Protection measures for women who have experienced intimate partner violence and sexual violence are critical to stopping the violence and preventing reoccurrence, escalation and threats of violence. Women have the right to live free of violence and free of the fear of violence. This means that protection measures need to be available independent of any initiation of a criminal, civil or family law case and be designed to empower women in their access to justice and enable them to stay safely engaged with the justice process.

Core Elements

- 8.1 Access to immediate, urgent and long-term protection measures
- 8.2 Enforcement of protection measures
- 8.3 Risk assessment
- 8.4 Safety planning
- 8.5 Prioritization of safety concerns in all decisions
- 8.6 Coordinated protection measures
- 8.7 Coordinated protection and support services⁵⁹

Support and Assistance (Essential Service 9)

“A crucial element in guaranteeing access to justice for all women is the provision of support and assistance services during the justice process. The international norms and standards refer to the importance of legal assistance, practical, accurate and comprehensive information, victim and witness support services and the need for support from outside the justice sector (such as, health, shelters, social services, counselling). These services can empower women, allowing them to make their own informed decisions based on knowledge of their rights and justice options.

Core Elements

- 9.1 Practical, accurate, accessible and comprehensive information
- 9.2 Legal services
- 9.3 Victim and witness support services
- 9.4 Referrals to health and social service providers⁶⁰

Communication (Essential Service 10)

“Communication is a key theme throughout the justice system. The victim/ survivor needs to know that she is being heard and that her changing justice needs are being understood and addressed. Information and the way it is communicated can empower the victim to make informed decisions regarding her engagement with the justice system. Information and communication management amongst the various justice service agencies and non-justice sectors, particularly prioritizing confidentiality and privacy, can contribute to the minimization of the risks victims face when seeking justice.

58 Ibid

59 Ibid

60 Ibid

Core Elements

- 10.1 Simple and accessible information about justice services
- 10.2 Communications promote the dignity and respect of victim/ survivor
- 10.3 Ongoing communication with the victim/ survivor
- 10.4 Regular and effective communication between justice agencies
- 10.5 Communication by justice agencies with other agencies⁶¹

Gender Sensitivity, Gender Blindness and Impartiality

“Gender blindness refers to ignoring and/ or failing to address the gender dimension in a particular process, as opposed to gender-sensitivity which is a process of taking the gender dimension into account.

For judges, the duty of impartiality is a central responsibility and an ethical obligation. The duty of impartiality does not, however, mean that judges must be gender blind. On the contrary, gender – as it intersects with other identity characteristics – should be taken into account and any disadvantages attached to it, challenged. Impartiality is not about closing one’s eyes, but about keeping the mind open.”⁶²

“What makes it possible for [judges] to genuinely judge, to move beyond [their] private idiosyncrasies and preferences, is [their] capacity to achieve an “enlargement of mind” ... by taking different perspectives into account.”⁶³

“Furthermore, the right to equality before courts and tribunals and to fair trial requires impartiality in two contexts.”⁶⁴

First, “judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. [and] Second, the tribunal must also appear to a reasonable observer to be impartial.”⁶⁵

Multi-Sectoral Coordination

A key principle underlying the multi-sectoral approach is that the rights and needs of survivors are pre-eminent, in terms of access to respectful and supportive services, guarantees of confidentiality and safety and the ability to determine the course of action for addressing the incident.

The multi-sectoral model calls for holistic inter-organizational and inter-agency efforts that promote participation of people of concern, interdisciplinary and inter-organizational cooperation, and collaboration and coordination across key sectors, including (but not limited to) health, psychosocial, legal/ justice and security. Sectors are comprised of all the institutions, agencies, individuals and resources that are targeted towards a specific goal (e.g., the health sector includes the Ministry of Health, hospitals, healthcare centers, healthcare providers, healthcare administrators, healthcare training institutions, health supplies, etc.).^{66,67}

One of the key solutions for addressing the GBV/ VAW crisis in Pakistan is effective multi-sectoral coordination that would involve all concerned departments and justice sector actors. This will allow a more cohesive response for identifying barriers to women’s access to justice and removing them effectively.

⁶¹ Ibid

⁶² Duban, Elisabeth and Dr. Ivana Radacic. “Training Manual for Judges and Prosecutors on Ensuring Women’s Access to Justice”. Council of Europe. 2017. https://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_EN.pdf

⁶³ Honourable Madame Justice Claire L’Heureux-Dubé. 2001. ‘Beyond the Myths: Equality, Impartiality, and Justice’. (2001) 10(1) Journal of Social Distress and the Homeless. paras. 87, 91.

⁶⁴ Ibid

⁶⁵ Human Rights Committee, General Comment No. 32, para. 21 on Article 14 of the ICCPR.

⁶⁶ UNHCR, 2001. Prevention and Response to SGBV in Refugee Situations: Interagency Lessons Learned Conference Proceedings, www.rhrc.org

⁶⁷ UNHCR, 2003. Interagency Guidelines for the Prevention of and Response to Sexual and Gender-Based Violence against Refugees, Returnees, and Internally Displaced Persons, www.rhrc.org.

The numerous benefits of this approach are highlighted in UN Women's End VAW Now initiative as described below and the multi-sectoral model explicitly highlights responsibilities unique to each sector:

- ❖ The **health sector** should train providers across a wide variety of health services to recognize and address violence against women and girls; ensure same sex interviewers for individuals who have been exposed to violence; respond to the immediate health and psychological needs of the survivor; institute protocols for treatment, referral and data collection and documentation that guarantee confidentiality; provide violence-related treatment free of cost; and be prepared to provide forensic evidence and testimony in court when authorized by the individual.
- ❖ The **social and health (clinical psychology) sectors** should be able to provide ongoing psychological assistance, which requires the training and ongoing supervision of psychologists, social workers and community services workers, and facilitate referrals for other services. Education and income-generation projects are also considered under the umbrella of psychosocial programming within this multi-sectoral model. Education systems should ensure curricula on "safe touch," healthy relationships, and basic human rights; institute codes of conduct for all teachers as well as impart training on identifying risk signs among children; and provide school-based services for children who have been exposed to violence. Income-generating projects should not only promote women's economic self-sufficiency, but also monitor for domestic violence risks and integrate human rights education into project activities.
- ❖ The **legal/ justice sector** should be able to provide free or low-cost legal counselling, representation and other court support to women and girls who have been exposed to violence; review and revise laws that reinforce violence against women and girls; enforce laws that protect women and girls and punish perpetrators; monitor court cases and judicial processes; provide orders of protection and other legal safety mechanisms for survivors; and monitor perpetrators' compliance with court-ordered rehabilitation (e.g., batterer programs).
- ❖ The **security sector** - police, military and other security personnel - should be educated about violence against women and girls and be trained on how to appropriately intervene in cases of violence against women and girls. Police should have private rooms to ensure confidentiality and safety of survivors reporting a victimization; ensure same sex interviewers; institute protocols for referrals to other sectors; collect standardized and disaggregated data on incidents; and create specialized units to address violence against women and girls.

Coordination Among Justice Agencies (Essential Service 11)

"Given the different mandates of each justice agency and the various tasks of different justice service providers, a coordinated response is required for ensuring that essential justice and policing services are delivered in a quality and effective manner and deliver the best outcome for victims/ survivors. Coordination sets transparent standards and expectations from each justice agency and contributes to better communications and linkages between the different justice agencies and service providers. From the perspective of a victim/ survivor, coordination of essential services means that she will be met with the same understanding of her rights and her situation and receive the same, high quality response from all justice service providers.

Core Elements

11.1 Coordination amongst justice sector agencies⁶⁸

68 UN Women. "Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines". New York. 2015. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-en.pdf?la=en&vs=3648>



**SECTION III:
NATIONAL
AND
PROVINCIAL
LEGAL
FRAMEWORKS
ON GENDER-
BASED
VIOLENCE/
VIOLENCE
AGAINST
WOMEN
AND
GIRLS**

Objectives

This Section attempts to apprise the reader of the national and provincial pro-women legal provisions in Pakistan. It provides an overview of Pakistan's national obligations and how duty bearers, consisting of the judicial arm of the State, execute the will of Pakistan's legislature.

Note for the Facilitator

The aim of this Section is primarily imparting technical legal knowledge about Pakistani laws related to GBV/VAW. It should be used with those justice sector officials who are or will be fully engaged in the processes for dispensation of justice to survivors, including judges, prosecutors, lawyers and law students. Parts related to Medico-Legal Officers may be shared in groups with their participation. The content can be adapted/ extracted to cater to the specific needs of the target audience, depending upon the relevance to their experience and their requirements.

As a general guideline, while delivering the content in this Section, the facilitator should first, share the content with the participants and then generate participatory discussion on the topic. It is recommended the following Section is either delivered by a lawyer or a lawyer should be present to aid the facilitator in delivering this session as the discussion is very technical with regard to legislations and legal aspects.

Suggested activities include brainstorming session/ group work leading towards plenary discussion and/or gallery walk presentation.

SESSION 6 – OVERVIEW OF THE CONSTITUTION AND LAWS ON GBV/ VAW

Notes on Methodology:

The facilitator will raise the following discussion points in the plenary and generate discussion among the participants.

- What is the constitution?
- Why is it important to have a constitution?
- What are fundamental rights?
- What kind of fundamental rights or freedoms should be ensured by the state for its citizens?
- How can the state ensure the provision of fundamental rights to all its citizen?

After a brief discussion, the facilitator should share the fundamental rights outlined in the constitution of Pakistan, listed as under from Articles 8 to 28.

- No person shall be deprived of life or liberty, save in accordance with law (article 9)
- Safeguard as to arrest and detention. All arrested person must be informed of grounds of their arrest, they have right to consult and defended by lawyer of their choice.
- Right of fair trial under article 10A
- Slavery, forced labor is prohibited and no child under age of 14 year be employed in factory and mines.
- There shall be protection against retrospective punishment
- There shall be protection against double punishment and self-incrimination.
- Freedom of movement to everyone
- Freedom of assembly for all citizens
- Freedom of association for all citizens
- There shall be freedom of trade, business and profession for all citizens.
- Freedom of speech for all citizens
- All citizens shall have right to have access to information in all matters of public importance under article 19A.
- Freedom to profess religion and to manage religious institution in country
- Safeguard against the taxation for the purposes of any particular religion.
- Safeguard as to educational institutes in respect of religion etc.
- All citizens have right to acquire, hold and dispose of property in any part of Pakistan.
- Protection of property rights of owners.
- All citizens are equal and there shall be no discrimination on bases of sex etc.
- Free and compulsory education to all children of age 5 to 16 by Government
- No discrimination in respect of access to public places.

- Safeguard against discrimination in services.
- All citizens have right to preserve their particular language, script and culture

After going through the content, the facilitator must ask the participants whether these rights are exercised by or are available to women and girls in Pakistan.

IMPORTANT: Prior to sharing the content below, the facilitator will clarify to the participants the distribution of laws in this Section that is; General Provisions inclusive of constitution and penal code and Provisions specific to certain categories of GBV/ VAW.

Facilitation requirements for session:

Co-facilitator required for presentation control and note-taking.

Key Concepts:

The Constitution - Fundamental Rights

Chapter 1: Fundamental Rights

3. Elimination of all forms of exploitation

The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work.

8. Laws inconsistent with or in derogation of fundamental rights to be void.

- (1) *Any law, or any custom usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.*
- (2) *The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.*
- (3) *The provisions of this Article shall not apply to:*
 - (a) *any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them.*
- (5) *The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.*

9. Security of person.

No person shall be deprived of life or liberty save in accordance with law.

10A. Right to fair trial.

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

11. Slavery, forced labour, etc prohibited (it should be noted that the Constitution was adopted in 1973, but was amended in 2015, in particular Article 11 that includes the following provisions.

- (1) *Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.*
- (2) *All forms of forced labour and traffic in human beings are prohibited.*

15. Freedom of movement, etc.

Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.

16. Freedom of assembly.

Every citizen shall have the right to assemble peacefully, and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

17. Freedom of association.

Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

18. Freedom of trade, business or profession.

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful professions or occupations, and to conduct any lawful trade or business.

19. Freedom of speech.

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission] of or incitement to an offence.

19A. Right to information:

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

22. Safeguards as to educational institutions in respect of religion, etc.

(3) Subject to law:

(b) no citizen shall be denied admission to any educational institutions receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public advancement of any socially or educationally backward class of citizens.

23. Provision as to property.

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the constitution and any reasonable restrictions imposed by law in the public interest.

24. Protection of property rights.

(1) No person shall be compulsorily deprived of his property save in accordance with law.

25. Equality of citizens.

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) *Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

25A. Right to education.

The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

26. Non-discrimination in respect of access to public places.

(1) *In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.*

(2) *Nothing in clause (1) shall prevent the State from making any special provision for women and children.*

27. Safeguard against discrimination in services

(1) *No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place or birth.*

Provided that, for a period of exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan.

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

Pakistani Laws on GBV/ VAW

The current regime of pro-women laws in Pakistan are mostly covered under the PPC of 1860 and the Criminal Procedure Code (CrPC) of 1898. In addition to this, there are provisions under the Anti-Terrorism Act 1997 and the Domestic Violence Against Women Acts of both Sindh and Balochistan. Civil laws include the Punjab Violence against Women Act, the Sindh Child Marriages Restraint Act 2013, Child Marriage Restraint Act 1929 and Protection against Harassment of Women at the Workplace 2010.

In addition to the text of these laws, the relevant definitions as per case laws have also been included to provide a greater understanding of their applicability to the audience i.e., cases that provide definitions or decisions that are made through practical situations faced by the Pakistani court.

These definitions also demonstrate the use of ‘statutory interpretation’. These precedents widen the scope of the law, as well as provide a more in-depth understanding of the law for readers.

This section identifies the existing provisions of law relating to sexual violence, honor killings and child marriages. We will start with a general category of all the provisions that fall into all these ambits mentioned above, and then move on to deal with the provisions that deal with them directly. The sections have been identified chronologically for easy reference.

SESSION 7 – PAKISTAN PENAL CODE

Notes on Methodology:

The facilitator should share all mentioned sections of the PPC and then lead a discussion regarding the implications of these sections in light of GBV and VAW.

Facilitation requirements for session:

Co-facilitator required for presentation control and note-taking.

Key Concepts and Legislations:

Section 34. Acts done by several persons in furtherance of common intention

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

Definitions under Case Law⁶⁹

- *This section was enacted with the purpose of dealing with cases where there is more than one individual involved in an offence. It serves to distinguish between the acts of different individuals to prove exactly what part was played by each of them.*
- *It is necessary for this section to be applicable that there be a “common intent” between the co-conspirators. Common intent implies acting in concert, existence of a pre-arranged plan, which is to be proved from conduct, circumstances or any incriminating facts. It is necessary that all the individuals not only know each other’s intentions, but also share them. This intention can also be formed at the spur of the moment. Mere presence or ‘similar’ intention is not sufficient. It has to involve a prior meeting of minds.*
- *The main feature of this section after establishment of common intent is the element of participation in the action. It embodies a principle of joint liability in committing a criminal act and the essence of that liability is the existence of a common intent. Once common intention is found, it is immaterial as to which part was played by whom and each one of such persons would be liable for the offence as if he alone had perpetrated it.*
- *Joint liability: all are guilty of the principle offence, not just of abetment. This section enacts a common law principle of substantive law that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually.*
- *To prove common intention is difficult and must be inferred from his act or conduct, facts disclosed in evidence and surrounding circumstances of the case.*
- *This section is a rule of evidence and does not create a substantive offence. This means that this section could apply even if no charge was framed under this particular section.*

Section 38. Persons concerned in criminal act may be guilty of different offence

Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

69 PLD 2007 SC 87; 2009 PCrLJ 1058; PLD 2010 SC 47; 2008 PCrLJ 1000; PLD 2007 SC 97; 2005 PCrLJ 784; 1998 PCrLJ 1192; 1994 PCrLJ 1640; 2005 PCrLJ 1384; 2005 PCrLJ 1442

Definitions under Case Law⁷⁰

This section is literally interpreted in the courts. It simply provides different punishments for all the different offences committed. The clause entails:

- A general provision that works towards ensuring that all the people involved in the commission of a crime, irrespective of their level of involvement, will be punished according to their actions during the commission of the offence. For example, one may be the main perpetrator, while another might be charged for incitement and another for abetting.
- Accordingly, this section is vital to ensuring that the involvement of all parties is covered under the law, and all are being held responsible for their actions.

Elements of GBV/ VAW Falling under the Provision of Sections 34 and 38

- These two clauses may not specifically deal with sexual violence, but cover several related issues. In situations where there is more than one perpetrator involved, they can all be held liable for having a common intention.
- It is often the case with a variety of forms of sexual violence and other anti-women practices that take place in Pakistan that there is collusion for the furtherance of a crime.
- If there is an intention to commit an illegal sexual act, they would all be tried for having committed an offence.
- There is a possibility to use this section in i) cases involving parallel systems such as *panchayats* or *jirgas*, i.e., those who have a common intention to hold an illegal council, thereby committing an illegal act; ii) gang rape incidents; iii) deprivation of inheritance; iv) forced marriages; and v) marriage to the Quran.

Section 90: Consent known to be given under fear or misconception

“A consent is not such a consent as is intended by any action of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person: If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child: Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

Definitions under Case Law

- Consent has to be free and informed consent. If consent is given due to being misled by misrepresentation, it is not deemed to be consent.⁷¹
- Consent and submission differ: Every consent involves submission but not all submissions involve consent. This should be clearly recognized and determined in each individual case.
- Proof of misconception and misrepresentation is equal to there being no consent having taken place.

Elements of GBV/ VAW Falling Under the Provision

The notion of consent is extremely important in cases of sexual violence. Unless for one of the above-mentioned reasons one is unable to give consent, real and actual consent can be a complete defense to the commission of a crime.

70 AIR 1925 PC 1 = 52 IC 40

71 1984 PCRLJ 2762

The UK case laws define consent in section 74 as “if he/ she agrees by choice and has the freedom and capacity to make that choice”. In this, the prosecutors need to consider two stages. One is that of capacity to make a choice, two is the freedom to make that choice. This has been elaborated in R v Bree [2007] England and Wales Court of Appeal (EWCA) 256, which says that *if through drink or any other reason, a complainant had temporarily lost her capacity to choose whether to have sexual intercourse, she was not consenting, and subject to the defendant’s state of mind, if intercourse took place, that would be rape.*⁷²

“United Kingdom’s (UK) Sexual Offences Act 2003 states two fundamental questions that need to be asked in relation to consent.

- (1) *Whether a complainant had the capacity (i.e. the age and understanding) to make a choice about whether to take part in the sexual activity at the time in question.*

In terms of consent, the question of state of mind is vital. The question is whether the complainant fully possesses their full capacity to give consent, i.e., whether the complainant had proper understanding and knowledge that she was not in a position to decide whether to consent or resist. This is especially important when discussing whether women in vulnerable positions feel that they do not have any other option but to consent.

- (2) *Whether he or she was in a position to make that choice freely, this is not constrained in any way. Assuming that the complainant had both the freedom and capacity to consent, the crucial question is whether the complainant agrees to the activity by choice.*⁷³

Section 97: Right of private defence of the body and of property

Every person has a right, subject to the restrictions contained in section 90, to defend:

- ❖ *First. His own body, and the body of any other person, against any offence affecting the human body;*
- ❖ *Secondly. The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of the theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.*

Section 100: When the right of private defense of the body extends to causing death

The right of private defense of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

The section discusses six descriptions of which the most relevant are:

- ❖ *Thirdly: An assault with the intention of committing rape.*
- ❖ *Fourthly: An assault with the intention of gratifying un-natural lust.*
- ❖ *Fifthly: An assault with the intention of kidnapping or abduction.*

Definitions under Case Law⁷⁴

- *Right of self-defense is a fundamental right and therefore is recognized by the courts.*
- *Right of self-defense would start the moment when there is fear or danger of death, grievous hurt, rape, assault leading to unnatural lust, kidnapping or wrongful confinement without having recourse to public authorities, and would continue until the danger was over.*

72 “Rape and Sexual Offences - Chapter 3: Consent.” Rape and Sexual Offences - Chapter 3: Consent | The Crown Prosecution Service, www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-3-consent.

73 Sexual Offences Act 2003, s 74. United Kingdom.

74 2010 YLR 1445; 2009 MDL 596; 2002 YLR 4008 PLD 2002 SC 553; P. L. D. 1951 Lahore 279

- *The burden of proof lies on the person that uses self-defense.*
- *Reasonableness of using self-defense is applied in every case on its individual merits and circumstances.*

In order to evoke the right of self-defense, a person does not have to face a bodily injury or harm. The reasonable apprehension of harm or wrongful confinement provides enough grounds for the utilization of the self-defense provision. However, there are limits to this right, which include:

- 1) *The circumstances should be so that a person cannot have immediate access to public authorities for protection.*
- 2) *The injury inflicted to the other person in exercising the right to self-defense must be proportionate to the apprehension faced, otherwise; the person using self-defense may be convicted under section 302 of the PPC.*

Elements of GBV/ VAW Falling Under the Provision

- *This is an extremely important provision for potential victims of sexual offences and should be easily identifiable by lawyers and judges.*
- *The purpose behind the sections relating to private defense, is that in situations where the intended victim fights back, their right is protected under this provision.*

Section 101: When such right extends to causing any harm other than death

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

(PPC Section 99: Act against which there is no right of private defence)

Definitions under Case Law⁷⁵

- *When the use of force is grossly out of proportion to the danger apprehended, or if force is used after the apprehension is over, it would be considered excessive force and therefore the right of self-defense as a defense could not be used.*
- *If the above is established it would be a punishable offence.*
- *The degree of apprehension is not to be measured by the injuries inflicted to the victim. The right to self-defense does not require the action of the victim to be equal to the apprehension of hurt. This means that a person acting in self-defense can cause death to the invader where she/ he fears grievous hurt or can cause grievous hurt where there was fear of simple hurt.*

Elements of GBV/ VAW Falling Under the Provision

- *Same as PPC Section 100*

Section 102: Commencement and continuance of the right of private defence of the body

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Definitions under Case Law⁷⁶

- *A threat is sufficient for the right of self-defense to be used.*
- *The test of reasonableness and proportionality is used in every individual case and this is determined on its individual merits.*

⁷⁵ 1963 PLD 771; 2009 MLD 1450; 2009 YLR 1938; 1986 PLD 335; 1974 PLD 274

⁷⁶ 2009 MLD 596

- *It is not necessary that one receives any injury, as apprehension of bodily injury or death cannot be measured.*

Elements of GBV/ VAW Falling Under the Provision

A person does not necessarily have to show that harm or injury was caused. The fact that a perceived threat exists is sufficient to use self-defense as a defense.

Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Definition under Case Law⁷⁷

According to this section, if the following conditions are met, the right to self-defense can be exercised even if an innocent person comes in the way of harm. The conditions are as follows:

- *if a person is able to establish that there was reasonable danger to life, or grievous bodily hurt with no option of a safe exit,*
- *if the person is able to establish that the force used by him/her was grossly proportionate to the apprehension of danger,*
- *That the causing of harm/ death to the innocent person was necessary to prevent death or grievous hurt to the person exercising self-defense*
- *That the person's presence on the spot when the incident occurred was bona fide, faultless and devoid of elements of mens rea (guilty knowledge or intention to commit a prohibited act) or actus reus (the conduct of the accused)*

Elements of GBV/ VAW Falling Under the Provision

The commentaries on earlier provisions on private defense are also applicable here.

This is a defense to an intended victim of sexual violence. If the intended victim has serious apprehension that her/his life is endangered or s/he may suffer grievous bodily hurt at the hands of the accused, and reacts in a manner that results in the death of an innocent person, this provision would apply.

Section 107: Abetment of a thing

A person abets the doing of a thing, who:-

- *Instigates any person to do that thing; or*
- *Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
- *Intentionally aids, by any act or illegal omission, the doing of that thing.*

Section 108: Abettor

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of abettor.

77 2009 SCMR 929; 1994 SCMR 1161

Definitions under Case Law⁷⁸

- *It is necessary for the accused under this section to commit an offence.*
- *He has to act in such a manner with the same intention or knowledge as that of the person he is abetting. Only then can he be guilty of abetment of an offence.*
- *The element of criminality in the act must be clearly established before a person is indicted for abetment.*
- *In the case law 2004 PLC (C.S) 688 'Instigate' is defined to mean 'to stimulate or goad to an action, specially a bad act, to incite, to foment.'⁷⁹*
- *This section provides that anyone abetting should be given the same punishment as the principle offender.*

Elements of GBV/ VAW Falling Under the Provision

- As mentioned with reference to an earlier section above, there can be several people involved in the committing of a crime of sexual violence, e.g., someone assisting in abduction, in hiding of the victim, and of incitement.
- This section recognizes and identifies the person who actually abets the offence. It includes instigators and co-conspirators.
- Abetting can have both a positive or negative action, i.e., to do a certain act, which results in abetment or an omission to do something such as report an offense to the police, which results in the commission of the act.
- This section can be valid for anyone who abets in any manner whatsoever in the commission of a sexually violent act. These accomplices who are complicit with the crime should not be allowed to go free without being held accountable for the part they played in the crime. This is important as often, in such cases, everyone apart from the main perpetrator is acquitted.

Section 120A. Definition of criminal conspiracy

When two or more persons agree to do, or cause to be done:

- (1) *An illegal act, or*
- (2) *An act which is not illegal by illegal means such an agreement is designated a criminal conspiracy:*

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Definitions under Case Law

The necessary elements to constitute a conspiracy include:

- *The 'agreement' forms the most important part of this offence. It is not a question of intention, but of actual agreement between two or more parties involved in committing a criminal offence.*
- *The act itself must be illegal.*
- *Illegal agreement can be inferred from the acts of the accused alone. This means that circumstantial evidence is invoked.*
- *The relevant time for it to be an offence must be when conspirators engage themselves to do a particular thing.⁸⁰*

78 1992 P Cr.LJ 58; 2005 P Cr.LJ 1648; 1995 P Cr.LJ 1424; 1970 P Cr.LJ 776; PLD 1984 FSC 55; PLD 1999 Karachi 151

79 2004 PLC (C.S) 688

80 1998 P Cr.LJ 1486; 1989 PSC 533; PLD 1979 SC 53; PLD 1967 Lah. 1190; 2006 SCMR 1292; 2001 SCMR 424; PLD 1957 PC 92

- *Exceptions to prosecution include a conspiracy between husband and wife.*
- *The courts have stated in judgments, that it is appropriate to observe that privacy and secrecy of an agreement may be oral or written to enter into a criminal conspiracy and it is essential to establish that prior to the event, two or more persons have conspired to commit an act.*
- **Distinction between ‘abetment’ and ‘conspiracy’:** *‘Abetment’ is not considered an offence on its own, but can be prescribed punishment based on the original offence, i.e., the offence that is being abetted. ‘Conspiracy’ on the other hand stands an offence on its own, without being attached to any other act or crime. Therefore, the offence of conspiracy may have elements of abetment in it.*

Elements of GBV/ VAW Falling Under the Provision

Abetment and conspiracy frequently underly gang rape and other such acts of violence in which a group of people act collectively to commit a violent crime. According to this clause, all people acting in any manner because of an agreement to commit an offence would be held equally liable for criminal conspiracy and the punishment that may result from it. It does not matter how minimal a role a person played towards the conspiracy and/or abetment, he/she would be liable to equal punishment.

Section 141: Unlawful assembly

An assembly of five or more persons is designated an ‘unlawful assembly’ if the common object of the persons composing that assembly is:

- *To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or*
- *To resist the execution of any law, or of any legal process; or*
- *To commit any mischief or criminal trespass, or other offence, or*
- *By means of criminal force, or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*
- *By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.*

Definitions under Case Law⁸¹

- *It is necessary for the members of a lawful assembly to be aware of the facts that render the assembly an unlawful one, and intentionally join or continue in it in order for them to be liable for the offence.*
- *An assembly may become unlawful at some stage after the start of an assembly.*
- *It is also necessary, through evidence, to identify a common object of the assembly. However, it is not proper to take all offences committed and to infer that all of these were from the very beginning part of the common object.*
- *This has to be based on evidence, as opposed to the mere facts themselves. A joint action by a number of persons is not necessarily an action performed with a common object. It may be performed on the spur of the moment as a reaction to some incident, and such a case would fall more correctly within the rule of constructive liability laid down in section 34, PPC., which is based on ‘common intention’; a condition of mind which is more directly connected with the action than in the formation of a common object. In cases such as these, liability of each member depends on the intention or knowledge of the other members.*
- *If members of the family of the appellants and other residents of the village assemble, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It is necessary, therefore,*

⁸¹ 1971 P.Cr.L.J. 528; PLD 1956 S.C. (Ind.) 249; PLD 1963 S.C. 109; PLD 1964 Dacca 480; 1971 P.Cr.L.J. 528; 1968 P.Cr.L.J. 300; PLD 1968 S.C. 372; Explanation-In PLD 1963 S. C. 109; 1984 SCMR 823

for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or had been committing some overt act in pursuance of the common object of the unlawful assembly.

- The case of each individual accused has to be examined to satisfy that mere spectators who had not joined the assembly and were unaware of its motive not be branded as members of the unlawful assembly which committed the crime.

Elements of GBV/ VAW Falling Under the Provision

This is directly relevant to illegal parallel justice systems such as *panchayats* and *jirgas*.

These illegal systems judge on different issues facing a community. They are seen to be extremely discriminatory towards women. Not only are women not allowed to be members of the council but they are condemned without being allowed to be heard or even appear before them except for being punished.

The punishments given by such councils have included some horrific examples, including justifying honor killings; gang rape; and the giving of women and girls to opposing feuding parties as part of a compromise. Such councils are some of the biggest violators of women's rights and implicit in violence against women, especially sexual violence.

While the Sindh High Court in its judgement PLD 2019 SC 218, has declared "*these councils illegal, they continue to exist without any attempts of quashing them*".⁸²

The Supreme Court in **Civil Petition No.773-P Of 2018** has reiterated an earlier decision of the Apex court and declared that "*jirgas/ panchayats are illegal*". In 2004, the Sindh High Court declared these informal systems as "*illegal and unconstitutional*". It went further to declare that those in violation of this court order could be held in contempt.

The 2018 Supreme Court judgement provided two main observations:

- "*Jirgas/panchayats do not operate under the Constitution or any other law whatsoever to the extent that they attempt to adjudicate on civil or criminal matters*"; and
- "*The operation of jirgas/ panchayats etc. violates Pakistan's international commitments under the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and CEDAW which place a responsibility on the State of Pakistan to ensure that everyone has access to courts or tribunals, are treated equally before the law and in all stages of procedure in courts and tribunals.*"

Without any law, which specifically deals with illegal parallel systems, this section and higher court judgements can be used to punish persons who take part in such an unlawful assembly.

Section 182: False First Information Report (FIR)

"False information with intent to cause public servant to use his lawful power to the injury of another person:

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:-

- to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or*
- to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to [three thousand rupees], or with both."*

Definition Under Case Law:⁸³

- *It is illegal to file a frivolous, false or vexatious complaint.*

82 PLD 2019 S.C 218

83 Civil petition 1282 2014, <http://www.supremecourt.gov.pk/web/page.asp?id=2022>

- A counter FIR can be lodged against the person under this section, who approaches the police to file an FIR that is fictitious.

Criminal Law (Amendments) Act 2017

Through this amendment the punishment under section 182 which “may extend to six months” was substituted with the following:

- a) Seven years regarding an offence that is punishable by death
- b) Five years in case of offence punishable with life imprisonment
- c) One fourth of the longest term where it does not fall under clause (a) and (b).

Section 292: Sale, etc., of obscene books, etc.

Whoever:-

- (1) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (2) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (3) takes part in or receives profits from, any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of -the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (4) advertises or makes known by any means whatsoever that any person he engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (5) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.

Section 293: Sale, etc., of obscene objects to young person.

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Definitions under Case Law (Sections 292 and 293)⁸⁴

- Obscene, as per case law, has to be determined by the reaction of a normal person and by prevailing normal standards and conditions of society.
- The duty falls on the court alone to decide on facts of whether or not the material in question is obscene or not according to surrounding circumstances and facts in each and every case.

Section 294: Obscene acts and songs.

Whoever, to the annoyance of others, --

- (1) does any obscene act in any public place, or
- (2) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

84 2008 MLD 467; 1990 PLD Lah. 499; 1979 PLD Lah. 279; 1960 PLD Lah.172; 1952 PLD Lah. 384

Definitions under Case Law⁸⁵

The word 'obscene' would be something which is offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas or being impure, indecent or lewd. 'Obscene acts' can include a number of different things, including acts such as pornography, exhibitionism/ exposure, any forms of eve teasing, sexual harassment, etc.

Elements of GBV/ VAW Falling Under the Provision

This section can also be used to put forward a claim of sexual harassment. In order to provide such an interpretation of this section, it will be important to prove that the words used are 'obscene' and were uttered with the intention to annoy/ harass the other. With section 509 "sexual harassment" now a specific section on harassment can be used to cover these offences. However, both this section (294) and section 509 can be used together to put forward a case for sexual harassment.

Note: The Penal Code gives extensive details on murder and hurt. However, for the purpose of this Resource Pack, we will concentrate on PPC sections regarding murder and hurt related to VAW/ GBV crimes i.e. honor crimes, acid crimes etc.

Section 300. Qatl-i-Amd (Murder with intention)

Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-e-amd.

Section 302. Punishment of Qatl-i-Amd

Whoever commits Qatl-i-Amd shall, subject to the provisions of this Chapter be;

- (1) Punished with death as qisas;
- (2) Punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
- (3) Punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

[Refer to:

Section 299. Definitions: In this Chapter, unless there is anything repugnant in the subject or context:

- (ii) "offence committed in the name or on the pretext of honour" means an offence committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices;]

Definition under Case Law

- Section 300 defines murder, while section 302 deals with the punishment. The latter must be included in the discussion as it provides an expansion and deeper analysis of the different elements of the section.
- Honor killing is recognized as part of Qatl-i-Amd/ murder and placed within the PPC.
- Motive is an important ingredient in this offence. Motive is the cause, manner and method of thoughts in the mind of the person for performing action, which is hidden in the mind of the accused.
- People who kill women in the name of honor try to use this motive as a sort of provocation which can act as a mitigating factor and earn them the minimum possible punishment. Crime of karo-kari and siyah kari, i.e., honor killings, is considered murder but until now were considered a mitigating factor during sentencing, as can be seen to be done in numerous cases. However, it is now established that honor cannot be used as a mitigating factor, but instead treated as an aggravating factor because now section 299E of PPC has given the judges the discretion to treat this offence under "Fasad-fil-Arz", to give the harshest punishment to the perpetrator.

- *Judges must attract Fasad-fil-Arz to this type of murder because killing in the name of honor is one of the first forms of VAW, is outrageous to public conscience and is now an option under 299E to use.*
- *All laws pertaining to self-defense apply to Qatl-i-Amd.*

Elements of GBV/ VAW Falling Under the Provision:

The question of murder is of course relevant in situations where sexual violence may be taken to a fatal level, i.e., sexual abuse resulting in death. It is important to understand the different components involved.

This section is very important in relation to cases of honor killing, which are related to incidents of sexual violence. Under the Criminal Law (Amendment) Act 2004, which amended the PPC and CrPC, among other laws, honor killings were recognized as murder and placed within the PPC. Also discretion was given to judges to treat this as Fasad-fil-Arz and in light of the intensity of the crime, it is the recommended practice.

However, there have been a number of reported cases in which judges have accepted the defense making use of 'honor killings' as mitigating factor to reduce charges from murder to manslaughter therefore reducing the sentence. Although this as well is at the discretion of the judge, but there are several factors at work behind this practice. Lacunas in investigation are among the top factors. Investigation officers are not adequately trained on how to investigate cases of honor killings. They often do not have the information about recent pro-women laws and fail to translate their investigation unto parameters set under the law. This is because of two reasons, mainly, one is lack of knowledge or understanding of the law, and second is corruption. They take bribes to make the case weak by not recording evidence properly, by writing insufficient and/ or irrelevant facts, by influencing the survivor and/ or witnesses in other ways. Their mindsets also matter as they are affected by the same stereotypes as everyone else. They are not sensitized enough to understand the nature of this heinous crime and accept it as a social norm. All this contributes towards inadequate police investigation presenting a lacuna filled report in the court. In order to address this, police investigation should be sensitized regarding honor killing and have specialized training for collecting evidence, examining witnesses and investigating all angles in the cases of honor killing.

Prosecution is another important factor in these cases which has the responsibility to present the case to the court in the best way possible to get a conviction. The responsibility of prosecution is to convince the court in deciding the judgement to be made according to premises and practices under the law. This includes convincing the judges to use their discretion as per criminal law amendment act 2004 to treat honor crimes as Fasad-fil-Arz. Sensitization related training on this subject is also necessary for prosecutors.

The Supreme Court and High Court have the power to monitor the proceedings as well as the judgements passed by the district judiciary which they can do in cases of honor crimes with special interest since they already monitor lower courts progress in other crimes. They can also issue guidelines through their judgements when a matter of honor crime comes before them. The Superior Court judgements and guidelines are binding on district judiciary. Judges are also not well informed about the recent laws and amendments and are influenced by the same stereotypes regarding gender and violence against women. Their training programs need to be updated as well to sensitize them with a special focus on dealing with honor crimes. Judges must themselves discourage the use of honor as mitigating factor and use their discretion recommended under the law (section 299EE) to treat honor killing as murder/ Fasad-fil-Arz.

In addition, legislators need to further clarify the legal parameters to eliminate any and all ambiguities in the law so that judges can attract Fasad-fil-Arz with clear interpretation.

Section 303. Qatl committed under 'Ikrah-i-Tam or Ikrahi-Naqis'

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 committed as a consequence of his Ikrah-i-tam; or*
- under Ikrah-i-naqis shall be punished for the kind of qatl committed by him and the person causing 'Ikrah-i-naqis' shall be punished with imprisonment for a term which may extend to ten years.*

[Refer to:

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-biljabr;
- (h) “Ikrah-e-naqis” means any form of duress which does not amount to ikrah-i-tam;]

Definition under Case Law

The bare perusal of section 299(g), PPC shows three ingredients necessary for this offence.

Therefore, the culprit for the commission of this offence would be a person who:

- (1) puts any person, his spouses or any of his blood relations within the prohibited degree of marriage in fear of instant death; or
- (2) instant permanent impairing of any organ of the body;
- (3) or instant fear of being subjected to sodomy or Zina-bil-Jabr.

It is important to note that this section cannot be used as a legal defense but instead it is a definition of an illegal form of harm done by the perpetrator and not by the victim.

Elements of GBV/ VAW Falling Under the Provision

The third element in the definition of *ikrah-e-tam* is directly related to situations of forced sexual activity to one’s spouse or blood relations.

Under this section, it is necessary for the complainant to have ‘fear’ in order to constitute an offence. As this includes the relationship of blood, it can be immediately linked to familial sex offences, especially those against children. It would be important in situations of incest and child abuse where the grown-up abuses his trust and authority over the child.

This section could apply to cases where there is a fear of marital rape, sexual abuse, child abuse, child molestation, physical violence and physical violence leading to death.

Section 315. Qatl Shihh-i-Amd

Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit Qatl -Shihh-i-Amd.

Definitions under Case Law⁸⁶

The main distinguishing feature between Qatl- i- Amd and Qatl- Shihh- i- Amd is that for the former, the assailant must have the intention to cause death or inflict the victims with an injury that is likely to cause death in natural circumstances.

In the latter the intention is of causing such harm or injury to the body that is not likely to cause death in natural circumstances, but, however leads to death of the victim.

Meaning thereby, that in case of Qatl Shihh-i-Amd “intention to cause death or cause such bodily injury which in the ordinary course of nature is likely to cause death” must be non-existent.

Rape can be considered to fall under this section.

⁸⁶ P L D 2007 Supreme Court 217; 2006 P Cr. L J 662; P L D 1984 Federal Shariat Court 136; 1987 PCRLJ 361

Elements of GBV/ VAW Falling Under the Provision

There are three parts to this offence:

- (i) to intend to cause harm;
- (ii) the causing of that harm; and
- (iii) that harm resulting in death.

'Harm' can be interpreted widely to include forms of violence including sexual violence. In simple terms it means to injure physically, morally or mentally.

In scope of this Resource Pack, it would mean an aggravated form of sexual violence, i.e., any act of sexual violence that could either be done to such an extreme that it would result in death, or cause some kind of damage that would eventually result in death i.e. sexual abuse resulting in death.

Examples could include forms of sexual violence such as aggravated rape, sexual assault, and domestic violence, emotional and psychological abuse, which result in women taking their own lives. It could also include harm such as transference of sexually transmitted diseases which could result in the death of the victim.

Section 332. Hurt

- (1) *Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables [disfigures, defaces] or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.*

Disfigure means disfigurement or dismemberment of any organ or any part of the organ of the human body which impairs or corrodes or deforms the symmetry or appearance of a person].

- (2) *The following are the kinds of hurt:*

- (a) *Itlaf-i-udw (Permanent impairment of an organ)*
- (b) *Itlaf-i-salahiyyat-i-udw (Permanent impairment of functioning of an organ)*
- (c) *Shajjah (Harm on face or head not coming under loss of organ)*
- (d) *Jurh (Injury leaving mark of wound apart from face or head) and*
- (e) *All kinds of other hurts.*

Definitions under Case Law⁸⁷

Hurt is defined in the PPC as "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt" It is not necessary that in fact, there should be marks of violence. If a person causes bodily pain to another person, he is guilty of causing hurt.

Elements of GBV/ VAW Falling Under the Provision

Hurt does not necessarily mean just the physical hurt. By using the words 'disease', 'infirmity', 'disfigures', and 'defaces' it widens the realm of the types of hurts. This could, for example be interpreted to mean sexually transmitted diseases (STD) and acid crimes.

It could also include victims of an abusive relationship. An abusive relationship would not just be purely physical abuse but would include relationships in which there is control over the victim by the perpetrator, with the abusive person's needs and opinions dominating and the victim feeling controlled by them. Hurt, if defined widely, could also include hurt being caused by taking away the right of choice from the victim, including those rights such as choosing to work, mobility, choosing to take contraception, etc.

87 1984 PCrLJ 794

Section 338. Isqat-i-Hamal

(Causing miscarriage of a child whose organs have not been formed)

Whoever causes woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause isqat-i-hamal.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.

Section 338A. Punishment for ‘Isqat-i-Hamal’

Whoever causes ‘Isqat-i-hamal’ shall be liable to punishment as tazir:

- (a) with imprisonment of either description for a term which may extend to [three] 3 years, if Isqat-i-hamal is caused with the consent of the woman; or*
- (b) with imprisonment of either description for term which may extend to [ten] 10 years if Isqat-i-hamal is caused without the consent of the woman;*

Provided that, if as a result of Isqat-i-hamal any hurt is caused to the woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death, as the case may be.

Definition under Case Law⁸⁸

A plain reading of the said section shows that in order to bring home a charge under Section 338 of miscarriage of a child whose organs have not been formed has to be proved.

Cases that have come under this section have been more focused on the commission of the offence of ‘zina’ as opposed to the abortion/ miscarriage.

The brunt of this section is focused on who causes the miscarriage. The accused have usually included a rapist whose violent rape caused an abortion (i.e., miscarriage), the mother-in-law of the girl and the midwife who performed the abortion.

Elements of GBV/ VAW Falling Under the Provision

While this law is primarily meant to illegalize voluntary abortions by women, it effectively also includes in its ambit forced miscarriages and abortions. It holds responsible the persons i.e., whoever causes the miscarriage or abortion. This could include the husband, in-laws, a paramour, and parents.

Apart from forced abortions, an act which results in the miscarriage of the fetus can also fall within this provision, including beating a pregnant woman or causing pre-natal maternal distress.

Section 338B. Isqat-i-Janin

(Causing miscarriage of a child whose limbs and organs have been formed)

Whoever causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause Isqat-i-janin.

Explanation: A woman who causes herself to miscarry is within the meaning of this section.

Definition under Case Law⁸⁹

The main difference between this section and the previous section is the extent of formation of the limbs and organs of the child. In this section, it is necessary for the limbs and organs of the fetus to have been formed.

There are not many cases that appear under this section. This section, however, has been misused, for example it has been used against women in cases where the wife applies for dissolution of marriage and the husband attempts to

⁸⁸ 1995 PCrLJ 444; 2006 PCrLJ 662; 2007 PCrLJ 856; 2002 PCrLJ 1292; 2004 YLR 1294; 2008 SCMR 914

⁸⁹ 2006 YLR 2221; 2005 PCrLJ 1162

blackmail her through the law. Circumstantial evidence should allow judges to recognize when this section is being misused.

Elements of GBV/ VAW Falling Under the Provision

As in the preceding section (Section 338 and 338.A), any person who causes the miscarriage or abortion of a fetus who is at a later stage of formation will be held liable under this provision. In terms of sexual violence, this could include any person, including a husband, in laws, a paramour and parents who force a woman to have an abortion. This is especially relevant in situations where abortions are forced upon women once it is discovered that the fetus is a girl.

Apart from forced abortions, an act which results in the miscarriage of the fetus can also fall within this provision, including beating a pregnant woman or causing her distress. However, what is not covered is the harm done to women due to forced abortion or miscarriage.

Section 338C. Punishment for ‘Isqat-i-Janin’

Whoever causes Isqatijanin shall be liable to

- (a) onetwentieth of the diyat if the child is born dead;*
- (b) full diyat if the child is born alive but dies as a result of any act of the offender; and*
- (c) imprisonment of either description for a term which may extend to seven years as ta’zir:*

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate diyat or ta’zir, as the case may be, for every such child:

Provided further that if, as a result of isqatijanin, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.

Section 339. Wrongful restraint

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception: The obstruction of a private way over land or water, which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Definitions under Case Law⁹⁰

Wrongful restraint would include obstruction of any kind. The physical obstruction and mere threat would not amount to obstruction. It must be proven that the complainant had a right to proceed towards a particular direction or way and was restrained from doing so.

Elements of GBV/ VAW Falling Under the Provision

This section is another example of an offence that is addendum to an offence of sexual violence. Due to the higher social status enjoyed by men in Pakistani society, men are able to control women’s movements. Whether this is due to social pressure, financial control or through threats and other forms of violence, this act can and has been committed in a variety of cases where there has been sexual violence. It is important to recognize that such an offence can be identified as a preparatory act, done with the intention to commit an illegal sexual act, e.g. sexual violence.

Section 340. Wrongful confinement

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

⁹⁰ 2002 PCrLJ 530; 1996 PCrLJ 735

Section 343. Wrongful confinement for three or more days

Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 344. Wrongful confinement for ten or more days

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which extend to three years, and shall also be liable to fine.

Section 346. Wrongful confinement in secret

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person of public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Definitions under Case Law⁹¹

- The definition of ‘wrongful confinement’ relates back to the definition of ‘wrongful restraint’. An essential ingredient of this offence is a physical obstruction to the movements of a person.
- Confinement in any place or area constitutes the offence. It is important to also to note that in situations where there is a combination of different offences for, e.g., in cases where there is robbery, abduction and wrongful confinement, each will be charged separately.
- Wrongful confinement has included situations where the appellant has abducted the complainant from his/her house and confined the person in a room for several hours; and situations where the police have illegally confined someone in their custody without any basis and justification and without legal sanction.

Elements of GBV/ VAW Falling Under the Provision

- Often this confinement is the most significant part of an offence of sexual violence.
- There are different levels of punishment according to the time period spent in wrongful confinement.
- It is important to establish whether the intention to commit an illegal sexual act, was the motive for the said confinement. If that is the case, then the offence can be said to fall within the dimension of sexual violence.
- This charge could be brought against not just the sexual offenders themselves, but anyone who assists in the continuance of wrongful confinement, including those who were negligent or chose not to inform anyone else in order to free the victim from this wrongful confinement. It could include friends, associates, family members, and any person who assisted in the commission of the offence.

Section 349: Force

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s sense of feeling: provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

- ❖ By his own bodily power.
- ❖ By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

91 2007 YLR 1976; 2000 PCRLJ 955; 1984 PCrLJ 794; PL 1963 (W. P.) Lahore 357; P L D 1999 Karachi 151; 1996. PCrLJ 975; 1992 PCrLJ 1095; PLD 1972 Lahore 474

- ❖ *By inducing any animal to move, to change its motion, or to cease to move.*

Definitions under Case Law

Threatening and assuming a fighting attitude would be a show of force. Also if force or intimidation is used to prevent any action it falls under this section.

Elements of GBV/ VAW Falling Under the Provision

This section is mentioned here for reference and definition relevant to the section is later in this Resource Pack (Section 350: Criminal Force – under Session 10).

Section 351: Assault

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will-cause any person present to apprehend that he who makes that gesture or preparation it about to use of criminal force to that person, is said to commit an assault.

Definitions under Case Law⁹²

- *Examples under case law of assault include unconditional threats being extended to another; or when the accused enters into a house armed with a gun.*
- *Mere words do not amount to an assault, but the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.*

Elements of GBV/ VAW Falling Under the Provision

- The main ingredient for this section to apply is that there must be apprehension in the victim that the perpetrator will cause her/ him harm.
- There must be a course of conduct which causes fear in the other that the use of violence is imminent.
- The determining factor must be that a reasonable person in possession of the same information would think the course of conduct would cause the other to fear on that occasion.
- Any gesture, such as raising a hand in preparation to hit another, exposing oneself to another or any such act that places another in fear of harm.
- In cases of sexual violence, any preparation or gesture relating to an act of sexual violence, which makes another feel that it is imminent, constitutes an offence under this section.

Section 441: Criminal trespass

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit ‘criminal trespass’.

Definitions under Case Law⁹³

The necessary ingredients of this offence are to commit trespass in order to intimidate, insult or annoy any person in possession of the property in dispute.

- *It is manifestly clear that to constitute an offence of criminal trespass one must enter into another person’s property unlawfully, and unlawfully remain there with intent to intimidate, insult or annoy any such person, or with intent to commit an offence. Criminal trespass can be committed even in absence of the occupier of the premises.*

92 351. Assault, bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3204.

93 2006 PCrLJ 539; PLD 1982 Karachi 600; PLD 556 SC 1975; 1983 PCrLJ 42; 2008 PCrLJ 812; PLD 1965 SC 640

Elements of GBV/ VAW Falling Under the Provision

Criminal trespass would be another ancillary offense to one of sexual violence. This would, again be considered as an act of preparation to any form of sexual violence if the trespass was committed with the intention to commit an illegal sexual act, i.e., rape and gang rape.

Section 442: House-trespass

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit 'house-trespass'.

Definitions under Case Law⁹⁴

- *The main purpose of this section is that, without getting the permission of the occupant or without a search warrant, no stranger, including a police officer, can enter the house of any person.*
- *It is even illegal for a magistrate to enter any premises if he is not authorized to enter into the premises without due process of law or permission of occupants.*
- *Case law has also defined the word 'building' to include a courtyard consisting of a walled enclosure with four rooms opening into it and an outer door to get into it. Similarly, a walled cattle yard has also been held to be a building.*
- *The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.*

Elements of GBV/ VAW Falling Under the Provision

As above, this may be an ancillary offence, i.e., an act of preparation to commit an offence of sexual violence.

Section 493-A: Cohabitation clause

Every man who deceitfully causes any woman who is not lawfully married to him believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty five years and shall also be liable to fine.

Definition under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under the Provision

This clause closes one of the channels that have been occasionally used to subject women to sexual activity. This states explicitly that even because of false information or perception created by an actor that makes woman a part of sexual activity willfully, it will be treated in as strict a manner as other such offences are treated.

Section 503: Criminal Intimidation

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

94 2008 PLD SC 376; 1996 PCRLJ 1608; 1968 PCRLJ 1857

Definitions under Case Law⁹⁵

There are three main essential ingredients under this section:

- (1) *There must be a threat;*
- (2) *That threat must be causative of injury to a person, reputation or to his property or to any other one in whom that person could be interested; and*
- (3) *That there must be a purpose of threat also which could cause harm to that person or to do any act which he was not legally bound to do or omit which that person was legally entitled to do as the means of avoiding execution of such threat.*

Simple threats would not be sufficient to constitute an offence under this section.-

The word '*threat*' implies a declaration or indication of an intention to inflict, punish or hurt, or to intimidate by threat of danger.

Elements of GBV/ VAW Falling Under the Provision

- The most obvious aspect of this provision is the act of threatening harm in situations such as domestic violence, rape, assault, or abuse of the person being addressed, or anyone connected to that person. It also makes it an offence to threaten the reputation of a person.
- This section can be used to cover issues of blackmail and manipulation. Threats therefore could be implicit in offences such as forced marriages, domestic violence, rape, prostitution, and trafficking.
- It also includes situations where an indecent, offensive or threatening letter, electronic communication or other article is sent to another person, or telephone messages which are indecent, offensive or threatening.
- Aggravated sexual abuse is not defined specifically under the law. Nevertheless, this section, in combination with any of the sections in which an act of sexual violence is committed, could constitute as aggravated sexual abuse.

95 2010 MLD 291; 2007 YLR 441; 2002 PCRLJ 530; 1988 PCRLJ 1560; 2002 PCrLJ 530; 1991 PCrLJ Noted 68; 1988 PCrLJ 270

SESSION 8 – PREVENTION OF ELECTRONIC CRIMES ACT (PECA) 2016

Notes on Methodology:

The facilitator will present the laws in this section including elements of GBV/ VAW relating to them. Then he or she will share a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate discussion by asking follow up questions specific to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover rest of statute's provisions/ sections.

The facilitator must also explain to participants the following points about different sections:

1. Whether or not it is bailable.
2. Whether or not it is compoundable.
3. What are the punishments?
4. Which court can take cognizance?
5. Government's responsibilities towards raising awareness about the law where applicable and/or defined.

Key Concepts and Legislations:

Section 20 – Offences against dignity of a natural person:

(1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both.

Definition under Case Law

The case of SM 2017, trialed under PECA 2016, deals with electronic crimes in dual manner as it curbs any kind of information that is transmitted and in-dignifies someone, and also what should be done when a false claim that is made about someone who has actually not committed such an offense. In totality, it curtails circulation of false information regardless of who does it.⁹⁶

Elements of GBV/ VAW Falling Under the Provision

This section does not explicitly deal with online harassment, yet there are several kinds of online harassment captured under this section.

For example, the inclusion of criminal defamation in this clause deals with the reputational harm that is inflicted on a victim of online harassment.

Section 24 – Cyber-stalking:

(1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the internet, website, electronic mail or any other similar means of communication to:

⁹⁶ Correspondent, The Newspaper's. "Woman Arrested for Blackmailing on Internet." DAWN.COM, 26 Mar. 2017, www.dawn.com/news/1322895.

- (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
- (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) Take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.

(2) Whoever commits the offence specified in sub-section

- (1) Shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

Provided that if victim of the cyber stalking under subsection(1) is a minor the punishment may extend to five years or with fine which may extend to ten million rupees or with both.

Definition under Case Law

The section has not had a chance to be properly interpreted in case law yet.

Elements of GBV/ VAW Falling Under the Provision

- This section is an excellent provision dealing with one of the most current forms of harassment, violations of rights and VAW.
- Even though the language of the section is straightforward and self-explanatory, the definition of ‘cyber stalking’ in PECA 2016 is vague and criminalizes a wide range of activities that might not otherwise be considered a crime.
- Phrases like ‘clear indication of disinterest’ are not clearly defined and have the potential of placing the onus on women. Litigation around PECA 2016 will help flesh out the interpretations of such phrases.
- Different forms of violence that could fall under this could include pornography, harassment over the internet including emails and through social media networks, taking unauthorized or unwanted pictures or videos of a person and putting them on the internet for private or public viewing.

Procedure

FIA’s National Response Centre for Cyber Crimes (NR3C) is the designated agency to carry out warrants for search and seizure, investigations, process complainants, and file charges. It is established under the Prevention of Electronic Crimes Act 2016, which encourages the setup of separate courts to process these cases. Confidentiality is stressed upon the officers of the NR3C.

Section 41 – Confidentiality of information

Notwithstanding immunity granted under any other law for the time being in force, any person including a service provider while providing services under the terms of lawful contract or otherwise in accordance with the law, or an authorized officer who has secured access to any material or data containing personal information about another person, discloses such material to any other person, except when required by law, without the consent of the person concerned or in breach of lawful contract with the intent to cause or knowing that he is likely to cause harm, wrongful loss or gain to any person or compromise confidentiality of such material or data shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

Provided that the burden of proof of any defence taken by an accused service provider or an authorized officer that he was acting in good faith, shall be on such a service provider or the authorized officer, as the case may be.

Section 43 – Offences to be compoundable and non-cognizable

- (1) *All offences under this Act, except the offences under sections 10, 21 and 22 and abetment thereof, shall be non-cognizable, bailable and compoundable:*

Provided that offences under section 17 shall be cognizable by the investigation agency on a written complaint by the Authority.

- (2) *Offences under sections 10, 21 and 22 and abetment thereof shall be non-bailable, non-compoundable and cognizable by the investigation agency.*

According to section 43

“The Court may, in addition to award of any punishment including fine under this Act, make an order for payment of compensation to the victim for any damage or loss caused and the compensation so awarded shall be, recoverable as arrears of land revenue.

Provided that the compensation awarded by the Court shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation so awarded.”

Case Study:

Sidra (24 years) lives in Sialkot and a man named Saeed, who was her brother’s friend is blackmailing her since 8 years. At that time, Sidra’s brother had lost his memory card which had pictures of Sidra and her family. Saeed told Sidra that he has that memory card and asked her to come to his place to collect the card. When she went to his place, he mixed something in her drink because of which she became unconscious and, in that state, he raped her and took nude pictures and videos.

Since then Saeed has been blackmailing Sidra that he will spread her pictures if she would not come to meet her. She once paid Rs. 70,000 to Saeed for the pictures and videos but he had made many copies and even after taking the money, kept blackmailing her. After some time he asked for some more money (Rs. 200,000) which she arranged somehow.

Then Sidra got a proposal, she was about to get engaged but Saeed showed her pictures to the guy she was supposed to get engaged to. He sent her nude pictures to her house which her mother received and caused immense tension to her family. In this stressful situation, Sidra tried to commit suicide but Saeed did not stop blackmailing her.

She finally reported this case to the FIA and they responded on time. However, they wanted to follow all the procedures according to the law, and asked her to lodge an FIR. Sidra was worried that her family would not support her after knowing what had happened so she took her case back.

SESSION 9 – DEFAMATION ACT

Notes on Methodology:

The facilitator will present an overview of the relevant laws then share a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

The facilitator must also explain to participants the following points about different sections:

- 1- Whether or not it is bailable.
- 2- Whether or not it is compoundable.
- 3- What are the punishments?
- 4- Which court can take cognizance?
- 5- Government's responsibilities towards raising awareness about the law where applicable and/or defined.

Key Concepts and Legislations:

3. Defamation

- (1) *Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation.*
- (2) *Defamation is of two forms, namely:–*
 - (i) *Slander; and*
 - (ii) *Libel*
- (3) *Any false oral statement or representation that amounts to defamation shall be actionable as slander.*
- (4) *Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means of devices that amounts to defamation shall be actionable as libel.*

4. Defamation Actionable.

The publication of defamatory matter is an actionable wrong without proof of special damage to the person defamed and where defamation is proved, damage shall be presumed.

3. Defenses

In defamation proceedings a person has a defence if he shows that–

- (a) *he was not the author, editor, publisher or printer of the statement complained of;*
- (b) *the matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith;*
- (c) *it is based on truth and was made for the public good;*

- (d) assent was given for the publication by the plaintiff;
- (e) offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff;
- (f) an offer to print or publish a contradiction or denial in the same manner and with the same prominence was made but was refused by the plaintiff;
- (g) the matter complained of was privileged communication such as between lawyer and client or between persons having fiduciary relations; and
- (h) the matter is converted by absolute or qualified privilege

9. Remedies

Where defamation shall be proved to have occurred, the Court may pass order directing the defendant to tender an apology, if acceptable to the plaintiff, and publish the same in similar manner and with the same prominence as the defamatory statement made and pay reasonable compensatory damages as general damages with a minimum of Rs.50,000/- (Rupees fifty thousands) and in addition thereto, any special damage incurred that is proved by the plaintiff to the satisfaction of the Court.

Definition under case law:

A much-publicized case of Ali Zafar filing a defamation suit against Meesha Shafi claiming damages of Rs 1 Billion, under the defamation ordinance 2002. Notwithstanding the merits of the case as we still await the judgement, this case law tells that anyone who feels that he/ she has been defamed can under this law seek remedy in form of compensation for the damages done. This law assures that no one makes use of sensitive issues to settle their own vendettas, which is very rear but still a possibility which cannot be foregone.⁹⁷

Case Study:

Maalik, a famous writer, filed a defamation case against Rahim Khan, Bacha Khan and Gul Samar Shah for uploading objectionable material on Facebook in 2015. In his plea, he accused the three persons in question of hurting his feelings by running a malicious campaign against him and defaming him and his family. He asked for relief under the Defamation Act 2002.

The three accused confessed uploading and sharing insulting material against Maalik, after which the court fined each one Rs. 1 million to settle the case.

97 "LHC Wants Ali Zafar-Meesha Shafi Defamation Case Decided in 90 Days." Pakistan Today, www.pakistantoday.com.pk/2019/04/09/lhc-wants-ali-zafar-meesh-shafi-defamation-case-decided-in-90-days/.

SESSION 10 – RAPE

Notes on Methodology:

The facilitator will highlight that laws to be discussed henceforth are specific to certain types of GBV/ VAW crimes and will apply differently depending on the situation.

The facilitator must also explain to participants the following points about each law given hereunder:

- 1- Whether or not it is bailable.
- 2- Whether or not it is compoundable.
- 3- What are the punishments?
- 4- Which court can take cognizance?
- 5- What are the Government's responsibilities towards awareness-raising or implementation of the law where it is applicable and/ or defined.

The facilitator will present the information on related laws then share a case study specific to rape with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from the participants, the facilitator will generate discussion by asking follow up questions specific to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Criminal Law (Amendment) (Offences Relating To Rape) Act 2016

The Law aims to improve conviction rates and make State directly responsible for rape survivors through the following provisions:

- *A trial must conclude in 3 months*
- *Deoxyribonucleic Acid (DNA) testing of the victim⁹⁸ and the accused⁹⁹ is permitted evidence¹⁰⁰ which was previously not present in CrPC 1898.*
- *The survivor has the right to free legal representation*
- *Police must provide a list of lawyers to the survivor*
- *In-camera sessions should be permitted*

Conviction rates in rape cases are abysmally low. According to a report of the Senate Standing Committee on Law and Justice (Report No. 06, Twelfth Parliamentary Year, 2014)¹⁰¹ presented by Senator Muhammad Kazim Khan, in the last 5 years of the 103 reported rapes cases registered in the Islamabad Capital Territory (ICT) area none of the culprits or accused have been convicted or brought to justice.

98 Criminal Law (Amendment) (Offences Related to Rape) Act 2016, Section 53A.

99 Criminal Law (Amendment) (Offences Related to Rape) Act 2016, Section 164A.

100 Criminal Law (Amendment) (Offences Related to Rape) Act 2016, Section 164B.

101 Senate of Pakistan. Report No. 06. 2014. (http://www.senate.gov.pk/uploads/documents/1426160433_238.pdf)

Elements of GBV/ VAW Falling Under the Provision

Our accusatorial system places the entire burden of proof on the investigating agency, almost coercing it to plant evidence, or resort to all kinds of illegalities to build a fool proof case. The pressure also compels the investigators to resort to third degree methods in order to get evidence. Other social issues such as poverty, illiteracy, social division into castes etc. further complicate the matters for survivors, their families and their pursuit of justice.

Genuine witnesses are generally reluctant to tender evidence and even if they do, their evidence is diluted during intense cross-examinations and re-examination. The poor rate of conviction destroys the confidence of the public in the criminal justice system. Moreover, large rates of acquittals and negligible rates of convictions have encouraged offenders to commit further crimes and women have lost faith in the criminal justice system prevailing in Pakistan.

Using the DNA evidence in cases of sexual offence in practice, however, prove difficult. *In one case a poor villager's girl who had sexual relations while in her landlord's estate with his son and eventually got pregnant, DNA evidence was obtained and the landlord's son was identified as the father. However, due to pressure the girl was forced to withdraw and testify that none of the landlord's household were involved. So even in the face of solid hard DNA facts, the case of paternity was overturned via testimony that was obviously forced.*¹⁰²

Besides on collecting blood sample, Semen sample or sample of hair-roots, there are no specific statutory provisions. There is no lower or upper limit of time for collection of these materials. And this is a fact that absence of a specific DNA legislation creates trouble in the crime investigation process.

Protection of Women (Criminal Laws Amendment) Act 2006

Change was seen in this Ordinance because of the Protection of Women (Criminal Laws Amendment) Act 2006:

5A. No case to be converted, lodged or registered under certain provisions No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1989 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496A of the Pakistan Penal Code (Act XLV of 1860) and no complaint of fornication shall at any stage be converted into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force.

Definition under Case Law¹⁰³

This section has not been discussed or clarified under case law.

Elements of GBV/ VAW Falling Under the Provision

Due to the methods employed by the Offence of Zina (Enforcement of Hudood) Ordinance 1979 prior to the 2006 amendment (Protection of Women Act), it was common that a complaint of rape would be converted to one of fornication, if the required evidence for rape could not be found.

This section specifically combats this issue. It is vital for the police and lawyers to be aware of this in order to ensure there is no repeat of the previous practices.

PPC Section 350: Criminal force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Definitions under Case Law

To the best knowledge of the researchers of this report, there have been no reported cases that have discussed this section and enhanced its meaning beyond its literal interpretation.

¹⁰² Salman Akram Raja vs. Government of Punjab (2013 SCMR 203)

¹⁰³ Protection of Women (Amendment) Act, 2006

Elements of GBV/ VAW Falling Under the Provision

- This section relates to the unlawful touching of another person without their consent.
- This offence falls under the ambit of sexual violence in terms of the methods used to commit the act itself, i.e., with force, as defined in the previous section.
- All forms of criminal force, from non-consensual touching, to hitting or pushing or harming, can fall under the ambit of this and the previous section (s349. Force).
- It is important to remember that criminal force is not a necessary element in acts of sexual violence. It can, however, be part of an offence of sexual violence. It can also add an element of aggravation to the offence of sexual violence and therefore could result in a higher punishment for the crime.
- Criminal force, however, constitutes an offence on its own. Therefore, even if the sexual element is not always recognized, a charge of criminal force can also be framed in order to punish the perpetrator.
- Current interpretations of the ‘force’ requirement are more flexible than in the past. Courts are now more willing to find implicit threats sufficient for a conviction. Even without an implicit threat, a complainant’s fear can satisfy the force requirement, provided the fear is ‘reasonably grounded’.
- This section could also be widened to include the elements of sexual contact, i.e., intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of any person with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.
- If sexual contact is not consented to or the victim is not legally able to consent to such touching and the perpetrator does not reasonably believe the victim has consented to this, it would result in constituting a crime of sexual assault and this section would apply.
- Any violence attached to these would constitute aggravated criminal force.

PPC Section 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.

Definitions under Case Law¹⁰⁴

- *The term ‘modesty’ has not been adequately described under case law. In one of the judgments referenced below in the footnotes, it is noted that this section identifies ‘outraging modesty’ in terms of somewhat minor acts such as indecent expression or gesture, such as touching a woman in a lewd or indecent manner.*
- *Cases of attempted rape have been prosecuted under this section, despite a ruling of the Federal Shariat Court to the contrary. Therefore, a number of cases, which are clearly preparations to commit rape, for example, untying the strings of a woman’s shalwar, are considered to fall under this section rather than attempted rape.*
- *Cases which should be under other provisions such as criminal force, attempted or actual acts of sexual assault are often brought under this section.. This is because-punishments under this section are much less severe than for example, attempted rape.*
- *Resultantly, it appears that instead of widening the interpretation of this section to include forms of violence which are not identified elsewhere, this section is being used as a means of escaping the harsher punishment for the commission of offences against women and receiving lighter sentences.*

104 1994 PCrLJ 322; 1996 M D 878; 1998 MLD 312; 1985 SCMR 1443; 2010 PCrLJ 1698; 2010 PCrLJ 1806 ; 2010 PCrLJ 368; 2010 PCrLJ 221

Elements of GBV/ VAW Falling Under the Provision

- Different forms of sexual assault, child abuse and molestation would fall under this section.
- It could include other more ambiguous forms such as:
 - ◆ Faith based violence, i.e., where false or inaccurate interpretations of religion are used to manipulate women into subjugation.
 - ◆ Leading women to believe that there are religious sanctions for wife-beating and that wife cannot refuse their husband's demand for sex.
 - ◆ Denial of rights to bodily integrity by including taking away women's sexual and reproductive rights, such as right to contraception, forced abortions, female genital mutilations, marriage to the Quran, and *watta satta* (exchange) marriages.
 - ◆ Relatively new forms of violence against women such as cyber stalking, as well as violence perpetuated through the internet, e.g., pictures and videos and be read with Section 24 of the Prevention of Electronic Crimes Act (PECA), 2016 i.e. cyber stalking.

PPC Section 354-A: Assault or use of criminal force to woman and stripping her of her clothes

Whoever assaults or uses criminal force to any woman and strips 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.

Definitions under Case Law¹⁰⁵

There are two conditions that are necessary for this section:

- *Firstly, there should be stripping of the clothes of the woman; and*
- *Secondly, in that condition she is exposed to public view.*

The word 'strip' would imply pulling or tearing off clothes, outer cover and even connote forcible or violent action and total removal of clothing. Removal of dupatta from head of a lady or a small part of the shirt is torn does not fall within the purview of this penal clause.

In recent times, the penalty of life sentence is no longer granted under Section 354A and the crime cannot relate to 'aggravating circumstance' or fasad fil arz.

Elements of GBV/ VAW Falling Under the Provision

This provision is straightforward, not leaving much room for interpretation. Nevertheless, issues such as what constitutes as 'public' may be raised. Situations in cases of gang rape, punishments meted out by *panchayats* or *jirgas* of rape or forcing women to be stripped naked and paraded would all fall under this section, making all parties responsible as main respondents as well as abettors.

PPC Section 365 B: Kidnapping, abducting or inducing woman to compel for marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

¹⁰⁵ PLD 2008 Lah. 308; PLD 2008 Lah 308; 1997 PCrLJ 600

Definition under Case Law¹⁰⁶

There are two factors in this crime:

- *Firstly, removal of women by force from one place to another; and*
- *Secondly the object of this removal must be to compel her to marry any person against her will or in order that she could be seduced to illicit intercourse.*
- *A female, not having attained the age of majority but having attained puberty, cannot be compelled to swear that her nikah/ marriage has been entered into by her own free will.*

Elements of GBV/ VAW Falling Under the Provision

The most important ingredient here is the ‘*compelling*’ of a woman. This section deals primarily with forced marriages of women and can be applicable to girls as well. It makes liable the person who commits the abduction or kidnapping or the compelling, or all of the persons involved in these offenses.

PPC Section 367 A: Kidnapping or abducting in order to subject person to unnatural lust

Whoever kidnaps, or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine.

Definition under Case Law¹⁰⁷

In order to constitute an offence under this section, both these elements must be present and established:

- i) *A child must be removed from lawful guardianship;*
- ii) *For the purpose of wanting to commit an act of ‘unnatural lust’.*

Elements of GBV/ VAW Falling Under the Provision

This section deals with unnatural lust alongside kidnapping or abduction of the victim. The definition of what is ‘unnatural’ can be expanded here. On the face of it, it refers to sodomy, but it can in fact refer to other forms of rape. Examples can include rape with objects, necrophilia and non-consensual sadomasochistic behavior.

PPC Section 375: Rape

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

- (i) *Against her will;*
- (ii) *Without her consent;*
- (iii) *With her consent, when the consent has been obtained by putting her in fear of death or of hurt;*
- (iv) *With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or*
- (v) *believes herself to be married; or*
- (vi) *With or without her consent when she is under sixteen years of age.*

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

106 PLD 2009 Lah. 223

107 2010 PCrLJ 274

PPC Section 376: Punishment for Rape

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

Definition under Case Law¹⁰⁸

This section's most important point to be understood is consent (or lack thereof):

- *Consent also has to be valid consent, i.e., a girl below the age of sixteen cannot ever be said to have 'consented'.*
- *Consent has been argued to constitute 'unequivocal voluntary consent'.*
- *It is also important to note that 'consent' and 'submission' are not synonymous terms.*
- *It is not necessary for there to be complete penetration. Partial penetration is sufficient for conviction.*
- *Evidence can be collected through injuries on victim's body—however, this is not to say that absence of injuries proves otherwise. DNA and other circumstantial and forensic evidences are also important to collect as they corroborate the survivor's testimony.*

Interestingly this section is often used against couples who have eloped or married without the consent of their parents when it comes to actual implementation whereas its purpose was otherwise.

Elements of GBV/ VAW Falling Under the Provision

Rape in Pakistani law has been defined to focus on penetration of a penis into the vagina or anus of another. However, worldwide, this definition has been widened to include penetration of the mouth and object rape as well

- It is important to re-define rape in connection with the definitions given earlier in the study, where rape has been shown to take various forms.
- A life sentence for rape attracts the principle of *fasad-fil-arz* (aggravating circumstance) and can no longer be commuted.
- The rape law permits DNA testing.
- It requires that a trial be completed in three months.
- Rape of a minor or a physically/ mentally disabled person will lead to a death sentence or life in prison. Rape by a police officer, medical officer, of a jailor will lead to the same sentence.

PPC Section 377: Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees

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

Definition under Case Law¹⁰⁹

- *If illegal means are used to fulfil an unnatural lust, it falls under this section.*

¹⁰⁸ 1987 MLD 2172; 1963 PLD 684; 1959 PLD38; 2010 YLR 2019; 1983 PCrL 992; PLD 1979 Lahore 155; 2010 YLR 1061; 2010 YLR 766

¹⁰⁹ 1961 PLD 7; 1970 PLD 230; 1961 PLD 447; 1959 PLD 623; 1991 PCrLJ 1017; 2007 SCMR 698; 1990 ALD 394 (1); 1988 SCMR 1614I PLJ 2003 CrC (Lah) 852; 2005 PCrLJ 58

- *Under this section, the offence is complete when there has been carnal intercourse against the order of nature with any man, woman or animal.*
- *Consent is immaterial, except as a possible mitigating factor.*
- *In order to prove the offence, proof of ejaculation is not required, and neither are marks of violence.*
- *It is sufficient that the accused discharges by rubbing of private parts, meaning that actual penetration is not necessary to constitute an offence, nor even in a legal sense of attempting penetration.*

Elements of GBV/ VAW Falling Under the Provision

- The definition of unnatural lust refers to sodomy, but it can in fact refer to other forms of rape. Examples can include rape with objects, necrophilia, nonconsensual sadomasochistic behavior, etc.
- The punishment is a *mandatory minimum* of fourteen years imprisonment and up to twenty years and a one million rupee fine.

Case Study:

Farhan (a 9 year old boy) stepped out of the mosque in the area where his family lives in the small town of Chunian. Hours later, when he had still not returned home, and his family began to fear the worst. The next morning, a local driver found his body in a barren field a few kilometers away. His body was not alone, however. Alongside him, police found other human remains, later identified to belong to three other boys from his town who had been kidnapped, raped and murdered in the last few months. After a two-week hunt, during which police took DNA samples from more than 1,700 people in the area, they narrowed down their search to one suspect: Sohail, a local rickshaw driver. Sohail confessed to the murders, saying he would take his rickshaw around town in the evening, just as the summer's scorching temperatures began to drop and children came out of their homes to play. He would offer the boys 100 rupees (roughly \$0.60) and a rickshaw ride. Once they hopped on, he would rape and strangle them to death.

SESSION 11 – DOMESTIC VIOLENCE

Notes on Methodology:

The facilitator will present the information on Domestic Violence then share a case study specific to this topic with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of the law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Three provinces have legislation regarding domestic violence: Sindh and Balochistan, both have criminal Acts and the Punjab Act is a civil law act.

The Sindh Domestic Violence (Prevention & Protection) Act 2013 and the Balochistan Domestic Violence (Prevention & Protection) Act 2014 are similar legislations.

The Domestic Violence (Prevention and Protection) Act, 2013 Sindh Act No. XX Of 2013

This Act entails the following:

- *This is a criminal act and provisions of PPC and CrPC govern it.*
- *Domestic violence is described as assault, abetting and attempting assault, emotional and psychological and verbal and economic abuse, harassment and sexual abuse.*
- *Penalty for emotional abuse is imprisonment for 6 months or compensation of Rs. 10,000 or both.*
- *The establishment of a Protection Committee for the assistance of the aggrieved person.*

Section 5

Domestic Violence includes but is not limited to, all acts of gender based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship including but not limited to -

- (a) "abet" as defined in Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section as the said Code;*
- (b) "assault" as defined in section 351 of the said Code;*
- (c) "attempt" as defined in section 511 of the said Code to commit any of the offenses enumerated in this section;*
- (d) "criminal force" as defined in section 350 of the said Code;*
- (e) "criminal intimidation" as defined in section 503 of the said Code;*
- (f) "Emotional, psychological and verbal abuse" means a pattern of degrading or humiliating conduct towards the victim, including but not limited to –*
 - (i) obsessive possessiveness or jealousy constituting serious invasion of the victim's privacy, liberty, integrity and security;*
 - (ii) insults or ridicule;*

- (iii) *threat to cause physical pain;*
- (iv) *threat of malicious prosecution;*
- (v) *blaming a spouse of immorality;*
- (vi) *threats of divorce;*
- (vii) *baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again;*
- (viii) *bringing false allegation upon the character of a female member by any member of the shared household; and*
- (ix) *wilful or negligent abandonment of the aggrieved person;*
- (g) *“harassment” as defined in section 509 of the said Code;*
- (h) *“hurt” as defined in sections 332, 333, 335, 336A, 337, 337B, 337C, 337E, 337J, 337K, 337L of the said Code;*
- (i) *“mischief” as defined in section 425 of the said Code against the property of the aggrieved person;*
- (j) *“physical abuse” means any hurt caused by any act or conduct as defined in section 5(f) of this Act;*
- (k) *“stalking” includes, but is not limited to –*
 - (i) *accosting the aggrieved person against his or her wishes; and*
 - (ii) *watching or loitering outside or near the building or place where the-aggrieved person resides or works or visits frequently;*
- (l) *“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person which may include –*
 - (i) *compelling the wife to cohabit with anybody other than the husband;*
 - (ii) *any kind of sexual abuse including sexual harassment of a member of the family;*
- (m) *“trespass” means entry into aggrieved person’s residence either temporary or permanent without his or her consent, and includes workplace or frequently other place where the parties do not share the same residence;*
- (n) *“wrongful confinement” as defined in section 340 of the said Code; and*
- (o) *“economic abuse” includes deprivation of economic or financial resources or prohibition or restriction to continue access to such resources which the aggrieved person is ordinarily entitled to.*

Domestic relationship as defined in this Act

In order for an act to constitute domestic violence the perpetrator and the victim/ survivor need to have a domestic relationship. This means that they currently live or must have at some stage lived together in a household when they were related by blood, kinship, marriage, adoption or are/ were family members living together.

This is a very large scope and includes all family relationships including, but not limited to:

- ❖ *Parents and grandparents*
- ❖ *Siblings*
- ❖ *Spouses*
- ❖ *Children (including adopted children) and grandchildren*
- ❖ *In-laws (all, as long as they were living together)*

The scope of the Act is limited to

- ❖ *Women: women can bring claims not only against a man but against other women of the household as well.*
- ❖ *Children (under 18 years of age), and*
- ❖ *Persons who are vulnerable due to old age, mental illness or disability.*

The reason behind this is that the purpose of the Act is for the protection of disadvantaged and vulnerable groups.

What does the Act entail?

- ❖ *The purpose of the Act to criminalize violent or traumatic behavior when it occurs in the domestic context.*
- ❖ *In order for violent acts to qualify as domestic violence under the Sindh Act, they must have taken place persistently. The victim must show that there is a pattern of particular types of violence and abuse occurring over a period of time. A single act of argument or abuse or violence does not necessarily amount to domestic violence.*
- ❖ *If a victim/ survivor does not personally take action, then anyone who knows of the incidents of domestic violence can file a case. Such people are known as “informers” and can be a family member, neighbor, friend or any other person who has knowledge of the incidents.*
- ❖ *Courts are required to fix the first hearing within 7 days of the complaint being filed and the entire case is to be decided within 90 days (3 months).*

What kind of acts amount to domestic violence under the Act?

The Act includes physical, psychological, verbal and economic abuse, assault, trespass, abetting, stalking, criminal force and intimidation, hurt, harassment and threats of divorce.

An attempt of domestic violence is also an offence under this Act. An example would be to prepare boiling water to throw on someone, but then not actually getting the chance to complete your plan. The preparation to commit the crime is in itself considered a crime.

Verbal, emotional and psychological abuse are also considered as violence under this Act. Such behavior can include but is not limited to:

- *obsessive possessiveness or jealousy which seriously invades the victim’s privacy, liberty, integrity and security*
- *insults or ridicule*
- *threats to cause physical harm*
- *threat of malicious prosecution*
- *blaming a spouse of immorality*
- *threats of divorce*
- *baseless accusations of insanity*
- *blaming the spouse’s inability to have children as a reason for second marriage*
- *false allegations upon the character/ morality of a female member*
- *willful or negligent abandonment.*

Some provisions are similar to ones provided in the PPC, these include:

- *Wrongful confinement*

- *Assault – includes any act, which would make the victim fear attack*
- *Criminal intimidation*
- *Harassment*
- *Aiding and Abetting*

Punishment

There are clear penalties for every type of domestic violence, which include prison sentences and fines that depend upon the severity of the abuse carried out. Punishments are provided for under section 6 of the Act. Each offence described under the definition of domestic violence has against it its own punishment.

In addition to these penalties which are imposed directly on the victim, a court can provide for a victim to be financially compensated for things such as medical bills or loss of earning for the time period that s/he could not work due to physical or psychological harm or maintenance which has not been paid for the duration of the trial.

If the victim is a child and the abusive behavior was being carried out by a parent, the Court has the power to award custody of the child to someone else who can protect and safeguard the child. A child has been defined as any person under the age of 18.

Balochistan Domestic Violence (Prevention and Protection) Act 2014 (Act No. VII Of 2014)

Section 4

Domestic Violence includes but is not limited to, all intentional acts of gender based or other physical or psychological abuse committed by an accused against women, children or other vulnerable persons with whom the accused is or has been in a domestic relationship including but not limited to:-

- (a) “assault” as defined in section 351 of the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section “as the said Code”;*
- (b) “attempt” as defined in section 511 of the said Code to commit any of the offences enumerated in this section;*
- (c) “criminal force” as defined in section 350 of the said Code;*
- (d) “criminal intimidation” as defined in section 503 of the said Code;*
- (e) “economic abuse” includes deprivation of economic or financial resources or prohibition or restriction to continued access to such resources which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including but not limited to household necessities for the aggrieved person and her children, any property jointly or separately owned by the aggrieved person, payment of rental related to the house hold, and maintenance;*
- (f) entry into aggrieved person’s residence without his or her consent, where the parties do not share the same residence;*
- (g) “harassment” as defined in section 2(1) clause (j) of this Act;*
- (h) “hurt as defined in section 332 of the said Code;*
- (i) “mischief” as defined in section 425 of the said Code against the property of the aggrieved person;*
- (j) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal force and criminal intimidation;*
- (k) “stalking” includes, but is not limited to-*
 - (i) following, pursuing or accosting the aggrieved person against his or her wishes; and*

- (ii) *watching or loitering outside or near the building or place where the aggrieved person resides or works for gains or carries on business or visits frequently;*
- (l) *“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person;*
- (m) *“verbal and emotional abuse” means any or persistent degrading or humiliating conduct of the accused towards the aggrieved person, including but not limited to-*
 - (i) *insults or ridicule;*
 - (ii) *threat to cause physical pain; and*
 - (iii) *threat of malicious prosecution;*
- (n) *wilful or negligent abandonment of the aggrieved person;*
- (o) *“wrongful confinement” as defined in section 340 of the said Code; and*
- (p) *Any other repressive or abusive behaviour towards the aggrieved person where such a conduct harms or may cause imminent danger of harm to the safety, health or well-being of the aggrieved person.*

The Punjab Protection of Women against Violence Act 2016

The Punjab Protection of Women against Violence Act (PPWVA) was passed in 2016 to protect women against violence including domestic violence (physical and mental torture), economic abuse, harassment and cyber-crimes. The main objectives of the PPWVA are to provide justice, protect women from all types of violence and create a secure environment where they can live a life of dignity and enjoy the fulfilment of their basic rights. The PPWVA will empower women and bring them on equal footing with the men of the province. The Government will also provide special centers (shelter homes), as a protection system for effective service delivery to women victims/survivors till there is reconciliation and/ or resolution of the disputes.

Currently, the protection system proposed in this law is only being implemented in Multan where the Violence Against Women Center (VAWC) and District Women Protection Committee (DWPC) has been established. In the Annual Development Plan (ADP) of Government of Punjab for year 2020, 4 more districts (Lahore, Rawalpindi, Faisalabad and Bahawalpur) are added to establish the protection system under this law in 2020. This process will be overseen by the Punjab Women Protection Authority¹¹⁰.

Main Features of the PPWVA

This Act is a civil law and its main features include:

- *Violence against women is described as domestic violence (physical and mental torture), economic abuse, stalking, harassment and cyber-crimes.*
- *Many new mechanisms have been specified for coordination, response and support to survivors, including a tollfree number, district protection committees, women protection officers.*
- *Power of entry by District Women Protection Officer (DWPO) to rescue an aggrieved person is permitted.*
- *In addition to interim orders there are protection orders, residence orders and monetary orders that the judge may issue*
- *The aggrieved person may directly approach the Court for an order.*

Court Hearings

A family court would fix the hearing for a domestic violence case within seven days of receipt of the complaint. The defendant will have to show cause in court in the same week. If the defendant fails to file a reply within the specified time, the Court, subject to service of the notice on the defendant, shall assume that the defendant has no plausible

¹¹⁰ Established under the Punjab Women Protection Authority Act 2017

defense and may proceed to pass any order under this Act. All complaints would be decided within 90 days from the day of the receipt of the complaint.

The law provides that victims of domestic violence cannot be evicted from their homes without their consent. If a victim is evicted from homes, the court can intervene. The law also provides power to DWPO to direct the defendant to move out of the house for 48 hours in order to protect the victim. The aggrieved person has the right to stay in the house or be provided shelter till the case ends and the defendant shall not sell or transfer the house other than to the aggrieved person.

Under the Act, if during the course of the trial – or even at the first hearing – the Court thinks that enough evidence has been presented to show that there may have been violence committed against the person who brought the complaint, then the court may issue a protection order and/or residence order.

Types of Relief Provided Under the Law

- Through a residence order, the victim has the right to stay in the house if she does not desire to vacate it or the defendant has to provide an alternative accommodation if the victim so desires.
- In the case of being harassed or stalked, the victim can claim a protection order which orders the defendant to not communicate with the victim or stay at a certain distance from her.
- In addition, the victim can also seek monetary relief from the defendant in the form of monetary orders to meet expenses occurred and losses suffered.

Protection Order

A protection order is an order prohibiting the wrongdoer from doing any of the following things:

- ❖ committing any act of domestic violence themselves or helping someone else commit such an act,
- ❖ entering the workplace, school or any other place where the victim goes regularly,
- ❖ attempting to communicate in any form whatsoever with the victim, and
- ❖ Committing violence against the dependents or relatives of the complainant or against any person who helps the complainant.

The court has the power to direct a police officer in the jurisdiction of the court to assist in the implementation of the protection order.

Residence Order

The Court can issue a residence order to safeguard the complainant and her possessions in the home. A residence order can include the following:

- ❖ prevent the wrongdoer from disturbing the complainant's possession of the household,
- ❖ restrain the wrongdoer or any of his relatives from entering the household, and
- ❖ direct the wrongdoer to secure alternative accommodation for the complainant or if the circumstances so require and to pay rent of the same.

Not following the directions in a protection or residence order is a crime of contempt of court and can lead to further proceedings against the complainant.

Additional Remedies

The court can impose any additional conditions or pass any other directions, which it thinks is reasonably necessary to protect the aggrieved person or her loved ones.

- ❖ The court may require from the wrongdoer to execute a bond, with or without sureties, which means that the wrongdoer would have to deposit a certain sum of money in court, which the court would keep as a fine in the event that any of the court's orders were breached during the case.

- ❖ *The court may direct the wrongdoer to return the aggrieved person's possessions or any property, valuables or documents to which s/he is entitled.*
- ❖ *The wrongdoer may be directed by the Court to pay the victim compensation to meet the expenses s/he has incurred, and the loss suffered. This may include compensation for loss of earning, medical expenses, loss caused due to the destruction, damage or removal of any property, maintenance for the aggrieved person and her children*

Punishment

- ❖ *There are clear penalties for every type of domestic violence, which include prison sentences and fines and depend upon the severity of the abuse which has been carried out. Punishments are provided for under section 6 of the Act. Each offence described under the definition of domestic violence has against it its own punishment.*
- ❖ *In addition to these penalties which are imposed directly on the offender, a court can provide for a victim to be financially compensated for things such as medical bills or loss of earning for the time period that s/he could not work due to physical or psychological harm or maintenance which has not been paid for the duration of the trial.*
- ❖ *If the victim is a child and the abusive behavior was being carried out by a parent, the Court has the power to award custody of the child to someone else who can protect and safeguard the child.*
- ❖ *Some of the punishments are as provided in the PPC. This includes for offences such as abet, assault, attempt, criminal force, harassment, hurt, mischief and wrongful confinement.*

Penalties

Several penalties (imprisonment and/ or fine) have been stated in the Act, including:

- ❖ *Obstructing a protection officer (six months imprisonment or Rs.500,000 fine)*
- ❖ *Filing a false complaint (three months imprisonment or Rs.100,000 fine)*
- ❖ *Breach of court orders related to interim, protection, monetary or residence (one-year imprisonment or Rs. 200,000 fine)*
- ❖ *Tampering with the GPS tracking system (one-year imprisonment or Rs. 200,000 fine)*
- ❖ *Repeat offenders will get double the imprisonment or fine*

Components of the Protection System

The PPWVA is civil law in Punjab and hence domestic violence in Punjab is not a criminal offence. This means that the case is not heard before a criminal court, and is considered a private matter between parties. The competent court is the family court for the purposes of this Act.

The 31 clauses of the PPWVA provides a protection system that include the following components:

- ❖ *District Women Protection Committee (DWPC)*
- ❖ *District Women Protection Officer (DWPO)¹¹¹*
- ❖ *Women Protection Officers (WPOs)¹¹²*
- ❖ *Violence Against Women Centres (VAWCs)*
- ❖ *Shelter Homes*

111 One DWPO to be appointed per district. DWPO is also member/secretary of DWPC having responsibility to report targets vs achievements to the committee. DWPO is now part of Punjab Women Protection Authority.

112 Multiple WPOs to be appointed in each district to assist the DWPO and act on complaints according to law. WPO is part of Punjab Women Protection Authority.

- ❖ *Women Volunteers and Women Volunteer Organizations (i.e., NGOs)*
- ❖ *Toll-Free Dial-in Number for the aggrieved persons*
- ❖ *Database and Software to track, record and report service provision details at district level*
- ❖ *Monitoring and Evaluation Mechanism*

The components of the protection system that already exist include:

- ❖ *District Coordination Officer*
- ❖ *Family Court*
- ❖ *Police*

The entire protection system will be setup in all 36 districts of Punjab. For the first time, an in-built mechanism has been designed through the:

- ❖ *District Violence Against Women Centers (VAWCs)*
- ❖ *Court orders (residence, protection and monetary)*
- ❖ *Introduction of GPS tracked electronic bracelets-anklets to enforce protection orders*
- ❖ *Power to D/WPOs to enter any place to rescue the women victims*

District Women Protection Committee (DWPC)

The provincial government will constitute a District Women Protection Committee (DWPC). Each committee will be headed by the District Coordination Officer (DCO)¹¹³. The members of the committee will include six district officials and four non-officials to be nominated by the provincial government (one of whom will be nominated as vice-chairperson).

The following tasks will be supervised by the committee:-

- *Working of the Protection Centre*
- *Provision of shelter home and toll-free helpline*
- *Implementation of necessary steps to improve the protection services*

The provincial government will appoint necessary staff at the district VAWCs which will perform the following functions:-

- *Rescue*
- *Medical examination*
- *Medical aid*
- *Psychological counselling*
- *Mediation and reconciliation between the parties (defendant and aggrieved)*
- *Legal help for the aggrieved person*

The centers and shelter homes will be supervised by the District Women Protection Committee (DWPC). The DWPC will also ensure that all VAW cases registered in any district's police station are referred to these centers.

113 District Coordination Officers were part of the Local Government System in Punjab. Later in 2016, Punjab Government replaced DCOs with Deputy Commissioners (DCs) through The Punjab Civil Administration Ordinance 2016. There has been no amendment in the law to reflect this change hence the law is silent on who leads the DWPC. Although, according to the VAWC Multan the committee in Multan is being led by DC Multan and this would prevail in other districts as well where these committees will be established in future.

District Women Protection Officer (DWPO)

Meanwhile, the District Women Protection Officer (DWPO) will have the power to enter any place to rescue the aggrieved with her consent. The DWPO can also file a habeas corpus case on the basis of any credible information of wrongful confinement of an aggrieved person. In order to obtain civil remedies, the law states that the aggrieved or any authorized person or the DPWO can submit a complaint to the court.

Violence Against Women Centres (VAWCs)

In order to just register a case of violence, the survivor has to go many different service providers and duty bearers. Often she has to re-tell her story multiple times. This ordeal serves to further traumatize her. To deal with this issue, the law provides for the establishment of 24-hour women-run VAWCs in all districts. The VAWCs will help in the smooth registration of the case along with provision of all required facilities including:-

- ❖ Immediate protection to the aggrieved
- ❖ First aid
- ❖ Police reporting/ FIR lodging
- ❖ Medical examination
- ❖ Forensics and Evidence collection within due time to facilitate investigation
- ❖ Prosecution
- ❖ Legal assistance
- ❖ Mediation if required
- ❖ Counselling and Post-trauma rehabilitation
- ❖ Maintaining Audio-visual record of all actions

Case Study:

Sakina (a 51 year old woman) is married and has three children (2 daughters and 1 son). Her daughters are married and her son is just 6 years old. She has been in an abusive relationship, in addition her husband Liaquat Ali is a criminal and has been to jail many times.

Her husband does not fulfil any financial needs of her family and recently he even tried to rape his own daughter when she was alone at their house. Her son in law saved her daughter from being raped by Liaquat.

Sakina left Liaquat to safeguard herself and her children. And now Liaquat has taken away their son who is only 6 years old and is refusing to return him to Sakina to force her to come back. Sakina believes she and her kids are not safe from Liaquat and he could try to hurt them again. She wants to take legal action against her husband to get her son back and wants *Khula* from him to get out of this abusive relationship.

SESSION 12 – HARASSMENT

Notes on Methodology:

The facilitator will present the laws related to harassment then share a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of the law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Protection against Harassment of Women at the Workplace Act 2010

Protection against Harassment of Women at the Workplace Act was passed in March 2010. It is a civil law and applies to the entire country. It makes sexual harassment of women in the workplace and in public spaces a criminal offence.

This Act:

- Describes the procedure to file a complaint for sexual harassment in the workplace.
- Requires workplaces to display the code of conduct
- Requires places of work to have committees to deal with complaints
- Establishes offices of Ombudsperson

2. Definitions. – In this Act, unless there is anything repugnant in the subject or context-

(h) “harassment” means any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment

Definition under Case Law:

The definition of harassment has not been further clarified or discussed under case law.

Elements of GBV/ VAW Falling Under the Provision:

The Act specifies three significant forms of sexual harassment in the workplace to include:

- ❖ Abuse of authority
- ❖ Creating a hostile environment
- ❖ Retaliation

Criminal Law (Amendment) Act 2010 – PPC Section 509: Word, gesture or act intended to insult the modesty of the woman

The Section 509 of the PPC:

- Provides the definition of sexual harassment as a criminal offence.
- Extends the definition not only to the workplace, but also to private spaces such as homes, and to public

spaces, such as streets, buses, markets and parks.

- *Stipulates 3 years imprisonment or fine of Rs 500,000, or both.*

(1) 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;*
- conducts sexual advances, or demands sexual favours or uses written or verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of work place, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment, shall be punished with imprisonment which may extend to three years or fine up to five hundred thousand rupees or with both.*

Definition under Case Law

This section has not been discussed in case law.

Elements of GBV/ VAW Falling Under the Provision:

- This section specifically covers the offense of sexual harassment.
- The definition of workplace is extensively provided in the section to include private spaces such as homes, and to public spaces, such as streets, buses, markets and parks.
- Such behavior might occur in a public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gatherings, or homes.
- Workplace means the place of work or the premises where an organization or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out. Sexual advances may occur after working hours and outside the workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job-related functions and activities.
- The language of the provision is clear cut and wide, so it remains to be seen how well it is truly implemented by the courts.

Prevention Of Electronic Crimes Act 2016 (PECA)

The Prevention of Electronic Crimes Act (PECA) replaces and consolidates previous legislation namely the Prevention of Electronic Crimes Ordinance 2009 and Electronic Transactions Ordinance, 2002. PECA has several sections that pertain to online harassment and protection of women in online spaces.

Section 21 - Offences against modesty of a natural person and minor:

(1) Whoever intentionally and publicly exhibits or displays or transmits any information which,

- superimposes a photograph of the face of a natural person over any sexually explicit image or video; or*
- includes a photograph or a video of a natural person in sexually explicit conduct; or*
- intimidates a natural person with a sexual act, or any sexually explicit image or video of a natural person; or*
- cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information*

system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail

(2) *Whoever commits an offence under subsection*

(1) *With respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:*

Provided that in case of a person who has been previously convicted of an offence under subsection (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

Definition under Case Law:

The Act has not had a chance to be properly interpreted in case law yet.

Elements of GBV/ VAW Falling Under the Provision:

This section addresses the exploitation of sexual imagery without consent. It regulates:

- Sexually explicit content, be it digital photographs or videos, taken or distributed without consent.
- Sexually explicit images or videos that are used to intimidate or blackmail someone.
- There are no guidelines as to what constitutes “*sexually explicit*” under this section.

Case Study:

18 years old Misbah is a student of 1st year of Nursing in a Hospital and has been living in the hostel for more than a year. One of her sisters is also a 2nd year student of Nursing at the same hospital.

One day, Misbah was on duty in the surgical ICU with two other female senior staff. These two staff members went out to do some work and suddenly a ward boy (Haroon) appeared, closed the door and tried to sexually assault her. Misbah somehow managed to escape and with her sister, complained to the senior co-workers, the on duty doctor, and the 2 Mess In-charges.

The hospital administration established a committee consisting of 5 staff members (2 male doctors, 1 male accountant, 1 female Hostel Supervisor and 1 female Mess In-charge).The committee, after discussing the matter, decided to change the duty station of the ward boy. On the committee’s suggestion, Misbah and her family did not lodge an FIR against him.

Now, Haroon keeps staring at Misbah and tries to intimidate her whenever he is near her. She does not feel safe in the hospital anymore and fears that he could do the same thing again. She thinks he should get fired from his job and wants to take legal action against him.

SESSION 13 – HONOR CRIME AND ACID CRIME

Notes on Methodology:

The facilitator presents the laws on honor crimes then shares a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

According to statistics, honor killings are rising at a disturbing rate in Pakistan. Pakistani activists estimate that there are about a 1,000 ‘honor’ killings every year¹¹⁴. While Human Rights Commission of Pakistan (HRCP) documented 737 ‘honor’ crimes between June 2017 and August 2018, the figures do not reflect the full picture¹¹⁵. This is because most cases go unreported as families and even survivors fear they will never get justice. According to Punjab police data, the reported honor killings in Punjab rose from 181 in 2017 to 244 in 2018 which is alarming¹¹⁶. Addressing the loopholes and lacunae in the existing laws (such as the element of compromise in such cases) is essential in order to prevent these crimes from being repeatedly committed.

Criminal Law (Amendment) (Offences In The Name Or Pretext Of Honor) Act 2016

The provisions in this law include:

- *Increased discretion of the judge to recognize honor crime as “fasad-fil-faraz”*
- *Section 299 (EE) describes ‘fasad- fil-arz’ as: the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community, or if the offence has been committed in the name or on the pretext of honour.”*
- *Death penalty or life imprisonment or 14 years imprisonment depending on situation but if crime established as an “honor” crime if the provisions of fasad fil araz attracted and thus follows under fasad-fil-faraz a life sentence is mandatory.*

Firstly, within the PPC, there has been a shift of the definition of fasad-fil-arz (aggravated circumstances) – the meaning has been kept the same but earlier it was placed before the new amendments from section 311: Tazir after waiver or compounding of right (?) of qisas in qatl-e-amd. Now it has been moved to section 299: Definitions. This means that the fasad-fil-arz exception is now applicable to all sections to do with ‘honor’ crimes as opposed to previously being limited to section 311.

Secondly, as a result of this, the second major principle has been attracted - the discretion of the judge has become more widely invoked. What this law has managed to do is increase the discretion of the judge to decide, based on the facts and circumstances of each individual case, whether the offence is one where the murder has been committed in the name or pretext of ‘honor’ and if the judge is able to establish it, then the principle of fasad-fil-arz will be attracted. What has been added to the discretion is that the judge will have no choice but to sentence the accused to life imprisonment should the principle of fasad-fil-arz be invoked.

114 Human Rights Watch. “World Report 2018”. <https://www.hrw.org/world-report/2018/country-chapters/pakistan>

115 <https://www.dawn.com/news/1432634>

116 <https://www.punjabpolice.gov.pk/honour-killings>

Definition under Case Law:

The Act has not had a chance to be properly interpreted in case law yet.

Elements of GBV/ VAW Falling Under the Provision:

This law specifically addressed honor crimes (karo-kari/ siyah-kari) committed against women and girls in Pakistan. The law also addresses the loophole of Qisas and out of court settlement by force, by greed and by prior planning between the accused and the family of victim.

Honor is falsely used by men, especially in tribes, to settle scores with their opponents/enemies through accusing them of having affair with women/girls of their family. This accusation is then brought to a Jirga/Panchayat where the accused and woman/girl are sentenced to death usually executed by the claimant family's members.

Another angle is to control women's choice in marriage. When any woman in family denies to marry as per wishes of the family and/or wishes to marry a person of her choice, the family claims its honor to be damaged and announce the woman and the person of her choice karo-kari/siyah-kar and ultimately taking their lives.

This mindset is driven by the patriarchal norms to have control over women's lives and life choices, dealing with them as property of men. This is grave violation of women's right to life.

Acid Control And Acid Crime Prevention – Criminal Law (Second Amendment) Act 2011

Rights organizations believe at least between 200-400 annual attacks of acid take place in the country with most of them targeted at women and girls.

The main features of the Act include the following:

- *Punishment for Hurt caused by corrosive substances is Life imprisonment (not less than 14 years) and fine of Rs 1 million.*

The below two sections were brought forward by the Acid Control and Acid Crime Prevention Act 2011.

Section 336A Hurt caused by corrosive substance:

Whoever with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, come into contact or received into human body or otherwise shall be said to cause hurt by corrosive substance.

Section 336B Punishment for hurt by corrosive substance.

Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.

Acid and Burn Crime Act, 2018

This is the latest and the most comprehensive act that exclusively provides for the reliefs that acid crime victims should be given.

- *Under Section 4 of this act, victims of acid attacks should be provided the benefits and relief prescribed under "The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981."*
- *Under this act punishment for the actual crime and attempt to commit the crime are the same.*
- *Under Section 7, the court may also grant interim monetary relief to such victims which can include loss of earnings, medical expenses incurred, and damages on account of disfigurement and disability.*
- *Under Section 12 and 24, Government run facilities are to provide medical examination and consequent medical treatment to acid/burn crime victims, free of cost. Similarly, under section 26, such victims can apply for free legal aid which may be provided by a board constituted under this act.*
- *This act also established a separate fund for the treatment and relief of acid and burn crime victims.*

- *In cases where victims are women and children, which in most cases are, this act makes special arrangements under sections 27, 28 and 29 to provide for free shelter, sustenance and basic needs for the victim and the dependents for a reasonable period.*
- *The time limit that is established for the completion of investigation under this act is 30 days, and the trial shall be conducted on day to day basis and be concluded within sixty days.*

Definition under Case Law:

The Act has not had a chance to be properly interpreted in case law yet.

Elements of GBV/ VAW Falling Under the Provision:

These laws specifically addressed acid crimes against women and girls which has not been done before. “The horror of the acid attack is nevertheless striking. Within seconds, the acid melts skin, fat, muscle and sometimes bone. Women may be left blind, some with sealed nostrils, shriveled ears and damage to their airway from inhaling the fumes. In time, formed scar tissue tightens and pulls what is left on the face and neck, causing intense physical pain and discomfort.

Why do the attacks occur? Most show a common theme: a woman stepping out of her subordinate gender role thereby causing dishonour to her husband or family. Choices many of us make without thinking, such as rejecting a marriage proposal or a sexual advance, are enough to instigate an attack. In addition to the physical damage, acid attacks inflict emotional damage and can destroy hopes and dreams. Uli Schmetzer, a Chicago Tribune foreign correspondent, told a story in 1999 of a 20-year old girl, S, who became the victim of an acid attack meant for her sister who had turned down a marriage proposal. Having been accepted into university, Sufia had plans to become an agronomist; following the attack, she was likely to end up a beggar. Often living as social pariahs following mutilation, these women are left with little hope. Seeing perpetrators get off without consequence, others are left to live in a state of fear that they will be next.”¹¹⁷

Case Study:

Amina (a 24 year old woman) got married to her husband (Javed) six years ago and has two daughters from this marriage. Her husband has anger and trust issues that made life difficult for her. Javed would not allow Amina’s family to meet her. He once even tried to kill his own daughter. He regularly tortures her emotionally and physically. After such a long abusive relationship, Amina decided to leave him and went to her brother’s house. Upon knowing, Javed came to her brother’s house and waited outside. When she came out to visit the nearby market, he threw a bottle of acid on her and ran away. She received life threatening burns and was scarred for life. Javed was never arrested.

117 Muller, Robert T. “Acid Attacks: The New Gender Terrorism”. Psychology Today. 2014. Acid Attacks: The New Gender Terrorism

SESSION 14 – CHILD MARRIAGE

Notes on Methodology:

The facilitator presents the laws on child marriage then shares a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Child Marriage Restraint Act, 1929 and Amendment 2016

There were amendments made to the 1929 act to increase punishments through the Child Marriage Restraint (Amendment) Act 2016.

This law is applicable all over Pakistan barring Sindh, which has its own Child Marriage Restraint Act 2013 (which will be discussed later on in this Resource Pack). Punjab has made amendments to this law in 2015 (discussed later on in this Resource Pack).

Section 2. Definitions

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

- (a) *“child” means a person who, if male, is under eighteen years of age, and if a female, is under sixteen years of age;*
- (b) *“child marriage” means a marriage to which either of the contracting parties is a child;*

Definition under Case Law¹¹⁸

- *Marriage to a child may be illegal and punishable but this it does not render the marriage invalid.*
- *An adult male marrying a female child will be liable for punishments. Females will not be punished under this Act.*

Elements of GBV/ VAW Falling Under the Provision

This section confirms that under Pakistani law, a girl cannot marry until she attains the age of 16 years.

- It has now been widely accepted globally and in some segments of Pakistani society that a child does not reach physical or mental maturity by the age of 16 to marry and bear children.
- Childhood is an essential developmental milestone that is every child’s right.
- If a girl is married before 18, she can suffer great physical, emotional and mental harm. Her health, well-being and even her life can come under risk in case she becomes pregnant and has to give birth before her body is fully matured to do so.

Section 4. Punishment for male adult above eighteen years of age marrying a child

Whoever, being male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

118 1975 PLD 234 ; 1970 PLD 323

Definition under Case Law¹¹⁹

- An adult marrying an under-age female is liable to punishment.
- If the girl has attained puberty and contracted a marriage with a person of her own free will, then the marriage is valid and her husband is considered her guardian.

Elements of GBV/ VAW Falling Under the Provision

- As discussed in the previous section, child marriages should be defined to include sexual intercourse with a child bride as rape. The husband, being an adult, should therefore be charged with rape or sexual abuse along with this section under the law.
- Other clauses such as conspiracy to commit a crime or under section 34 PPC, having a common intention to commit a crime, would also be attracted here due to his involvement in the planning and the commission of an illegal act, i.e., marrying a child and having committed sexual assault or rape.

Section 5: Punishment for solemnizing a child marriage

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one year or with fine which may extend to three hundred thousand rupees, or with both unless he proves that he had reason to believe that the marriage was not a child marriage.

Section 6: Punishment for parent or guardian concerned in child marriage

(1) Where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to [three years], or with a fine which may extend to [three hundred] thousand rupees, or with both:

Provided no woman shall be punishable with imprisonment.

(2) For the purpose of this section, it shall be presumed, unless and until contrary is proven, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

Definition under Case Law^{120&121}

These provisions are wide enough to cover all persons involved in the commission of the offence.

Violation of this section does not make the marriage invalid though it makes punishable a marriage made in violation of its provisions.

Elements of GBV/ VAW Falling Under the Provisions

- **Section 4:** Punishment for male adult above eighteen years of age marrying a child,
- **Section 5:** Punishment for solemnizing a child marriage, and
- **Section 6:** Punishment for parent or guardian concerned in child marriage focus, not on the definition but on the liability of the crime.

These provisions deal with those solemnizing the child marriages. As seen from the case definitions, it can extend to all those involved in solemnizing the marriage including the parents and *Qazi* (religious judge or adjudicator) who read and registered the *nikah*. As above, he could also be liable under section 34 PPC.

119 1970 PCRLJ 1035; 1964 PLD 630

120 1988 CLC 113

121 1964 PLD 630

Punjab Child Marriage Restraint (Amendment) Act 2016

Punjab has maintained the marriageable ages of 18 for boys and 16 for girls. It has, however, increased the punishment for child marriages with imprisonment to six months and a fine of Rs. 50,000.

Punjab's Act also entails injunctive powers of the court to stop a child marriage should a complaint in this regard be made.

Sindh Child Marriage Restraint Act 2013

In Sindh, the age of the child has been established for both boys and girls at 18 years, before which marriage is illegal and punishable by law.

Punishment:

In cases of underage marriage, parents, the groom and/ or the person who solemnizes, directs, brings about or in any way facilitates the marriage may be liable to imprisonment of up to three years but not less than two years of rigorous imprisonment and a fine.

Case Study:

A 14 years old girl's mother and relatives filed a police complaint against her husband named Palomal that he had given her daughter to a man for 70,000 rupees. Following the complaint, a police team conducted a raid, and recovered the girl who had been married off to a 55 year old man.

Police arrested that girl's husband and her father who had accepted money in exchange for arranging the marriage. Two other men (Pindit Satosh and Mohan) had also been involved in the matter, one of them managed to flee while police arrested the other. A First Information Report (FIR) was registered against four persons on behalf of the state under section 3.

A judicial magistrate handed a two year prison sentence to all 4 people and slapped the convicts with a fine of Rs. 5000 each.

SESSION 15 – FORCED MARRIAGE

Notes on Methodology:

The facilitator presents the laws on forced marriage then shares a case study specific to this topic with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Prevention Of Anti-Women Practices (Criminal Laws Amendment) Act 2011

The main features of the Act include the following:

- *Acts of badla-ul-sulh, wanni and swara (marrying girls off to settle disputes): 7 years imprisonment (not less than 3 years) and fine of Rs 500,000.*
- *Forced marriage: 7 years imprisonment (not less than 3 years) and fine of Rs 500,000.*
- *Marriage to the Quran. 7 years imprisonment (not less than 3 years) and fine of Rs 500,000.*

PPC Section 310A: Punishment for giving a female in marriage or otherwise in badal-i-sulh, wanni or swara

Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-i-sulh, wanni or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Definition under Case Law

This is a new section and no case law data is available while developing this Resource Pack.

Elements of GBV/ VAW Falling Under the Provision

This section can be used to cover situations where the woman is married to a person to settle a dispute by her family, elders or *Jirga/ Panchayat* under anti-women practices of badal-e-sulh, wanni or swara and had no will of doing so.

PPC Section 496: Marriage ceremony fraudulently gone through without lawful marriage

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

Definition under Case Law¹²²

In many cases pertaining to this section of the PPC, there have been claims by families of the women so married, that they have been abducted and forced to enter into nikahs (Marriage Contracts) with their abductors. However, these women when presented before the courts have denied such propositions and declared that they married of their own will. This shows how this law has been used to implicate women and those whom they marry in false cases, because the family does not consent to the marriage.

122 2009 YLR 1425; 2008 YLR 1097

Elements of GBV/ VAW Falling Under the Provision

This section can be used to cover situations where the groom and/or other relevant persons, including the Qazi, do not reveal the fact that the marriage is not 'lawful'. This would cover situations of forced marriages, where the wife has already gone through a *nikah* with another and/or child marriages.

PPC Section 498B: Prohibition of forced marriage

Whoever coerces or in any manner whatsoever compels a woman to enter marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees

Criminal Law (Amendments) Act 2017

The amendment in section 498 B adds that "in case of a female child or a Non-Muslim woman, the accused shall be punished for a term which may extend to "ten years but shall not be less than five years".

Definition under Case Law

A forced marriage is where one or both people do not (or in cases of people with learning disabilities or reduced capacity, cannot) consent to the marriage as they are pressurized, or abuse is used, to force them to do so. It is recognized in the UK as a form of domestic or child abuse and a serious abuse of human rights.

The pressure put on people to marry against their will may be:

- *physical – for example, threats, physical violence or sexual violence*
- *emotional and psychological – for example, making someone feel like they are bringing 'shame' on their family*

Elements of GBV/ VAW Falling Under the Provision

Many times women are forced to marry within the household and one of the major reasons for it is to keep the property that the women will inherit, within the household even if she is given a share in the inheritance. Hence forced marriage that infringes on the basic right of choice and free will of women, at the same time deprives her of her financial independence.

PPC Section 498 C: Prohibition of marriage with the Holy Quran

Whoever compels or arranges or facilitates the marriage of a woman with the Holy Quran shall be punished with imprisonment of either description which may extend to seven years which shall not be less than three years and shall be liable to fine of five hundred thousand rupees. Explanation.- Oath by a women on Holy Quran to remain un-married for the rest of her life or, not to claim her share of inheritance shall be deemed to be marriage with the Holy Quran.

Definition under Case Law

This is a new section and no case law data is available while developing this Resource Pack.

Elements of GBV/ VAW Falling Under the Provision

The marriage of a woman to the Holy Quran is termed as Haq Bakshish. The women are forced by their families to "marry" the Quran instead of a human male. This way the woman's family get to keep the woman's inheritance. Haq Bakshish is used by families to prevent property leaving the family when a girl weds someone outside the family.

Hindu Marriage Act 2017

This is the first law in Pakistan legislated to solemnize marriages among Hindu community in Pakistan attending to issues as marriage, registration of marriage, separation and remarriage, void marriage, termination of marriage. The laws also sets minimum age of marriage among Hindu community as 18 years for both girls and boys. The law addresses compensation for Hindu married women during and after termination of marriage. The law will help

Hindu women document proof of their marriage. The law also gives right of filing for termination of marriage to Hindu women. It allows widows to be able to remarry. In addition, this law would discourage forced conversions of Hindu girls (especially under-age) via marriage.

The law decides the following punishments and relevant procedures:

- 1- *Bigamy – Marriage null and void as per PPC Section 494 & 495*
- 2- *Violation of clauses (b – age limit 18 years) or (c – in prohibited relationship) of section 4 (conditions of marriage) – simple imprisonment 3 to 6 months, or fine up to five thousand rupees or both.*
- 3- *Violation of provisions (Any person who contravenes the provision of this Act or rules made thereunder regarding registration of Hindu marriage) – simple imprisonment up to 3 months, or fine up to one thousand rupees or both.*
- 4- *Violation of provisions (Any person who make statement or give particulars to be entered in the Shaadiparat¹²³ which is false or has reason to believe to be false) – simple imprisonment of one to six months, or fine up to one hundred thousand rupees or both.*
- 5- *All offences under this act are non-cognizable and non-compoundable. Same shall be triable by Magistrate first class on a complaint in writing by a marriage registrar.*

Sindh Hindus Marriage Act 2016

The Hindu Marriage Act 2017 passed by the National Assembly was derived from the law passed in Sindh a year earlier. Most provisions are the same except there are additional marriage conditions in Sindh's law (Section 4) such as parties to marriage must give free consent and presence of at least two witnesses at time of solemnization and registration of marriage.

Further differences can be found in detailed procedure with timelines in Section 6 (Manner of Registration).

Although there is no mention of any punishments or procedures to void/terminate Hindu marriage in this law, Section 4 and Section 6 have certain conditions discouraging forced marriages/conversions of Hindu girls. Further amendments are required to fine tune this law to include punishments and void/terminate Hindu marriage in certain situations.

Definition under Case Law

This is a new section and no case law data is available while developing this Resource Pack.

Elements of GBV/ VAW Falling Under the Provision

Forced conversions of Hindu girls via change of religion and marriage are a huge issue especially in Sindh. Many Hindu girls are kidnapped, forcefully converted and then married to Muslim men. According to the Human Rights Commission Report 2018, an estimated one thousand Hindu women and girls were converted by force in year 2018, although exact figures of this human rights violation are not available.

Case Study:

Shazia (an adult female) was engaged to be married to a man named Shahbaz. However, she did not want to marry Shahbaz and eloped and got married to Munir. When the community members found out, a *panchayat* was reportedly held over the matter and Shazia was returned to her family. In terms of the settlement, 15-year-old Bibi, sister of Munir, was declared *wani* and it was decided that she would be married to Shahbaz. Furthermore, Munir's family was fined four *kanals* of land and excommunicated from their village for 10 years.

On the order of the regional police officer, the police force took action and arrested four people, including Shahbaz, and registered a case against them. Raids are being conducted to search for the head of the *panchayat* and others involved.

¹²³ *Shaadiparat* is a certificate of marriage issued by the marriage registrar, which certifies the solemnization of Hindu marriage under the law.

SESSION 16 – INHERITANCE

Notes on Methodology:

The facilitator presents the laws on inheritance then shares a case study specific to this topic with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Prevention Of Anti-Women Practices (Criminal Laws Amendment) Act 2011

The main features of the Act include the following:

- *Depriving a woman from inheriting lawful property: 10 years imprisonment (not less than 5 years) and fine of Rs 1 million.*

Enforcement of Women's Property Rights Act, 2020

- *Under this act, an ombudsman would be appointed under section 7 of the Protection against Harassment of Women at the Workplace Act, 2010.*
- *Women who have been illegally deprived of their property, can file a complaint in the Ombudsman office under this act, and the ombudsman shall direct a preliminary enquiry to be launched. If after inquiry, the ombudsman believes that the complaint is legitimate, action must be taken to restore the property to the women.*
- *If the Ombudsman believes that the matter requires deeper enquiry, he or she may send a report or reference to the civil court in which jurisdiction the matter falls, and such reference would be treated as a civil suit.*
- *Even if a matter is pending in a court, and a complaint is filed in the Ombudsman office and preliminary enquiry reveals that the complainant has been deprived of her property, the ombudsman can request the court to stop the proceedings and take actions to restore the property to the complainant.*
- *Not only should the property be restored, but the rent for the period the property was withheld from the complainant shall be calculated and given to the complainant.*

Letters of Administration and Succession Certificates Act, 2020

- *This act eases the process of succession of property by authorizing National Database and Authorization Authority (NADRA) to issue succession certificates of moveable and immovable property to the legal heirs in accordance with the Family Registration Certificate.*
- *NADRA may constitute any of its offices as a Succession Facilitation Unit, where legal heirs may file applications for succession certificates, which would be granted in case there is not factual controversy (discord/disagreement between claims of heirs) that exists. If there exists a factual controversy, the matter would be taken to court under the Succession Act, 1925.*

PPC Section 498A. Prohibition of depriving woman from inheriting property

Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both.

Definition under Case Law

Any person who deprives any woman of her inheritance through illegal or illegal is to be punished with imprisonment which can be extended to 10 years and no less than 5 years or a fine of one million rupees or both.

Elements of GBV/ VAW Falling Under the Provision

Depriving women of their inheritance plays a major role in placing them on an unequal footing with the male members of the family and also acts as a conduit in making women financially dependent on the male members of the family. This dependence is what acts as a foundation of many of the crimes inflicted against women within the household.

Case Study:

Nasreen had a dispute with her brothers that started soon after the death of their father who owned a house and some other property in addition to agricultural lands, which were supposedly gifted by the late father to his three sons before his demise. The sole evidence of this 'transaction' was a handwritten document, bearing only the signature of their father. Nasreen filed a suit against her brothers before a local court, contending that she was entitled to a 1/12th share in the estate of her deceased father as per Sharia law. The suit was partially allowed, with the qazi giving her a share in the agricultural lands, but not the gifted properties. Both sides then went into appeal.

However, the apex court held that the document was not registered and therefore remained unproved. On the other hand, the property mutations, which were registered with the local *patwari*¹²⁴, only bore the deceased man's thumb impressions. This inconsistency, the court noted, remained unexplained. The bench also noted that the three brothers did not bother to obtain the mutations of the property in their names following the death of their father.

The apex court decided in favor of Nasreen.

¹²⁴ An individual in the local authority who maintains the ownership records for a specific area as well as to undertake the collection of land taxes.

SESSION 17 – EXPLOITATION/ ABUSE OF CHILDREN

Notes on Methodology:

The facilitator presents the laws on protection and exploitation of children then shares a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Sindh Children Act 1955- Section 48. Punishment for Cruelty to Children

- (1) *Whoever having the actual charge of, or control over a child willfully assaults, ill-treats, neglects, abandons, or exposes him or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed or negligently fails to provide adequate food, clothes, or medical aid or lodging for a child in a manner likely to cause such child unnecessary mental and physical suffering shall, on conviction, be punished with imprisonment of either description for a term not exceeding two years or with fine which may extend to Rs 1,000 or with both: Provided that in the case of married juveniles the Court trying the offense under this section may permit it to be compounded for reasons to be recorded in writing.*
- (2) *The infliction of reasonable punishment on a child for a proper reason shall not be deemed to be an offense under this section.*

Definitions under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under the Provision

This clause deals with the violence that is inflicted upon children by those who are supposed to be the legitimate custodians of the children. It challenges the notion that parents or guardians who provide for the children have the right to do whatever they want to do with their children, and defines limits that must be followed even when children need to be disciplined.

Section 49. Employing Children for Begging.

Whoever employs any child for the purposes of begging or causes any child to beg or whoever having the custody, charge or care of a child connives at or encourages its employment for the purpose of begging and whoever uses a child as an exhibit for the purpose of begging shall, on conviction be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs 300 or with both.

Section 55. Allowing or Permitting Child to be in Brothel.

Whoever allows or permits a child over the age of four years to reside in or frequently to go to a brothel shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both.

Section 56. Causing or Encouraging Seduction etc.

- (1) *Whoever having the actual charge of, or control over, a girl under the age of 18 years causes or encourages the seduction (which shall include inducement to indulge in immoral behavior) or prostitution of that girl or*

causes or encourages any one other than her husband provided his wife has attained the age of 14 years, to have sexual intercourse with her shall, on conviction be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both.

Section 57. Seduction or Outrage of Modesty.

Whoever seduces or indulges in immoral behavior with a girl under the age of 18 years shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both.

Section 58. Young Girls Exposed to Risk of Seduction of, etc.

If it appears to a Court on the complaint of any person that a girl under the age of 18 years is, with or without the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution, the Court may direct the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of such girl.

Section 59. Exploitation of Child Employees.

- (1) *Whoever secures a child ostensibly for the purpose of menial employment or for labor in a factory or other establishment, but in fact exploits the child for his own ends, withholds or lives on his earnings, shall, on conviction, be punished with fine which may extend to Rs 1,000.*
- (2) *Whoever secures a child ostensibly for any of the purposes mentioned in subsection (1), but exposes such child to the risk of seduction, sodomy, prostitution or other immoral conditions, shall, on conviction, be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to Rs 1,000 or with both.*
- (3) *Any person who avails himself of the labor of a child exploited in the manner referred to in subsection (1) or (2) or for whose immoral gratification such child is used shall be liable as an abettor.*

Section 105. Power to Authorities to Send Children to Remand Homes or Voluntary Homes instead of to Certified School or Recognized Institutions.

Wherever under the provisions of this Act it is provided that a child shall be committed to a certified school or recognized institution, it shall be lawful for the authority concerned to order such child to be sent to a remand home or a voluntary home instead, if, in the opinion of such authority, such be in the interest of the child.

PPC Section 292 A: exposure to seduction

Whoever seduces a child by any means whatsoever with an intent to involve him or her in any sexual activity or exposes him or her to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned acts, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to seven years or with fine which shall not be less than one hundred thousand rupees and may extend up to five hundred thousand rupees, or with both

Definitions under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under the Provision

This section approaches the issue of child abuse from the point of view that children do not have a mature approach to life and are not in the best capacity to make a decision for themselves. Hence, any manner in which children are misguided or made to do anything which is detrimental for them and results in them being subjected to sexual activity of any kind, even when it does not relate to forceful coercion to do something, is illegal and the person committing such an act is liable to punishment. Hence this act is a safeguard against all such activities of manipulating children to take part in harmful sexual conduct.

PPC Section 292 B: child pornography (I);

Whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian any photograph, film, video, picture or representation, portrait or computer-generated image or picture, whether made or produced by electronic, mechanical or other means of obscene or sexually explicit conduct, where –

- (a) The production of such visual depiction involves the use of a minor boy or girl engaging in obscene or sexually explicit conduct;*
- (b) Such visual depiction is a digital image, computer generated image that is, or is indistinguishable from, that is, that of a minor engaging in obscene or sexually explicit conduct; or*
- (c) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct; is said to have committed an offence of child pornography*

(2) The preparation, possession or distribution of any data stored on a computer disk or any other modern gadget, shall be an offence under this section.

Definitions under Case Law

The major case law available under this section is the well-known Qasur Child Pornography Ring, which became the impetus for revelations regarding the subjection of many children in Qasur to child pornography. This law completely prohibits any such activity where child pornography is used for commercial purposes because that is against the modesty and dignity of children.

Elements of GBV/ VAW Falling Under the Provision

Children who are subjected to pornography are also very vulnerable to sexual assault and abuse by the people who involve them in this activity in. Not only that, but the children who are made to become a part of child pornography, with their will or against, which does not even matter because of the imbecility that is evident in those decisions, also become subject to life-long blackmail which makes them silent victims of every form of oppression that they are subjected to.

PPC Section 292 C: Punishment for child pornography

Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than two years and may extend up to seven years, or fine which shall not be less than two hundred thousand rupees and may extend up to seven hundred thousand, or with both

Criminal Law (Amendments) Act 2018

The amendment in section 292 C replaces the punishment of “Two to Seven years” with “Fourteen to Twenty years”.

PPC Section 328. Exposure and abandonment of child under twelve years by parent or person having care of it

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Definitions under Case Law¹²⁵

To the best of the researcher’s knowledge there have been no reported cases that discuss the different aspects of this section. The majority of the cases refer mainly to the question of bail and questions relating to maternity and/or paternity. The definition of this section is safely, therefore, taken to mean simple and literal abandonment of (usually) a new born baby.

125 2010 YLR 1332; 2006 PCrLJ 893

Elements of GBV/ VAW Falling Under the Provision

This section is limited with regards to age of the abandoned or exposed child. Although this section, in a literal sense, relates to actual abandonment or exposure, but it can easily be expanded. It relates to parents or guardians of a child who intentionally or recklessly endanger a child by

- ❖ Causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse; or
- ❖ Failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation.¹²⁶

The interpretation and notion of abandonment or exposing of a child could include parents or guardians who allow their children to enter into child marriages or as part of *Badl- i -Sulh*, and/or prostitution.

Parenting is to protect your child and ensure his/her well-being. If a parent is not protecting their child and is in fact giving them away, not for the good of the child, but for other motivations, it could be argued that the parent has abandoned the child and exposed her/him to potentially harmful/dangerous circumstances.

PPC Section 364-A. Kidnapping or abducting a person under the age of [fourteen]

Whoever kidnaps or abducts any person under the age of [fourteen] in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.

Definition under Case Law¹²⁷

It is first necessary to see whether there was a 'kidnapping' in the first place i.e.

- ❖ *The minor was taken or enticed away by the kidnapper;*
- ❖ *The minor was out of keeping of the lawful guardian;*
- ❖ *The keeping of the minor was without the consent of the guardian.*

Once the kidnapping is established, the question then is whether the appellant intended to murder the victim or subject her/ him to grievous hurt or abuse.

Elements of GBV/ VAW Falling Under the Provision

- This section specifically deals with child abuse alongside the necessary component of abduction. It is necessary for a child to be taken away from the lawful guardian without their consent.
- However, possible interpretations relating to the word 'abduction' may be raised.
- Suggestion: A new definition of abduction relating to taking a child away from the guardian for these purposes would be sufficient without the intention of kidnapping for a long period of time. This would widen the ambit to ensure protection of children from lust, harm or slavery.

PPC Section 366-A. Procuration 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 or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

¹²⁶ Criminal Justice Act 2006, Ireland

¹²⁷ 2008 PCrLJ 627 FSC

PPC Section 366-B: Importation of girl from foreign country

Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Definitions under Case Law

These sections have not been adequately dealt with under case law to provide any analysis.

Elements of GBV/ VAW Falling Under these Provisions

Section 366A deals with the internal trafficking of minors. This section also deals with cases of bride buying, as long as the 'brides' are below the age of 18.

Section 366B relates to trafficking across international borders.

PPC Section 377 A: Sexual abuse

Whoever employs, uses force, persuades, induces, entices or coerces any person to engage in or assist any other person to engage in fondling, stroking, caressing, exhibition, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or the conjunction with other acts, with or without consent where the age of the person is less than eighteen years, is said to commit the offences of sexual abuse.

Definitions under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under these Provisions

This section deals with forced or coercive acts of sexual abuse of children (under age of 18 years) excluding rape or sodomy.

PPC Section 377 B: Punishment

Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description or a term which may extend to seven years and liable to fine which shall not be less than five hundred thousand rupees or with both.

Criminal Law (Amendments) Act 2018

The amendment in section 377 B replaces the punishment which "May extend to seven years" with "Fourteen to twenty years".

Definitions under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under these Provisions

This section relates to punishment for sexual abuse as outlined in PPC Section 377 A.

Zainab Alert, Response and Recovery Act, 2019

This act calls for the creation of a Zainab Alert, Response and Recovery Agency of missing and Abducted Children (ZARRA).

- *This agency would work under the supervision of the National Commission of Human Rights.*
- *ZARRA would set up a hotline with number 1099 where the public can report cases of missing or abducted children.*
- *Main purpose of ZARRA would be to pass Zainab Alerts whenever there is a case of a missing or abducted*

child. ZARRA would coordinate with Pakistan Telecommunication Authority (PTA) to send SMS/ MMS about the missing child.

- ZARRA in consultation with National Commission of Human Rights should also establish a Missing Child Response and Recovery Team (MCRRT), which should consist of trained personnel who shall work for recovery of missing children in collaboration with the local police.
- This act also amends section 364-A and 369 of the PPC to bring the age of the child kidnapped which was “below 14 years” in the former and “below 10 years” in the latter, to below “18 years of age.”

Islamabad Capital Territory Child Protection Act, 2018

This act calls for the establishment of a Child Protection Advisory Board which should create child protection centers and appoint child protection officers.

- Under section 18 of this act, a child protection officer has emergency powers to take away a child from custody of parents or guardians in case he/ she feels that the child faces significant risk of harm. The officers must report to the court within 24 hours of such action. However, no female child must be taken or remain in the care of a male care giver.
- Section 12 and 13 of this act requires child protection officers to carry out initial and if required comprehensive assessment of children who require care and protection, and if found in need of care, the officers should develop a child care plan under section 14 of this act.
- Under Section 25 of this act, an unattended child (a child with unknown parentage, orphan, abandoned, neglected and destitute, homeless or not in the legal custody of anyone,) must be registered with NADRA and for that the child protection officer should designate a guardian to such child.

Juvenile Justice System Act, 2018

This act has repealed the Juvenile Justice System Ordinance, 2000.

- Under Section 3 of this act, every juvenile who commits an offence should be provided legal assistance on state expense.
- Section 4 calls for separate Juvenile Courts to be established to deal with such cases.
- Section 5: If a juvenile is arrested, they should be kept in observation homes and their parents/ guardians should be reported immediately.
- Section 6: A juvenile may be released on bail with or without surety, but the court may reject bail if it believes that the Juvenile may end up in bad company, because no guardian has been traced. In such case, the Juvenile shall be kept in a rehabilitation center and the court shall direct the investigation officer to trace the child’s guardians/ parents.
- Under section 12, no juvenile must be put in trial with an adult person for an offence unless it is necessary for justice, and section 13 protects the privacy of juveniles and prohibits disclosing any information related to the Juvenile, unless done in good faith.
- No Juvenile offender shall be committed to prisons, put in fetters, handcuffed or given any corporal punishment.

Case Study:

In November 2019, a 13 years old boy’s mother lodged an FIR against a man named Sohail. The woman said that Sohail took her son to a house in Bahria Town, Rawalpindi where he drugged and raped the victim for four days. The man filmed the minor as well and threatened to release the video if the victim or his family reported the crime. The police arrested Sohail, and confiscated obscene videos and pictures from his house after he confessed to more than 30 counts of child sexual abuse in Pakistan. He himself ran a child pornography group and also revealed details about a network of delinquents involved in child rapes who filmed, sold or streamed videos live on the dark web.

SESSION 18 – HUMAN TRAFFICKING & SMUGGLING

Notes on Methodology:

The facilitator will present the laws on human trafficking and smuggling, then share a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

The Prevention Of Trafficking In Persons Act 2018

Note: Prevention and Control of Human Trafficking Ordinance, 2002 has now been repealed. The Prevention of Trafficking in Persons Act 2018 has replaced it.

Salient features of the new act are:

- *Defines human trafficking as obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share of such person's subsequent transportation out of or into Pakistan.*
- *Coercion is defined as the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or infliction of serious harm.*
- *Prohibition of human trafficking for any reason whatsoever including labor, entertainment or prostitution.*
- *Two persons acting together to commit a crime falling under the purview of the Ordinance are sufficient to qualify as an "organized criminal group" thus meriting stricter punishment.*

2. Definition.

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

- (b) "child" means any person who has not attained the age of eighteen years*
- (d) "coercion" means the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or of infliction of serious harm*
- (f) "exploitative entertainment" means all activities in connection with human sports or sexual practices or sex and related abusive practices*
- (h) "human trafficking" means obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3.*

Definition under Case Law

These definitions have not been further enunciated under recorded case law.

Elements of GBV/ VAW Falling Under the Provision

- Human trafficking has been an increasing problem across the world and it affects Pakistan as well.
- This law identifies the sexual nature of trafficking and makes it illegal.
- This is a positive law relating to women, except that it excludes internal trafficking.
- In the normal course of events, the Foreigners Act comes into play but rarely is this Act referred to and have cases registered under it.
- The police and lawyers need to be more proactive to recognize the ingredients of this law and to apply it.

Section 3: Punishment for human trafficking

The human trafficking shall be punishable as under.

- (i) *Whoever knowingly plans or executes any such plan for human trafficking into or out of Pakistan for the purpose of attaining any benefit, or for the purpose of exploitative entertainment, slavery or forced labour or adoption in or out of Pakistan shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:*

Provided that in case of an accused who, in addition to committing an offence as aforesaid has also been guilty of kidnapping or abducting or any attempt thereto in connection with such offence, the imprisonment may extend to ten years with fine:

Provided further that whoever plans to commit an offence under this clause but has not as yet executed the same shall be punishable with a term of imprisonment, which may extend to five years and shall also be liable to fine.

- (ii) *Whoever knowingly provides, obtains or employs the labour or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:*

Provided that if the commission of the offences under this clause involves kidnapping or abduction or any attempt thereto, the term of imprisonment may extend to ten years with fine.

Provided further that payment of any remuneration in lieu of services or labour of the victim shall not be treated as mitigating circumstance while awarding the punishment.

- (iii) *Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.*

Provided that if the commission of the offence under this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine.

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

- (iv) *Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.*

Definition under Case Law¹²⁸

- To constitute an offence under this section, it is necessary for there to be coercion or kidnapping.
- A mere promise or taking a person outside Pakistan to provide employment abroad will not constitute an offence “human trafficking” under this section.

Elements of GBV/ VAW Falling Under the Provision

- Trafficking has been defined under Section 3(1) of this Act. The clause states that any person who recruits, harbours, transports, provides or obtains another person, or attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion, commits an offence of trafficking in persons.
- *Smuggling, under The Customs Act, 1969, is considered to mean to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force of goods.*¹²⁹ Apparently, the major difference between smuggling and trafficking is that smuggling can have the element of consent of the person being smuggled, but trafficking is not willful. However the Pakistani laws on both, i.e. “The Prevention of Trafficking in Persons Act, 2018” and “The Prevention of Smuggling of Migrants Acts, 2018” do not make any explicit differentiation between the two on the basis of consent to be smuggled, because steps have been taken towards the non-criminalization of the migrants smuggled in Pakistan.
- However the distinction between Smuggling and Trafficking has been made clear by the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) in its Issue Brief (Issue 01, 10/2016), as “Although the terms are often confused, the smuggling of migrants is not the same as human trafficking. An element of exploitation is required in trafficking but not in smuggling. Smuggling must be consensual and it must be transnational, as human trafficking may also occur within a country’s territory. In practice, it may be hard to establish the boundary between smuggling and trafficking, as elements of exploitation and abuse may emerge during transit or at destination, even in the presence of initial consensus on the part of the migrant. Smuggling and trafficking may occur on the same routes and smuggling can lead to trafficking, making it difficult to discern one from the other. *It is also important to note that human trafficking generally is a crime against an individual, whereas smuggling is a crime against the state.*¹³⁰

The new law requires more public awareness particularly among those in the justice sector.

PPC Section 369A: Trafficking of human beings

Whoever involves himself in human trafficking shall be punished with imprisonment for a term which shall not be less than five years and may extend up to seven years, or fine which shall not be less than five hundred thousand rupees and may extend up to seven hundred thousand rupees or with both.

The word ‘human trafficking’ in this section shall have the same meaning as is assigned to in the prevention and control of human trafficking ordinance, 2002.

Definitions under Case Law

At the time of writing this Resource Pack, there are no cases under this section.

Elements of GBV/ VAW Falling Under the Provision

This PPC section deals with punishment of human smuggling. Elements of GBV/ VAW are same as Prevention of Trafficking in Persons Act 2018: Section 3.

128 2008 PLD 2181; 2006 YLR 1682

129 The Customs Act, 1969

130 Migration Data Portal, <https://migrationdataportal.org/themes/smuggling-migrants>

PPC Section 371A: Selling person for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations:-

- (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to a person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.
- (b) For the purposes of this section and section 371B, “illicit intercourse” means sexual intercourse between persons not united by marriage.

Definition under Case Law¹³¹

The important ingredients in this offence include whether

- i) the girl was purchased;
- ii) she was recovered from the custody of the accused; and
- iii) she was to be used in future for the purpose of prostitution.

Elements of GBV/ VAW Falling Under the Provision

This particular section focuses on those who are selling the victim /survivor for the purpose of prostitution. All those involved in the different phases of the ‘sale’ can fall under this section.

PPC Section 371 B: Buying person for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Definition under Case Law¹³²

There are a number of different ingredients under this provision.

1)

- What does “possession” mean? The law does not specify the nature of possession nor its duration nor intensity.
- Case law identifies that possession could be implied as sufficient control over the minor. Therefore, the gist of the offence under the section lies in the exercise of effective control over a person under the age of eighteen years.
- It is not necessary that possession should be obtained from a third party.

2)

- There must be prostitution or illicit intercourse.

¹³¹ 2009 YLR 1013

¹³² 1970. PCRJ 120; PLD 1963 (W. P.) Lahore 357; PLD 1963 (W. P.) Lah 239

- *The only test which is necessary and sufficient for this section is whether the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse.*
- *The requirement for possession is that it is obtained for the purpose of a single act of sexual intercourse and that possession “denotes definite control over the person of whom possession is obtained”.*

3)

- *It is necessary that the accused who is obtaining possession must know it to be likely that she would be employed or used for purpose of prostitution, illicit intercourse or for any other unlawful and immoral purpose.*
- *The evidence of intention or knowledge must be that the receiver was “at the time of receipt” compelled by the desire of employing or using her as a prostitute.*
- *It is the intention as to the future course of conduct, which constitutes the offence.*

Case Study:

Tahir, a resident of Lahore, registered a complaint with the FIA. He said that he was contacted by some matchmaking agents claiming to represent a Chinese man, Musa, newly converted to Islam, who intended to marry a Muslim girl. Being poor and disadvantaged, he was persuaded to marry his daughter off to this ‘Chinese businessman.’

He was told that he too would accompany his daughter abroad and then come back. However, after marrying ‘Musa’, the girl travelled to Islamabad and subsequently left for China. After a couple of months, the girl called Tahir to reveal that the family had been deceived. According to his daughter, her husband was a con and was forcing her into prostitution.

SESSION 19 – CONFLICT RESOLUTION

Notes on Methodology:

The facilitator should inform the participants that the laws discussed under this category are subject to certain conditions described within the laws. These conditions also differ from province to province.

The facilitator should also highlight the fact that prior to these laws, the dispute resolution out of court would result in unwritten and unbinding settlements in which women would face family/ domestic retaliation once they went back in the same situations and the perpetrators would have no consequences for turning away from their word.

Then the facilitator will share a case study specific to this topic with the participants. The facilitator will ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

ICT Alternative Dispute Resolution Act, 2017

- *Under this act, the court, if deemed necessary, can refer cases of both criminal and civil nature for ADR if they fall under the offences scheduled in this act. This will be done only when there is consent of both parties and the court believes that the issue can be resolved through ADR.*
- *In Civil matters, the court shall refer every civil case mentioned in the schedule to ADR on the first date after appearance of all parties.*
- *The court shall not refer a case to ADR if an intricate question of law or fact is involved.*
- *A neutral would be appointed to act as the mediator between both parties. In case one or both members of the party are women, the case should preferably be dealt by a woman neutral.*
- *If the case is referred to an ADR center, where one or both of the parties to the dispute are women, the ADR center team dealing with the case shall preferably include a woman.*
- *If the ADR process fails to bring about a settlement, court would be notified about it in order to start court proceedings. All information that a neutral receives during mediation is privileged, and cannot be used against either party, and the neutral cannot testify on behalf of any party.*
- *The ADR center shall resolve a dispute within 30 days and can take an extension of 15 days.*

The Code of Civil Procedure (Sindh Amendment) Act, 2018

- *Applies to the province of Sindh. Under this act, the court, if deemed necessary, can refer cases of civil and commercial nature for ADR if they fall under the offences scheduled in this act. This will be done if court believes that the issue can be resolved through ADR, and if the parties think otherwise, they have to make a submission to the court mentioning reasons for not sending a case to ADR. If the reasons are not good enough, the court retains the power to send the case to ADR.*
- *The ADR center shall resolve a dispute within 60 days and can take an extension of 30 days.*
- *In case of a plaint, the court shall at first instance see the possibility of resolving the case through ADR. If at any stage of the case, before or after the recording of admissions and denial, the court feels that a case can be resolved through ADR, it may refer to the case to the ADR center, upon consent of all parties.*
- *Other aspects remain the same as the ICT Alternative Dispute Resolution Act, 2017.*

Punjab Alternate Dispute Resolution Act, 2019

- *Applies to the province of Punjab. Under this act, the court, if deemed necessary, can refer cases of both criminal and civil nature for ADR if they fall under the offences scheduled in this act. This will be done only when there is consent of both parties and the court believes that the issue can be resolved through ADR.*
- *In Civil matters, the court shall refer every civil case mentioned in the schedule to ADR within 30 days of appearance of defendants. Whereas, a trial court may refer a case to ADR at any time or stage where it is of the view that it is likely to be resolved through ADR.*
- *In criminal matters, the court on request of the prosecutor, shall with consent of the complainant at any time before framing of the charge, or by itself within 7 days of framing of charge send a case to ADR.*
- *The ADR center shall resolve a civil dispute within 60 days to 6 months. In criminal cases, it shall resolve a dispute within 90 days, and can take an extension further of 90 days.*
- *Other aspects remain the same as the ICT Alternative Dispute Resolution Act, 2017.*

ICT Costs of Litigation Act, 2017

- *Section 35 of the Code of Civil Procedure as amended by this act, deals with the costs of litigation that a party may file with the court, on basis of which the court may award reasonable compensation for the costs incurred by the party whose claim has succeeded.*
- *This act also introduces two new sub-sections, 35A and 35B, which deal with Adjournment costs and Special Costs. Under 35A, any party which requests the courts to adjourn the date of the case would be made to pay for the increment in cost of litigation that it has caused to the other party, unless it can provide unavoidable reasons for seeking such adjournment. Under 35B, if a party makes an allegation on the other party which turns out to be intentionally fabricated, the court shall award special costs to the opposite party.*
- *These sections are very important for cases of women and children who are mostly the weaker party and cannot afford the costs of litigation and hence refrain from taking their pleas to the court of law. When assured that the court would compensate them for the costs they have incurred on litigation, they would be less reluctant to pursue their cases. Similarly, many times parties keep seeking adjournment to discourage the other party due to the impeding costs, and 35A can act as a deterrent to such tactics.*

Case Study:

Kishwar has been married to Jamil for over 10 years. Jamil has an abusive nature and beats his wife up regularly on minor issues. Kishwar was given dowry by her parents at the time of her marriage which is under Jamil's possession. She wants to get a separation from Jamil but she is afraid of lengthy court proceedings. She also is worried that she does not have any money to pay for the legal and court fees/ expenses.

Kishwar has no children with Jamil and her parents passed away some time ago. She contacted and requested to Madadgaar Helpline to get her dowry back and to get a divorce from Jamil. Madadgaar referred her to CPLC to assist in the case who engaged a mediator for them, and as a result Jamil agreed to divorce Kishwar and return the dowry.

SESSION 20 – TRANSGENDER RIGHTS

Notes on Methodology:

The facilitator will present the laws related to transgender rights, then share a case study specific to this topic with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Transgender Persons (Protection of Rights) Act, 2018

- *Section 3 of the act deals with recognition of identity of Transgender persons. Every transgender person who has attained the age of 18, shall have the right to be identified in the Computerized National Identity Card (CNIC) according to his/ her self-perceived identity. Those who already have CNIC issued should be allowed to alter their identities on the CNIC, Driving license and passport in accordance with the National Database and Registration Authority (NADRA) ordinance.*
- *Section 5 and 6 of the Act prohibits every form of discrimination and harassment against transgenders.*
- *Section 7 of this act establishes the RIGHT TO INHERITANCE of transgenders considering the verdict given by the court in Aslam Khaki case. Under this section, a transgender would have the share of a male if that is his self-perceived identity and of a female if she perceives herself to be a female. In case of transgender being below 18, gender for inheritance would be established through medical examination.*
- *This act in general reiterates that all basic and fundamental rights guaranteed by the constitution must equally and precisely apply to all transgender persons. In case of denial of these rights, a transgender person can move a complaint to the Federal Ombudsman, National Commission on the Status of Women (NCSW) and/ or National Commission for Human Rights (NCHR).*

Case Study:

On the evening of May 22, Alina, a 23-year-old transgender woman and human rights activist in Peshawar, the capital of Pakistan's northwestern Khyber Pakhtunkhwa province, received a phone call from some transgender friends. A local gang was demanding money and threatening them with violence if they didn't pay — so Alina rushed to the scene to help.

The confrontation turned violent, and the gang shot her six times at close range and left her for dead. The friends rushed Alina to a hospital but it was no help. For six hours, doctors debated whether to put Alina in the male or female ward, even jeering at her friends as she lay bleeding. Human Rights Activists protested vehemently upon hearing this, and even got provincial politicians to stop by, but the wait was too long and Alina succumbed to her wounds and died.

SESSION 21 – RIGHTS OF PEOPLE WITH DISABILITIES

Notes on Methodology:

The facilitator will present the laws related to rights of people living with disabilities, then share a case study specific to this topic with the participants. The facilitator will then ask the participants to go through the case study and identify which sections of this law are applicable to the case.

Based on responses from participants, the facilitator will generate a discussion by asking follow up questions related to the case study and the legal provisions. The facilitator will also explore other hypothetical situations created from within the case study to cover the rest of the provisions/ sections.

Key Concepts and Legislations:

Sindh Empowerment of Persons with Disabilities Act, 2018

- *Part II of this act specifies that all the basic fundamental rights guaranteed under the constitution should be granted to differently abled persons, and the government should make sure that these people are treated on the basis of equity in their health care, education, right to acquire news skills and jobs, protection in cases of disaster, rehabilitation, and participation in sports, recreational activities and politics.*
- *The Government should make arrangements to provide easy access to all state facilities for these citizens. Section 11 specifically calls for a 5% quota for differently abled persons in government offices and corporations, and for steps to encourage private companies to implement this quota through incentives e.g. tax exemption etc.*
- *Part III of the act deals with instruments for administering rights to differently abled persons, that is, through establishment of special courts for provision of speedy justice, allocation of funds, insurance cover etc.*
- *Part IV deals with offences against the differently abled persons and their punishment. In case a company has committed such an offence, under section 35 of the act, every official who had control in the company at the time of the offence would be held liable unless it can be proved that he/she had no knowledge of the offence.*

ICT Rights of Persons with Disability Act, 2020.

- *This act calls for ensuring the availability of all fundamental rights guaranteed under the constitution of Pakistan to the differently abled segment of the society. In such, it requires the government to make necessary provisions to provide equitable access to all resources including health, mobility, basic accommodation and employment for differently abled persons and ensure the prevention of all sorts of abuse and discrimination against them. Such provisions include the reservation of Job Quotas for the differently abled as prescribed by the Federal Government.*

Case Study:

Maria has several physical and mental disabilities. She is married and her husband often used her disability against her. He would say that Maria ruined his life because of her disability. However, Maria had no option as she could not cope on her own. She was fully reliant on him to take care of her, a setup that became part of the abuse. He typically withdrew “care” – even food, water and medications– if she broke one of his many rules, and threatened to call Edhi to take her away if she didn’t do as he said. He was regularly violent, and found it easy to isolate her by simply taking away her wheelchair, and keeping her housebound for days or even weeks on end.

Maria wants to get away from him, but has nowhere to go. She is not educated and does not have any skills. But years of abuse have brought an end to her patience.

CLOSING SESSION

Notes on Methodology:

The facilitator will begin the closing session by announcing to participants that it is time to review what they have learned together during the orientation session.

The facilitator then will ask the participants to one by one share their learning and what they will do after the orientation to carry forward the lessons.

The facilitator will hand out the written evaluation and post-assessment forms and allow time for all participants to complete the two.

At the end, the facilitator will make closing remarks and thank you note.



ANNEXURES

ANNEXURE 1:

**Sample
orientation
agenda/ plan**

ANNEXURE 2:

**Pre-test and
post-test**

ANNEXURE 3:

**ESP
guidelines
brief
table**

ANNEXURE 1: SAMPLE ORIENTATION SESSION AGENDA

Title of event: **ORIENTATION SESSION ON GBV RELATED LAWS IN PAKISTAN**

Date of Orientation: _____

Location of Event: _____

Sr. No	Section	Session	Duration	Timeline
Day 1				
1	-	Registration & Attendance	15 Minutes	09:00 AM – 09:15 AM
2	-	Welcome, Introduction, Recitation of Holy Quran, National Anthem & Ground Rules	10 Minutes	09:15 AM – 09:25 AM
3	-	Pre-Orientation Assessment	15 Minutes	09:25 AM – 09:40 AM
6	Introduction	About the Project	5 Minutes	09:40 AM – 09:45 AM
7		About the Orientation & Resource Pack	5 Minutes	09:45 AM – 09:50 AM
8	Section 1 – Introduction to GBV/ VAW	Definitions, Terminologies and Forms & Types of GBV/ VAW in Pakistan	70 Minutes	09:50 AM – 11:00 AM
9	-	Tea Break	15 Minutes	11:00 AM – 11:15 AM
10	Section 2 – The Conceptual Framework and Principles	Human Rights-based Approach, Survivor Centered Approach, Gender Equality and Women Empowerment, Age Appropriateness and Cultural Sensitivity, Safety & Accountability	60 Minutes	11:15 AM – 12:15 PM
11		Access to Justice, Essentials for Access to Justice, Barriers to Justice	45 Minutes	12:15 PM – 01:00 PM
12	-	Lunch Break	45 Minutes	01:00 PM – 01:45 PM
13	Section 2 – The Conceptual Framework and Principles	Non-Discrimination, Gender Stereotypes, Roles & Duties of Judges and Prosecutors to Ensure Access to Justice, Essential Services Package Guidelines, Gender Blindness & Impartiality, Coordination amongst Justice Sector Agencies, Multi-Sectoral Coordination– Group Work, Presentation & Plenary Discussion	60 Minutes	01:45 PM – 02:45 PM
14	Section 3 – The National & Provincial Legal Framework on GBV/ VAW	Pakistani Laws on GBV/ VAW, General Laws: The Constitution, Pakistan Penal Code 1860, Prevention of Electronic Crimes Act 2016, Defamation Act 2004	90 Minutes	02:45 PM – 04:15 PM
15	-	Tea Break	15 Minutes	04:15 PM – 04:30 PM
16	-	Participants' Reflections on Day 1	20 Minutes	04:30 PM – 04:50 PM
17	-	Closing Remarks	10 Minutes	04:50 PM – 05:00 PM
Day 2				
18	-	Registration & Attendance	15 Minutes	09:00 AM – 09:15 AM
19	-	Welcome & Revision	15 Minutes	09:15 AM – 09:30 AM

20	Section 3 – The National & Provincial Legal Framework on GBV/VAW	Rape, Domestic Violence	90 Minutes	09:30 AM – 11:00 AM
21	-	Tea Break	15 Minutes	11:00 AM – 11:15 AM
22	Section 3 – The National & Provincial Legal Framework on GBV/VAW	Honor Crimes	30 Minutes	11:15 AM – 11:45 AM
23		Child Marriage, Forced Marriage, Inheritance	90 Minutes	11:45 AM – 01:15 PM
24	-	Lunch Break	45 Minutes	01:15 PM – 02:00 PM
25	-	Energizer	15 Minutes	02:00 PM – 02:15 PM
26	Section 3 – The National & Provincial Legal Framework on GBV/VAW	Exploitation of Children, Human Trafficking & Smuggling	60 Minutes	02:15 PM – 03:15 PM
27		Conflict Resolution, Transgender Rights, People with Disabilities	45 Minutes	03:15 PM – 04:00 PM
28	-	Tea Break	15 Minutes	04:00 PM – 04:15 PM
29	-	Post-Orientation Assessment & Evaluation	30 Minutes	04:15 PM – 04:45 PM
30	-	Certificate Distribution/ Group Photo	10 Minutes	04:45 PM – 04:55 PM
31	-	Closing Remarks	5 Minutes	04:55 PM – 05:00 PM

ANNEXURE 2: PRE/ POST ORIENTATION ASSESSMENT FORM

Title of event: **ORIENTATION SESSION ON GBV RELATED LAWS IN PAKISTAN**

Date of Orientation: _____

Location of Event: _____

1. What is Gender-based Violence?

2. List 3 core principles for dealing with survivors of VAW

3. Name any two international human rights instruments that provide guidelines on dealing with GBV/ VAW?

4. Name any four (4) forms of GBV/ VAW prevalent in Pakistan?

5. It is estimated that “during her lifetime, one in five women in the world will become a victim of rape or attempted rape. True or False? (tick the correct answer)

(a) True

(b) False

6. Sexual violence, and rape in particular, is considered the most reported violent crime.

True or False? (tick the correct answer)

(a) True

(b) False

7. Write any four (4) barriers to justice.

8. Which High Court banned Jirgas in year 2004 declaring them illegal?

Please tick the correct answer.

(1) Punjab

(2) Khyber Pakhtunkhwa

(3) Sindh

(4) Balochistan

9. The right to self-defense requires the action of the victim to be equal to the apprehension of hurt. This means that a person acting in self-defense cannot cause death to the invader where she/he fears grievous hurt and also cannot cause grievous hurt where there was fear of simple hurt. True or False? Please tick the correct answer?

(1) True

(2) False

10. Honour Crimes are recognized as murder and included in PPC after which Criminal Law

Amendment? Please tick the correct Answer.

1 – Act of 1997

2 – Act of 2002

3 – Act of 2004

4 – Act of 2006

5 – None of the above

10. Which sections of the PPC are applicable to Rape?

11. Which Pakistani law provides protection against stolen identity, online harassment, abuse and other forms of cyber-violence against women?

12. Is there any specific legislation in Pakistan on using DNA evidence? Please tick the correct Answer.

1 – Yes

2 – No

13. Which province in Pakistan does not have a law on Domestic Violence?

14. Which GBV/ VAW crimes are now covered under the Anti-Terrorism Act 1997?

ANNEXURE 3: GUIDELINES FOR ESSENTIAL JUSTICE AND POLICING SERVICES

*The following brief is developed by the Essential Services Joint Programme (UN Women, UNFPA, UNDP, and UNODC) with support of Australian Aid and Spanish Cooperation.

These guidelines for essential justice and policing services aim to provide guidance for the design, implementation and review of quality justice sector and policing service responses for women and girls subject to all forms of gender-based violence. The guidelines have been developed with a focus on low to middle income countries in stable settings but they are also applicable in high income countries.

The Essential Services Package reflects the vital components of coordinated multi-sectoral responses for women and girls subject to violence and includes guidelines for health services, social services, coordination and governance mechanisms as well as justice and policing services.

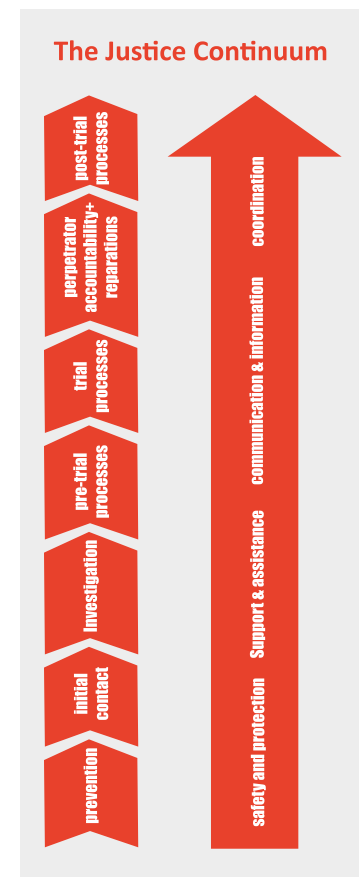
Purposes and Scope

A quality police and justice response is crucial in ensuring that relevant laws against such violence meet international standards: are enforced; keep women and girls safe from violence, including from the re-occurrence of further violence; hold perpetrators accountable; and provide for effective reparations for victims and survivors. Justice systems, and all actors within the system, must be accountable for ensuring that they deliver on their obligations. The purpose of the Justice and Policing Module (Module III) in the Essential Services Package is to assist countries ensure the provision of a quality justice response as part of the holistic, comprehensive and multi-sectorial approach to addressing violence against women. Despite the progress and improvements to the legal frameworks and justice systems to date, the police and justice sector's response has been notably deficient and is often not functioning at a level required to address the severity, nature and extent of gender based violence; protect the well-being and safety of victims and survivors' and ensure women's access to justice. Studies across the globe illustrate that the vast majority of perpetrators face no legal consequences.

Only a minority of cases of violence against women is ever reported to the police and an even smaller percentage of reported cases result in charges laid against a perpetrator, and in only a small fraction of those cases is there a conviction. In cases where women chose not to pursue justice through the criminal system, but rather decide to take action under civil, family and/or administrative law, women can face expensive complicated and lengthy legal processes, limited or no legal aid, and the failure by civil and family court to take into account the history of violence when deciding child custody and cases.

In order to respond to all women and girl, diverse needs and experiences, this Module recognizes that a broad range of justice options need to be available to victims and survivors. It covers aspects of the relevant legal domains: criminal law matters, civil law matters (such as personal injury claims/torts), family law matters (such as divorce, child custody and maintenance issues) and administrative law matters (such as state criminal compensation schemes). It is acceptable for countries which have different legal traditions: common law, civil law and religious based justice traditions. Women and girls who experience gender-based violence may also come into contact with the justice system as someone in conflict with the law. The special considerations for victims and survivors of violence against women who have been accused of or charged with criminal offences focus only on women and not girls, as this would involve a review of international standards and norms regarding juvenile justice which is outside the scope of this document.

Essential justice and policing services cover all victim and survivor's interactions with the police and the justice system from reporting or initial contact to ensuring appropriate remedies. The services are grouped according to the broad stages of the justice system prevention, initial contact; investigation; pre-trial/hearing processes; trial/hearing processes; perpetrator accountability and reparations; and post-trial processes. There are also services that must be available throughout the entire justice system; protection; support communication; and justice sector coordination.



Essential Service-Justice and Policing	Description	Core Elements
ES-1: Prevention	It is important that justice service provider strongly support initiatives and organization that seek women's equality; raise public awareness about violence against women, its courses, and the consequences to women, their family and communities as well as punishment that perpetrators will face; and ensure that information about services and how to access them is readily available to all. The development and promotion of institutional cultures founded on gender equality and gender responsiveness and service delivery is crucial to prevention.	C.E.1.1: Promotion and Support of organizations and initiatives seeing to end violence and increase women's equality C.E.1.2: Support efforts to raise awareness and promote the unacceptability of men's and boy's violence against women C.E.1.3: Stopping violence and prevent future violence against women C.E.1.4: Encouraging women to report violence perpetrated against them
ES-2: Initial Contact	A positive initial contact experience with the justice system is crucial for victims/survivors of violence. Services must be available and accessible to all women. But most importantly, the initial contact must demonstrate to the victim/survivor that the justice system, and the justice service providers in the system or committed to her health and safety, take her complaint seriously, and want to ensure that she is well supported on her journey through the justice system.	C.E.2.1: Availability C.E.2.2: Accessibility C.E.2.3: Responsiveness
ES-3: Investigation	It is crucial that investigation of crimes of intimate partner and sexual violence against women or started in timely fashion, or conducted in a professional manner, meet evidentiary and in investigative requirements, and that all available means to identify and arrest the suspect or exhausted. Throughout, the women's safety, security and dignity or carefully censured and maintained.	C.E.3.1: Cases of violence against women or given high investigation priority. C.E.3.2: Victim/Survivor medial and psycho-social needs or addressed C.E.3.3: Relevant information and evidence is collected from the victim/survivor and witnesses C.E.3.4: A thorough investigation conducted C.E.3.5: Professional accountability is maintained throughout the investigation.
ES-4: Pre-trial processes	Criminal, civil, family and administrative pre-trial/hearing processes that or non-based and sensitive to the specific needs of victims and survivors of intimate partner violence and sexual violence or essential to guaranteeing their right to justice. Essential pre-trial criminal justice services reflect the international obligation on the state and its justice service provider in exercising primary responsibility for investigation and initiating prosecution while balancing the importance of empowering victim and survivors to make informed decision regarding their interactions with the criminal justice system. Essential pre-trial/hearing civil, family and administrative justice services emphasize the importance timeliness, affordability and simplified and easy to use procedures.	C.E.4.1: Coordinated and integrated approaches to criminal, civil, family and administrative law cases. C.E.4.2: Primary responsibility for initiating prosecution C.E.4.3: Correct charge and approval of the charge made quickly C.E.4.4: Accessible, affordable and simplified procedures to access justice C.E.4.5: Prioritization of cases C.E.4.6: Application of fair procedures and evidential standards in all pre-trial processes C.E.4.7: Victim survivor centered empowerment oriented and rights pre-trial processes C.E.4.8: Readiness for trial C.E.4.9: No forced mediation, alternative dispute resolution in case involving violence against women C.E.4.10: Special considerations for victim survivors who are suspected or accused of criminal behavior

<p>ES-5: Trail/ Hearing process</p>	<p>Victims and survivors of intimate partner violence and sexual violence who are involved at the trial stages in criminal and civil justice processes can feel vulnerable overwhelmed by the unfamiliarity of the justice system or re victimized through the insensitive or discriminatory treatment of justice service provider international norms and standards call for measures to prevent further hardship and trauma that may result from attending the trial its self and to insure that trial process maximize the survivor’s cooperation promote her capacity to exert agency during the trial stage while insuring that in criminal matter the burden or onus of seeking justice is on the state. The justice services that are considered essential. During the trial `process deflect internationally agreed upon model strategies including friendly and enabling court environment for survivors to feel safe and comfortable recounting what they have experienced procedures to minimized re-victimization and application of evidentiary rules in a non-discriminatory manner.</p>	<p>C.E.5.1: Safe and friendly court room environment C.E.5.2: Protection of privacy integrity and dignity C.E.5.3: Opportunity for full participation C.E.5.4: Opportunity to give details of the impact of the crime C.E.5.5: Non discriminatory interpretation and application of evidentiary rules. C.E.5.6: Special considerations for victim/survivors who have been charged with criminal offences</p>
<p>ES-6: Perpetrator accountability and reparation</p>	<p>The vast majority and perpetrator of intimate partner violence and sexual violence faced to legal consequence, when they are held accountable to often the sanctions whether criminal civil, or administrative, or very low. In addition, the reparations that women receive from the perpetrator and/or the state following the violence often do not reflect the realities of the harm suffered by women and girls, particularly the patterned use of coercion, intimidation and the use or threat of violence, from a survivors perspective accountability and reparations can mean can many thing, from a criminal sentence, civil damages, state compensation and public condemnation of the violence, as well as including redress for the state’s failure to provide essential justice services. The essential services relating to accountability and reparations reflect the international obligation of due diligence of imposing appropriate sanctions to hold perpetrators accountable for their action and providing for just and affective remedies to the survivors for the harm or loss suffered by them.</p>	<p>C.E.6.1: Justice outcomes commensurate with the gravity of the crime and focused at the safety of the victim/survivor C.E.6.2: Participation of victim/survivors of sentencing hearings, in applicable jurisdictions C.E.6.3: Available and accessible options for reparations C.E.6.4: Reparations that cover consequences and harms suffered by victim/survivor C.E.6.5: Enforcement of remedies C.E.6.6: redress when essential justice services or denied under mind, unreasonably delayed, or lacking due to negligence.</p>
<p>ES-7: Post Trail Processes</p>	<p>the justice system can play an important role in perverting future violence, bot by sending a strong message to the community that violence Against women will not be tolerated but also in its role in ensuring the accountability and rehabilitation of perpetrators and reducing recidivism. The international norms and standards urge states to develop and evaluate treatment and reintegration/ rehabilitation programmes for perpetrators that prioritize the safety of the victims as well as to ensure that compliance is monitored. These standards also urge states ensue that there are appropriate measures in place to eliminate violence against women who are detained for any reasons.</p>	<p>C.E.7.1: Interventions that prevent re-offending focus on victim/survivor safety C.E.7.2: Prevention of and response to violence of women who are detained for any reason C.E.7.3: Reduction of exposure E to violence of female offenders in detention end post detention services</p>

ES-8: Safety and Protection	Protection measures for women who have experienced intimate partner violence and sexual violence are critical to stopping the violence and preventing reoccurrence, escalation and threats of violence. Women have the right to live free of violence and free of the fear of violence. This means that protection measures need to be available independent of any initiation of a criminal, civil or family law case and be designed to empower women in their access to justice and enable them to stay safety engaged with the justice process.	C.E.8.1: Access to immediate, urgent and long-term protection measures C.E.8.2: Enforcement of protection measures C.E.8.3: Risk assessment C.E.8.4: Safety Planning C.E.8.5: Prioritization safety concerns in all decisions C.E.8.6: Coordinated protection measures C.E.8.7: Coordinated protection as support services
ES-9: Support and Assistance	A crucial element in guaranteeing access to justice for all women is the provision of support and assistance services during the justice process. The international norms and standards refer to the importance of legal assistance, practical, accurate and comprehensive information, victim and witness support services and the need for support from outside the justice sector (such as, health, shelters, social services, counseling). These services can empower women, allowing them to make their own informed decisions based on knowledge of their rights and justice options.	C.E.9.1: Practical, accurate, accessible and comprehensive information C.E.9.2: Legal Services C.E.9.3: Victim and witness support services C.E.9.4: Referrals to health and social service providers
ES-10: Communication	Communication is a ke theme throughout the justice system. The victim/survivor needs to know that she is being listened to and that her changing justice needs are being understood and addressed. Information and the way it is communicated can empower the victim to make informed decisions regarding her engagement with the justice service agencies and non-justice sectors, particularly prioritizing confidentiality ad privacy, can contribute to the minimization of the risks victims face when seeking justice.	C.E.10.1: Simple and accessible information about justice services C.E.10.2: Communications promote the dignity and respect of victim/survivor C.E.10.3: Ongoing communication with the victim/survivor C.E.10.4: Regular and effective communication between justice agencies C.E.10.5: Communication by justice agencies with other agencies
ES-11: Coordination Among Justice Agencies	Given the different mandates of each justice agency and the various tasks of different justice service providers, a coordinated response is essential to ensuring that essential justice and policing services are redelivered in a quality and effective manner and delivers and best outcome for victims/survivors. Coordination sets transparent standards and expectation from each justice agency and contribute to better communications and linkages between the different justice agencies and service providers. From the perspective of a victim/survivor, coordination of essential services means that she will be met with the same understanding of her rights and her situation and review the same, hight quality response from all justice service providers.	C.E.11.1: Coordination amongst justice sector agencies.



This publication has been funded by the U.S. Department of State through the Bureau of International Narcotics and Law Enforcement. The views expressed in this publication are not necessarily the views of the U.S. Department of State.

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