

GENDER ISSUES IN CONDUCTING GBV AND RAPE CASES

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TRAINING MANUAL FOR FACILITATORS

FACILITATORS NOTE

This session has been prepared to be delivered as an interactive narrative by facilitators for participants and as a background for a PowerPoint presentation. The narration set out is a suggested example of what might be said by the facilitator when conducting this 75 minute session as the numbered PowerPoint slides are shown.

SLIDE 1

INTRODUCTION TO THE SESSION

In this session, the focus will be on bringing together the information you have already heard about what gender sensitization means, and now adding on, what that means for judges when they have GBV cases before them.

The session will not be discussing the law of GBV and rape such as the elements of the offence, relevant sections of the legislation or case law on those sections. Instead this session will look at practical matters concerning the way in which GBV and rape cases are conducted in the court and the gender issues which arise in those cases

OBJECTIVES OF THE SESSION

SLIDE 2

The objectives of the session are to:

- Topic 1 Provide a brief background about the universal and Pakistan experience of women and gender based violence (GBV)
- Topic 2 Discuss challenges for women witnesses in GBV and rape cases
- Topic 3 Gender stereotyping in GBV cases
- Topic 4 Discuss assessing credibility in rape cases
- Discuss Standards of Court Practices in Punjabi Courts State – including referring to Model GBV Court in Lahore
- The session will be Interactive with a practical exercises

TOPIC 1 UNIVERSAL AND PAKISTAN EXPERIENCE OF WOMEN AND GBV

SLIDE 3

NARRATION

The Universal experience of women in society

- In order to address gender sensitization for women in courts it is necessary to take account of the general inequalities faced by women on a daily basis.
- This is true worldwide and in some countries more than others.
- The challenges for women's access to justice do not begin in the courts.
- Before they come into the justice system

Women

- Women suffer economic and social inequalities as well as inequalities in education, health, employment and within their relationships in families.
- They have employment inequalities and have lower literacy rates
- Fewer women than men finish their schooling
- They earn less than men for the same or similar work,
- They do significantly more household work and childcare than men and it is unpaid
- Women face discrimination on multiple grounds (Such as ethnicity/race, indigenous marital and/or maternal status and age)
- Women are most likely to be the victims of gender based violence (GBV)
- Violence against women is one of the major reasons why women come into the court system apart from matrimonial and inheritance issues, which can sometimes be closely linked to GBV

WHAT IS MEANT BY GENDERED BASED VIOLENCE

SLIDE 4

NARRATION

- Expressed in a simple form
- **"Violence against women"** is an act of gender-based violence that results in, or is 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. It also includes domestic violence.

INTERNATIONAL AND PAKISTAN GBV CONTEXT

SLIDE 5

NARRATION

Internationally

- 1:3 women in the world experience violence, either physical or sexual at some point in their lives, mostly from someone close to them
- In some countries the figures can be as high as 1:2 (such as in some African countries)
- In industrialised countries such as Australia the figure is 1:4 .That is in spite of some initiatives to address this issue.
- Sometimes the increased numbers in countries where initiatives have been taken may be reflecting that more women feel able to come forward to complain about GBV rather than there being an increase in the GBV against women. It may be both.
- Whatever the explanation is, the statistics are shocking.

Pakistan

- Current studies indicate: (references to the sources are at the end of the ppt)
- In South East Asia (including Pakistan) the rate is higher (37.7%)(WHO 2013)
- Between (2008 – 2014) the number of GBV cases reported by women increased from 7571 to 10,070, a 28.2% increase (Aurat Foundation 2015)
- 4 women are raped every day – half of them minors (HRCP 2015; Parveen 2011)

PUNJAB PROVINCE DATA

SLIDE 6

NARRATION

- In Punjab State the number of reported cases of GBV increased from 6,505 in 2015 to 7,313 in 2016 (Punjab Commission on the Status of Women 2017).
- The increase in the cases is potentially an example of women feeling more able to lay a complaint than previously.
- However, most women do not come forward to lay a complaint.
- Pendency of cases of GBV from all Districts of Punjab as at 31.08.17 were 8,091
 - 2838 rape,
 - 240 gang rapes
 - 667 sexual assault

- 2375 Hurt cases
- 226 Domestic Violence cases (PJA Handbook p4)

PUNJAB ATTRITION DATA

SLIDE 7

Punjab Commission on the Status of Women Report 2017

http://www.gmis.gop.pk/Chart_indi15.aspx?id=392

Statistics 2016

Crime	Reported	Convictions	Acquittals	Consigned to record
Rape	2,948	100	2,183	70
Murder	688	50	84	-
Honour killings	222	19	114	8
Assaults (S 354)		17	660	723
Human Trafficking		15	312	81
All Hurt Cases		12	372	187

FACILITATOR NOTE

- not all statistics were available in the 2017 report Commission Report hence the gaps
- these were reported to the PCSW by the Public Prosecutors. These figures are regarded as the most reliable and differ in number from those supplied to the PCSW by the police
- The figures from the police and prosecution are differently compiled
- Also it needs to be noted that the number of convictions and acquittals (and those consigned to record) are not necessarily the same complaints which were reported in the year 2016. In other words there is a lag between when a cases reported and then when cases are heard and convictions occur. However, that said, the overall reported figures for the previous years were not so significantly different as distort the rates of convictions and acquittals

The major points to note using the rape figures is that

- 2353 rape cases were dealt with in 2016 (that is adding together the convictions acquittals and consigned to record) and the conviction rate from cases dealt with in the court mean that only approximately 3 to 4% of cases result in a conviction. This is a very high attrition rate.
- Also it begs the question of what "acquittals" refer to. It is likely to be cases in which there has been a resiling by witnesses or where there has actually been a settlement

between the parties, being an informal compounding, when rape is not a compoundable offence. Also Honour Killings are not compoundable.

- The only cases which are compoundable on those statistics are Murder and Hurt cases.
- This data, inadequate as it is, demonstrates that the court system is in fact being abused and there is impunity in relation to the true offenders. Those making false complaints, pressure by families for women to make false complaints of abduction or rape etc. or alternatively, true complaints of women that are then compromised for a variety of reasons. In which case the offenders go free .

There is a significant gap between the constitutional position of women in Pakistan and the legislative provisions and policies, and the reality of women being able to access to justice in the justice system and the courts.

PAKISTAN - CONSTITUTIONAL FRAMEWORK AND PRO-WOMEN LEGISLATION

SLIDE 8

NARRATION

- As has already been referred to in other modules, there are constitutional guarantees of equality between man and women in the law.
 - **Articles 25, 28, 34 and 35**
- The guarantee of equality between man and women is not only equality in the law in a formal sense (Art 25) ,but also in policy and also includes equality in other aspects of the personal lives of men and women
- The Government has taken important steps in the last two decades with Initiatives which are both in legislation and policy.
- The Punjab State has also taken even greater steps both in legislation and policy
- These are important steps and collectively have improved the framework for women to help improve their ability to access to justice

FEDERAL LEGISLATION

SLIDE 9

FACILITATOR NOTE: Simply refer to slide and highlight the 2016 legislation that they in the PJA Handbook

- The Protection of Women (Criminal Laws Amendment) Act, 2006
- The Protection Against Harassment of Women at Workplace Act, 2010
- The Prevention of Anti-Women Practices (Criminal Laws Amendment) Act, 2011
- The Acid Control and Acid Crime Prevention Act 2011
- Criminal Law (Amendment)(Offences related to Rape) Act 2016
- Criminal Law (Amendment) (offences in the name or pretext of Honour) Act 2016

PUNJAB LEGISLATION

SLIDE 10

FACILITATOR NOTE: Simply refer to slide and highlight the 2016 legislation that they in the PJA Handbook

- The Punjab Commission on Status of Women Act 2014
- The Punjab Women Empowerment Package 2016 which was implemented and under the Act
- The Punjab Protection of Women against Violence Act 2016

TOPIC 2 CHALLENGES FACED BY WOMEN WITNESSES COMING TO COURT

SLIDE 11

NARRATION

- Before women victims come to the courts they have often already experienced distressing circumstances and justice system processes

FACILITATOR NOTE: Open up general discussion on what judges perceive about issues that women witnesses have and why they may not report complaints to the police. It could cover the following matters.

- Worldwide it is found that before women come to the courts they have often already experienced distressing and sometimes unresponsive, or even positively aggressive conduct by police or other law enforcers.
- Women often do not report violation of their rights to the authorities for fear that they will be humiliated, stigmatised, arrested or have other forms of violence inflicted upon them, including by law enforcement officials.
- Other reasons, include shame, concern about family and societal reactions, and concern or fear about the overall process of the criminal Justice system. This is particularly the case in relation to sex crimes and domestic violence.
- Even if women lodge complaints, the authorities frequently fail to act with due diligence to investigate and prosecute the perpetrators.

SLIDE 12

What do these pictures show?

12



FACILITATOR NOTE: open up for discussion

- This depicts a woman going to make a complaint to the police.
- Differences in treatment when alone and when with male
- What is the most common situation in their view etc
- How do you think she is feeling about making a complaint about a sexual assault?

APPEARING IN COURT

SLIDE 13

FACILITATOR NOTE: open up for discussion and cover the following points

- Just appearing in court is distressing
- Judges regard this as part of their familiar workplace and think nothing of it
- However, to a witness, and particularly a female witness, it is formidable
- It is formal building and rooms with a peculiar layout and with many people in formal court attire or in uniform moving around and speaking legal language with which they are unfamiliar
- They may come face-to-face with the accused which is an intimidating experience in itself
- Add to that, the proximity of the accused, at least two counsel and court staff, many of whom are likely to be men
- This is going to be the place in which they have to give evidence about an offence, the details of which are traumatic for them

Giving Evidence

14



- Having to give evidence about intimate conduct before strangers
- Knowing that their conduct and reputation can be subjected to XN
- Knowing a judge will make a decision as to whether they should be believed

FACILITATOR NOTE: Refer to the drawing of a woman giving evidence

- Women have to give evidence, often about intimate conduct in relation to a sexual assault upon them. They have to tell this before strangers. A minimum of about 6 people most often males.

SUGGESTION FOR FACILITATOR: Ask judges to put themselves in the shoes of the witness eg .

- I ask you to imagine for a moment, what you would feel like if you had to give intimate details about a sexual experience that you have had in your life.
- **And** that you then have to tell all of the information about who, when, where and what happened, in sequence, and in very great detail. **And** to tell a group of judges here today. I suggest you would find the experience excruciating.
- But add to that the fear of women knowing that their conduct and reputation are likely to subject to adverse scrutiny through cross examination
- Women refer to this experience as feeling “re-victimised” by the process, feeling that they are the ones on trial and not the accused.
- Finally, knowing that a judge is going to deciding whether to believe them or not
- Thinking about these issues will give you some sense of what it may feel like for a woman victim giving evidence in court.

RECOGNISING WOMEN'S EXPERIENCE

SLIDE 15

NARRATION

A case which brings together some of the factors of which I have spoken is a case from the Philippines

People v. Melivo, (G.R. No. 113029, Feb. 8, 1996) (Philippines)

"With all the attendant social consequences such a classification [being a rape victim] brings, many rape cases go naturally unreported, and those which manage to reach the authorities are routinely treated in a manner so demeaning to the victim's dignity that the psychological ordeal and injury is repeated again and again in the hands of inexperienced, untrained and oftentimes callous investigators and court room participants"

TOPIC 3 STEREOTYPING OF WOMEN IN GBV CASES AND RAPE CASES

SLIDE 16

NARRATION

- As has been previously discussed in the session on Gender Sensitisation, we all have personal views and it is very easy for stereotyping and gender bias to creep into our thinking.
- Stereotyping and gender bias of women in GBV cases can arise in different ways:
 - Judges can have rigid views based on what they consider to be appropriate conduct for women and take an adverse view of women who do not conform. For example, a woman should always dress demurely and not use bad language even if she is angry or upset.
 - Assessing a woman's evidence by comparing her behaviour with how a man would respond. For example, if a woman was being sexually groped by a man in public, she would push his hand away and loudly tell him to stop.
- Generalizing or stereotyping of a woman's behaviour about how she should behave in these circumstances, can affect the assessment of the credibility of her evidence
- A female witness should not be assessed against how a man would behave, nor how a stereotyped "normal" women ought to behave, but instead how **this** woman in **her** situation in all of **her** circumstances, behaved.
- In other words, assessing her credibility should take account of her personal background and her circumstances

STEREOTYPING OF WOMEN IN GBV AND RAPE CASES (CONT)

SLIDE 17

NARRATION

- Women's and men's experiences and feelings and therefore their actions or inactions in relation to similar situations, might be (and often are) different for very valid reasons. For example, the effect of unequal physical strength or unequal power in community
- It is important to appreciate the reality of the particular situation, and also understand that situation from a woman's perspective, and then that particular woman's perspective.
- This is highly relevant when dealing with issues of consent in rape cases
- Also there is often a lack of understanding of the nature of domestic violence or sexual assault and its impact on women's responses at the time of an offence and when giving evidence in court.
- This is a topic on its own, namely the cycle of Domestic Violence, how it escalates and the devastating effect it has on not only women but also on the children in families.

ACTIVITY 1 - QUIZ

SLIDE 18

- Each of you will be given a quiz with questions to be answered by indicating whether the proposition is true or false
- Tick the box which you consider is relevant (10 mins)
- Your answers will be collected and will remain anonymous
- The main purpose of the exercise is to enable you to reflect on your views on the topics related to rape and GBV
- We may not have time to go through all of the answers but some may be discussed as a group
- Total time 20 mins

FACILITATOR NOTE. The following is an **Activity Handout** to be given to all participants at the session for them to answer and then follow with a group discussion on the answers.

ACTIVITY 1 Gender issues Conducting GBV and Rape Cases Q AND A
GBV women stereotypes and myths

Mark with a tick in the box as to whether the statement is true or false

Number	Statement	True?	False?
1	A genuine victim reports rape immediately after it happens.		
2	Delay in reporting rape indicates that a rape claim is false.		
3	All rape victims should physically put up a fight and failure to do so indicates consent.		
4	All rape victims will sustain genital injuries.		
5	All rape victims will sustain bodily injuries.		
6	Absence of genital injuries and/or bodily injuries indicates that the victim has consented to sexual conduct.		
7	Consent to sex can be assumed when women:		
	(a) wear provocative clothing or makeup		
	(b) engage in flirtatious behaviour		
	(c) Stay out late		
8	Rape occurs because men are unable to control their sexual urges when they are provoked by a woman's behaviour such as in 7 above.		
9	Rape is more likely to be committed by a stranger than by a person known to the victim such as friend, family member or neighbour.		
10	When a woman says "no" it does not mean she is not consenting to sexual intercourse.		
11	Women are unreliable as witnesses about rape allegations and there must be corroboration of their evidence by independent witnesses or evidence.		
12	Complainant's, particularly if they are children, usually make up stories that they have been raped or sexually assaulted.		
13	The past sexual history of a woman complainant is:		
	(a) Always relevant to whether she consented to sexual intercourse.		
	(b) Rarely relevant to whether she consented to sexual intercourse.		
14	A judge may rely solely on the demeanour of a complainant in court when deciding whether to believe their evidence that a rape occurred		

FACILITATOR NOTE:

The correct answers for some of the questions are in the following slides 19 – 23 and in **HANDOUT A "Gender issues in Conducting GBV and Rape Cases -Cases referred to in slides 19 – 23 "**. They are also discussed in Slide 24 -25 with the references.

GENDER STEREOTYPING – LEGAL AND FACTUAL ISSUES IN RAPE CASES

SLIDE 19

NARRATION

There are commonly held views of judges on legal issues which involve gender stereotyped views of women. They relate to the following topics:

- Delay by victim in reporting rape
- Moral character of the complainant and virginity
- Actions of women and whether they indicate consent to sexual assault/rape
- Whether absence of visible injury negates rape
- Whether women victims are reliable and their evidence requires corroboration a complainant consented

The following slides provide case law examples referring to those issues and how judges have reflected on these topics

DELAY BY VICTIM IN REPORTING RAPE

SLIDE 20

FACILITATOR NOTE: See Handout A

Case 1 *People v Ilao* (G.R.Nos 152683-84, December 11, 2003)

Case 2 *People v Ilagan* (G.R.No 144595, August 6, 2003)

RELEVANCE OF MORAL CHARACTER OR VIRGINITY OF VICTIM

SLIDE 21

FACILITATOR NOTE: SEE Handout A

Due to time to read out only two.

Case 1 *People v. Ilao* (G.R. Nos. 152683-84, December 11, 2003). (The Philippines) On appeal.

Case 2 *People v. Jason Navarro, Solomon Navarro and Roberto Olila* (acquitted) (G.R. 137597, October 24, 2003) (Philippines)

Case 3 *People v. Wilson Suarez, et al.* (G.R. Nos. 153573-76 April 15, 2005) (The Philippines)

Case 4. *State of Punjab v. Gurmit Singh & Ors*, 1996 AIR 1393; 1996 SCC (2) 384 (Anand J) (India, Supreme Court)

NARRATION

- In the UK and Australia the court can disallow questions about the *general reputation* of a complainant as to chastity. But the court has the discretion to admit specific evidence about prior sexual conduct if that has “substantive probative value”, such as, for

example evidence of the complainant having had consensual sexual relations with the defendant prior to the alleged offence. However it must be sufficiently proximate to the alleged offence.(UK and Aus)

Note that *Pakistan Qanun-e-Shahadat*, Order 1984 Section 151(4) has been repealed. This section read.

“Impeaching the credit of a witness –when a man is prosecuted for rape or an attempt to ravish, it **may** be shown that the prosecutrix was of generally immoral character”.

Reading the cases it appears as though notwithstanding repeal, aspersions are commonly made about a woman’s character as part of an ordinary defence. ***The State v Muhammad Afzal S/O Ghulam Haide***. Amjad Ali Shah Addl Sessions Judge Narowal Case FIR No.109/2010 19.01.2012 in Handout A

WHETHER THE VICTIM CONSENTED AND ABSENCE OF VISIBLE INJURY

SLIDE 22

FACILITATOR NOTE: SEE Handout A

Case 1 *People v. Ilao* (G.R. Nos. 152683-84, December 11, 2003) (The Philippines)

Case 2 *People v Ilagan* (G.R. No. 144595. August 6, 2003) (The Philippines)

Case 3.... AIR 1927 Lah 222 name of the case

The State v Shabbir alias Kaka s/o Moza Jhamke and Fozia Bibi.Jazeela Aslam Addl Sessions Judge, Sheikhpura. FIR No 1499/10 October 4, 2012

WHETHER WOMEN RAPE VICTIMS ARE UNRELIABLE – AND THEIR EVIDENCE MUST BE CORROBORATED

SLIDE 23

FACILITATOR NOTE: SEE Handout A

Case 1.....1983 SCMR 90 get ref to name

Case 2 *Amanullah v The State* PLD 2009 SC 542

Case 3 *Imran v The State* 2016 PCr LJ 1888 (Sindh)

Case 4 *The State v Muhammad Afzal S/O Ghulam Haide*. Amjad Ali Shah Addl Sessions Judge Narowal Case FIR No.109/2010 19.01.2012

Report reference: International commission of Jurists (2015), *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*.

TOPIC 5 ASSESSING CREDIBILITY

SLIDE 24

NARRATION

Studies have shown that: (sources are in the references)

- the demeanour of a witness in court is a doubtful indicator of reliability
- judges and lawyers are no better at assessing credibility than other people
- witnesses may be reacting to the stress of the courtroom, or their family situation, or any number of factors totally unrelated to truthfulness
- the appearance, behaviour and body language of a witness is influenced many factors. For example, age, as well as social and cultural experiences.
- persons with physical or cognitive disabilities will also have different presentations
- quick “instinctive” reactions by judges to the visual look, appearance or behaviour of a witness leads to assessing by pre-conceived stereotype

ASSESSING WITNESSES FAIRLY AND WITHOUT BIAS

SLIDE 25

NARRATION

- The most reliable approach is to carefully consider the likelihood or otherwise of particular evidence of a witness having happened
- Take into account ALL of the evidence in the case, both direct and circumstantial
- Carefully consider any inconsistencies and whether they may be attributed to misunderstanding or the stress of a witness giving evidence
- Be able to give logical reasons based on all the evidence as to why a particular assessment of a witness is reached
- Deliberately reflect on whether a stereotype or bias is influencing the reasoning process
- Take time to consider decisions and not be pressured to make “snap” judgments about whether a witness is to be believed

TOPIC 5 STANDARDS OF COURT PRACTICE FOR GBV REGARDING WOMEN REGARDING GBV

SLIDE 26

NARRATION

In relation to this topic we will be looking at the requirements of the *Salman Akram Raja and ors v Government of Punjab State* 2013 SCMR 203 and what directions the Supreme Court has given to courts dealing with rape cases. In addition, the extent to which the Directions are being implemented in practice.

In addition we will look at the recent “Lahore High Court guidelines to be followed in cases of GBV” which were issued on 17 October 2017 and also the recent setting up of the model GBV Court in Lahore, which is likely to be replicated in other districts in the Punjab.

These documents have been supplied to you as Handouts namely:
Handout B -"The Lahore High Court Guidelines to be followed in cases of GBV"
Handout C -"Practice Notes" issued in relation to the model GBV Court Lahore

SALMAN AKRAM RAJA AND ANOTHER VS. GOVERNMENT OF PUNJAB - 2013 SCMR 203

SLIDE 27

- Brief facts and background set out in PJA Handbook pp 244-245

NARRATION IF NEEDED

- A 13 year old girl was subjected to gang rape. No formal FIR was registered. Upon entry of the complaint the Sub-Inspector took the victim to the Hospital for DNA test. Even after positive DNA findings no FIR was lodged. The victim tried to commit suicide and the incident was covered by media and a Suo Motu action was initiated and the matter was registered.
- The Supreme Court gave directions for courts, police, hospital and medical practitioners in matters concerning the complaint process, the taking and use of DNA and court processes for vulnerable witnesses particularly women, children and persons with disability
- The Supreme Court gave Directions for courts, police, hospital and medical practitioners in matters concerning:
 - the complaint process
 - the taking and use of DNA and
 - court processes for vulnerable witnesses particularly women, children and persons with disability

The Supreme Court requirements have now been encapsulated in the LHC guidelines to be followed in cases of GBV

These guidelines are not just limited to the model GBV Court but are applicable to all District and Sessions courts dealing with GBV cases

LHC GUIDELINES TO BE FOLLOWED IN CASES OF GBV

SLIDE 28

NARRATION

The LHC guidelines were issued No 223325 dated 17 October 2017

See Handout B

The LHC guidelines incorporate the directions in *Salman Akram Raja* and S 13 of the *Criminal Law (Amendment) (Offences related to Rape) Act 2016* and international best practices.

FACILITATOR NOTE

Potential selected topics from the LHC Guidelines to highlight could be:

- Role of Supervising magistrate
- Sessions Court requirements
- Practice to be followed if victim or family members are threatened to compromise
- Court environment
- Requirements when taking evidence

THE MODEL GBV COURT LAHORE

SLIDE 29

NARRATION

- The GBV court commenced on 24 October 2017
- The judge who has been allocated to be the “model judge” of the court is Addl Sessions Judge Rehmat Ali Malik
- The court is guided in its practice by the LHC guidelines but in addition “Practice Notes” have been issued to give practical guidance on the operation of the court.
- The “Practice notes constitute best practice and they are set out in **Handout C**
- Features of the GBV Court as seen in the Practice Notes include:
 - Female support officer
 - Settling the victim and witnesses
 - Trial process
 - Protection orders
 - Procedures when victim or other witnesses resile (a particularly important feature and would also be relevant to courts other than the GBV Court)
 - Procedures where victim does not attend court
 - Courts power to ask questions and call witnesses

FACILITATOR NOTE

A major point to be made is that almost all of these features are also applicable to cases of GBV which are being heard in other than the GBV Court. This would include cases of domestic violence.

CONTENT OF QUESTIONS, LANGUAGE AND MANNER OF QUESTIONING

SLIDE 30

NARRATION

There are two aspects of questioning which will be discussed here which are relevant to best practice in when women give evidence in GBV cases and they are consistent with in the LHC Guidelines and the Practice Notes .

- Content of questions
- Manner of questioning

CONTENT OF QUESTIONS

SLIDE 31

NARRATION

- Starting with the Pakistan legislation
 - Qanun-E-Shahadat Order:
 - S 146 gives the court discretion to forbid any questions or inquiries which it regards as “indecent or scandalous”
 - S 148 allows the court to forbid any questions which appears to “be intended to insult or annoy” or appears to be “needlessly offensive”
 - Many common law jurisdictions have evidentiary rules regarding the disallowance of “**improper**” questions of witnesses which are broader than QES Order but as a matter of practice in controlling the court as a matter of fairness to witnesses, similar approaches would be applicable to courts in Pakistan

IMPROPER QUESTIONS

SLIDE 32

NARRATION

- Examples of “improper” questions include questions which use inappropriate language, or are **misleading, confusing, or harassing**.
- There can be many examples of questions which are **misleading or confusing** to a witness. For example
 - **Using legal terms.**
Eg. “I suggest that you dreamt that up that story ‘ex post facto’”
 - **Long or complex sentences which ask more than one question.**
Eg. “Do you say that he came through the door, picked up a knife from the kitchen and then threatened to kill you?”
 - **Ambiguous questions.**
Eg “how many times did you tell the policeman that your uncle touched you”. This could be asking either “how many times did you tell the policeman” or “how many times did your uncle touch you”.
 - **Harassing questions:** It is common for counsel to ask the same questions over and over again in the hope of wearing down a witness and getting a different answer
- Questions which appear to be **stereotyping and/or unfairly alluding to a woman’s gender**.
 - Eg. Question in cross-examination related to whether they victim consented to sexual assault. “Well I suggest that when you pushed him away you were more concerned that he would ruin your makeup?”

- Intervening if a statement **implies that a woman makes a less credible witness** than a man.
 - Eg. Closing Submissions. "This is a woman who is telling your Honour that she was assaulted by my client in a public place but she does not produce any male witness to corroborate her story"
- A court when deciding whether a question is "improper" should take into account a number of features of a witness. For example:
 - Mental, intellectual or physical impairment; age; gender; language; educational background; religion; maturity and understanding of a witness. Also it may include the relationship, if any, to any other party in the proceeding.

MANNER OF QUESTIONING

SLIDE 33

NARRATION

- Regardless of content, a court may prohibit questioning which is done in a manner which is bullying, aggressive, angry or loud voice questioning which can result in a witness not being able to be treated fairly when giving evidence
- Prohibit body language or aggressive eye contact which can be threatening
- Prohibit rapid fire questions which can upset a witness and result in them feeling pressured, intimidated or flustered
- The court should control this conduct as part of its inherent power to regulate and control proceedings before them
- In order to do that the court needs to be aware of the impact of this conduct and that depends upon the individual witness and overall circumstances

THE OVERALL PURPOSE IS TO ENSURE A FAIR TRIAL FOR ALL PARTIES BOTH THE ACCUSED AND THE COMPLAINANT AND ALSO FOR ALL WITNESSES

BEST PRACTICE FOR QUESTIONING VULNERABLE WITNESSES

SLIDE 34

NARRATION

- "Vulnerable witnesses" include children, persons with physical disability or cognitive impairment, victims of serious offences against the person and witnesses threatened by violence or retribution. In the case of GBV these are mostly females.
- Best practice is based on research which shows that the most reliable evidence from a vulnerable witness is obtained when they can "tell their story" in answer to "open questions.
- This is to take account of their suggestibility when asked questions by those "in authority" and that they have a tendency to answer "yes" to leading questions, which are the usual style of cross examination questions .
- The way these guidelines are to be applied depends on the particular witness and the crime and the circumstances.

- They are also applicable to the defendant or other witnesses who give evidence who may be vulnerable witnesses.
- These guidelines are **not to be applied** in a manner which adversely impacts on a fair trial for the defendant, instead to ensure that there is a fair and just trial process for all parties.
- Many common law countries have Guidelines about questioning vulnerable witnesses which include:
 - limiting the number of questions asked of a witness
 - requiring questions in cross examination to be “open” questions and not “closed” or “leading”
 - Restricting unnecessary repetitive questions.
- Ref: Guidelines for questioning vulnerable witnesses: children and witness with mental disabilities. District Court of Western Australia Circular to Practitioners CRIM 2010/1 8 September 2010. **See Handout D**

ACTIVITY 2

SLIDE 35

- This Activity enables an open discussion about ways in which the courts in Lahore could improve better access for women in the courts. Time 15 mins

Questions:

- Are there ways in which the judiciary could improve :
 - the physical environment outside the courts?
 - the physical environment inside the courts?
 - the ways in which evidence can be taken from women or vulnerable witnesses, eg use of pre-recorded videos?
 - the manner of treatment of women in courts as a witness and during their questioning?
 - Improve the assessment of credibility of women witnesses?

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