

# GENDER ISSUES IN CONDUCTING GBV AND RAPE CASES

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# Objectives of the Session

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- 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

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- **The Universal experience of women** is that the challenges for women's access to justice do not begin at the courtroom door
- **Women:**
  - suffer economic, social, educational and employment inequalities and have lower literacy rates
  - face discrimination on multiple grounds (ethnicity/race, marital and/or maternal status)
  - are most likely to be the victims of GBV and rape

# What is Meant by Gendered Based Violence

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**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 data

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## Internationally

- 1:3 women in the world experience either physical or sexual violence at some point in their lives, mostly from someone close to them

## Pakistan

- In South East Asia (including Pakistan) (37.7%) experience violence (WHO 2013)
- 4 women are raped every day - half of them minors (HRCP 2015; Parveen 2011)

# Punjab Province data

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- In Punjab reported cases of GBV increased from 6,505 in 2015 to 7,313 in 2016 (Punjab Commission on the Status of Women 2017)
- 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

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## Punjab Commission on the Status of Women Report 2017

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

# Pakistan - Constitutional Framework and Pro-Women Legislation

- There are constitutional guarantees of equality between man and women in the law
  - **Articles 25, 28, 34 and 35**
- The Government has taken important steps in the last two decades with initiatives in legislation and policy.
- The Punjab State has also taken even greater steps both in legislation and policy to improve women's access to justice



# Federal Legislation

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## Federal Legislation

- 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

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## Punjab Legislation

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

Ref PJA Handbook

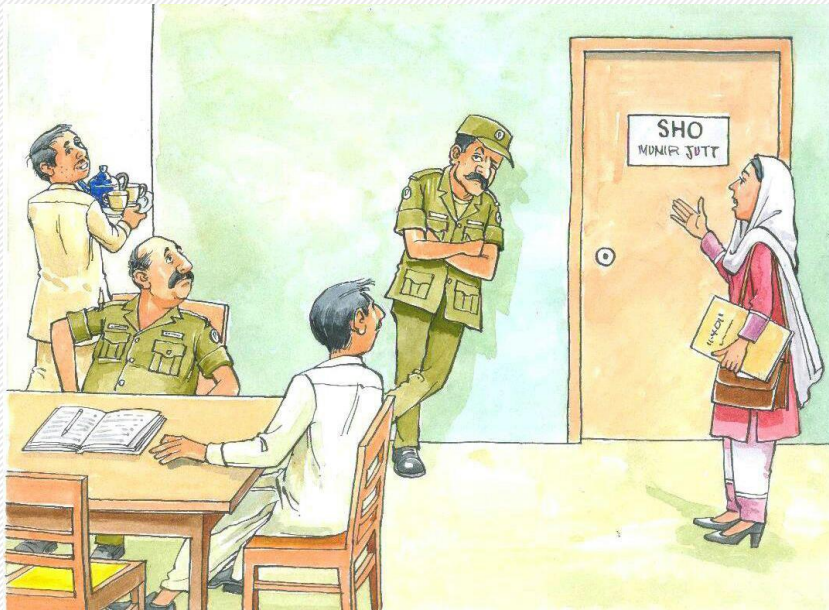
# Topic 2 Challenges for Women in GBV cases

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

# What do these pictures show?

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# Appearing In Court

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- Just appearing in court is distressing. The building, courtroom, formal dress and formal legal language
- Having to come face-to-face with the accused
- The proximity of the accused, counsel and court staff, many of whom are likely to be men

# Giving Evidence

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

# Recognising Women's Experience

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

“With all the attendant social consequences such a classification [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 and Rape Cases

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- 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
- Assessing a woman's evidence by comparing her behaviour with how a man would respond
- A female witness should not be assessed against how "normal" women ought to behave but instead how this woman in this situation in all of her circumstances behaved.



# Stereotyping Of Women In GBV and Rape Cases (cont)

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- Stereotyping of a woman's behaviour affects the assessment of the credibility of women's testimonies
- A lack of knowledge and understanding of the nature of domestic violence or sexual assault and its impact on women's responses at the time of offence and when giving evidence in court

# ACTIVITY 1 - Quiz

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- Each of you will be given a paper with quiz 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
- Anonymous answers will be discussed as a group
- Total time 20 mins

# Gender Stereotyping - legal and factual issues in Rape Cases

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Commonly held gender stereotyped views of judges on legal and factual issues cover 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 unreliable and their oral evidence requires corroboration

# Delay By Victim in Reporting Rape

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- **Pakistan case**
- *People v Ilao* (G.R.Nos 152683-84, December 11, 2003)
- *People v Ilagan* (G.R.No 144595, August 6, 2003)

# Relevance of Moral Character or Virginity of victim

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- *People v Ila* (G.R.Nos 152683-84, December 11, 2003)
- *People v Jason Navarro, Solomon Navarro and Roberto Olila* (G.R. 137597, October 24, 2003)
- *People v Wilson Suaruez, et al.* (G.R.Nos 153573-76 April 15, 2005)
- *State of Punjab v Gurmit Singh & Ors*, 1996 AIR 1393
- UK courts can disallow questions about general reputation as to chastity, with discretionary allowance
- Note Qanun-e-Shahadat Order S1 51(4) is repealed

# Whether the Victim Consented and absence of visible injury

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- *People v Ilao* (G.R.Nos 152683-84, December 11, 2003)
- *People v Ilagan* (G.R.No 144595, August 6, 2003)
- .....AIR 1927 Lah 222
- *The State v Shabbir alias Kaka s/o Moza Jhamke and Fozia Bibi.*Jazeela Aslam Addl Sessions Judge, Sheikhupura. FIR No 1499/10 October 4, 2012

# Whether women rape victims are unreliable - and their evidence must be corroborated

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- .....1983 SCMR 90
- *Amanullah v The State* PLD 2009 SC 542
- *Imran v The State* 2016 PCr LJ 1888 (Sindh)
- *The State v Muhammad Afzal S/O Ghulam Haide*. Amjad Ali Shah Addl Sessions Judge Narowal Case FIR No.109/2010 19.01.2012
- International commission of Jurists (2015), *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*.

# Assessing Credibility - Research

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- Demeanour 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
- The appearance, behaviour and body language of a witness is influenced by many factors
- Persons with physical or cognitive disabilities have different presentations
- Quick “instinctive” reactions by judges to the visual look, appearance or behaviour leads to assessing witnesses by pre-conceived stereotypes



# Assessing Witnesses Fairly And Without Bias

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- Take into account ALL of the evidence both direct and circumstantial
- Carefully consider the likelihood or otherwise of particular evidence of a witness having happened
- Are any inconsistencies be due to misunderstanding or the stress of giving evidence
- Be able to give logical reasons as to why a particular assessment of a witness is made
- Reflect on whether the reasoning process is influenced by a stereotype or bias
- Take time to consider decisions and not make “snap” judgments about whether a witness is to be believed

# Topic 5 Standards Of Court Practice for GBV cases in Punjabi Courts

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Standards and directions given by the Supreme Court

*Salman Akram Raja v Government of Punjab*

2013 SCMR 203

# *Salman Akram Raja Vs. Government of Punjab*

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- Brief facts and background (PJA Handbook pp 244-245)
- Supreme Court 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

# LHC Guidelines to be followed in cases of GBV

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- No 223325 dated 17 October 2017
- Incorporated the directions in *Salman Akram Raja* and S 13 of the *Criminal Law (Amendment) (Offences related to Rape) Act 2016* and international best practices.
  - Supervising magistrate
  - Sessions Court
  - Practice if victim or family members are threatened to compromise
  - Court environment
  - Taking evidence

# The Model GBV Court Lahore

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- Commenced operation 24 October 2017.  
Features include:
  - Female support officer
  - Settling the victim and witnesses
  - Trial process
  - Protection orders
  - Procedures when victim or other witnesses resile
  - Procedures where victim does not attend court
  - Courts power to ask questions and call witnesses
  - Procedure for cross-examination of victim by defence counsel

# Content of Questions, Language And Manner of Questioning

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## Two Aspects

- Content of Questions
- Manner of questions

# Content of Questions

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- 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 question which appears to “be intended to insult or annoy” or appears to be “needlessly offensive”
- Many common law jurisdictions disallow “improper” questions of witnesses

# Improper questions

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- Questions using inappropriate language, misleading, confusing, or harassing
- Are stereotyping and/or unfairly alluding to a woman's gender
- Infer that a woman makes a less credible witness than a man
- Need to take into account mental intellectual or physical impairment, age, gender, language, personality, educational background, religion, maturity and understanding of a witness.
- Other matters such as relationship, if any, to any other party in the proceeding



# Manner of Questioning

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- Regardless of content, prohibit bullying, aggressive, angry or loud voice questioning
- Prohibit body language or aggressive eye contact which can be threatening
- Prohibit rapid fire questions which can upset a witness and feel pressured, intimidated or flustered
- The court should control this conduct as part of its inherent power to regulate and control proceedings before them

**THE OVERALL PURPOSE IS TO ENSURE A FAIR TRIAL FOR ALL PARTIES**

# Best practice Questioning Vulnerable Witnesses

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- Research which shows that the most reliable evidence from a vulnerable witness eg a child, is to allow them to “tell their story” in answer to “open questions”
- This takes account of suggestibility when asked questions by those in authority.
- There is a tendency to answer “yes” to leading questions (“confirmatory bias”)
- Many countries have guidelines to restrict questioning of vulnerable witnesses

# Activity 2

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- This Activity enables a short open discussion on practical ways in which the courts in Lahore could improve better access for women in the courts for GBV and rape
- Questions:
- Are there ways in which the judiciary could improve :
  - the physical environment outside the courts?
  - the physical environment inside the courts?
  - the manner of treatment of women in courts as a witness and during their questioning?
  - Improve the assessment of credibility of women witnesses?
- Time 15 Mins

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- Ministry of Justice UK: Achieving Best Evidence in Criminal cases: Guidance on interviewing victims and witnesses, and guidance on using special measures. March 2011
- 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