

Gender Based Violence Courts in Pakistan: A Success Story

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Abstract

Gender-based violence (GBV) remains a pervasive international public health and human rights crisis, affecting individuals based on socially ascribed gender differences. This paper sheds light on the challenges faced by victims within the criminal justice system, particularly in rape cases, where low conviction rates and societal biases perpetuate an environment that deters survivors from seeking justice. The study explores the establishment of the first-ever gender-based violence court in Lahore, South Asia, as a groundbreaking initiative to address these issues. Through judicial training, gender sensitization, and the implementation of victim-friendly practices, the specialized court achieved a remarkable increase in the conviction rate for rape cases, from zero to 16.5 percent in less than a year. The paper underscores the importance of a reformist spirit in legislation, exemplified by laws such as the Criminal Law (Amendment) Act, 2016, and Anti-Rape Act 2020, while acknowledging the ongoing challenges in their effective implementation. Two landmark judgments from the Lahore High Court and the Supreme Court of Pakistan serve as beacons of progress, emphasizing the equal protection of law for women and dismantling gender stereotypes in GBV cases.

Key Words: Gender-based violence (GBV), Victim-friendly judicial system, Rape, Conviction rates, Judicial training, gender sensitization, Landmark judgments in GBV cases

Introduction

Gender based violence (GBV) is an umbrella term for any harmful act perpetrated against a person based on socially ascribed (i.e. gender) differences between males, females and transgender. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion and other deprivations of liberty. These acts can occur in public or in private spaces. Common forms of GBV include sexual violence (rape, attempted rape, unwanted touching, sexual exploitation and sexual harassment), intimate partner violence (also called domestic violence, including physical, emotional, sexual and

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economic abuse), forced and early marriage and female genital mutilation. GBV is recognized as a widespread international public health and human rights issues and is not merely a problem but a crisis. Women still face significant barriers in accessing justice, whether they are victims, witnesses, alleged offenders, or prisoners.

Criminal justice systems tend to focus on the needs of a predominantly male population of offenders and prisoners. The data collected reveals that the conviction rate in rape trial was very low all over the world. In these cases, accused were acquitted because of compromise or cases were consigned to record room for reason that victims did not appear in courts to give evidence. This leads to a false perception that rape cases in Pakistan are falsely reported. There are number of challenges rape victims face. Attorney pose questions, solely designed to humiliate and intimidate. Delaying tactics, searching questions and long typical cross examinations conducted with sole purpose to harass the victims urging to get their cases decided and all stake holders with typical mindset do not even bother to look into the reasons which are important:

- Why victims do not appear in courts to give evidence?
- Why in large number of these GBV cases compromise takes effect?
- Why there are only acquittals in these cases?

It is estimated that less than 10% of female victims/survivors globally seek assistance from the justice system. Forming of empathetic view for the women victims/survivors was required. Statistics will tell you that a few hundred GBV cases are reported to police that is not even the tip of iceberg because majority of offences are even not reported and even if they are reported there is a little chance of conviction as the perception amongst the masses is that she was at fault or she was a consenting party without considering the fact that her account might well be true or the cases might not be properly investigated. The victims in such cases are adjudged prior to their account being tested on the touchstone of evidence.

So, what happened when the case was registered? Police is regarded as gate keeper to the Criminal Justice System, and it is very hard for survivors belonging to lower income groups even to get the police believe that they have been raped especially if she is pressing charges against somebody who is better off in terms of money or in terms of social position in society.

Due to this mindset of investigation agency, in GBV cases, shoddy investigation is logical corollary, so when the case reaches the court for trial suffers from loopholes and infirmities. After going through the bail proceedings when the cases reach the stage of trial the real problems ensue. Even decision of pre- arrest bail applications of the accused may take long time.

When victims step in the witness box in an unconducive environment tough, typical, scandalous, and searching questions were asked from the victim as if she

is on trial, not the accused. These questions are humiliating, intimidating and asked in open court in front of the accused and other litigants. Judges mostly don't stop these questions to be asked and after the omission of Article-151 Sub-Article 4 of the QSO 1984 there is no scope to ask these sorts of questions. If a lady doctor who conducted the medical examination comes to court to adduce evidence regarding Medico Legal Reports, scandalous questions were asked just to humiliate her and if she is young, she often gets worse treatment. The trial is protected by defense lawyers just to make it a test of nerves. Hence, the majority of cases were consigned to record rooms or compromise/resiling statements were made to avoid these precarious and humiliating situations.

Unfortunately, no one realized these barriers. In the backdrop of this, Asian Development Bank provided technical assistance on judicial training, capacity building initiatives and the first-ever gender-based violence court was established in Lahore in 2016, the first court of its kind in South Asia.



Before establishing this court intensive training on gender sensitive issues was the eye opener to identify these issues faced by women particularly victim's day in and day out in judicial system. Main focus of training of judicial officers and other stake holders was on Gender Sensitization, National Gender Laws, Culture of Pakistan, Relevance of International Standards, Gender-sensitized Judicial Conduct and GBV against Women. The general atmosphere of the courts, the loud environment, the imposing counsel and the close proximity of the victim/survivor the perpetrator combine to intimidate and traumatize victims/survivors. Main focus of training to judicial officers was to sensitize them and realize the latent perception of the society of victim shaming. Practice Notes were designed, and guidelines were issued by the Lahore High Court for GBV Courts for recording evidence of victims of GBV cases and trials were put on fast track. The results of this effort were astounding which paid high dividends and in less than a year the conviction rate for rape cases tried in this specialized court rose from zero to 16.5 percent. Revolutionizing the atmosphere for the victims in the GBV courts was of a great help. The victim-friendly judicial system was created to control the variables which became an impediment in the way of justice. Extreme care and caution are required in writing orders and judgments in GBV cases.

The language of the court must be cold. Failure to prove charges by victim does not give any authority to demean her or rebuke her. The failure could be due to various factors beyond her control such as shoddy investigation, weak prosecution, witnesses won over so on and so forth. Any adverse remarks by judge

becomes verdict which further exacerbate the plight of emotionally fragile victim coping with the stigma. A reformist spirit espoused by the judiciary, parliament and civil society organizations resulted in laws such as the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016, Sindh Domestic Violence (Prevention and Protection Act), 2013 and Anti Rape Act 2020, have further paved the way for a stronger commitment to fight GBV and enhance legal protections afforded to victims of such crimes. However, the challenges still lie in the implementation of these laws. There are two recent landmark judgments rendered by Lahore High Court, Lahore and Supreme Court of Pakistan in Sadaf Aziz Case and Atif Zareef³ case respectively. These judgments are beacons of lights showing us the way and guiding the judges to the right trait. Here extracts from judgment of Atif Zareef case are shared:

“A woman whatever her sexual character or reputation may be, is entitled to equal protection of law. No one has a right to invade her privacy on the ground of her alleged immoral character”

“In a criminal trial relating to rape it is the accused who is on trial and not the victim”

This decision demonstrates that the constitutional right to dignity forbids consideration of gender stereotypes in gender-based violence cases because the constitution provides that the right to dignity shall be inviolable, the independence, identity and free choice of women should be respected. Hon'ble Supreme Court of Pakistan further observed that the right to dignity, the only one that is non-negotiable. In Sadaf Aziz case⁴ while conducting medical examination of rape victims the practice of two fingers test was held illegal while observing that the status of hymen is irrelevant, and scope of medical examination is only to determine whether alleged victim was subjected to rape. Although the threshold is not yet achieved but the positive step has been taken in the right directions on the subject. We in Pakistan are committed to jealously guard and improve this journey.

Conclusion

In the pursuit of justice for gender-based violence victims, the establishment of a gender-based violence court in Lahore stands as a transformative step. Through concerted efforts in judicial training, cultural sensitivity, and legislative reforms, this initiative has significantly improved the conviction rate for rape cases and created a victim-friendly judicial system. The recent landmark judgments from the Lahore High Court and the Supreme Court of Pakistan reinforce the constitutional

³ PLD 2021 Supreme Court 550 ATIF ZAREEF and others — Appellants Versus THE STATE--- Respondents

⁴ 2021 P Cr. LJ 205 [Lahore] SADAF AZIZ and others — Petitioners Versus FEDERATION OF PAKISTAN and others---Respondents

right to dignity, affirming that gender stereotypes have no place in the adjudication of GBV cases. While legislative strides have been made, the paper acknowledges the continued challenges in the implementation of these laws. The commitment to guard and improve this journey remains steadfast in Pakistan, as the nation strives to create a justice system that is truly just and equitable for all.