

VIOLENCE AGAINST WOMEN

& their quest for justice

by shahla zia



simorgh women's resource & publication centre lahore, pakistan.

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and
Their Quest
for
Justice

By
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“ Legislation, however strong is insufficient unless it is accompanied by gender sensitive attitudes and perceptions on the part of those responsible for the administration of justice. Since we [the judiciary] are a part of the same inequitable system and reflect the same gender biases prevalent in society, it is crucial for an institution like ours to seriously begin the process of recognising these biases and ensure that they do not affect the quality of justice we dispense.”

**Justice Nasir Aslam Zahid,
Supreme Court of Pakistan**



“ Through its every nuance, tone, accent and expression, equality has begun to lead us to a mutual understanding of violence against women – as we see it, as the individual women experience it and as judges judge it. It has opened a vista to a woman’s right to live life with dignity by enabling judges and others to recognise the pervasive indignity of women’s conditions.”

**Naina Kapur, Director Sakshi, India,
Co-ordinator Asia Pacific Advisory Forum**



“ It is directly concerned with the role of the courts to do justice without fear or favour to all manner of people, men and women in accordance with not only the letter of the law but with it’s spirit – not merely formal equality but substantive equality as well. ”

**Justice Madraiwiwi,
Arbitration Court of Fiji**



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GLOSSARY OF TERMS & ABBREVIATIONS

- Ahadeeth:** Plural of hadeeth; the sayings of the Prophet Mohommad (peace be upon him).
- Baithak:** House
- Bismillah:** "I begin in the name of God."
- Burqa:** A veil covering the whole body, from head to toe.
- Chadar:** Shawl
- Chowk:** Square or crossroads
- Danda:** A stout stick or bludgeon
- Dupatta:** Thin shawl
- FSC:** Federal Shariat Court
- Ghair kafoo:** Not of an equal status.
- Ghairat:** Sense of honour.
- Ghairatmand:** One with a sense of honour.
- Hadd:** Restrictive ordinance of God/the Holy Quran/ Sunnah; and the punishment for non-observance thereof.
- Haveli:** A large house.
- Jirga:** Local adjudication body for dispute resolution.
- Jurm:** Crime; offense.
- Kala kali\ Karo kari:** Customary practice of killing alleged adulterers in the name of family or tribal honour, prevalent in areas of Baluchistan and Sindh in its ritual form.
- Kassi:** A tool for digging, similar to a spade.
- Khadim:** Literally, a servant; in this case an employee.
- Khana Damad:** An arrangement where, by mutual agreement, the married daughter and son-in-law live with the wife's conjugal family.
- Lalkara:** Ritual battle cry or challenge.

Mashallah: "By the grace of God." Meaning relies on tone of voice and body language. Depending on context, it can carry obvious sexual overtones.

Mubarat: Dissolution of marriage through mutual consent.

Nikah: Marriage rites.

Nikahnama: Marriage document.

PCrLJ: Pakistan Criminal Law Journal

PLD: Pakistan Law Digest

PLJ: Pakistan Law Journal

PPC: Pakistan Penal Code

Purdah: Veil; screen.

Qatl: Murder.

Qatl-e-Amd: Wilful murder; homicide.

Rukhsati: The point at which a legally married girl moves from her parental home to her husband's home, hence, the point at which the marriage is consummated.

SCMR: Supreme Court Monthly Review

Shalwar: Trousers

Sui juris: Of an age and mental competence to take decisions regarding her/his own life (especially regarding marriage).

Taazir/Tazir: Punishment other than (but not necessarily less than) *hadd*.

Talaq: Divorce.

Talaqnama: Divorce papers.

Ulema: Religious scholars

Wali: Guardian.

Zina: Adultery/ fornication.

Zina-bil-jabr: Rape.

INTRODUCTION

Over the decades there has been a growing awareness of the injustice and discrimination that women in Pakistan face at all levels, and a number of reports and studies in recent years have highlighted different aspects of the situation. One area of particularly grave concern has been that of violence against women – the most pervasive violation of their human rights.

Violence against women occurs in diverse forms, ranging from the most apparent physical forms of violence to the more subtle forms of emotional torture and mental cruelty. It includes, amongst other manifestations, abusive or offensive language, sexual harassment, physical abuse, sexual abuse, stripping, mutilation, forced prostitution, rape, incest and murder. It also includes denial and violation of their basic human rights to life, security, liberty and choice in the form of child marriage, forced marriage, denial of the right to marriage by choice, forced confinement, and so on.

Unfortunately, many forms of violence against women are not even recognised as violence in society. But what, perhaps, is even more frightening is the reality that even those, which are recognised are often ignored, condoned or justified. Women, therefore, become victims both of the violence they undergo as well as of social attitudes and biases, which are indifferent to their plight or hold them responsible for it. Most women accept their fate and suffer in silence. Some try to alleviate the violence in their lives through culturally acceptable means. A very few, for whom the situation becomes totally unbearable, take action.

This study is about women victims of violence and their quest for justice. What violence did they suffer? What means did they use to try and resolve the issue? What support did they get from their families and society? What were the hurdles they faced? And, eventually, what justice did they get, or hope to get from the system of justice in the country?

While society, as a whole, bears the responsibility for the violence women suffer in their lives, there are some institutions charged with the responsibility of ensuring that justice is done. Of these, the key institution is the judiciary. It is to the courts that women turn when all else has failed them. How then do the courts respond when violence has been done to women or women turn to them for redress? Judges, after all, are a part of the same social system within which this violence takes place. Bearing in mind their key responsibility of ensuring justice, are they able to differentiate between their own gender biases and the fundamental right of equality they are charged with upholding? Are they able to understand the nature of violence that women suffer? Do they recognise it as

violence? Do they view this violence in terms of the circumstances of women's lives? Do they dispense justice to women?

This study seeks to address many of these questions through interviews with women victims, women involved in the court process, women's NGOs and women lawyers to find out about their experiences and perceptions. In order to do this, it undertook a courtroom watch to personally observe and experience the process that women go through. And, finally, it reviewed and analysed a substantial number of judicial decisions to assess how the courts had actually dealt with issues of violence against women.

This research has been carried out as a part of the "Gender and Judges" project, under the Asia Pacific Advisory Forum on Judicial Education on Equality Issues (FORUM). The research followed a methodology designed by SAKSHI, New Delhi (coordinating agency for the FORUM) for the South Asian NGO partners.

In doing so, the study tried to keep a benchmark of both the formal and substantive concepts of equality. The first deals with women's right to equal treatment, irrespective of their sex. The second deals with real equality in circumstances where formal equality may, in fact, create or perpetuate inequality, requiring therefore a distinction of approach in situations where women's lives have been subject to systemic forms of discrimination, as also where society's expectations of them and the prevailing myths about them have led to a different perception of their rights.

Shahla Zia
October, 1998

I WOMEN VICTIMS OF VIOLENCE

As discussed earlier, access to justice does not merely mean the existence of a physical infrastructure of courts and the right of women to approach those courts when they have been subjected to violence. It implies a social climate within which victims of violence are treated as persons whose rights have been violated, rather than as persons disapproved of by society because they are violating cultural codes by seeking redress for the violence committed against them. It presupposes a system in which they are given the requisite support and guidance in seeking such redress, rather than discouragement and condemnation. It presupposes an environment within which they can express themselves freely and without fear, rather than one in which they are compelled to feel ashamed and guilty. It requires that law officers and other concerned personnel treat them with the dignity and concern which is their due, rather than as shameless women because they have dared to assert their rights. It also requires judicial forums that are sensitive to their concerns, uphold their rights and provide justice to them expeditiously.

All these elements are, by and large, missing from our system of justice. For women, who are already traumatised by the violence and humiliation they have undergone in their personal lives, the implications of a non-supportive and insensitive system are drastic. For the judiciary, which bears the ultimate responsibility for the dispensation of justice, a sensitive understanding of what women have gone through before they access the judicial system, if at all they do, and what they go through once they have done so, is crucial.

This chapter, therefore, provides a brief insight into the types of violence women undergo before they even begin the process of trying to seek redress; what the violence does to them as persons, the hurdles and obstacles they face in the process, their fears and impressions of the law courts, and the implications of all this on their lives. Even more important, is to start seeing these experiences in the context of the fundamental rights of all human beings to security, dignity and life; to question whether the constitutional protections for the family, for mothers and children are actually used for providing such protection, or – in the name of culture and social norms – merely to ensure that the issues are suppressed. It is critical for us to reflect on the role all of us play in contributing to the injustice.

This chapter contains the results of interviews with some women who experienced violence in their personal lives but did not take the matter to court, as well as those who filed cases to seek redress but are currently considering or going through a compromise. It also includes a few women who have recently filed cases with the help of a crisis centre. A separate chapter follows which elicits the views and experiences of other women actively involved in the court process in different capacities.

The interviewees

Altogether 60 women were interviewed. Of these, 32 were women who had taken their cases to court, while 28 had not approached the courts. Most of the women interviewed were in shelters or had sought help from crisis centres. Almost all of them were women who had experienced violence from their husbands, except a few whose own relatives had abused them.

The nature of violence experienced

Since this was largely a sample of women who had taken the active step of seeking refuge in shelters or approaching crisis centres for help, it was important to know what kind of violence they had experienced which had pushed them into taking this action.

What was the nature of the violence you experienced?			
Mental:	24%	Non-physical:	22% (100 - 78)
Emotional:	22%	Physical:	78% (60 + 18)
Physical:	18%		
Psychological:	10%		
All types:	60%		

While a number of women interviewed identified some specific forms of violence they had experienced, more than half of them stated that they had suffered all types of violence – physical, emotional, mental and psychological. Combined with those who specifically indicated physical violence, it appears that about 78% of the women interviewed had suffered physical violence. Though there are no overall statistics in Pakistan relating to domestic violence, recent reports have indicated that wife abuse is a fairly common phenomenon. As indicated by the substantial proportion of women in this sample, who stated that they had experienced all forms of abuse, it is apparent that physical violence does not cause just physical damage. The emotional trauma suffered by women who are physically abused, the constant humiliation and degradation, the loss of dignity and self-respect, the fear and sense of helplessness and insecurity, all have a severe mental and psychological impact on them as well.

Almost a quarter of the women (22%) experienced emotional, mental and psychological forms of violence, without such violence necessarily being physical. In a society where even physical domestic violence is rarely recognised as a crime, unless it assumes serious proportions, non-physical violence barely stands a chance of such recognition, usually being viewed as part and parcel of married life for a woman or, at best, as a marital dispute. This attitude or perception extends to all levels, including the judicial level that rarely considers it even worth classifying as ‘cruelty’ in family court cases. Yet, wives who undergo the constant degradation of abusive language, humiliating treatment in front of everyone including their children, relatives or in-laws, curbs on their actions and mobility etc., are conscious of the mental agony and psychological damage they suffer in terms of loss of self-confidence and low self-esteem.

Remedies pursued against abusers

Most of the women in the sample had pursued either a single remedy against their abusers or, in a number of cases, a combination of multiple remedies. The largest number had tried for a compromise through the family and elders; others had tried to reach a settlement through intermediaries and friends. A few had taken the route of trying to report the abuser to the police, while others had approached different forums which they felt could help e.g. the mosque, the Shariat Court or a crisis centre. Some had also tried to compromise directly with their husbands.

More than half of the women selected for the interview were those who had approached the courts for redress. But most of them had tried for years to find some alternative means of seeking redress before going to the courts, which was eventually done as a last resort.

Did you pursue any remedies against your abuser? If so, in what form?

Family/elders:	50%	Directly:	6.5%
Intermediaries/friends:	17%	Crisis centres:	6.5%
Police:	16.5%	Mosque etc.:	4%

Women tend to endure considerable domestic abuse over long periods of time. When the situation becomes unmanageable and there is no relief in sight, they ordinarily first attempt the relatively more private and culturally acceptable forms of mediation through the family, elders or friends. At this stage, the goal for most women is primarily to stop or lessen the violence, since they are generally reluctant to take the risk of breaking up the marriage. It is usually only when the situation becomes unendurable, and all other efforts fail, that they move out of these socially prescribed parameters of redress and contemplate stronger action.

Obstacles in the way of finding redress

The women were asked to state three obstacles that had come in the way of finding redress for the violence they had experienced. Half the women felt that the general lack of support for their situation had been a major obstacle in the way of finding redress. The attitudes towards domestic violence, even from their own families, were that it was quite normal and that women had to learn how to deal and live with it. Not only was there lack of support, many faced active social and family pressure to discourage them from seeking any redress. Inevitably, these social attitudes, where women are made to feel that they are wrong to take any measure towards redress, even when they are the ones against whom violence is being committed, resulted in many women experiencing feelings of shame, guilt and embarrassment, which constrained or delayed them from taking action.

Additionally, these attitudes made them worry about the social stigma they would suffer. Other major obstacles women faced were the lack of knowledge, information and guidance about their rights and the means of redress, as well as financial constraints. Women also waited, hoping that the situation would improve, concerned about their children, not wanting to break up the family, worrying that action might lead to divorce etc. Some who tried to report their husbands to the police found that police attitudes were biased and unsympathetic, and that the police would not register a formal case.

State three obstacles that came in the way of finding redress for the violence you experienced.

No support:	50%	Social/family pressure:	25%
Lack of information/guidance:	37%	Fear of social stigma:	20%
Financial problems/constraints:	35%	Children:	10%
Shame/embarrassment/guilt:	27%	Hope for improvement:	10%

Some statements that women made in response to being asked what obstacles they found in the way of seeking redress may convey their situation better

- "No support, no one would listen, no one believed me...Violence in marriage is taken as a routine matter."
- "I was the biggest obstacle. I kept hoping the situation would improve."
- "One obstacle only - the system let me down, I had to sign a compromise deed."
- "Lack of support and guidance - being treated as though you have done something wrong."
- "Fear for life, no support - everyone expecting me to understand that violence is a normal thing and that I should accept it."

Reasons for not filing, or delay in filing, a case in court

The major reasons why women did not file a case in court, or delayed taking legal action, were shame, guilt and embarrassment. Family pressure was another reason, leaving them not only without support, but also having to face active discouragement or opposition. Under the circumstances, it was inevitable that women would be frightened about taking on a public battle in an unfamiliar area, without any support or guidance. Naturally enough, in view of the family censure, many were worried about the social stigma they would suffer. Some women also referred to lack of information, financial constraints and children as deterrents against legal action. A few others talked about hoping the situation would improve, attempts to resolve the issue otherwise and attitudes of the police etc.

Why did you not think of filing, or delay in filing, a case in court?

Shame/guilt etc:	72%	Family pressure:	28%
Fear:	52%	Lack of info/money etc:	13%
Stigma:	30%		

Social attitudes that condone domestic abuse result in denying women the support they desperately need to find relief from the violence. The widely held view that violence in the family is an internal or marital concern places further pressure on women to somehow manage the violence or learn to live with it. At best, mediation efforts within culturally acceptable parameters may be made to contain the violence. But failing these, there is generally active discouragement from the family against seeking public forms of redress, regardless of what the woman might be suffering. It is she who is made to feel ashamed and guilty for violating societal norms, she who bears the social stigma. Guilt, shame and family pressure combined with fear, lack of resources and totally inadequate information, are a strong enough deterrent against accessing the courts for seeking justice.

Preferred remedies other than going to court

Since women were obviously reluctant to approach the courts to seek redress, and did so as a last resort, they were asked what kind of remedy they would have preferred. A large majority (70%) said they would have preferred a compromise. Most of them preferred a compromise through the family, though some felt that they would prefer a compromise through other intermediaries e.g. the husband's family, friends or *jirga*. A few felt that there was no other remedy besides going to court since they did not want to compromise, while two stated that there was no remedy for violence. Some stated that they would have preferred just to get what they needed or were entitled to e.g. a divorce outside court, property rights, maintenance, custody of the children, being able to go back to their family etc. Only one woman articulated what many must have felt – that she would have liked to inflict the same sort of violence on the abusers that she had suffered at their hands.

As a victim of violence, what kind of remedy would you have preferred other than going to court?

Compromise through family:	50%	No remedy besides court:	8%
Compromise (general):	8%	No remedy for violence:	5%
Compromise through intermediaries:	7%	Other:	17%
Compromise directly with husband:	5%		

Most of the victims felt that as long as they were not actually abused – whether physically or otherwise – that in itself would amount to a balanced and fair compromise. The fact that they would be denied other rights e.g. freedom to work, education, marriage

etc. was something they could live with. Subjected to the same social conditioning from the day they are born, women's expectations of their husbands are low, and most of them are willing to compromise to the last limit. The factor of children and having no other place to go to, are other reasons for their willingness to compromise.

Some statements in this regard follow

- "I would like to compromise as much as possible to do well."
- "I don't want any other remedy."
- "There is no remedy for a victim of violence."
- "I would prefer to subject them to the same sort of violence that I suffered!"

Women's fears when they have experienced violence

For the majority of women, the worst fear they had after experiencing violence was extreme shame and humiliation at being treated in this manner. This led to embarrassment at the humiliation as well as a loss of self-respect, not only for being subjected to abuse, but also often for continuing to live with the humiliation under the same circumstances. Some felt that the worst fear was that the violence would continue or they would face even more danger – a substantial number fearing for their lives. Women are obviously acutely aware of the fact that in cases of domestic violence, they cannot run away from the danger, that they are in fact living in the danger zone, vulnerable to all forms of violence and threats, including loss of life. They are also aware that once violence has been committed, the chances of its recurrence are even greater, and that they are unlikely to be believed or to receive support. Some, therefore, begin to undergo mental agony and worry about the uncertain future they face. Others are afraid of the stigma, scared that the situation will end in divorce, and worried about the effects violence will have on the children.

Some statements of women in response to these questions are reproduced

- "Fear of dishonour before the world."
- "Losing her self-respect/her life."
- "The fear of being physically abused again and again."
- "Knowing the physical abuse will never stop."
- "Fear of the unknown."
- "When she has no support and no one believes her."
- "Divorce - and there is always the threat to kill."
- "Losing her entire family because she did the right thing."
- "Lack of security for herself and her children."

What is the worst thing that women fear when they have experienced violence?

Shame/humiliation:	50%	Uncertainty of future:	8%
Fear of life:	32%	More danger/violence:	5%
Loss of self-respect:	10%	No support/credence:	5%

Perceptions about what happens to women who go to court

This question elicited different responses from the two groups of women who were interviewed – those who did not go to court and those who did. The responses of the first group were based more on social factors, while retaining more faith in the justice system; those of the second were based on their actual experiences.

What do you think happens to women who have experienced similar situations of violence, but do go to court?

	<i>Women who did not go to court</i>	<i>Women who went to court</i>
Stigma/loss of respect:	21.5%	12.5%
More shame/humiliation:	29%	19%
Lose security/violence continues:	3.5%	6%
Get their rights/justice:	39%	15.5%
Sometimes get rights/justice:	7%	19%
Don't get their rights/justice:	10%	25%

As is apparent from the table, the women who had not gone to court were far more concerned about loss of respect, stigma, shame and humiliation, while the second group had already faced these and was now more concerned about the success of its endeavours. In terms of expectations of getting rights and justice, the first group, which had not gone to court at all, obviously had much higher expectations of the justice system as compared to the second group, which had already experienced it. Those who felt they sometimes got justice attributed it to good luck, chance, money or a good lawyer rather than faith in the system. And, of course, the group which had gone to court, had far less hope of getting justice after having had some experience of the courts. Some women felt that the price they paid for going to court was too heavy in terms of the social stigma, loss of self-respect and the guilt of bringing shame to themselves and their families, and wondered whether it was worth it. Others felt it had a damaging effect on children.

Some responses of women who did not go to court

- "They might get justice, but at a heavy price."
- "They lose their security - the violence never stops."
- "They don't get justice, and get exploited if they are poor."
- "They fight for their rights, but all their efforts are fruitless."

Some responses of women who went to court

- "They get no justice - *and* lose their future."
- "It's better to stay in a violent situation than go to court."
- "Face further humiliation, as well as live with a social stigma."
- "Sometimes they get justice - actually the system is on sale and anyone can buy it."
- "Whoever has the money gets justice."
- "They are treated as if *they* have done something wrong."
- "It's a big mistake to go to court."

Perceptions about fairness of judges to women who face violence

Once again, the responses of the two groups of women were somewhat different, women who had not been to court believing in the fairness of judges far more than those who had already faced the situation. While recognising some unfairness in the system, a few women held others responsible for the lack of justice. Some had no particular opinion about the issue or could not articulate their feelings.

In your opinion, do you think judges are fair to women who face violence?		
	Women who did not go to court	Women who went to court
Yes:	40%	61%
Sometimes/maybe:	9%	10.5%
No:	40%	18%

From those who felt that judges were not fair, a few reasons were put forward for the unfairness. The most common ones were the inability of men to understand women's problems and the existence of clear gender biases of judges in a patriarchal society. Many women were unable to clearly explain or articulate why they felt the judges were unfair. But their perceptions in this regard were of a negative message coming across from the judge.

Some statements of those who felt judges were not fair/were fair sometimes

- "They do not want to understand women - the reader and judges are the root cause of all problems."
- "It's a male-dominated society."
- "They cannot understand a woman and her problems."
- "They cannot understand or feel the fear of a woman."
- "They have already decided what to do before hearing a case."
- "If there are divorce cases they do justice, but not so in the case of love marriages and property cases."
- "They are puppets in the hands of the system."
- "They expect all women to stay with their husbands."
- "They give judgements against the backdrop of social norms."
- "They feel like all men, that a woman's place is at home."
- "Sometimes, if he is a sensitive judge."
- "Maybe judges are fair, but other people involved in giving justice aren't fair at all."

Regrets about taking/not taking cases to court

Both groups of women were asked if they regretted the decision they had made with respect to taking their case to court, and why. Very few were able to articulate why.

Half of the women who had not gone to court did not regret it, presumably for the same reasons that they had been reluctant to do so in the first place. According to one woman, the violence was better than the shame and fear of going to court. Some did regret not going to court, while others were confused about how they felt. Except for a few, others were not articulate about their reasons, some not responding to the question at all. Two of the women were in the early stages of filing their cases after reaching a crisis centre. It appeared that while most of them did not consciously regret their decision, the fact that they were mostly in shelters showed their lack of options and support and indicated clearly that they were not satisfied with the situation they were in. For them, it seemed to have been a choice between the devil and the deep blue sea, and obviously they had opted for what they considered the less hazardous option, despite the fact that 61% of this group had felt that judges were fair to women.

For women who did go to court, the situation was different. As compared to the first group, a far greater number regretted their decision, largely because of the further humiliation they had to undergo in court. Even the wife of an alcohol addict who was regularly battered by her husband felt that going to court was far worse. A substantial proportion had no regrets, mostly because they felt they had no choice. Confusion and mixed feelings about decisions taken were inevitable.

Do you regret that you did not take your case to court?

Yes:	18%
No:	50%
Confused:	21.5%
Now filing:	7%

Do you regret that you took your case to court?

Yes:	43.5%
No:	34.5%
Confused/sometimes:	15.5%
Other:	6.5%

Considering that most of the women who took their cases to court were in the process of compromising on these cases, it is important to know why so many of them regretted taking their cases to court, and why some did not regret.

- "I did not realise that I would face more humiliation."
- "The violence was not as severe as going to court."
- "Even if I have regrets, it's too late anyway."
- "I always knew freedom had a high price."
- "I had no choice, I had to go to court to get my freedom."

Suggestions for changes in the court system to ensure its sensitivity to cases of violence against women

The women were asked to list three possible changes they would make in the court system if they could recreate it to ensure its sensitivity to cases such as theirs. Only some of the women were able to make concrete suggestions. The main recommendation was that of fewer delays. Women apparently get quite disillusioned with the justice system when long delays take place in the decision of their cases. For them, the maxim "justice delayed is justice denied" is a living reality as they remain paralysed and despondent in the purgatory of waiting before they can begin to pick up the pieces and reconstruct their lives. The delays often make them feel it was not worth it.

A fairly large number opined that there should be a better environment, others felt that a conducive environment may have encouraged more women to approach the courts. A substantial number felt that there should be female judges. Half of these were women who had already experienced male judges, the other half who did not go to court but obviously felt that they may have done so if there were female judges. Some felt that there should be changes in the law, specific reference being made to the discriminatory laws, the Hudood laws and laws relating to domestic violence. An equal number felt that better judicial attitudes in terms of sensitivity and responsibility should be there. Some felt that there should be more female lawyers, all of them were women who had been to court and obviously had their experience of male lawyers. A few, who had also been to court, suggested there should be more protection for women. Suggestions were also made for free legal aid and training for lawyers and judges, as well as for fair dealing and giving women their rights.

If you could recreate the court system, list three changes you would make to ensure it is sensitive to cases such as your own.

Fewer delays:	30%	Female lawyers:	6.5%
Better environment:	18.5%	Fair dealing:	6.5%
Female judges:	17%	Training for judges/lawyers:	3.5%
Change in laws:	8.5%	Protection for women:	3.5%
Better attitudes:	8.5%	Free legal aid:	3.5%

A few responses of women to this question have been reproduced

- "Not to take the word 'divorce' as a curse, not to treat such women as second-hand objects and not to hold a biased opinion."
- "The court system in Pakistan is on sale."
- "I would change the entire system."
- "The judge and lawyer should be females, we should get protection in court."
- "I would remove all the men, have separate courts for women."

Defining justice

This question elicited the most articulate response from the women interviewed. While some expressed their vision of justice, other responses, based on women's real experiences, were bitter or philosophical. Some generalised about the concept, others defined it in very personal terms in the context of their own particular problems e.g. getting a divorce, not having to go back to her husband, being able to return to her own country etc. For most women, justice meant freedom – the freedom to exercise their rights, to make decisions, or simply do what they want. Getting their basic rights was another common definition, while for some, after the violence and trauma they had suffered, it just meant peace or freedom from fear, a feeling just a few could articulate. A few saw it as punishment to their abusers. Some felt it had lost all meaning or that there was no justice in Pakistan. A very few poignantly described it in the humblest of terms of 'just being listened to' and believed.

What does 'justice' mean to you?

Freedom:	26.5%	To be listened to/believed:	5%
Getting basic rights:	16.5%	Peace:	5%
Punishment to abusers:	10%	No justice:	3.5%
Lost all meaning etc:	8.5%		

The feelings of the women can only be gauged through their actual statements in response to this question

- "Justice is what God has wished for me."
- "Freedom to exercise my rights."
- "Getting rid of him."
- "Justice to me is when the criminal pays and not the victim"
- "To have my basic rights and live a life without fear."
- "To be able to do what I want to do."
- "To get my freedom and a chance to live my life peacefully."
- "Not to feel guilty and scared when I know I'm right."
- "It has lost all meaning for me."
- "There is no justice in the real sense. Getting a divorce may be justice to some, but the damage is done and cannot ever be recovered."
- "This word does not exist in Pakistan."
- "There is no justice especially with the...judges."
- "If there was justice, why would women come here (to the shelter)?"
- "To end this violence and have freedom."

••II WOMEN IN THE LEGAL PROCESS: LITIGANTS, ACCUSED AND 'ABDUCTEES'

The previous section addressed the problems and perceptions of female victims of violence. This section focuses on women involved in the legal process in different capacities – as litigants, as the accused and as 'abductees.' Thus, the ambit of this section has been enlarged to include not just victims of domestic violence, but also victims of the system of justice prevalent in the country. This includes women who have been charged with or convicted for *zina* (adultery) under the Hudood Ordinances of 1979. These laws have been criticised on a number of grounds, including their discriminatory character and their use as a tool for victimising women. It includes women who have married of their own choice, resulting in a variety of cases – habeas corpus petitions, cases of abduction, and eventually, cases of *zina* (adultery). It includes women who have claimed cruelty as a ground in their cases for termination of marriage. And it includes women tried on a variety of criminal charges ranging from petty theft to murder. The attempt is to gain an insight into the range of violence women suffer in their lives at all levels and from different sources and institutions, starting with their own families, to society, law enforcers, officials of the justice system, laws made ostensibly to provide justice, and the judges – the final dispensers of justice.

The system of justice, as discussed earlier, is not restricted to any one institution. It includes the laws, the process of justice, as well as key institutions and their functioning. Thus this study, while focussing on women's experiences of courts, has extended beyond this to include the violence women suffer at the hands of the justice system itself, whether directly or through its representatives. The experiences and perceptions of women in this context are important for all those involved in accessing justice for women, but particularly important for those who bear the ultimate responsibility for the administration and dispensation of justice. How can justice ever be done unless they are aware of, and sensitised to these forms of violence, the pressures and constraints that women face in their personal lives, as well as the damage and abuse caused by the system?

The interviewees

The sample for this section of the report comprised 50 women, mostly from one jail and two shelters. It included 14 women who had undergone domestic violence and had gone to the family courts; 20 women confined or imprisoned under cases of kidnapping and/or *zina*, and the remaining 16 tried and/or convicted under various criminal charges such as murder, drugs, arms, kidnapping, robbery or 'immorality.' The sample included women who had filed or asked for divorce, and had subsequently had criminal cases lodged against them by their husbands.

Some statements by women in this regard have been reproduced to give an overview of women's perceptions of the system of justice in Pakistan

- "I went to court to prove to my family that even without them I could stand for my rights, but I never realised what an uphill task this was going to be."
- "Getting justice in Pakistan is simply a matter of luck and destiny."
- "The price of freedom I had heard was high - going to the courts proved it."
- "I want the earth to open and swallow us - it is better to subsist on one meal a day than bear this shame."
- "This entire system, the legal environment - is all made for men, not for women."
- "Death is better than going to courts."
- "I wanted justice, but I am *badnam* (have a bad reputation) - so what difference does justice make now?"
- "The courts and the entire process make me feel we are no longer worthy of outside life. I wouldn't even wish my enemy's daughter to come to these courts."
- "Once a woman enters a jail, her life ends - going to court reinforces this."
- "In the courts I feel like a bird with cut wings."

1. *Why did women victims of violence choose to go to court?*

The sample responding to this question (and the one following) comprised of 16 women: the 14 who had filed for divorce in the family courts and were now living in shelters, plus 2 women (out of the 20 who were confined/imprisoned) who had filed for divorce and had subsequently had criminal cases lodged against them at the behest of their husbands, and were, therefore, in jail.

All the women had suffered domestic violence at the hands of their husbands and, in a few cases, also their sons or mothers-in-law. The forms of violence were physical, verbal and psychological and included frequent beating, tying up by the hair and beating, breaking of ribs, attempts to poison, cutting off of hair, threatening to kill, threatening to cut off nose, bringing home of other women and bringing home men. Most of them were living in a perpetual state of insecurity. As exemplified by the statement of one woman: "When a woman is a victim of violence, she wonders whether next time she will have to pay with her life." A large majority of women, in view of the social norms, had kept silent for many years and put up with the abuse. As one victim explained: "We have been trained since childhood to keep our problems within the home."

The very large majority only went to court as a last resort, when they did not get any support from their families and when mediation, if tried, had failed. Finding no other way out of a situation of torture and violence, they were left with no other option but to go to court and get their freedom. It was thus the desperation of the situation that drove them to

take a step that they would ordinarily have considered unthinkable. According to one woman: "Going to court is a better hell than what I went through." For many, the feeling of being abandoned by everyone also contributed towards their taking this ultimate step. As one woman said: "The only option was the court, even though I knew it is not respectable to go there – but there was no one whose honour I had to uphold."

2. Are women victims reluctant to go to court? If so, why?

Most of the women waited for years before approaching the courts. In some cases, family, neighbours and elders tried to mediate on their behalf but did not succeed in improving their situation. Sometimes, the women waited "hoping their situation would improve." 14 out of the 16 women (almost 90%) admitted that they were reluctant to go to court. Some of the reasons for this reluctance were:

Fear: A large number of women admitted that fear played a major part in their reluctance to go to the courts. The inadequacy of information and knowledge about legal processes; the lack of support from family members; the fear of losing self-respect; the fear of financial insecurity; of going against social norms and being stigmatised – all of these were very real fears for these women. Conditioned from birth to bear with misbehaviour from the husband and not to air personal problems outside the house, however violent and insecure the situation, they found that even the thought of going to court was frightening.

Embarrassment, Humiliation and Shame: Many women identified embarrassment, humiliation and shame as reasons for their reluctance to go to court. One reason for this was because of the discomfort and awkwardness attendant upon speaking about their personal problems publicly in front of strangers. This was a process in which they felt they would lose their self-respect. Another was the fact that emotionally many of them were not quite able to shake off the feeling that taking action against their husbands, whatever the provocation, was somehow not the proper or right thing to do. This feeling was understandable in view of the lack of support most of them received, even from their own families.

Family Honour, Social Pressures, Social Stigma and Lack of Support: Social norms about family honour being damaged by a woman getting divorced, particularly at her own behest, played a significant role in discouraging women from accessing the courts even if they were receiving no help or support from their families. A large majority of women admitted that social pressures and the fear of being socially stigmatised deterred them from taking legal action. The fact that this social pressure was coming from those very relatives, in-laws and neighbours who were aware of the violence these women were undergoing, is clearly indicative of the social norms which condone domestic violence, however extreme, or treat it as a private marital issue with which women should learn to put up or deal with privately. These, then, were the social norms and pressures that kept these women in unsafe environments over a number of years. Some subjected to life-threatening physical violence; many subjected to unspeakable psychological humiliation, and all undergoing a life of total insecurity and unendurable torture.

Financial Pressures: Monetary worries were another very serious concern for most of the women interviewed. Largely belonging to lower-income families, their own lack of resources, combined with lack of family support and worries about the effect litigation would have on their children, caused most of them to continue to live in physically insecure home environments for a number of years. The fact that this was identified by most of the women as a reason for reluctance in going to court is indicative of the financial status of most women and the effect of economic dependence on the assertion of their rights. It is also indicative of the insufficiency of support services, as well as the reality that the women had no real expectations of getting any financial security through the legal process.

3. *What was women's first impression of the court when they entered?*

Asked to relate their first impressions of court, all the women replied very negatively. There was some degree of difference, however, between the responses of those who went to the family courts and others who went to the criminal courts.

Two major first impressions of most of the women were that there were just so many men, and that everyone was staring at them. For women who were by and large unused to being in the company of strange men, the sight of the crowded courts filled with such large numbers of men was shocking, unexpected and overwhelming. Scared and nervous to start off with, in whichever capacity they had come, the crowds of men frightened them even further, making them feel confused and crowded in. Moreover, feeling abandoned and alienated as they already were, the number of men made them feel even more self-conscious and alone, almost as though this scene depicted what they were up against. The relentless and unashamed staring took away whatever remnants of courage and self-respect they had left.

The staring was something mentioned by the vast majority of the women as their first impression or experience of the courts. Not only were they stared at, the way they were stared at was even more demeaning and humiliating, making them feel ashamed and guilty. A number confessed to feeling dirty or to experiencing a loss of self-respect. The staring also made a number of them feel that they were already being viewed by the system as criminals, a feeling of being pre-judged even before their cases were heard.

Some responses of the women to the staring they experienced are as follows

- "They stare as if you have murdered someone."
- "They make you feel like a criminal."
- "They stared as if I had done something wrong."
- "They stare as if it's all my fault."
- "When I first entered I thought I could not breathe. They all seemed to be staring at me. They made me feel dirty."
- "One cannot even go in a *dupatta* to the court. One has to wear a *chadar* and even then the stares go through that, they stare as if they will eat us."

What was women's first impression of court when they entered it?

Embarrassed/ashamed/humiliated etc.:	66%
Scared/nervous/tense etc.:	38%
Self-conscious/confused/alone:	24%
Disgusted/shocked:	20%
Confident/comfortable:	0%

In addition to the crowds of men and the staring, a number of women were further subjected to sexual innuendoes and offensive remarks, as well as 'accidental' brushing as men passed them. How, then, did all of this make the women feel? A large majority of them felt embarrassed, ashamed and demeaned, leading to a

feeling of loss of self-respect or humiliation. A large number felt scared, nervous, tense or mentally agonised; many were left feeling self-conscious, confused and alone; some were shocked or disgusted. It is significant that not one woman had a positive first impression of the courts, and not a single one felt confident or comfortable about the atmosphere.

A number of women strongly and clearly expressed their overall first impressions of the court and were articulate about their own reactions to it

- "It is not meant for human beings."
- "I felt I had entered hell; I felt ashamed."
- "I hated it; everyone made me feel like a culprit."
- "Even the most *beghairat* (dishonourable) person would feel ashamed there."
- "It was winter, but I was sweating more than in summer - I simply kept looking down."
- "I could not believe that a place like this could exist in an Islamic State."
- "When we go to court, the play starts - a circus is going on and everyone is looking."

It is under these conditions, then, that women begin their quest for justice.

4. Did women somehow feel disadvantaged as litigants because of being women? If so, what was it that made them feel this way?

An overwhelming number of women (80%) felt disadvantaged as litigants because of being women. Only 14% felt hopeful of getting justice, all of them being women seeking divorce in the family courts. The rest were not sure about how they felt. Of course, women's natural fears and first impressions of the court also contributed to this feeling. A substantial number felt disadvantaged because of lack of any financial resources and support, which sometimes meant that they did not even have a lawyer. But these were not the only reasons.

A significant number of them felt that the system – whether laws, processes or attitudes – victimises women or is unfair to them, many expressing this as a bias against women in the system. Many felt or perceived that being weak or helpless against the social attitudes

towards women put them at a disadvantage, both because of the tone and attitude of court personnel, and because they were made to somehow feel they had violated social norms. Some felt disadvantaged by the overall environment and atmosphere of the courts, feeling that this put them at a disadvantage since they had to answer questions of a personal or embarrassing nature in front of so many strange men. And some felt they were at a disadvantage because they were neither informed nor guided about the law or what was going on, nor were they listened to.

Did women feel disadvantaged as litigants?

Yes:	80%
No:	14%
No response/not sure:	6%

Why did women feel disadvantaged?

The system victimises women etc:	37.5%
Lack of money/support:	30%
Attitudes/perceptions:	25%
Environment/atmosphere etc:	17.5%
Not informed/listened to:	15%

Some examples of women's perceptions about being disadvantaged are reproduced below in their own words

Divorce cases

- "People ... society feels a woman's place is by the side of her husband. I was going against this norm."
- "I was made to feel I was wrong and should go back."
- "My husband was abusive in the court, but no one stopped him - as if it was alright for him to abuse me."

Murder cases

- "I am not being given my right to speak, no one is listening to me."
- "One is innocent until proven guilty, but in the courts one is first guilty (especially if one is a woman) then innocent - that is, if the judge is bought."
- "There is only one law - that women have to be victimised and punished."
- "Sometimes judges decide in a very strange manner, they are blindfolded when it comes to giving justice to women."

Drug case

- "These courts are not meant for women, but men - the system is also meant to favour men only."

Robbery case

- "Pakistan is a country that does not recognise women."

Zina (adultery) cases

- "This entire system - the legal environment, the judge - it's all made for men, not women."
- "I was so embarrassed, I wondered what questions he would ask me in front of everyone - there were so many men! The judge asked me, 'Whose son is he?'"
- "When no one listens, then why go to court? It's better to stay in jail and die."
- "This can only happen to women because this law only victimises us."
- "As far as this system is concerned, a woman's second name, is Shame."

Cases of marriage by choice: kidnapping/zina

- "Why can't people understand that I am exercising my right? The entire system makes me feel disadvantaged."
- "This system is made only for men, being a woman becomes a *jurm* (crime); one feels one cannot even breathe with one's own will."
- "The system does not recognise our rights...judges decide on their whims and fancies - the law is irrelevant; they victimise women."

5. As litigants, did women feel in control of their cases in court?

Feeling disadvantaged as they were, a large number of women also felt that they were not in control of their cases. Of those who did feel somewhat in control, more than half were women who had filed for divorce in the family courts.

Did women feel in control of their cases in court?

No:	66%
Sometimes:	6%
Don't know:	4%
Yes:	24%

Why did women not feel in control?

Not informed/listened to etc:	36%
No lawyer:	22%
Bribery/manipulation:	18%
Perceptions/pressure etc:	18%
Delays:	15%

There were a number of reasons given by the women for not feeling in control of their cases, many of them citing more than one reason. A large proportion of them (36%) could not understand what was going on and were not kept informed by their lawyers or the court. Since no one bothered to explain anything to them, reassure them about what was happening, or to listen to them, women felt helpless and isolated in the

legal process. Significantly, a number of the women who did feel in control stated that their lawyer explained matters to them or reassured them, thus giving them greater faith in the lawyer and the system. The attitude of not keeping women informed or listening to them, typifies the gender attitudes prevalent in our society, and further intensifies the feeling among

women of being non-persons or not recognised as persons capable enough of understanding anything.

A significant number of women (22%) felt a lack of control primarily because they had no lawyer, and often neither the money nor the support to get one. All of these were women who were being tried for murder or adultery, and had obviously been abandoned even by their own families. One woman said no lawyer would take her case because she had been accused of killing a lawyer.

A number of them (18%) felt they were not in control because the judge had been bribed or the case manipulated. In view of the widespread perception of dishonesty of the judicial system, particularly at the subordinate levels, this was an understandable reaction on the part of the women, and the conduct of the judge and other personnel may have contributed to it.

An equal number (18%) gave varied reasons for feeling they were not in control – a feeling that the judge was going to decide against them, pressure from the judge or apprehensions about the system. And some (15%) stated that the frequent delays in the hearings made them feel they had no control over their cases.

Some comments by women about how they felt are reproduced below

- "I could not understand anything and no one explained anything to me."
- "I felt alone - there was no one to explain, guide or care for me."
- "My lawyer never keeps me informed. I never know what is going on."
- "They (the women police) don't allow our lawyers to speak to us in the courts, how can one know of one's case if one does not speak to one's lawyers?"
- "The delays made me nervous; I wondered if the judge had already made up his mind."

While women were not always necessarily able to clearly articulate why they did not feel in control, further focused questions on other aspects of the court process threw more light on the situation.

6. During the course of their case, did women feel the judge addressed them differently from the way he/she would have addressed a man?

Did the judge address them differently?

Yes:	38%
No:	28%
Never spoken to:	16%
Other:	12%
No response:	6%

All the judges/magistrates in the cases covered were men. A substantial number of women felt that the judge addressed them differently from the way he would have addressed a male. Often, this opinion was based on the judge's behaviour, tone or expression, which was perceived as critical, harsh or indifferent to their plight. But in some cases it was based on remarks and opinions clearly expressed by the judge, which the women felt were biased or contrary to their interests or case.

Quite frequently, the women stated that the judge had never spoken to them, sometimes even in cases that had been going on for years. While these women did not necessarily perceive this as 'different' behaviour from that towards men, it certainly intensified the feeling that they, as persons, did not matter in the eyes of the court, and what they had to say was considered irrelevant or unimportant. For some, even though they were not always able to articulate why, the attitude of the judge translated into the opinion that the judge had been bought or had already made up his mind about the case. A number of the women did not feel that the judge addressed them differently, often stating that he was 'very nice' or 'polite.' But even amongst these, some felt he was polite because he was supposed to be so as a judge, while a few expressed the view that being nice was not enough.

Some responses to this question are reproduced below

Divorce cases

- "He kept telling me to go back to my husband."
- "Yes, as I said, he was bribed...the judge's tone was tense; he would not listen to me or let me complete my sentences...He wanted me to go back."
- "I was made to feel I was wrong and should go back...He did not ask me much, but the way he looked at me made me feel uncomfortable...The tone of the judge was as if he was not interested in my case."
- "He was very nice...(but) when the other side used abusive language, the judge did not stop them."
- "He addressed me as if I had done something wrong. He indirectly influenced me to go back."
- "He tried to influence me to go back, despite the violence I have experienced - he made me feel it was my fault."
- "He was harsh and abrupt...They are more friendly with men and show anger towards women."

Murder cases

- "The judge seemed so stern, I felt he had already decided my case."
- "The judge has never spoken to me, never listens to me - but he is not bad."
- "He always seems to be angry with me, his tone is very harsh and he never let's me speak - only makes me feel as if I am actually a murderess."
- "One goes to the judge, one's heart full of so much, but it's like beating one's head against the wall - he is not interested in listening."

Zina (adultery) cases

- "My judge is very nice - but he should finish my case...The questions he asked me were embarrassing and I kept crying...Actions speak louder than words - simply being a nice judge is not enough."
- "I feel scared of him. The way he looked at me - I thought he would sentence me."
- "I have hardly spoken to him, I just feel scared...The judge is at fault - he keeps refusing my bail."

Drug case

- "In three years, apart from asking me my name, the judge has not spoken to me."

Cases of marriage by choice (zina/kidnapping)

- "He kept telling me to go back to my family - he would not say that to a man who had married out of choice."
- "What I did not like about the magistrate was that he kept telling me a woman's place is at home by the side of her parents; so I should go home...I feel scared; what if the judge does not listen to me? Because I am right!"
- "He says 'Go back to your parents,' his tone is bad, I feel he will sentence me - the way he speaks to me is harsh."
- "He has been very polite, but his eyes look at me critically."
- "I am influenced to give a statement against my husband for kidnapping - how can I do that? He is my husband ... When my religion has given me the right of marriage, then who are these judges that do not give justice to us...I am scared."

Since the ultimate decisions regarding their fate rests with the judges, it appears as though the women want desperately to believe in their impartiality and fairness, often expressing this belief as though repeating it will somehow make it come true. But the reality of judicial attitudes towards women begins to take on a clearer shape, even where women assert that the judge is 'nice' or 'polite.'

While overall attitudes towards women are apparent across all types of cases, interestingly, some of the clearer gender biases begin to emerge more strongly in cases relating to divorce, adultery and marriage of choice, where the obvious disapproval and perceptions of the judges against women who have or may have violated stereotyped social norms, begin to show in terms of their tone or behaviour, and even in the proactive role of trying to influence the women.

Even in family court cases, where women have the greatest expectations of success, it is apparent that success, if achieved, is only because of the continued determination of the women despite overt pressure from the concerned judges.

7. Was there ever any language and/or conduct which women found discriminatory or offensive to them as women, or to women in general, during their cases?

Discriminatory or offensive language or conduct	
Staring:	84%
Sexual remarks/gestures/innuendoes:	30%
Overt sexual harassment:	32%
Comments on appearance etc:	10%
Offensive conduct by lawyers, police, court personnel etc:	44%

This question was put to women in addition to the more specific questions relating to the judge's behaviour as well as comments regarding the women's personal appearance and dress, and any experiences of verbal or physical harassment during the course of the case. Perceptions and experiences of the conduct of judges have already been covered. Since responses to the other questions overlapped considerably, they have all been covered together, but under different subheads in this question. An overall picture of women's responses about discriminatory or offensive conduct suffered by them during the course of their cases, apart from that of judges, can be gauged from this table.

Staring

An overwhelming majority of the women mentioned the awful staring they had to suffer during the court process and found it offensive, humiliating and intimidating. Its possible effect on how the women conducted themselves, answered questions in court or made any decisions about their cases is incalculable, yet some of the responses are extremely revealing. It may be pertinent to mention that some interviewees started crying when talking about how they felt.

The following comments may provide an insight into how this made the women feel or react

- "I simply kept looking down."
- "They stare as if I am dirty; I want the earth to open and swallow me."
- "Those men - who would not have the guts to stare, also stare."
- "They look as if they are taking my clothes off."
- "With their looks they make you feel like a criminal before you are sentenced."
- "No one has said anything to me, but no one has to - their eyes say it all."
- "The men look as if this is some big market and we are up for auction."

Sexual remarks, gestures and innuendo

A substantial number of the women complained of sexual remarks, gestures and innuendoes. These often took the form of looks accompanied by remarks muttered under their breath, and sometimes by more abusive language and suggestive gestures like licking of lips, winking and flying kisses. One woman felt embarrassed and harassed by the fact that a film of a man and woman having sexual intercourse was shown in court in her presence.

- "Everyone keeps staring and passing remarks under their breath."
- "They stare, they sit together, talk about us and point at us."
- "Once a man licked his lips when I passed him."
- "Once a man passed me and gave me a flying kiss, I felt extremely humiliated."
- "They use abusive words, 'the *gashti/kanjri* (whore/ prostitute) is here.'"

Comments regarding personal appearance and dress

Just a few women responded affirmatively to this question, since most of the remarks made to women are sexually offensive and abusive, rather than directly about dress or appearance. Much is also conveyed through expression, gestures and innuendo. As far as personal remarks are concerned, it appears that the words *bismillah* and *mashalah* are commonly used, along with expressive looks, to convey views about the woman's appearance.

- "Only once outside the court, he said: '*Bismillah!* Seeing you has cooled my heart' ... It made me feel ashamed, angry and guilty."
- "It is common to hear sexual/obnoxious remarks about one's dress or appearance - appended with the terms *mashalah* or *bismillah*."
- "Once I wore yellow and so many people in the court called me yellow taxi."
- "*Mashallah*, we are seeing you after a long time."

Overt sexual harassment

While staring and gestures are all forms of sexual harassment, women undergo much more explicit and threatening forms of sexual harassment during the process of their cases in court. This can include brushing and touching, as well as specific sexual threats and offers, some of which seemingly result in women being pushed into a position of sometimes having to provide sexual favours. The more acute forms of sexual harassment is apparently suffered much more by women undergoing criminal trials and takes place in the criminal courts, police stations, lock-ups and jails. Sexual harassment and

intimidation, particularly by the very persons charged with the responsibility of enforcing the law, are in themselves abundantly clear indication to women of the quality of justice they are likely to receive. For them, this is often the ultimate violation – degradation, abuse and violence at the hands of those who are intended to uphold the justice system. No wonder, then, that a number of women expressed the view that they would rather stay in jail, the process of being taken to courts being seen as a ‘nightmare’ or ‘hell.’

- "The men stare a lot in the courts - occasionally they even brush against you and wink."
- "I was brushed against twice. The men simply come in the way - maybe they do it deliberately."
- "Men deliberately brush against you or come in the way... There is no place in the courts to throw a pin, let alone for a woman to pass."
- "They brush against you, make sexual remarks, wink and stare."
- "They brush against us, they treat us like prostitutes."
- "A man once passed and brushed my breast."
- "The policeman said, 'We have wasted so much money on you taking you from jail to the courts that now we will take it from you, understand?' He asked me to have a relationship with him."
- "The policemen use the women here... I have witnessed girls having intercourse with them behind the jail - they do this to get favours."
- "They offer tea - the girl who is beautiful, they pursue her, especially if she has no background."
- "Men and women are taken in one car - that is the worst - they throw letters, brush, pinch, deliberately touch private parts."
- "The women's police stations are there in name only - actually they are all men there - they threatened to take our clothes off if we did not confess."
- "The atmosphere in the courts is not fit for a woman, the pimps are always there - waiting for a green light to step in."
- "Pimps and touts bribe the police and try to persuade the pretty girls that they will pay their bail."

Offensive conduct by lawyers, police, court personnel etc.

Apart from blatant sexual remarks or overtures, women are subjected to particularly humiliating and offensive treatment at the hands of lawyers, police and court personnel, often only because they are women. Even if the treatment is sometimes the same as that meted out to men, it takes on sexual overtones when it is men treating women in the same manner. Most unfortunately, even women in the law enforcement sector tend to behave in the same abusive manner, partially because of the same social conditioning, and partially

because those are models set for them by their male seniors and colleagues. Abuse by the very people who comprise the institutions responsible for the administration and enforcement of justice, is not only a betrayal of the trust reposed in their persons – for women, combined with all their other problems, it is the ultimate betrayal by the justice system. Systematically abused and humiliated, physically and psychologically intimidated and violated, treated like animals or sub-humans, subjected at best to insensitivity and callousness, it seems as though the whole system has been designed to break them.

- "The lawyers stare as if I am some cheap woman."
- "Even the older male lawyers stare at us."
- "The reader and court personnel are rude and speak in a humiliating tone."
- "The readers also stare."
- "The court reader treats one as if he has all the power in his hand, his tone is absolutely rude and humiliating."
- "The policeman said, 'Why are you crying. First you were in a small home, now you will be in a big house!' "
- "A 90 year old woman was taken in the morning and came back at night and went to bed hungry. Is this not harassment?"
- "They treat us like sheep. There is no facility of water, benches or a separate bathroom." (Lock-ups on court premises)
- "The women police treat us like animals."
- "Women constables beat women viciously, take our jewellery as well as our money."
- "Women constables slap us whenever they like in the courts - that's the limit of harassment."
- "At the women's police station, I was beaten so much that I was continuously vomiting. They kicked my head with their feet and shoes, then made me write a letter saying no one had hurt me."
- "When my medical (check-up) had to take place, the doctor said to me, 'We'll find out just now whether you are *badmash* or not.' When she found out that I had no one accompanying me, she did not do my medical (exam) and made the report herself."

It may be pertinent to mention that some of the women interviewed were either in a state where they broke down while being interviewed, while some others had gone beyond this stage and sometimes did not even register what they were being asked. Even more humbling was the fact that a number of them were simply grateful just to have someone ready to listen to their stories of torture, first at the hands of society and ultimately at the hands of the 'justice' system.

8. *Was the advocate who represented the women a male or a female? Did the gender of their advocate in any way (positively or negatively) affect their cases?*

Of the 50 women interviewed, 11 (22%) had no lawyer, 32 (64%) had male lawyers, 5 (10%) had female lawyers and 2 (4%) had both male and female lawyers.

Of the women represented by male lawyers, almost 60% felt that the gender of their lawyers positively affected their case, about 31% felt it affected them negatively, and the others felt it made no difference. Of the reasons given by some who felt positively about them, the most common was that male lawyers were better able to relate to and explain the case to the judge, since both were men, and would also be listened to more. A few felt that men had better understanding of the law or could tackle it better. Even one who was not too pleased about her male lawyer's performance felt that because of the position of women, female lawyers could not really tackle the case. Therefore, male lawyers were largely preferred not because of their greater ability but because, in the prevailing situation, it was felt they stood a better chance of success.

Of the reasons given by those who felt male lawyers had had a negative effect on their cases, the most common was that women lawyers would have understood their case better, cared more and represented them better. There was also a feeling that their lawyers did not keep them informed about their cases. Of the few who had female lawyers, there was a general feeling that the gender of their lawyer positively affected the case, except one who felt it made no difference. The basic reason given was that women understood their case better. Thus, while the perception of a positive effect by having male lawyers was based on their realistic appraisal of a situation where the decision-makers were male, the positive perception of having female lawyers was based on a feeling of greater personal confidence and a feeling of more control since they were kept informed. Perhaps unconsciously, this reflected their feelings that male judges would be biased against female lawyers, since they had perceived these biases against themselves in their own cases.

9. *As women victims of violence, what was the worst experience of going to court? What was the best?*

In view of women's responses to the earlier questions, the results of this question were fairly predictable. 94% of the women said they had had no good experience. Of the three who did, one had won her divorce case, one felt it gave her a feeling of getting control over her life again, and the third who had married of her own choice, felt that with each hearing she felt she was closer to getting back with her husband.

The worst experiences were fairly common, corresponding closely to their earlier responses relating to their various court experiences. The overwhelming feeling among most of them (80%) was that of shame, humiliation, social stigma, embarrassment and

loss of self-respect. A substantial number (38%) experienced fear, tension and mental agony. About 14% felt that not getting their rights, losing their rights or not getting justice was their worst experience. And some (10%) felt the worst was the feeling of being alone and confused. In view of what these women had gone through inside and outside the courtroom, the reactions were amply justified.

10. If there were three things they could change about the litigation process for women who experience violence and seek redress, what would they be?

Asked to list what they would change about the court process for women, women were very explicit about what was needed in terms of change. Since most of the women had been involved in the legal process for a number of years, quicker proceedings or no delays in the proceedings was the most common demand. Long delays in the decision of their cases were obviously seen both as a major hardship in view of what the women suffered in the process, as well as a denial of justice.

Changes suggested in the litigating process	
No delays:	44%
Female judges:	36%
Better environment:	24%
Judges' training/changes:	24%
Counselling/female lawyers:	8%
Legal aid/lawyers:	8%
Lawyers/police training:	6%

The next most common demand was for more female judges, some stating that all judges should be female. Obviously then, despite the hope and confidence expressed by a substantial number of the interviewees, there was a clear feeling that male judges were biased against them and there were fewer chances of getting justice from them.

A better or more conducive environment was the next most common demand. Some suggestions were for separate courts, more protection for women and no men in the courts. Obviously, the court atmosphere, with crowds of staring males and fraught with sexual remarks and overtures, was something that women wanted changed.

An equal number of women made suggestions for training of judges, more sensitive judges, true justice or fair dealing, honest judges and even changing all the judges. The last was based on the opinion that judges were the root cause of all the problems.

Some women felt that the laws were flawed and should be changed, specific reference being made to the Hudood Ordinances. Others felt there should be lawyers for everyone and free legal aid for women. A few felt that there should be counselling facilities for women – someone to look after them and explain things to them. More female lawyers were also suggested. And finally, a few recommended training for lawyers and the police.

11. If women had a second chance (or any opportunity/cause for action in the future), would they still take their case to court?

The large majority of women (76%), not surprisingly, categorically stated that whatever the circumstances, they would never approach the courts. A number of them stated that death was preferable. The reasons, where given, reiterated many of the experiences and perceptions stated earlier. The impact of their experience on the future assertion of their rights is horrifying. These women are prepared to suffer any deprivation of their rights and violation of their dignity, as well as risk their security and life in the future, just to avoid the torture they know they would have to undergo in court.

To give an indication of their feelings about courts, some of their responses have been given below

- "No, I can't go through it again."
- "No, death is better."
- "I would not even pass this road."
- "Whenever I see the courts, I will run in the opposite direction."
- "No, the agony is not worth it."
- "No, this is enough to last a lifetime."
- "No, who wants to go to hell?"
- "No, the shame and humiliation are worse than the punishment."
- "No, one starts to hate oneself."

However, despite all the unpleasant experiences, a reasonable number of very courageous women (24%) stated that they would go to court again if they had to. While they admitted that the experience had been horrendous, they were equally determined to assert their rights and get justice from the institution charged with the responsibility of dispensing it.

- "Yes, in spite of all that I've gone through."
- "Yes, if need be, I will."
- "Yes, there was no other choice this time - I won't have it a second time either."
- "Yes, I will go because courts are supposed to give justice."

12. What is the worst thing a woman has to face after she has experienced violence? Are judges sensitive to this?

Loss of self-respect, humiliation etc.:	66%
Fear of losing her life:	30%

For the vast majority of women, the worst thing a woman had to face after undergoing violence was a loss of self-respect or dignity due to humiliation, shame, stigma etc. Yet another was the fear of losing her life. A few women also talked about the hatred or feelings of revenge they experienced after undergoing violence.

- "Shame! One does not want to live."
- "When a woman is a victim of violence, she wonders whether next time she will have to pay with her life."
- "This hatred eats one up; one is consumed by hatred."

Asked whether they thought judges were sensitive to what women suffered after undergoing violence, only 4% felt they were, while 12% either felt they should be or gave no response. 84% of the women felt judges were not at all sensitive to women's feelings after they had undergone violence, primarily because they were men.

- "No, he is a man - how can he know?"
- "Only a woman judge can understand. A male judge can never know how a woman feels."
- "I think only the people who go through the same pain can be sensitive to it, not others."

13. *After their experience in court, do women think there is a need for gender sensitisation/training of the judiciary?*

On being asked if they felt the judiciary needed gender sensitisation training, only one woman said no. Some women (18%) gave no response, having no understanding of the concept even after it was explained to them. But an overwhelming majority (80%) unequivocally said yes – judges did need training in gender sensitisation. However, they were unable to give suggestions with regard to the nature of such training. Only one woman suggested that workshops for the judiciary should be held at regular intervals.

...III

NON-GOVERNMENTAL ORGANISATIONS (NGOS)

Sections I and II of this report have dealt with the experiences and perceptions of women victims of violence, as well as women who have been involved in the legal process at different levels. This section deals with the experiences and views of some NGOs and women's groups who have been working on the issue of violence against women, and therefore, directly or indirectly, have been involved in dealing with women victims of violence, their families, lawyers, court personnel, law enforcement agencies, judges and other concerned organisations and institutions. The views of NGOs and women's groups on the legal system and its functioning in the context of women, are important. While the experiences and opinions of women directly involved in the legal process give a more subjective, though equally valid, perspective, that of NGOs and women's groups reflects a relatively objective perspective, thereby providing a more complete picture of the legal system. Their experiences are also necessary to assess how far their perceptions about judicial attitudes and the system are reflected in judgements relating to women.

There are a limited number of NGOs in Pakistan, which directly deal with or focus on the issue of violence against women. Even fewer are directly involved in the legal process that may follow; most of them referring the matter to concerned shelters, NGOs or lawyers. This survey covered 11 NGOs in Lahore, Peshawar and Islamabad and got their views and experiences of the legal system and legal processes in relation to women.

- 1. How do you view the legal system when it comes to cases concerning women's issues?*
- 2. Do you feel that the legal process in your country is gender sensitive?*

Though the two questions were put separately to the NGOs/women's groups, the responses to them have been combined since they frequently overlapped.

Basically, almost all the NGOs/women's groups were clearly of the view that the legal system and related processes were weighted against women and insensitive to their concerns. The most common reasons given for holding this opinion were the laws themselves, the attitudes of judges, the attitudes of other concerned personnel, procedural delays, inefficiency and the atmosphere of the courts. Two organisations stated that the system was gender-sensitive in the negative sense, since it clearly distinguished between males and females in terms of laws, procedures, interpretations and decisions, to the detriment of women. Only one opined that the legal system was equally contemptuous of both men and women, and that it was women's status in society that made the legal process more difficult for them. (It may be pertinent to mention that this was the only questionnaire filled in by a male respondent).

Some general statements made on the legal system are as follows

- "There is no justice for women in our legal system. It's designed according to the rules and regulations of a patriarchal society and not based on the canons of humanity."
- "Our legal system not only denies women their rights, it victimises them."
- "Our country's biggest problem is lack of justice because of the absence of sensitisation about women's rights...What has the State done for women? The apathy and sheer indifference of society, the lack of sensitisation of the judiciary are devastating facts."
- "The legal system is full of deficiencies when it comes to cases concerning women's issues ... The legal process is gender-sensitive in the negative sense. In other words, it discriminates against women."
- "The legal system is weighted against women."
- "The legal system is, by and large, biased when it concerns women's issues."
- "The system is biased in favour of male clients."

Discriminatory laws: Eight of the eleven NGOs/women's groups clearly identified discriminatory legislation as one of the major causes for the legal system being biased against and unjust to women. Seven of them specifically referred to the Hudood Ordinances, which are obviously viewed as the laws most derogatory to women's rights, and seen as tools for the victimisation of women as well as the reason for so many women being in prison.

A number of them also referred to the Qanoon-e-Shahadat, the Law of Qisas and Diyat, family laws etc. Apart from the discrimination inherent in the text of the laws themselves, it was pointed out that the attitudes of judges towards women were also negatively influenced and moulded by laws which declared women as unequal and treated them as less capable than men (reference to the Hudood laws and Law of Evidence). A few NGOs felt very strongly that the constitutional provisions of equality were being grossly violated by the existence of these discriminatory laws. The need to repeal discriminatory laws and develop responsive and gender-sensitive legislation was also expressed.

Inadequate or ineffective laws: A number of NGOs expressed the view that existing laws that might be beneficial to women were not being enforced; and that a number of laws were inadequate or insensitive to women's concerns. One NGO expressed the view that several laws dealing with human rights were not enforced either in letter or in spirit; if the laws were drafted, they were not complemented with rules and regulations, thus making them ineffective in practice.

The law relating to domestic violence, an area that most of the NGOs dealt with, was of primary concern to most NGOs. Since most of them had undergone the frustration of trying to initiate legal action in cases of domestic violence, there was a general feeling that the existing law or its application was inadequate to address the issue. There was a strong impression that domestic violence was not even recognised as a crime, but was treated, instead, as a routine marital dispute. The police usually refused to register an FIR in cases of domestic violence, preferring, if pushed, to use the alternative method of applying pressure through threats to force a reconciliation. The issue was not taken seriously either by the police or the judges, and often ignored in family courts. Other areas of law deemed inadequate or unenforced were those relating to child marriage and polygamy.

Procedural delay and discrimination etc: Long delays in cases were identified as a major cause of injustice to women by a number of NGOs. While delay in cases is a problem for all litigants, its impact on women is far more adverse since they have far less support, fewer resources and, for these reasons, limited staying power to carry on with their cases. These legal delaying tactics are a loophole in the law and are often used against women with the knowledge that they will very often give up their legal battles if the process continues for an extended period of time; especially since the nature of some cases requires a quick decision. Cases relating to women in any case tend to undergo an even lengthier process than the usual cases, because there is inevitably more discussion on social/religious norms and cultural practices etc. than there is in cases relating to men.

Unnecessary delays also cause women particular hardship in cases where they remain confined in shelters and jails while their cases are processed. This is particularly so in cases of women contracting marriages by choice, where courts have a tendency to confine them in shelters and sometimes in jail, while they decide whether it was a valid marriage, an abduction or a case of adultery (*zina*). While the orders for their confinement are themselves a violation of women's right to liberty and freedom of movement, the sanctioning of long delays in resolving these issues makes the maxim 'justice delayed is justice denied' a far more bitter reality for women than it is for men. The delays in the system also tend to discourage women from seeking legal redress, since it brings home the realisation of how long and burdensome the process is likely to be.

The general inefficiency of the system is compounded by the fact that sometimes the very process and procedure of the case is also discriminatory to women, for instance, it is far easier and simpler for a man to divorce his wife, but the woman has to go through a long and complicated court procedure if she initiates divorce proceedings. Some NGOs also felt that the environment of the courts was very discouraging for women, making most women reluctant to go to court even if their situation at home was unbearable.

Attitudes of other concerned personnel: There was a general feeling that the attitudes of the police, court personnel and lawyers towards women were unsatisfactory. Those who had dealt more directly or extensively with the law-enforcement agencies felt most strongly about the attitudes they encountered. Of all those connected with the justice system, the attitude of the police emerges as being particularly biased and offensive to

women. Their insensitivity to women's concerns made them "callous and unconcerned" in their behaviour towards women as well as in their treatment of women's cases. One example of this is their response to cases of domestic violence, which they refuse to register as crimes or even take seriously. As one NGO put it: "The police is insensitive at best and exploitative at worst." Whatever potential police personnel initially have to deal more sensitively with women, is apparently destroyed over a period of time, as they become more firmly a part of the 'system.'

A crisis centre volunteered the information that they prefer to deal with younger people in the administration and police "who are still gender sensitive and have not become part of the system." The attitudes of court personnel were also felt to be biased and insensitive to women, resulting in rude and offensive behaviour. Lawyers also tended to follow the same pattern in their dealings with women, since very few of them were oriented to gender issues.

Attitudes of judges: The issue of judicial attitudes towards women was one that elicited the most articulate response from the NGOs/women's groups. There was a very strong opinion that judges lacked sensitivity on women's issues and were biased in their approach. This was partially attributed to the fact that they were members of a society in which human rights were neither accepted nor practised, while a view was also expressed that very few judges had any orientation on gender issues and approaches. But, by and large, there was a clear perception that judicial attitudes and decisions were based on socio-cultural norms and practices, personal beliefs of the judge and stereotyped images of women, resulting in their perception of themselves as the 'champions of morality.' Their inability to rise above these biases was seen as a major reason for injustice to women, since it resulted in their failure to view women as equals or to uphold their fundamental rights, and an even greater failure to comprehend or sympathise with the inequality faced by women in their daily lives. A few traced the more retrogressive trends in the superior judiciary's thinking to the period of so-called 'Islamisation' in Pakistan. Contradictory judgements at the superior level were felt to be partially responsible for the attitudes of the subordinate judiciary, with the additional observation that the superior judiciary failed in its responsibility of supervising the subordinate judiciary.

These attitudes, personal beliefs, stereotyped images and adherence to social norms and cultural practices result in a number of practices and decisions which violate women's fundamental rights to equality, security, freedom of movement and choice, and deny justice to victims of violence, keeping women in a perpetual state of insecurity. Meanwhile, settled issues relating to their rights get opened and re-opened. This inevitably results in diminishing women's rights. The willingness of courts to hear petitions that challenge or re-open a debate on women's rights was seen as an extremely unfortunate trend in the superior judiciary, since it was felt that most of them should not have been admitted in the first place. A particular example of the readiness to re-examine women's rights issues has been the continuing practice of the Federal Shariat Court to admit petitions relating to family law despite the constitutional bar of jurisdiction in this Ordinance. The confinement of women in shelters while cases of marriage by choice are

- "Judicial attitudes towards women who come to court are dismissive. They are treated as 'bad, shameless' women whether they bring their cases to court or cases are brought against them, and there is a feeling that they are going against social norms and 'must have deserved what they're getting.' "
- "Female witnesses are not given any importance during the course of the cases because judges assert, or their attitude conveys the message, that women's evidence doesn't have the same value as that of men (because of laws like Hudood and the Law of Evidence). They also believe that women exaggerate a simple thing into a mammoth problem, particularly in cases before family courts. Domestic violence is rarely taken into consideration in family cases."
- "Following the long period of 'Islamisation' and the resultant amendments to the Constitution, the superior judiciary - while taking up issues of law and rights relating to women - has tended to regard themselves as champions of morality, thus strengthening customary practices and stereotyped images of women. Trends within the superior judiciary are contradictory, leading to misleading and mixed signals being sent to the lower judiciary, which the superior judiciary has failed to supervise."
- "Thus cases are not just decided on merit, but tend to go into social value systems and norms etc."
- "Even where cases are decided in favour of women, the judgements contain unnecessary extraneous moral platitudes/opinions which are derogatory, humiliating or offensive to women as persons and to their rights as individuals. Personal beliefs are given precedence over legal rights, and rights are diminished/subjected to social norms or personal opinions of judges."
- "In family law matters, the subordinate judiciary rather than remaining a court of fact and following the text of the law, tends to interpret the law, basing their judgement on what they think the law *should* be rather than what it *is*. The lower courts also give value to customary practices over and above the text of statutory law."
- "Courts confine women forcibly in 'shelters' while cases are decided. They have patriarchal biases - even the superior judiciary can be amazingly chauvinistic."
- "The judges are biased and there are few exceptions - judicial attitudes in 'honour killings,' cases of 'grave and sudden provocation,' confining women in jails/shelters etc, in marriage by choice cases, delays in decisions, unnecessary confinement for years is very unjust."
- "Debates are reopened on settled issues, often diminishing women's rights, leading to long periods of uncertainty for women."
- "Re-opening debates creates tension and uncertainty for women and is derogatory to their fundamental rights e.g. their right to marriage by choice, where women are treated as objects or recovered property to be protected, and as criminals if they stand up for their rights ... Courts go beyond their mandate/jurisdiction e.g. the Family Laws Ordinance has been challenged in the Federal Shariat Court. This should have been dismissed right away, not admitted right away."

being decided and their lenient attitudes in cases of grave and sudden provocation and 'honour killings' were given as further examples of the biased and patriarchal attitudes of the judges.

Overall, therefore, the finding was that the court process was biased and gender-insensitive. Two NGOs felt that there were a few exceptions to the general rule, where a few judges in the superior judiciary were more sensitised than those in the subordinate judiciary, and there were a few cases in which courts had given women their rights. There was also a feeling that the subordinate judiciary was not well informed about the text and procedure of the law and failed to follow the principles of justice established by the superior judiciary.

3. *As an NGO, what do you feel you are able to give an individual woman who comes for assistance that the legal system is unable to give?*
4. *What are the remedies that you have been able to offer to women who are victims of violence?*

While all the NGOs/women's groups dealt at different levels with women victims of violence, their capacity to offer services depended largely on the focus of their work. Different services were also provided to women on a case-to-case basis, depending on their immediate or long-term needs. Either directly or indirectly (through referral to others) all the organisations provided substantial moral support to the victims, information and advice on the problems they were facing, legal services and counselling, temporary or longer-term shelter or refuge, and other interventions towards resolving the issue/case or following up on it. A number of them arranged for medical aid, some provided or arranged for jobs, training, rehabilitation, financial aid etc., and a few also made advocacy interventions by highlighting issues in the print media.

Moral support: All the women litigants and victims of violence who approached these organisations for help, were desperately in need of moral support and sympathy. In view of their bitter experiences in terms of social censure and lack of support – as expressed in earlier sections of this report – it is not surprising that all the organisations that deal with women victims of violence first have to provide considerable moral and psychological support to them. This can begin by merely listening to them and believing their story, a simple act of sympathy and compassion denied to them by society; providing them with a sense of security, a feeling that they are no longer alone in their struggle and are safe from the perpetrator; helping to give them back their dignity, and an awareness of themselves as human beings, which they often lose during the course of their traumatic experiences; and providing the basic support system which gives them the confidence and moral courage to stand up for their rights. Some NGOs, which have the in-house expertise or necessary linkages, provide more specialised psychological counselling to victims traumatised by the violence they have undergone; a very few also extend this to the women's families, lawyers and doctors. A number of NGOs, aware of how lonely,

insecure and afraid women feel in these situations, also accompany the women to court hearings to give them moral support.

While much of this support cannot be provided by the legal system, a more sympathetic court environment in which women do not feel threatened or exposed to vulgar curiosity and staring can certainly diminish the need for this. Sensitive attitudes and an indication of genuine concern, particularly on the part of the judiciary, could also go a long way in alleviating women's fears and apprehensions.

Information, advice, counselling etc.: Most of the NGOs provided women with basic information and knowledge about their legal rights, ways of handling the matter at hand, advice about the course of action and other related information about legal assistance and the process of cases etc. As was evident from earlier sections of the report, most women are unaware of their rights or how to go about obtaining them, including many of those involved in the legal process. Conscious that women need to know their rights, as well as the difficulties they may have to undergo in the process, before they can make informed decisions or are ready to initiate legal action, NGOs do provide this very crucial service. However, while awareness about rights and options is necessary for accessing justice, it must be kept in mind that there are very few organisations, which can provide this basic information to women, and only a small proportion of women facing violence even get to the concerned organisations.

Legal aid services: The types of cases that organisations had to deal with included family court cases, criminal prosecutions for violence, and habeas corpus petitions. All the organisations either provided legal services if they had in-house lawyers or made arrangements/referrals for legal aid. But in some cases, keeping in mind both the inadequacies of the system as well as the helplessness of the women, legal help to victims had to go far beyond this. Three of the NGOs helped victims in registering their cases, a task which often required a lot of pressure and running around, a few helped to get copies of documents etc, one assisted in getting their statements officially recorded in critical cases of violence, helped in the collection of circumstantial evidence and investigated on-the-spot needs, while some followed up on the cases at different levels after they were filed or registered. One organisation stated that it also offered women the alternative option of addressing and resolving the issue from a fundamental rights perspective rather than within the limited provisions of statutory law.

Aware of the fact that cases can take many years before they are resolved, some organisations also made interventions towards shortening the process. These included: pushing for quicker hearings in court, referrals to appropriate authorities, contacting concerned authorities directly and, in some cases, trying to settle the matter directly through a mediation process. One organisation tried to facilitate a written agreement or compromise between the parties and thereafter monitored the perpetrator to ensure that the incident was not repeated; another monitored the victims following cases of compromise. This process of mediation and monitoring is one that is totally absent in the legal system.

Other services: In view of the fact that many women victims of violence have no support and there is a paucity of shelters for women, most of the NGOs/groups tried to facilitate or arrange shelter for women, sometimes provided temporary shelter or, in two cases, themselves made shelter arrangements for women. But this was not the only service they were called upon to provide. Many of the organisations either provided or arranged for medical advice and referral, sometimes raising funds for medicines and hospitalisation or arranging for free treatment, occasionally having to directly deal with the medical process. One organisation also provided for temporary pain relief for victims of acute violence or those on their deathbed e.g. in the cases of women who had been burnt, whose noses had been chopped off, hands amputated, or bones broken. Two of the organisations provided or arranged for rehabilitation services, while some others raised funds for victims or helped to get them jobs etc.

A few organisations also felt it necessary to highlight cases of violence in the print media to put pressure on the authorities to take necessary action. This was done through press statements and documentation of cases, which were released to the media. A few had tried to set up pressure groups for liaison with law enforcement agencies and other key persons in the system to provide relief to victims of violence.

5. *How do you think judges view women's groups/NGO's? Is it a positive or a negative perception? Please give reasons for your answer.*

By and large, NGOs felt that judges mostly had a negative perception of NGOs and women's groups. A number of possible reasons were suggested for this negative view.

One common reason given was that since most judges were men with the gender attitudes of a chauvinistic society, they considered women's groups a nuisance who kept raising controversial and sensitive social and religious issues. It was also felt that they hold NGOs responsible for leading women astray or luring them into taking up issues, which the judges would prefer to keep quiet, not bring to courts or make public. Thus women's groups are seen as a threat to the prevalent social order and cultural norms, and responsible for destroying women's perceptions of their role and rights in society. Women's groups also feel that judges view them as being influenced by the West and as following an agenda that conflicts with our religion and customs. This is an attitude that makes it easier for them to dismiss issues raised by women. It was suggested that judges, being a part of the system, cannot accept any change or alternative view, and are also uncomfortable and resentful about the presence of women's groups in court. It was also suggested that judges with fixed political leanings or a visibly traditional mindset, whether in the superior or subordinate judiciary, have an entirely negative attitude towards the involvement of women's groups and NGOs in legal matters, such judges giving greater value to negative customs, no matter how grave the violation of the woman's fundamental rights.

There was also a feeling that judges reacted negatively to women's groups because they put pressure and created problems for them by being 'meddlesome;' women's groups create problems by making the case public if decisions are unjust to women. Judges also feel pressurised by militant/conservative elements in society when sensitive and controversial issues are made public and raised in courts.

NGOs also felt that the system generally does not encourage participation by NGOs on rights issues, nor is there any tradition of participation by civil society groups, particularly those focussing on women's issues. Generally, therefore, institutions are not responsive to groups taking up public interest issues that create waves in the existing modus operandi.

However, some NGOs felt that judges vary in their approach and there are some rare exceptions to the rule. While most judges have a very negative and unsympathetic attitude towards women's groups, a few judges do appreciate the perceptions or alternative points of view of women's groups, and are helpful. They are sometimes encouraging when they realise that certain NGOs and women's groups are working according to a definite human rights agenda, and are helping women in the courts without any self-interest; such judges even refer cases to them occasionally. In family courts, where judges frequently come across women with no backing, their attitude can often be positive towards groups providing assistance since the case then proceeds more smoothly and a proper legal procedure is followed. This makes them more responsive to requests from the woman litigant's side e.g. for transfer, setting dates promptly or at the woman's convenience etc. One NGO felt that certain judges, who do not have clear political inclinations or a traditional mindset, have come to respect their work as well-grounded in the knowledge of law and social realities; and while NGOs and certain judges of the superior judiciary may not necessarily see eye to eye, there has been a growing recognition of the importance of women's legal issues.

A few NGOs felt there had been relatively more interaction between NGOs and some members of the judiciary in recent years, whether because of certain cases that had come up or in seminars and other forums. A few members of the superior and subordinate judiciary had also participated in workshops organised by NGOs, some of which were on issues of violence against women. This had led to more understanding of each other's roles, a greater degree of tolerance and respect, and discussion on more practical ways of evolving a support system. The superior courts have also sometimes intervened where excesses against women have been brought to their attention, and a few judges have become relatively more accessible. However, it was suggested that all judges needed much more awareness of and insight into women's rights and empowerment issues; an understanding of the reality of women's lives and acceptance of their rights would make them more humane and compassionate in their attitude towards women, and bring about a change in the hostile approach of our society.

6. *Are women lawyers /women victims/ women NGO's aware of CEDAW?*
7. *If so, how do they view the effectiveness of this document? Can they use CEDAW in their work? If so how?*

Most NGOs agreed that hardly any of the women victims of violence were aware of CEDAW, unless perhaps they were working with a concerned NGO. Only a few women lawyers, who came from activist backgrounds or were attached to concerned NGOs, were aware of CEDAW; others, if aware, would only know about it very generally. Most concerned women's rights NGOs are aware of CEDAW, but all of them are not necessarily well versed in it.

Overall, it was felt that CEDAW has mostly been used for lobbying purposes since Pakistan ratified it in 1996. Women's NGOs and groups of activist lawyers attempt to use it as a basis for recommendations for legal reform and to put pressure on the government to enact laws, policies and procedures accordingly. It has also been widely used by concerned NGOs to mobilise women, and can be used as a good reference document on women's rights issues. However, there were doubts about how effective its use had been. One NGO viewed it as an ideal but far removed from reality, with another opining that its effectiveness so far had been close to zero. Firstly, CEDAW was only ratified a few years ago. Secondly, it has not yet been translated into law, and its use as a convention – that too, with reservations – becomes limited. Because of this, it is not commonly used in cases by most women lawyers/NGOs. Nor are the judges or others aware of it. However, it has been used once or twice in courts. It was suggested that it would only be really effective if adopted in domestic legislation and NGOs should press for its implementation. NGOs are using the Beijing follow-up process to push for its concretisation, but so far, even the first CEDAW report has yet to be submitted.

This section deals with the views and perspectives of women lawyers to assess their experience in the legal profession with respect to gender discrimination, whether in the nature of sexual harassment, or any other more subtle or blatant form. It also seeks to document some of the problems women lawyers face when representing women in violence-related matters, and to solicit their views on possible changes needed to ensure gender sensitivity to female lawyers and on issues of violence against women. This section of the report is critical in two respects: firstly, it is important to see if the views and experiences of female victims and litigants with respect to the court environment and attitudes of court personnel etc. are corroborated by female professionals in the field; secondly, as more women lawyers enter the field and often represent women in cases involving violence, their negative experiences are not only indicative of the prevalent gender biases and discrimination, but also of how these impact and affect the confidence and performance of professional responsibilities of those who seek to represent women in cases relating to violence.

It must be mentioned that this was, perhaps, the most difficult part of the research. While victims, litigants and NGOs by and large had no hesitation in sharing their personal experiences or in articulating their views, many women lawyers were extremely reluctant, and some were even antagonistic when questioned about issues of discrimination or harassment. Thus, a number of them simply answered in straight "no's" to most of the questions, while a few gave strong opinions about the questions. In our own assessment, this was partially due to the fact that sections of the questionnaire were not always culturally appropriate for all areas of Pakistan, as they included questions worded in a manner which made many interviewees feel defensive from the start.

This kind of response was especially marked in cases when the lawyers themselves were not sensitised to many of the issues, and also because they believed that many issues were 'West-oriented' and not relevant to Pakistan. Another factor which may well have contributed to this negative reaction is something that many of us, who have entered male-dominated careers, have gone through ourselves – a total negation of any serious problem, because admitting to problems on the basis of gender somehow seems like admitting to a weakness in oneself or one's personal ability. Fortunately, there were also a fairly large number who were able to express themselves freely, many of them working in firms/chambers already sensitised to issues of gender-discrimination.

Altogether, the sample for this section includes the responses of 55 women lawyers from Lahore, Rawalpindi, Islamabad and Peshawar, including those who gave mostly straight negative responses.

1. *Do women lawyers feel judges address them differently from their male counterparts? If so, in what way?*

- "Yes, in what they call a respectful tone, and I call an uninterested tone - they don't treat us as equals."
- "Yes, in a patronising tone. We don't want leniency, but a chance to prove we are as good as male lawyers."
- "Because we are women, they don't take us seriously. First we have to prove we are good women, then good lawyers."
- "They don't take them seriously as lawyers. They think they are here for their amusement. Women lawyers have to prove themselves before they take them seriously as lawyers."
- "I remember once in a particular case, every time I opened my mouth he would start smiling. I felt so humiliated."
- "I remember once in a family court the judge would simply not let me complete my sentences or continue (with my argument) - he kept interrupting me."
- "They are extremely polite and lenient. Their leniency is almost because they think we are not capable. Yes, one can say judges have a patronising attitude towards us."
- "Yes, a demeaning and patronising attitude. They sometimes give us too much leverage, thus attracting our attention and that of others."
- "What others call encouraging is actually patronising behaviour. Judges feel we are mentally and professionally incompetent, weak and stupid and that we need extra care. This is gender-discrimination, we should be treated as equal to male lawyers."
- "Patronising tone. Whenever female lawyers enter the courtroom, they sit up straight and look up. They never do this for male lawyers."
- "Judges of family courts are different from those of magisterial courts. The judges of family courts are very supportive, but underlying this support is the fact that they actually take female lawyers as inferior, incompetent and something like showpieces. Their behaviour is patronising. The judge will be lenient; he will smile at you; you feel that he is favouring your case and client, but the judgement comes out quite differently. Those females who are young and smart have more trouble than those who are not."
- "Judges are patronising towards women lawyers at the start of their practice. Once they begin to take up issues that are non-traditional, their attitude changes. They become impatient, insulting and invariably question the motives of the counsels for defending their clients."

- "Judges have remarked on a number of occasions 'You are very bold and confident.' Why do they expect me to be otherwise? ... Once I had to fight for my right and say I wanted to argue."
- "If a female lawyer is young, he will be more interested in what she has to say and if she is unattractive, he will be distracted and uninterested."
- "Yes, judges always speak differently to women lawyers, sometimes wanting to have long discussions, sometimes giving (sic) smiles and making them (feel) embarrassed."

Yes:	62%
No:	29%
Sometimes:	5.5%
No response:	3.5%

62% of the women lawyers interviewed felt that judges addressed them differently from their male counterparts, while about 5.5% felt this happened sometimes. Not all of them were able to clearly articulate how they were addressed differently, since in many cases the subtle difference lay in the tone of the judge or in an attitude of

being over-polite, indifferent or too lenient where women lawyers were concerned. This indulgence or casualness was perceived by many women lawyers as being patronising, degrading or demeaning, since it seemed to indicate that they were not being taken seriously or considered equal to men in terms of their ability. Some felt that the attitude of judges also took on sexual overtones, with them showing more interest when good-looking women lawyers appeared before them, and trying to get their attention – a few perceiving this as a form of sexual harassment. A few felt that there were more remarks on cultural norms and issues when women lawyers appeared before judges, and that they had to 'prove' themselves more, first as good women, then as good lawyers. A view was also expressed that the attitude of judges also depended on the case or issue being brought up. They claimed that the attitude of judges was more impatient or insulting when the issue was non-traditional, even leading to a questioning of the counsel's motives for defending the clients. All these attitudes inevitably result in making the women lawyers more self-conscious and anxious, and affect their self-confidence. What is abundantly clear is that the vast majority of women lawyers want to be treated as equals, neither shown special favours, nor treated differently.

Interestingly, many of those who did not feel that judges addressed women differently, related similar experiences but viewed them differently.

- "No, their tone is not different, but their attitude is slightly different and as for my experience, it is very good as they give extra help and provide guidance and also indulge (us) professionally."
- "No, they are very nice - and they treat us very gently."
- "They are very polite, respectful and lenient."

2. *Has any woman lawyer ever been subjected to comments about her physical appearance or dress (when no such comments are made about men)? If so, were these comments made by judges, lawyers, court personnel etc.?*

More than 67% of the women lawyers interviewed had been subjected to comments about their physical appearance or dress, mostly by lawyers, but also by the public and court personnel including the reader, police and even judges. Most of them found it a disturbing or uncomfortable experience, affecting their confidence and natural performance. Only two were unaffected by the comments made to them by judges, as they felt they were not made offensively and did not have sexual undertones.

- "If a female lawyer is wearing any ribbon etc. on her uniform, or maybe a dark lipstick or earrings, she is discussed and sometimes a group of lawyers will nudge each other and (exchange) smiles."
- "'She is very fast. Look, she wears half-sleeved shirts,' commented one male lawyer."
- "Comments like, 'This lawyer seems to have come to a film shooting, not to the courts'."
- "I once overheard a male lawyer say, 'She walks like this to attract attention.'"
- "I have also heard they not only discuss the appearance and dress but also the figure (of the woman lawyer). I was the first lawyer to wear a half-sleeved coat, and for a long time I had to hear comments on my coat."
- "They, including my colleagues, stand together in two's and three's and discuss female lawyers. They will discuss their hairstyles, their clothes, their way of speaking etc."
- "Yes, they all make remarks about the physical appearance and dress (of women lawyers) and discuss them as objects."
- "Lawyers tell our (women) clients to cover their heads - indirectly they are telling us to do the same."
- "Once there was a discussion among lawyers. The male lawyers felt female clients should cover their heads when they come to court. Then, in a taunting manner, some of them said 'When the female lawyers don't cover their heads, why should they (the clients)?'"
- "Women lawyers have been commented upon about their dress and physical appearance by judges and lawyers. Recently a family court judge told women lawyers to wear their *dupattas* 'properly!'"
- "I mean, what right do they have to tell us to cover our heads with our *dupattas* - well, then they should all grow beards."

3. *Do women lawyers experience physical or verbal sexual harassment by judges, lawyers, court personnel, other etc.?*

60% of the women lawyers interviewed had experienced some form of sexual harassment in their careers in court, mostly by their male colleagues, often by court personnel and the public and even sometimes by judges. The harassment took different forms, often echoing the experiences of litigants: staring, and the manner of staring; suggestive comments on personal appearance; brushing and touching; inappropriate discussions and offensive invitations; gossip and scandals, and deliberate embarrassment through putting crude questions in cross-examination. Causing humiliation, anger, insecurity and lack of confidence, the harassment also affects their cases and sometimes even discourages them from taking on particular types of cases.

- "Male lawyers stare and we have heard they discuss us female lawyers all the time. If a particular female lawyer does not speak to them, they make scandals about her."
- "When male lawyers stare at us, we feel humiliated. Going to courts and moving in this environment is also very humiliating. You are brushed against, touched and they (men) pretend as if they are doing it all accidentally."
- "Everyone stares a lot. It's a cultural shock coming here. If I'm alone I think I am unsafe ... Around here, if you don't have a back (sic) you will be crushed."
- "Staring is very common. It's the way they look; their eyes seem to be going through us ... I feel I am always under a microscope."
- "With their eyes they seem to unclot a person."
- "Female lawyers feel as insecure as female clients. A couple of days ago, I went to court without my uniform. The male lawyers were staring as if their eyes would come out. One male colleague commented, 'I can't understand these male lawyers, if you make a donkey wear a *dupatta*, they will still stare at it.'"
- "I have experienced abusive language by lawyers and threatening remarks from judges for defending my client in cases which they felt were against the social norms of society."
- "When one is reading out authorities, I feel the judge is not really listening because he is busy looking at you."
- "As I have a very light skin colour, nearly every day I hear comments like 'queen of beauty', '*masha'allah*', 'black glasses on a fair face' etc."
- "Male lawyers, especially the older ones, brush against you whenever they get the opportunity."

- "They refer to female lawyers by nicknames which only they know about."
- "Male lawyers stare a lot and I have heard them discuss us openly. They are happy at our failures. Accidental brushing is frequent, though how accidental it is, only the male lawyer knows."
- "We all, including myself, experience verbal harassment nearly every day. As soon as we start doing well in this profession, male lawyers start making scandals about us. They stare all the time; sometimes they will deliberately come in the way so one has no choice but to brush against them slightly (in passing). Some of them openly discuss their female colleagues. If one is seen talking to a male lawyer more than once, everyone presumes that you are having an affair with him."
- "Once my senior lawyer was in the High Court and she asked me to take an application on her behalf. When I went to submit the application, he said the application was not correct and to bring it to his room at 2 p.m. I went back to my senior and told her that the judge had insisted that I should bring the application to his chambers. She passed some comments on him and said 'You will not go.'"
- "Once a judge - I will not name him - called me to his chambers with reference to a case. When I went, he started asking me personal questions about whether I was engaged (to be married) etc. I felt scared at first and later disgusted. I had always thought he was a very respectable person."
- "Once a judge would start reciting poetry whenever I entered his courtroom. In the end, I stopped going there."
- "Whenever we have to deal with officials, especially when we have work with them, we first have to oblige them by sitting with them for a cup of tea or general chit-chat that has no relation whatsoever with the topic at hand. This situation is unavoidable ... I have even been offered a dinner invitation by a judge. You see, the further you go i.e. with your friendship, the more they will reciprocate ... We are first women, then lawyers ... The judges will not give us relief if we are stern and aloof; one has to acquire a familiar manner. Male judges are very nice and polite superficially but actually inside they are male chauvinistic pigs ... Even female clients are harassed in the judges' chambers."
- "A lady doctor was once asked such questions that she started crying ... I would never take a rape case because of the environment of the court."
- "Verbal (harassment) by way of crude cross-examination, especially when on the other side the advocate is a female. This, by lawyers - most of them of long standing."

4. *In the course of their work, do women lawyers ever feel patronised, ignored, demeaned, harassed, and/or treated as outsiders?*

In view of the experiences referred to above, it was not surprising that more than 65% of the women lawyers felt patronised or demeaned in the course of their work. Apart from the different treatment by judges, personal remarks and harassment, women lawyers also face other attitudes that belittle them. These include rude or offensive behaviour by court personnel, particularly readers of the court, and the attitudes of male lawyers generally towards women lawyers and their work. This is especially so in the case of male seniors. Offensive or rude remarks are also occasionally made by judges.

A number of women lawyers talked about the insulting tone and manner adopted by readers with women lawyers. One mentioned that they like to keep women lawyers standing when they approach them and tell them to wait, almost as though they are getting "some kind of ego boost" by doing so. Others mentioned remarks and comments about women lawyers, both personal as well as about their professional capability. Yet, as stated by one lawyer: "He (the Reader) has more control over the case than the judge himself. We have to be polite to him despite his saying things, because of the fear that he might 'misplace' an important document in the file." Some others also echoed this fear.

The demeaning attitude of male lawyers was a matter of particular concern for most women lawyers. According to them, male lawyers clearly indicate the feeling that women lawyers are incompetent and cannot handle their cases, sometimes even deliberately enticing away their female clients by telling them the same. This patronising attitude is also carried into courtrooms. As stated by one woman lawyer: "Male lawyers sometimes openly comment in court, 'Poor thing! Sir, please listen to her arguments first.' It is very demeaning." Apart from this, male lawyers also put down women lawyers by telling them to change their profession because it is 'too tough for women,' projecting them as women who are wasting their time or have come into the profession to get marriage proposals; or treating them as women who have come to pass the time till they get married and take on their household responsibilities. This attitude also sometimes gets reflected in the practice of seniors who are reluctant to give them important briefs. Moreover, judges also tend to treat them the same way, sometimes being patronising, occasionally not letting them present their arguments properly, sometimes questioning their motives and role when representing women. Both judges and male colleagues also indicate that they feel women lawyers contribute towards the 'break up of families.'

5. *Are women lawyers subjected to remarks or jokes in court, at work or in chambers, which may not be demeaning to them in particular but demean women in general?*

Almost 55% of the women lawyers interviewed had been subjected to some remarks or jokes demeaning to women in general. These were mostly made by lawyers, but also by court personnel, police and clients, and sometimes even by judges. The nature of these

remarks was derogatory to women clients, women lawyers and women in general. According to one woman lawyer, they did not even spare a woman judge who received a number of obnoxious letters. The remarks tended to refer to women as mentally less competent, including comments on their behaviour and character, or were judgmental in terms of their role, repeating the pattern of blaming women clients and lawyers for bringing up issues of abuse, rather than blaming the abuser.

- "Male lawyers think, and openly state, that women who come here are fast and have no self-respect talking about their personal matters in an open court. They joke about our clients and pass judgements on them."
- "Male lawyers openly say that women who bring their divorce cases to court lack the ability to adjust and that women should not make a public display of their marital problems."
- "They even discuss our clients and make fun of them in front of us."
- "The male lawyers will sit together and criticise female clients and state how they are responsible for their own problems and for being in the courts. They also crack jokes about them."
- "Remarks and jokes are common in the bar room and by judges in open court."

6. *Have women lawyers ever experienced gender bias/discrimination in the courtroom? If so, did the judge intervene to stop it?*

About 62% of the women lawyers faced some form of gender bias or discrimination in the courtroom. In 70% of these cases, the judge did not intervene to stop it. In fact, in some cases, the judges were the ones responsible for the discrimination or for encouraging it. The type of perceived discrimination included: giving more attention to arguments by male lawyers (especially in criminal or serious cases), the language and tone, non-intervention or encouragement of offensive cross-examination, and biased attitudes towards female clients. One woman lawyer observed that gender bias and discrimination only took place when encouraged by the presiding judge.

- "The very tone and language of the courtroom is discriminatory."
- "Judges do not intervene when the cross-examination gets out of hand, they take the side of the male lawyer."
- "Judges are insensitive, they rarely intervene when there is gender-discrimination in the court or the line of questioning is offensive (to women)."
- "I have experienced it, and no, the judge did not intervene. This was when my own client started to shout at me in a fit of temper because she could not understand the proceedings. The judge enjoyed every minute of it. I feel if it was a male lawyer, he would have tried to intervene."

- "Judges themselves discriminate by siding with the male lawyer."
- "Cross-examination sometimes goes out of hand and the judge does not intervene."
- "Judges sometimes even smile when male lawyers are cross-examining female clients and often repeat such questions."
- "Once my counterpart male lawyer said to me, 'You keep quiet, you don't know anything,' and the judge did nothing to stop him."
- "I always experience discrimination if my client is a female."
- "A civil judge scolded a girl for having come to get a divorce and told her she should go back to her husband and compromise. He scolded her a lot."
- "I have experienced gender bias and discrimination in the courtroom. It only happens when the presiding judge encourages it."
- "The bias of a judge starts when he does not want to believe a female client ... It is difficult for judges to accept that a male could also commit an immoral act."
- "They are hypocrites and they have double standards ... In Hudood Ordinance cases, the attitude of the judges is disgusting, insensitive and inhuman."

7. *Is there anything about the language of the court or the process of being a lawyer that women lawyers feel is either offensive or demeaning to women and which ought to be changed?*

About 47% of the interviewees responded to this question in the affirmative, citing as examples the discriminatory laws, the court environment, the judicial system, the terminology, and most of all, the gender-insensitivity in the attitudes and behaviour of both judges and lawyers, with particular reference to cross-examination.

In relation to the court environment and lack of facilities, one woman lawyer gave the example of a case where a woman was being tried for *zina*. While she was standing in the courtroom, the judge went to his chambers to receive a call. After he had left, the lawyers and other litigants started staring at her and she became so nervous that she was shivering, till finally a female lawyer sent her to the clerk's room to wait till the judge returned. With reference to gender-insensitivity, another mentioned how much people enjoy the cross-examination of a woman, and referred to an incident, which she found disgraceful, when a woman was crying and everyone was laughing. In family matters, there is basically an underlying disrespect towards women.

Concrete suggestions about change, therefore, included recommendations for the repeal of discriminatory legislation and the implementation of CEDAW; improvement of the court environment; restructuring of the court system; more female judges, particularly in the family courts, and holding of rape/*zina* cases in-camera.

A particularly important suggestion was that of gender-sensitivity training for both lawyers and judges. For judges, it was suggested that regular meetings and conferences be organised on women's issues; different types of courses be conducted on how to behave or deal with women, whether as lawyers or litigants; participation in seminars and workshops organised by concerned organisations; and that it be made mandatory for judges to visit jails, shelters, crisis centres, police stations; and for concerned women's organisations to hold meaningful discussions with them, where they just *listen* to women and get sensitised to women's concerns, with particular reference to issues of violence against women.

8. *Do women lawyers feel that judges attach more credibility to the arguments of lawyers who are male, female or to neither?*
9. *Do women lawyers feel that the outcome of cases is ever affected, positively or negatively, because of the lawyer's gender?*

About 58% of the women lawyers felt that judges attached more credibility to the arguments of male lawyers, about 36% felt they were impartial and it depended on the professionalism of the lawyer, while two respondents felt that more credibility was given to women lawyers because they were more trustworthy. A few offered further insights. One felt that more credibility was attached to the arguments of male lawyers in particular types of cases e.g. *zina* and marriage of choice. Others opined that while credibility may be the same, judges resent the fact that a female can argue a case well and still cannot accept the fact that women are addressing them. One felt that many times judges favour male lawyers due to a prior understanding, friendship or simply on the basis of gender, giving an example of a particular case: "Once we had a case with so many authorities, grounds, our evidence was strong. The male lawyer came and casually stated to the judge that he should simply read the disobedient wife judgement. On the basis of that, the judgement in the case did not go in our favour."

Almost 62% of the women lawyers felt that the outcome of a case did sometimes get affected because of the lawyer's gender. This was partially because the judge attached more credibility to the male lawyers' arguments, partially a resistance to accepting women lawyers at par with men or even allowing them to fully present their cases. This could also be because women lawyers often represent women clients, in which case gender biases intervene negatively. Male judges are also not completely at ease with women lawyers in their courtrooms. One woman lawyer mentioned how a judge adjourned the case about twenty times when she appeared in court, hearing it only when her male senior finally came, thereby delaying the outcome of the case considerably. However, some women lawyers felt that their gender contributed positively to the outcome of family court cases, because they took these cases more seriously than males and put more effort into them.

10. Do women lawyers feel that judges attach more credibility to the testimony of witnesses who are male, female or neither?

About 51% of the women lawyers felt that judges attached more credibility to the testimony of male witnesses, about 42% felt it made no difference, while 7% felt the testimony of women was given more credibility because they were more trustworthy. Of those who felt that more credibility was attached to the testimony of male witnesses, the general reason appeared to be the assumption by judges that women are unreliable or easily influenced, or because judges do not want to believe female clients or accept that men could be wrong. One pointed out that there are actually Supreme Court judgements where it has been upheld that women lie often. Another stated that this was because our religion and law give preference to male testimony.

11. In terms of the legal system where do women lawyers feel that gender bias is encountered most often?

More than 63% of the women lawyers felt that gender bias pervaded the entire legal environment, including courts, lawyers' chambers, police stations etc. About 13% encountered it most often in lawyers' chambers, about 11% felt it was most acute in the courtrooms, while the rest either felt it did not exist or did not respond to the question.

According to one woman lawyer, neither police stations, nor courts nor lawyers recognised violence against women as an issue unless it took an extreme form, focusing instead on 'whose fault' it was, and that this attitude in itself was discriminatory. Another stated that harassment started from the courtroom when the entire court staff, including the stenographer and reader, provided support to the male lawyer and client throughout the case. One mentioned the resentment expressed by male lawyers in her chambers against having a number of women lawyers working there.

A number of women lawyers spoke about judicial attitudes towards women who came for legal redress or were standing trial. One stated that it was common practice in divorce cases for judges not to provide full opportunity for female clients to speak. Another mentioned that when girls marry of their own choice, the judge tries to persuade them to go back. Some referred to the disgraceful attitude towards women in *zina* cases. Reference has already been made to the insensitive cross-examination condoned or encouraged by judges.

Beyond this, attitudes towards female clients were also considered most inappropriate and often, offensive. Lawyers make offensive and judgmental remarks about women clients, and good-looking clients are even invited out by them. According to one woman lawyer, judges do not spare women clients even in their chambers. According to another, one family court judge laid down the condition that any female lawyer coming with a female client in a divorce or maintenance matter must ensure that the client had a meeting alone with him. The female lawyers immediately advised their clients to cover themselves and wear *burqas*.

12. Have women lawyers ever observed gender-based discrimination in the court or in chambers in cases involving violence against women?

58% of the women lawyers indicated that they had observed gender-biased discrimination mostly in the courts, but also in the chambers, in cases involving violence against women.

In cases of violence, women are not heard properly; women who report violence against themselves are maligned as being the ones to have provoked it; in most cases, they are pressurised to forgive, compromise or withdraw the case; their cross-examination is deliberately discriminatory and embarrassing; they are addressed in a rude and insulting manner; and they are often told that the violence they have undergone is not legally a crime. In family cases, domestic violence is rarely considered relevant to the outcome of the case, while attitudes in rape cases are pitted against women. According to one woman lawyer, there is some element of discrimination in every case involving a woman, whether in tone, attitude or behaviour.

Some examples concerning judges' and lawyers' attitudes towards women are given below

- "Once a husband slapped his wife in the courtroom and the judge did not intervene."
- "Once a woman was crying in the court and the judge said to her, 'If you don't stop crying, I will throw you out of my court, I will not tolerate this behaviour in the court.'"
- "Once I witnessed a drug trafficking case where the girl had hidden the drugs in her bra. The male lawyer kept on asking her again and again where she had hidden it (the drugs). Everyone was laughing and the judge kept smiling. I thought the line of repeated questioning was unnecessary."
- "There is a sixteen-year old girl in Adiala jail who has been framed for murdering a lawyer in collusion with the boy she ran away with to get married. Generally, we all know she is innocent and the boy who is also in jail murdered the lawyer who was trying to blackmail them. Here, no one is permitted to take her case."

13. What is women lawyers' general perception of how the court system addresses violence against women? Do they feel that it is gender sensitive or gender discriminatory?

About 53% of the women lawyers felt that the court system was discriminatory in the way it addressed violence against women, while about 15% felt it was gender-sensitive. The others had varied or no opinions about it.

Of the 53% who felt it was discriminatory, most felt that the entire system, being male-dominated and subject to patriarchal norms, was biased against women. This leads to:

- Women not being provided full opportunity to speak in court, or not being properly listened to.
- Violence, particularly domestic violence, being treated as a routine matter which has no bearing on the case.
- Judicial attitudes which hold women responsible for the violence committed against them.
- A system which regards raped women as the accused instead of as victims, with the classic attitude that 'she must have asked for it.'
- Attitudes where women who come to court are seen as shameless or as persons who create unnecessary problems over 'non-issues.'
- A justice system where sentences in cases of violence against women are commonly reduced on superficial grounds.

No wonder then, that women who come to get justice are nervous, scared, humiliated and insecure. As stated by one lawyer, it appears as though the entire system operates in a manner intended to discourage women from approaching it.

- "It is normally in a shameful manner."
- "Judges invariably expect a woman to compromise and accept the situation as it is and go back to the husband or parents."
- "The entire system overpowers a woman and compounds her nervousness."
- "A victim who is usually in a weak economic position has also to fight a system that is male-dominated. Behind her, she has left set social norms and traditions that already hold her guilty and treat her as an outcast for making her marriage problems a public affair."
- "They have still not accepted that a female can come to court. They take violence as a routine matter. Rather than being sensitive to her problems, they feel she is so headstrong that she has come so far. They feel her coming to court means she is breaking traditions. They also feel she must be involved with someone else (lover) therefore she is trying to get rid of the present one (husband). Their eyes say everything."
- "Male judges are very nice and polite superficially, but actually inside they are male chauvinistic pigs. They are third class (people) and no amount of education or training can improve them because they represent their background where their daughter, sister or mother is a second-class citizen. They are hypocrites and they have double standards."

- "Firstly, women come to court after exhausting all other options. The only way they can survive a case is to become immune to the entire system."
- "The entire system is male-dominated ... Under these circumstances, how can she feel comfortable or at ease, especially when everyone blames her for the situation she is in? They would never blame the man."
- "The laws are against women, and so are the judges."
- "Where rape cases are concerned, the attitudes of the judge and what the male lawyers openly say is that 'she must have asked for it.'"
- "In a nutshell, a woman doesn't report rape because in most cases she ends up being the accused rather than the victim."
- "Reduction of sentence in cases of violence on superficial grounds is common."
- "Yes, it is gender-discriminatory because the judges and male lawyers think that females are used to cooking up issues about things that aren't really issues."
- "They take violence as a normal event."
- "The issue of violence in divorce cases is a routine matter for the judges and does not really have any bearing on the case."
- "No matter what the circumstances, the woman/girl is held responsible for the man's actions."
- "Male lawyers deliberately resort to a line of questioning that is insulting and makes a victim feel nervous."
- "It is not sensitive to women. Everyone takes it for granted that it's the woman's fault without first listening to her."
- "A case that involves a woman, for the court personnel and others present, is fun, a circus, a theatre going on. Cross-examination is offensive."
- "No one cares about women who have gone through violence. People think they must have asked for it."
- "Once when the husband was being abusive to his wife, the judge did not intervene."
- "Well, I would like to see how this court would function if a man had to come to court because he had filed for divorce. The entire system is against a woman, especially when she is filing for divorce, custody of her children, or her right to property. They want a woman to remain silent. Courts function in this insensitive way to ensure women are discouraged from coming here."
- "Women as clients or lawyers are treated as a lower species."
- "It's not only difficult, but impossible for a woman to move confidently in the courts. She feels scared, nervous, alone. Her stories of the abuse she went through fall on deaf ears. She is like a kite whose string has been cut, going wherever the wind takes her."

A few women lawyers opined that the attitude of the court was kind, professional or depended on how strong the lawyer was. One felt that it had improved because of the special attention paid by NGOs and the government to such cases. Yet another felt that though males were sympathetic when women had undergone violence, no one had the courage to condemn the person responsible for it.

14. Do women lawyers feel the court in which they function is accessible to women who experience violence?

Almost 55% of the women lawyers felt that the courts in which they functioned were not accessible to women who experience violence; about 27% felt they were, while the others did not respond to this question.

Among those who answered affirmatively, the question was mostly taken literally and it was reiterated that women could approach the courts, particularly when lawyers could guide them to the appropriate forum or court.

The reasons given for non-accessibility were varied. These included:

- A system which generates fear in women
- The hardship caused to women through long delays in cases
- The insecure and unsympathetic court environment,
- The insulting / insensitive behaviour and attitudes towards women who come to court,
- The outrageous form of cross-examination, particularly in rape cases,
- Discriminatory laws.

The fact that most women lack confidence because they are uninformed about the law and their rights, further prevents them from accessing the legal system.

The overall environment and gender attitudes were foremost among the reasons why women lawyers felt the courts were inaccessible. A few women felt that the courts functioned in this way to discourage women victims from coming there to raise issues, and their stories and pleas fell on deaf ears in the case of both male lawyers and judges. One woman lawyer said that in cases of violence against women, where a lot depended on evidence and reports, evidence and papers disappeared from labs, record rooms and police stations; and the courtroom environment was not conducive to a woman explaining the nature of her problems. She concluded that here in the courts, 'you do not need guts, you need to be made of stone.' Another stated that families themselves preferred that their daughters not come there, whether as lawyers or victims, since the whole system was against women.

Some other statements in this regard follow

- "No-one in their right mind would come here the way the situation is."
- "One out of a thousand who need to come would come here."
- "Women come to the courts as a last resort when all other options have been exhausted. The court environment is dirty, the people who come here are dirty, and the laws and judges are discriminatory and insensitive. The environment is not fit for any woman, I don't know how we survive."

15. Do women lawyers ever experience stereotyped expectations of their work because they are women?

Almost 64% of the women lawyers experienced stereotyped expectations of their work. Starting with attitudes about their entering the legal profession, the expectations relate both to the clientele and the nature of work, extending to stereotyped expectations about their behaviour as well.

A substantial number of women lawyers were told by lawyers and court personnel that this was not the right profession for them, being too tough for women generally and 'not meant for nice girls like them.' Women are, therefore, expected and advised to quit and move into a field 'more suitable for them.' They are also considered incompetent or incapable of handling the work. As one said: "They feel and expect we don't know anything," another added, "They take it for granted that women cannot practice law." This often results in seniors giving them the worst cases. The feeling extends to clients also or is conveyed to them by male lawyers. One woman stated that she had to prove herself, since her clients felt she might not be able to defend their cases. A number of them felt they were treated non-seriously, a common view being that they were not likely to take it (Law) up as a permanent profession but were merely using it for passing the time. Some also felt that when they did do well in the profession, they were harassed.

Another expectation is that women should only take up women's cases, eyebrows being raised and comments made even by judges when they found them representing men in some cases. While women lawyers felt they were in a better position to understand women's problems, particularly in family cases, this did not mean these were the only cases they could handle. Along with this, was the expectation that women would only take up family or civil cases, or do chamber work. While commercial law was not considered women's work, what particularly brought forth disapproval and shock was when women went into the field of criminal law, an area generally considered totally inappropriate for women.

And, finally, there is an expectation that women should act and behave in accordance with conventional notions of female behaviour – fragile, helpless, and unable to exert themselves too much. They are also expected to dress and behave conservatively; any non-conformist or non-conventional behaviour leading to gossip or scandals about them. Conversely, they are also only accepted when they do not conform. According to one response, “In the case of a female lawyer, firstly she has to prove that she is not a female, and secondly, that she is not a stereotyped one.”

16. Has the fact that they are women been an integral factor for the women who come to them vis-à-vis issues of violence against themselves?

More than 85% of the women lawyers felt that their gender was a crucial factor in the cases of women who came to them in matters of violence against themselves. Most felt that they were more easily able to understand women’s problems and were generally more sensitive to them, particularly in cases of sexual violence and matrimonial issues. They also felt that women clients were more comfortable and relaxed with female lawyers, that they could open up more easily and feel less embarrassed discussing personal matters, and could communicate better with them. One lawyer mentioned that they sometimes also examine the female client’s body to see the nature of the injury, as this gave them the confidence to argue the case more forcefully – this examination could only be done by women lawyers. However, as one woman lawyer said, “I had to work very hard at it to make them realise I am with them and that I can help, because they also feel that being a woman, I cannot fight for them.”

17. Do women lawyers feel that they need gender-sensitive training on issues of violence against women?

- “No, because if there is violence against women, there is also violence against men. What will you say about that? Why do you make a distinction between men and women? Why don’t you think they are equal? We must do something to raise their status, instead of putting these questions to discriminate against them and make them more weak.”
- “No, never. I give you correct answers but I have questions for you. Why have you made women so weak by putting these foolish questions? Don’t discriminate between them and males.”

Two women lawyers also returned the questionnaire, stating:

- “What silly questions. I am satisfied in this atmosphere and I have no difficulty, so I don’t want to answer these silly questions.”
- “All these questions are senseless, we don’t want to answer them. Being women we do not feel any problem. We are given more respect than male lawyers.”

About 78% of the respondents felt that women lawyers need gender-sensitive training on issues of violence against women. One reason given was that since women lawyers were a part of the same society and subject to many of the same social biases, their attitudes towards women victims of violence were often as callous as those of their men colleagues. And, like them, they also tended to treat violence against women as a routine matter, rather than considering them as victims of abuse. It was also stated that they needed far greater awareness of women's perspectives, as well as conceptual clarity about many issues. For this, it was suggested that they needed to attend workshops where there was open discussion on issues of women's equality and rights, gender violence, marital rape, sexual harassment etc. It was also felt that this training was needed for women and men, lawyers and judges.

One respondent felt that women lawyers did not need training, but needed to give it to others, another felt that they automatically got it through their cases. Some of them stated emphatically that no training was required. Some responses have been reproduced above to show how societal values get internalised in both men and women, as well as the insecurity, which leads women to totally deny any form of discrimination or violence in their lives. These in themselves indicate the urgent need for women's sensitisation to gender issues.



V COURTROOM WATCH SUMMARY

The objective of the courtroom watch process was to personally observe the court environment and see how women were treated in the courtroom, to assess how conducive the atmosphere was to women who approached the courts or were involved in cases. The purpose was also to assess the conduct of judges, court personnel and lawyers, with a view to understanding what it must be like for a woman coming to court in a violence-related case, as well as to gauge prevalent gender biases and their impact on the dispensation of justice to women.

This process was undertaken after the surveys with women victims, litigants, and lawyers had been completed. A number of observations had already been made in these exercises about the court environment, treatment of women and conduct of those involved in the legal system. The personal watch, therefore, was also able to confirm a number of observations made by other groups, and identify some other perspectives relevant to the following section on judgements.

Because of the limitations to how much one researcher could undertake, the courtroom watch process provides:

- a. General observations relating to some district courts;
- b. Observations relating to the family courts in one city; and
- c. Observations relating to the latter part of a trial for attempted rape.

Since the court watch process was limited to about ten-twelve days generally (involving visits to meet female lawyers and clients, observe the family courts and examine records) and about four days in connection with the trial, it does not in any way claim to reflect the complete picture of the courtroom situation in Pakistan, or even of the specific courts observed. But it does provide a poignant glimpse into the kind of climate that women enter to obtain justice.

a. General Observations

Three district courts were visited during the course of this study. All of them were located in fairly central and crowded sections of the respective cities. Two of them had fairly old and dilapidated buildings and were quite dirty and badly maintained, while one had comparatively newer buildings and was relatively better maintained.

All three courts have covered outdoor pavilions/large shed-type structures, where lawyers have their benches, tables and signboards, and where they meet their clients. In one district court, these are covered with a cemented roof; another has a tin-covered roof. In the one that the researcher visited most frequently, the pavilion area was filthy and disorganised, and beggars and hawkers were a constant source of disturbance. The benches were closely adjacent to each other, leaving no room for privacy. Very few of the signboards belonged to women.

All the court premises were crowded, primarily and overwhelmingly with men from various professions – lawyers, vendors, court personnel, policemen, beggars and members of the public. There were hardly any women to be seen generally, except for a few women lawyers, some clients and, occasionally, a few policewomen. However, the situation differed somewhat in the three cities according to the number of women lawyers working there. One city had more than a hundred women lawyers working there, another had about forty registered women lawyers, while the third had about twenty women lawyers. These were all large cities, and therefore not at all reflective of the situation in the other district courts in Pakistan where, except for a few cities, there would be far fewer women. Relatively more women, as well as a number of children, were present in the vicinity of the family and guardian courts in one district court, including some clients, their relatives and offspring. A few more female lawyers were also seen here, though male lawyers still vastly outnumbered them, and many courts only had men in them.

The courtrooms by and large were small, shabby and dingy, except for a few courtrooms belonging to more senior members of the judiciary. All the courtrooms were crowded with men, and became more crowded during the course of the day. Courtroom personnel, by and large, looked fairly indifferent and bored, the readers and stenographers only becoming more alert when the judges were in court. Their communication with the public was minimal, indifferent, and sometimes rude. Responses to inquiries were mostly brief and given indifferently, almost reluctantly. Readers were seemingly the most important persons in the courtroom, given deference equal to (if not more than) the judge. In this capacity, they were cordial to just a few lawyers and others.

Walking through the courts as a woman was not a pleasant experience. The crowded atmosphere and the number of men was daunting and intimidating. There were hardly any women to be seen, nor did there seem to be a designated place in any of the courts where inquiries could be made. The first horrible feeling was one of being stared at, not just by members of the public, but mostly by the male lawyers. The staring was done blatantly, without embarrassment on their part. Inquiries about courtrooms and lawyers were responded to politely enough, but the curiosity about the researcher was evident. An acutely uncomfortable feeling was that everyone seemed to come very close to talk to you. Glances and smiles were exchanged amongst male lawyers, and remarks made to each other, when women lawyers or other relatively young or well-dressed women passed by.

The attitude and appearance of women lawyers was different in each city, perhaps partially due to the general atmosphere of the city. In one district court it was noticeable that almost all the women lawyers seemed to have covered themselves as thoroughly as possible, including *dupattas* on their heads and even dark glasses, apparently to keep as dull and low a profile as possible. In another, women apparently did not feel so compelled: heads were not covered as a rule, and women occasionally wore light makeup or jewellery, though they appeared more self-conscious. In the third, which had the most women, women lawyers seemed to move about more confidently. In all the courts, foul abuses directly relating to women or their anatomy, were common and audible in normal conversation between men, making one wince with disgust and embarrassment. Some men, as casually as they used obscene language, were equally casual about touching or rubbing their private parts in public.

b. Observations relating to family courts

In the one district court visited for this purpose, there were about 9-10 family courts, which were also performing other functions. About 30-40 cases come up every day in the courts, and the number can go up to about 100 including other matters. Clients come in the morning and wait for hours for their cases to be called, with children accompanying a number of them. Frequent adjournments, delays and a mechanical hearing of cases is inevitable under the circumstances.

The first impression of the family courts was that they were small and congested. There were a large number of men in the courts, with some courts not having any females in them. There was no separate area designated for the family courts, all of them being located among the other courtrooms, thus there was no element of privacy for the women who come there. There were no female personnel in the courts; therefore all inquiries had to be made to the male staff who were not necessarily unkind, merely disinterested and short in their responses. Few women approached the reader to ask about their cases; mostly their male relatives or lawyers/clerks did this. The tone and attitude of the readers was casual to the point of being rude, revealing minimal information. Most women prefer to go to the courts with their lawyers, even if other relatives accompany them.

There were no basic facilities available, including seating space, toilets or drinking water. Since there is usually a long wait involved, this can be particularly hard on the children and infants accompanying their mothers. Many women sit and wait at the open pavilions on the lawyers' benches. This is also where many of them meet their lawyers, where once again there is total congestion and complete lack of privacy.

The judges in the family courts displayed the same degree of aloofness and lack of interest as was apparent in other courts. Discussions with lawyers indicated that judges, as well as the public, showed far greater interest in a case if the involved woman belonged to a more well-to-do family or was good-looking. Family cases are rarely heard in the chambers, thus all personal matters are discussed in open court in the presence of an audience that is primarily male.

Most complaints were related to delays, lack of facilities and the attitude of judges. Dissolution of marriage cases take about one year, due to delaying tactics by the husband's lawyer, and maintenance cases by wives are invariably retaliated against with child custody cases by the husbands. Two lawyers stated that fathers, who are given time to visit their children, deliberately delay their visits for hours to harass their wives. As a result, children and women have to wait for hours in a most uncomfortable environment; and the judge does nothing even after this issue has been brought to his notice.

c. Trial for attempted rape

The proceedings of an attempted rape case were attended in the court of the Sessions Court in a major city during July 1998. The courtroom was reasonably clean, but a little shabby and neglected. The portion where the judge sat was well lit, while the rest of the room was dimly lit and depressing. It was hot and humid, with two fans over the area where the judge sat and one for the rest of the courtroom.

Men overwhelmingly crowded the room, whether policemen, court personnel, lawyers or the public. By 8 a.m. there were 22 men in the courtroom and 3 women, including the researcher. More male lawyers kept entering as time passed, and the courtroom filled up even more. A little later, 5 policemen and a lady constable entered. By about 8.30 a.m., there were more than 30 men and 4 women, comprising a lawyer, a client, a policewoman and the researcher. At one stage, later in the day, the researcher was the only female among 16 men. At times, the courtroom became so crowded that there was no place to move around. The atmosphere was tense, and the uneasy silence was only broken by the clatter of the typewriter and the voice of the man who called out the cases.

The researcher wore a uniform and accompanied a male lawyer, to look like a lawyer and merge with the atmosphere without being conspicuous, as well as to be able to take down notes, since she had been told that this might otherwise cause a negative reaction and suspicion. However, her presence aroused immediate curiosity among the male lawyers who asked each other who she was, whispered remarks to each other about her, tried to read what she was writing, stared at her constantly and tried to meet her eye. As one female lawyer entered the courtroom, all the male lawyers started staring at her, some whispered in each other's ears. However, when another entered with her head covered, no one took much notice. As the first female lawyer was leaving, one male lawyer jumped to hand her bag to her, and all of them looked at each other and smiled as she left.

During the course of these four days in the courtroom, the researcher was touched or brushed against on three different occasions: by a male lawyer, who passed too close to her, his coat brushing her head; a policeman, whose body brushed her shoulder while passing by her; and another very young male who sat next to her and who, accidentally or otherwise, touched her leg with his shoe. Moving through the court, there was generally a tendency by the men not to give way, but to deliberately keep blocking it, leaving the female with the choice of either brushing past or speaking to them to tell them to make way.

The crowded courtroom, the staring and brushing, the tense atmosphere and the number of men made the female researcher feel uncomfortable and overwhelmed, giving her a strong feel of the fear, insecurity, aloneness and helplessness women must feel when coming to the courtroom for the first time.

The case: The case was a criminal trial under sections 354 and 452 of the PPC and section 18 of the Hudood (Offence of Zina Ordinance). It was alleged that a deliveryman for a courier company had trespassed into the house of a 28-year-old Chinese woman and attempted to rape her. The evidence stage had been completed during April 1997, but the arguments had been delayed because the Sessions Judge had changed during this period, and the new judge remained unwell for quite some time. The researcher attended the proceedings at the stage of arguments by the defence lawyer, between 14-18th July 1998.

The Sessions Judge was a male; about 59 years of age, and due to retire in one year. He was well dressed, had a white beard, no moustache and a mehrab or prayer mark on his forehead. He was referred to as a "maulvi" by everyone, and a "judicial terror" by a member of the staff. The judge generally had an aloof attitude in all his cases, and maintained no eye contact with anyone, often keeping his face covered with his hand. He barely spoke, looking down at his papers most of the time. Actually, with 31 cases on his list for the day, including arguments in the main case, he just had an average of about two minutes per case, and could not have said much anyway. He looked particularly expressionless when younger lawyers presented their cases, often interrupting their arguments to give them a new date, sometimes giving them a date even before they reached him. He had a perpetual frown, seemed unapproachable, spoke softly but in a tense manner, and had an aura that did not seem to encourage anyone to speak freely.

The reader was a male in his mid-40's, and looked bored and uninterested in his work. Remaining generally aloof, he only greeted people he knew quite well, and was quite rude and short in his responses when asked a question by someone. The stenographer was a male, probably in his mid-30's, with a pleasant personality. The prosecution lawyer was a woman in her forties, while the defence lawyer was a male in his thirties. There were cordial and courteous relations between the prosecution and defence lawyers, but they remained more formal with each other in front of the judge.

Although the evidence stage had already taken place, some reconstruction of the cross-examination has been possible through conversations with the defence lawyer, some copies of court records, and references to the cross-examination in the judgement. Four witnesses had appeared for the prosecution: the Chinese woman, her husband and two police officers.

The cross-examination had taken place with the previous Sessions Judge in open court. The defence lawyer proudly announced to the researcher that he had kept the Chinese girl standing for four days while he asked her all sorts of questions. He also told her that the earlier judge was very nice and allowed all sorts of questions, and that he had really enjoyed himself. As the records indicate, the lawyer conducted a lengthy cross-

examination over a number of days. Though the defence plea was that of mistaken identity on the part of the accused, the questions in cross-examination often seemed to suggest willingness on the part of the woman and, according to the judgement, went so far as to suggest that her husband was impotent. It also frequently dwelt on the details of the act alleged. The cross-examination, therefore, seemed to have followed the classic pattern of defence in cases of this nature: attempts to trip up the witness on other trivial details, asking a lot of personally embarrassing questions about details of the encounter, pointing out the lack of injuries on the witness's body, and suggesting willingness. It also indicates the kind of leeway allowed to defence lawyers by judges conducting the case. There is also no indication that the prosecution objected at any stage to the line of questioning or the specific questions being asked.

The Chinese woman was not present at the arguments stage, which was conducted in the judge's chambers. The arguments of the defence went on over a period of four days. The prosecution lawyer was not present most of the time while the defence was presenting arguments, and did not appear at all at two hearings and barely spoke when she was present. Thus, the prosecution lawyer remained oblivious of or unconcerned about the arguments being presented by the defence, and gave no counter-arguments, leaving this task to the judge. The defence lawyer told the researcher he would have said much more about the incident, but was embarrassed because of her presence.

The defence lawyer, in his arguments, made a number of submissions. He attacked the moral character of the woman by suggesting that foreigners had lower moral standards; and reading out passages from her testimony stating "he tried to kiss me," "touch my breast" and "unbutton my blouse," commented that no self-respecting woman would say these things. He suggested consent or willingness on the part of the woman by pointing out that she had, on an earlier occasion, given the courier a cup of tea; suggesting that her husband was impotent because she was issueless; referring to the fact that she had no injuries on her body, and that her blouse was not torn, merely pulled at the seams. He argued that even if her story was true, it did not amount to attempted rape, merely an offence under section 354 PPC for which the punishment was two years, and the accused had already been in prison for one and a half years. And, finally, he pointed out a number of trivial discrepancies to prove that it was a concocted story.

Even before the defence arguments had begun, the judge informed the lawyer that he had already decided the matter. Seeming uninterested, he rarely spoke or asked questions during the arguments. At one stage, when the defence lawyer was presenting arguments relating to the moral character of the woman and suggesting that no respectable woman would come to court and shame herself, the judge intervened to state that he agreed that no woman would take this stigma on herself. At another stage, he told the lawyer that whatever he (the lawyer) said, he (the judge) would not enter into any controversy with him, but that he himself was not convinced. He objected to the line of questioning and the arguments that the lawyer raised with regard to the impotence of the husband, at which stage the lawyer told him that the earlier judge had allowed him to ask any questions he wanted. And when the lawyer began to argue that this did not amount to attempted rape,

the judge told him that his arguments should support the defence story of the accused not being present, and not go beyond that. The defence lawyer came away very pleased, informing the researcher that he was expecting a complete acquittal.

The judgement was announced on 24th July 1998. It (a) pointed out the number of occasions on which the woman was subjected to cross-examination; (b) observed that the woman had given the minutest details and was fully supported by her husband, and that there was no reason to disbelieve them since they had no motive to falsely implicate the accused; (c) held that it was "illogical, improbable and unnatural" for a woman to take on such a stigma if nothing of this nature had happened; (d) stated that the defence of mistaken identity and substitution was untrustworthy and did not stand to reason, since the occurrence took place in broad daylight; (e) stated that he failed to understand why the scandalous question about the husband's impotence was put forward by the defence and what they hoped to derive from it, since it did not give the accused the right to rape the wife; (f) found that the minor discrepancies in the statements show that the witnesses were natural and not giving computerised statements; and (g) that the prosecution evidence led to no other conclusion except the defence of the accused. Making references to various judgements, the Sessions Judge went on to find that the acts committed did amount to attempted rape and sentenced the accused to 10 years R.I. and 30 stripes under sections 18 and 10 (3) of the Hudood (Zina) Ordinance, as well as 7 years under section 450 PPC, the sentences to run concurrently.

The role of the prosecution lawyer during the period of observation was unfortunate, nor does it appear from the records that she played a more alert or responsible role during the evidence stage. She appears to have made no objections during the evidence stage, was absent on a number of occasions during defence arguments and was, therefore, unaware of the points being raised; she also made no counter-arguments. Displaying the irresponsible and unconcerned attitude of prosecution lawyers in many cases of this nature, this also indicates that women lawyers are not necessarily always more sensitive to or concerned about issues of violence against women.

The role of the defence lawyer also followed the classic pattern of attacking the woman's moral character, implying consent on her part, and arguing that the acts alleged did not amount to attempted rape. In addition, typical tactics were deliberately employed to harass and intimidate the woman e.g. cross-examining her for a number of days, putting scandalous questions to her, and dwelling on embarrassing details of the encounter. Even more disturbing was the pleasure the lawyer personally seemed to derive from doing all this. However, perhaps judging the judge by his own standards, he obviously totally misread the judge's interventions during his arguments.

The role of the previous Sessions Judge is also questionable in that he allowed scandalous questions to be asked of the woman and permitted the cross-examination to continue unnecessarily over a number of days. Tacitly, therefore, he condoned the harassment of the woman in open court, in an environment already described. The current Sessions Judge, who wrote the judgement, must be given credit for pointing out the number of

days the woman was questioned, as well as the unnecessary scandalous questions put to her; for clearly stating that no woman would undergo this unless she had suffered the offence; and for not allowing suggestions about character, lack of injuries etc. to influence him. He must also be commended for not allowing the defence to argue points other than those taken in the defence plea – a leeway often allowed to the defence and accepted by the judge in similar cases. However, the judge should have insisted on the presence of the prosecution lawyer during the defence arguments. And, while his judgement cannot be faulted in this particular case, it must be pointed out that an aloof and disinterested exterior can often result in discouraging women who come to court.

The case has now gone to the Federal Shariat Court.

.....VI JUDICIAL DECISIONS

Earlier sections of this report frequently refer to judicial attitudes and indicate a fairly widespread perception among women involved with the legal system that judges, being part of the system, are subject to the same gender biases that are prevalent in society. They refer to their stereotyped expectations of women, their disparate treatment of women in terms of their fundamental rights, their disapproval of women who violate social norms, their attitudes in cases of violence against women, and their lack of understanding of the situations and circumstances of women's lives. The experiences of women who are more directly involved, show that these biases tend to get reflected not only in their conduct in the courtroom, but also in their judicial decisions. Consequently, a legal research of judgements was undertaken to see how far judges are able to put these biases, myths and perceptions aside while they perform their responsibility of rendering justice, how systematically these impede women's access to justice and whether there appear to be any positive or negative changes in judicial attitudes over the years.

The types of cases reviewed were those involving some form of violence against women. These included cases of:

- Physical violence against women, including murder, assault, injury etc., particularly cases involving 'honour' and provocation, whether 'grave and sudden' or otherwise.
- Cases of sexual violence against women and minor girls, including rape (*zina-bil-jabr*), attempts to rape, outraging modesty etc.
- Cases of women marrying of their own choice, also involving issues of fundamental rights, and often entailing charges of abduction and adultery/fornication (*zina*).
- Reference to cases of *zina*, in terms of the law and its use in harassing and controlling women.

The review extended to judgements of the Supreme Court, the Federal Shariat Court, the Lahore High Court and the Rawalpindi District Courts, but can only be considered a preliminary study, since a comprehensive one with complete analysis would entail much more time and work. The judgements were obtained from the Supreme Court Monthly Review (SCMR) from 1984-97; Pakistan Law Digest (PLD) and Pakistan Law Journal (PLJ) (Supreme Court) from 1988-1997; PLD (FSC) from 1980-1997; PLJ (FSC) from 1982-1997; the Pakistan Criminal Law Journal (PCr.LJ) from 1983-97; PLD (Lahore) from 1979-98, PLJ (Lahore) from 1984-1998, and directly, from the District Court Rawalpindi from 1997-98.

A. GRAVE AND SUDDEN PROVOCATION/'HONOUR' KILLINGS

The Pakistan Penal Code (PPC), in its original form, contained provisions whereby causing the death of a person due to grave and sudden provocation was defined as culpable homicide not amounting to murder. The relevant provision, contained in Exception 1 to Section 300 PPC stated: "Culpable homicide is not murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

The law thus empowered the courts to liberally interpret the provisions of these sections in terms of offences relating to women. However, in 1991, the Criminal Law (Fourth Amendment) (Qisas and Diyat) Ordinance, declared as being based on Islamic law, did away with the provisions relating to 'grave and sudden provocation.' The amendment provided for murder (*Qatl-i-Amd*) to be punished with death as retaliation (*Qisas*), with death or life imprisonment (*Taazir*) where the evidentiary requirements of *Qisas* were not met, and provided for imprisonment for up to 25 years where the punishment of *Qisas* was not applicable. This change caused great consternation and palpable concern amongst the superior judiciary, which then directed its energies into re-creating the law of grave and sudden provocation within the new provisions.

In *Ghulam Yaseen and others vs. The State* (PLD 1994 Lahore 392), the three accused were charged with the murder of a man they suspected of having illicit relations with Mst. Bakho, sister and niece of the accused. The trial court convicted all three accused under Section 302 (b)(c) PPC and sentenced them to 25 years RI each. The High Court felt that the question that emerged for resolution was the determination of the offence that had been committed by the appellants. Referring to the newly added section in the PPC, the court noted that the provisions did not make any allowance for *Qatl* committed under *ghairat* (honour). However, holding that the courts were to be guided by the injunctions of Islam in the interpretation of the application of the provisions of the chapter and referring to various *ahadeeth*, the court stated that *Qatl* committed on account of *ghairat* was obviously not the same thing as *Qatl-e-Amd* (murder) pure and simple, and people deserved concession. The least that could be done was to convict such persons under clause (c) of Section 302 PPC. The conviction was accordingly converted, and – holding that under the old law such culpable homicides were termed as homicides committed under grave and sudden provocation and no such convict was ever punished with 25 years – the sentence of the accused was reduced to 5 years each.

In *Abdul Haque vs. The State and another* (1996 SCMR 1566), the Supreme Court felt that the plea of diminished responsibility under grave and sudden provocation had been well-recognised in the sub-continent for more than a hundred years and there was good reason that a person who committed culpable homicide out of compulsion, ethical or otherwise, not brought about by himself, could not be placed on the same footing as a cold-blooded murderer or hired assassin. With similar observations in other cases, the law of grave and sudden provocation remained.

The mitigation allowed in cases of grave and sudden provocation has been criticised by women's rights activists as a provision that condones violence against women; allows murderers to get off with light sentences, and sanctifies the criminal as 'honourable.' Its existence in a patriarchal society is particularly dangerous for women, allowing for gender biases that have serious implications for women and their right to life and security.

What is the judicial view of 'grave and sudden provocation' in the context of women?

Ordinarily, the plea of grave and sudden provocation is considered applicable to very close family members upon catching a person in the actual act of illicit sex. However, this has undergone wide expansion over the years.

In the case of *Ghulam Mustafa and another vs. The State* (1983 PCr.LJ 1712, Lahore), Javed, who killed his mother's husband, had his sentence of life imprisonment reduced to 5 years because the High Court felt it was quite natural for him to be furious, lose control and kill his mother's 'lover.'

In *Mohd. Yaqub alias Ayyub vs. The State* (PLD 1984 Lahore 358), the sentence of a brother who stated that he had killed a man and tried to kill his sister also because he saw them coming out on different sides from a sugarcane field was reduced to 5 years because the High Court felt the circumstances were sufficient to raise a genuine suspicion in his mind and it was a case of grave and sudden provocation. It also stated that no hard and fast rules could be laid down, and that the age, environment, occupation and individual character had to be kept in mind while determining the matter.

In the case of *Mohd. Rafiq and others vs. The State* (PLD 1993 Lahore 848), the High Court extended the application of the plea of grave and sudden provocation to everyone, stating: "Consequently, when a man who is otherwise stranger to a woman, sees her in the arms of another and loses control over the situation would be entitled to get benefit of this exception in a particular society where social norms are observed strictly everywhere with no exception."

In *Riaz vs. The State* (1997 PCr.LJ 22 Lahore), the High Court held sexual intercourse was not the only cause to provoke a brother to cause culpable homicide in our society and that in a rural society family honour was of prime importance.

In *Akbar vs. The State* (1997 PCr.LJ 1887 Lahore), the court observed that there was no way to measure the degree of provocation and how long it continued, since people's minds react in different ways. According to the court, illicit relationships in a Muslim society were not acceptable and the actions of a 'ghairatmand' (honourable) father/brother were but natural and needed proper realisation by the courts.

And in *Mohd. Ayub vs. The State* (1997 PCr.LJ 2056 Lahore), where the High Court reduced the sentence of a husband to five years for killing his wife out of 'ghairat,' it observed that the accused was an uneducated young man belonging to a tribe and an area where no loose conduct of a female was tolerated and family honour was jealously guarded; that he was also of an age group (19-20) where tolerance was nonexistent and rashness was the order of the day irrespective of ensuing consequences, and that if he remained in jail a long time he was likely to come out as a hardened criminal, which was not desirable.

The messages emerging out of these decisions are very clear. A man can get away with minimal punishment on the plea of grave and sudden provocation:

- even where the relationship of the persons involved is licit, if he gets furious enough with it;
- even when they have done nothing suspicious, or have done something which he subjectively considers suspicious;
- if his age, environment, occupation and individual character so impel him;
- even if the woman is a total stranger;
- even if the murder occurs long after the provocation, because there is no way of measuring the degree of provocation or knowing how long it continues;
- if he is 'ghairatmand;'
- if he is uneducated;
- if he belongs to a tribe or an area where a woman's loose conduct is not tolerated;
- if he is intolerant and rash, and does not worry about consequences; and,
- if he is likely to come out of jail a hardened criminal if he stays there too long.

The alacrity of the courts in accepting any justification in cases of grave and sudden provocation is a clear indication of their own gender biases. For example, where a son killed his step-father, the use of the words 'mother's lover' instead of 'husband' is indicative of the court's own bias about women who marry for a second time of their own choice, and provided the justification to her son for losing control. And where a husband brutally murdered his wife, there was concern about his youth, although the wife he killed must have been even younger than him. Killing of women for 'honour' is clearly viewed as a natural reaction for good Muslim men, calling not just for leniency, but also for respect. Basically, then, the courts have given men a license to murder women within and outside their families whenever they so wish, according to social norms or personal character and circumstances.

Some other interesting findings

In cases where the prosecution gives suspicion of illicit relations as the motive, courts often tend to immediately accept the defence version entirely if claims are made about catching the couple in the act of sexual intercourse.

In the case of *Mohd. Sharif vs. The State* (PLD 1987 Lahore 312), where a husband killed his wife in their own house in the early hours of the morning, the appellant denied guilt and in his statement under Section 342 CRPC, stated that he had gone out to ease himself and when he returned, he saw his wife and one Anwar Fauji embracing each other inside the room. Anwar Fauji scaled the wall and left. The appellant admonished his wife, whereupon she abused him and threatened to carry on her illicit relations, upon which he lost his self-control and throttled her to death. The appellate court fully accepted the defence version, further observing,

The appellant's admonishing his wife on her paramour's departure did not minimise the gravity of the situation and the provocation offered. In such a situation even if the wife begs her husband for a pardon and asks for mercy, yet if he kills her, his conduct would still be mitigated and he would not be guilty of murder, because it is the gravity of the provocation which is the criterion to determine the conduct of the accused who loses self-control and not the immediate subsequent conduct of the person who offered the provocation. But in this case, the wife's conduct immediately after the departure of her paramour added fuel to the fire, because on reprimand, she shamelessly threatened to carry on with her lover and also abused her husband, as if he was an intruder. This was the greatest provocation offered to the appellant who lost self-control and killed her.

The High Court, therefore, altered the conviction to one under 304 Part 1 and reduced the sentence to one already undergone by the appellant.

The judgement is one of the most blatant examples of judicial gender bias. The court had no hesitation in totally believing the statement of the accused; a statement that was not even subjected to cross-examination. The absurdity of the defence version – that the wife was entertaining another man in the house in the very short period that her husband had gone to ease himself – did not seem to strike the court at all in its eagerness to condemn the murdered woman. The readiness to condone the criminal conduct of a husband and drastically mitigate his sentence merely on the allegation of immorality or bad character of a woman is apparent.

Sometimes, even when it is denied by the prosecution and there has been nothing brought on record to even indirectly support it, a mere claim is sufficient to make the defence version acceptable.

In 1987 SCMR 2045 (*Mohd. Abdullah vs. Rashid Shah and another*), where a man had been sentenced to life imprisonment for murdering his wife, the High Court converted his sentence to 5 years under Section 304 Part 1. The prosecution story was that Rashid had recently got married and was living as *khana damad*. He wanted his wife to go to his village with him and on her refusal he murdered her. Rashid's statement was that his wife would not have sexual intercourse with him since they got married and he therefore had a suspicion that she was a bad character and had illicit relations with one Shah Nawaz. When he told her she had to leave with him, she told him she would rather go with Shah Nawaz, upon which he lost his self control and killed her with hatchet blows. The Supreme Court did not find it a fit case for intervention.

Courts can even reinvent the whole story to justify a plea of grave and sudden provocation. In *Mohd. Jamil and others vs. The State* (1983 PCr.LJ 1365, Lahore), three accused persons had been charged with the double murder of Shahid and Nargis. The defence version was that they had caught both of them making love next to the kitchen in Nargis' house, and had picked up kitchen knives and killed them there under grave and sudden provocation. The proven reality was that they had been killed separately in their own houses, which was also the prosecution's story. The High Court, therefore, partly accepted the defence story. It stated that it was reasonably possible that when the accused caught them, Shahid tried to run away and was chased and killed in his own *baithak*. He raised an alarm upon which the witnesses came. The accused then rushed back to Nargis' house. The latter was still there, thinking they might not come back, but they did, and caused injuries resulting in murder. Through this totally concocted story, the life sentence of the accused was reduced to 5 years under 304 Part 1.

Yet another way of mitigating sentences is by finding that the motive or events were 'shrouded in mystery.' This is quite a favourite expression with the courts. In the case of *Mohd. Nawaz vs. The State* (1989 SCMR 124), Nawaz had been accused of brutally murdering his sister and niece with knife blows. It was a daylight murder with a single accused and eyewitnesses, in which the accused had been almost caught red-handed. Nawaz had totally denied the charge, but stated that after her husband's death, his sister and niece started leading an immoral life. The trial court sentenced him to death, which was confirmed by the High Court. The Supreme Court came to the conclusion that keeping in view the close relationship, the motive alleged was not strong enough to commit two murders. Noting that the appellant had raised the plea of immoral conduct and protested his innocence, and also noting that there were innumerable injuries on the dead bodies, the court stated that it appeared that the appellant for whatever motive, did so at a time when he was highly charged with the emotion of anger. The fact that no cuts were found on the *shalwar* of the niece although she had injuries on her legs, according to the court, "could only lead to an argument that she was not wearing this or any *shalwar* at the time of occurrence." The fact that the results of vaginal swabs were not produced "would at least raise a serious suspicion with regard to clean conduct of the prosecution case." And one independent witness admitted that they had the notoriety of immorality.

The Supreme Court held that while it was unable to give a definite finding that the appellant saw something "which provoked him suddenly and gravely, but it would be possible to reach the reasonable conclusion that his suspicion about the immoral conduct of the deceased lurking in the mind of the appellant was not unfounded. However, as the reputation of an unmarried girl is involved, after death, we would in such a case refrain from making any further comment regarding her character."

Another hypothesis, according to the Supreme Court, was that the prosecution motive was too weak for the murder of two such close relatives, thus it became a case in which the alleged motive – having not stood the test of scrutiny – was treated as a case where the motive remained 'shrouded in mystery.' In either case, the accused was entitled to a reduction of sentence, and the death sentence was changed to life imprisonment.

On occasion, in their willingness to believe the worst where women are concerned and eagerness to allow the accused the benefit of the plea of grave and sudden provocation, courts do not even make the effort to explain their decision in accordance with the facts. In *Mohd. Sharif vs. The State* (1983 PCr.LJ 1817 Lahore), Sharif killed Nasim Akhtar with a knife and when Siddiq tried to save her, he gave him two knife blows also. The prosecution story was that he killed Nasim, his former wife, out of annoyance because she was about to get married again. The accused claimed that she was still his wife and he killed her when he saw her coming out of a *haveli* with a stranger. The High Court rejected the prosecution story and felt that the accused had seen something unusual resulting in his losing self-control and attacking his wife, which fitted in with the defence inference. The sentence was reduced to 3 years. However, it did not give any explanation for the injuries to Siddiq, who supported the prosecution version, though it allowed him compensation.

Courts appear to bend over backwards to allow men the plea of grave and sudden provocation. If the accused sees the couple in the act of sexual intercourse, he is given benefit because of the grave and sudden provocation he suffers; if he sees something which he considers suspicious, the circumstances are considered sufficient to give him the benefit; and if he comes up with nothing to justify the murder in the eyes of the court, then it becomes a case 'shrouded in mystery' and he becomes entitled to reduction in sentence.

Courts also tend to see a large number of injuries on the dead bodies as corroboration of the defence version of grave and sudden provocation, since they suggest a loss of control. In *Fazal Din vs. The State* (1983 PCr.LJ 92 Lahore), where the accused claimed that he had found the deceased in a compromising position with his sister and killed him, the High Court held that the number of injuries showed that the same were caused in a fit of frenzy and had it been merely suspicion, he would have avenged the family honour with just a few blows. The conviction was converted to one under 304 Part I and the accused sentenced to five years. In *Mohd. Yaqub alias Ayub vs. The State* (PLD 1984 Lahore 358) the court felt that 11 stab wounds indicated the state of mind of the accused and showed that it was a case of grave and sudden provocation. On the other hand, single injuries are seen as showing lack of premeditation or no intention to kill.

Even with the change of law, the sentences usually given for cases of grave and sudden provocation are insultingly light. In *Niamat Ali vs. Mohd. Yaqub and another* (1988 SCMR 62), the accused who had killed his wife, received a sentence of 2 years, and the Supreme Court held that no case was made out for interference. In *Mohd. Amin and others vs. The State* (1988 SCMR 249) where 16-17 year old Raj Bibi and Shaukat were done to death cruelly, the accused received 7 years. In *Zulfiqar vs. The State* (PLD 1997 Lahore 213), where Zulfiqar murdered his sister and her 'paramour,' The High Court held that the ends of justice would be met if the appellant was sentenced to the period of imprisonment already undergone by him. In *Walayat vs. The State* (1998 PCr.LJ 111 Lahore), where the accused had killed his sister-in-law, he was sentenced to 7 years. In *Mohd. Ishaque vs. The State* (1998 PCr.LJ 1110 Lahore), where the accused was alleged

to have killed a man on suspicion of illicit relations with his sister, and of killing his sister the next day, the High Court reduced his sentence to 5 years despite his total denial, convinced that he acted in *ghairat* and stating that a sentence of a few months should generally meet the ends of justice in most cases, even though he totally denied the killing.

However, there are occasionally some exceptions to the rule. In *Abdul Shakoor vs. The State* (1997 SCMR 601), Abdul Shakoor killed his wife Nargis with a knife and made a murderous assault on Abdul Rehman, his father-in-law. Nargis had been living with her parents for two years because of strained relations; Abdul Shakoor wanted to take her back but she was not willing to go with him, because of which he killed her. The appellant pleaded grave and sudden provocation, claiming that on the day of the occurrence, Mst. Nargis had gone to the field to meet her paramour Ali Asghar and when he saw them in an objectionable position, he got provoked and assaulted them. His death sentence confirmed, Abdul Shakoor came in appeal to the Supreme Court. His counsel contended that the appellant was entitled to the company of his wife, which had been denied to him for two years. He stated that the appellant went to the house of his father-in-law a few days before the occurrence, but his request was refused. This was followed by an exchange of hot words. It was urged that it was against this background that the appellant, a young man of 27/28 became desperate and took recourse in attacking his father-in-law and wife, which unfortunately proved fatal in her case. These were the extenuating circumstances that mitigated the gravity of the offence and would justify the lesser sentence. The Supreme Court found itself unable to accept this contention. It observed that there was nothing on record to indicate that the appellant had made any serious effort over the two years to bring her back through seeking intervention or any other means. He only went to his father-in-law's once and that too not in a very conciliatory mood, since it ended in an exchange of hot words. Thereafter he made a murderous assault causing 6 injuries to his father-in-law and killing his wife in cold blood. Not only that, he also tried to malign the deceased by attacking her moral character at the trial stage. For all these reasons, the Supreme Court did not feel he was entitled to any leniency and held that he had been rightly awarded the death sentence. The appeal was dismissed. The judgement clearly exposed the tactics usually employed by the defence in cases of such nature, and usually accepted by courts at some stage.

Courts sometimes make biased presumptions about women's character; even when there is nothing on the record to prove it. In *Mohd. Rafique vs. The State* (PLD 1981 Lahore 83), a murder case where the accused claimed that he had stabbed the deceased because he trespassed in his house at midnight to rape his wife, the trial court rejected the prosecution's story holding that "it was likely that the deceased had an affair with Mst. Zarina and had visited the house on an invitation from her."

Courts also sometimes make presumptions about men. In *Murid Hussain vs. The State* (NLR 1990 Criminal 41), it was alleged that the appellant had killed one Zafar Iqbal on his refusal to submit to sodomy, and afterwards dragged his own wife, Mst. Jindan Mai out of the house and murdered her to give the murder the colour of *kala-kali*. The appellant pleaded grave and sudden provocation, saying that he killed Zafar Iqbal and his

wife because he found them in a compromising position. The appellate court rejected the motive alleged, holding that there was nothing on record showing that the appellant had a "bad eye on the deceased" or that he had "a flair for boys." It noted, on the contrary, that the appellant was recently married and, therefore, the story appeared to be improbable. Thus, the court chose to deny the possibility of homosexual urges in a man recently married, but had no qualms in finding a recently married woman capable of extra-marital sex, even when dead and unable to defend herself. The fact that Zafar Iqbal was naked at the time of the post-mortem examination, was held to be supportive of the defence version, although it was more consistent with the prosecution version of attempted sodomy and, in fact, belied the defence version since Mst. Jindan's body was not naked.

Comments

The provision of grave and sudden provocation, whether written or read into the law, allows for the free expression of gender biases particularly prevalent in tribal and feudal societies, and has led to a practice where women themselves are murdered, and men are murdered on the declared or proven suspicion of 'illicit' relations with women, and these murders are increasingly viewed by courts as 'honour' killings. Case law in Pakistan is replete with examples where dead women have been condemned as immoral merely on the raising of a defence plea to that effect, where courts have extolled the virtue of 'ghairatmand' men who avenge family honour, where every leeway has been extended to condone these murders and exonerate the men who have committed them, where customary practices of men taking the law into their own hand have been actively encouraged, where the definition of 'grave and sudden provocation' has been extended to cover the most inexcusable offences, and where sentences have often been light enough to be laughable.

A common argument raised is that the concept of grave and sudden provocation has neither been limited to Pakistan, nor does it apply to women in particular. Firstly, the existence of bad law in other parts of the world is no justification for its continuance in Pakistan. Secondly, the reality is that in a patriarchal society, where women are largely regarded as property and their bodies as the repository of family honour, the use of the law and its interpretation would inevitably be heavily tilted against women. Nowhere do you hear of men or women killing men of their own family because of family honour or because their immoral conduct led to loss of control over the passions. This 'honourable' treatment is only reserved for wives, mothers, sisters, daughters and other female relatives, and sometimes even unrelated females. The lenient view taken by courts not only makes murder respectable and allows mitigation of sentences, it encourages people to give in to base instincts and take the law into their own hands – an attitude laws are intended to discourage, not corroborate. By doing so, the system condones customary practices like *karo kari*, encourages violence against women, holds women guilty without their being heard, and allows murder to go insufficiently punished. It has also led to an increase in the practice of accused persons using this as an excuse for murder, and often getting away with it. A crucial question is whether a woman's conduct, however immoral or opposed to social norms, justifies or mitigates what is, at the end of the day – murder.

In any event, the practice of condoning crimes of this nature is the acceptance of the base instinct of retribution and revenge, which the justice system should aim to discourage, not approve. And in patriarchal societies like ours, where women are considered both the property of the family and expendable, it is inevitably they who will bear the brunt of these cultural practices.

Mitigation in other cases

Mitigation of sentences takes place in other cases of violence against women also. This normatively occurs in instances where the court feels that the wife has not been sufficiently 'docile' or 'obedient,' or when the slightest suspicion is raised about her moral character. In *Abdul Ghafoor vs. The State* (PLD 1982 Baghdad-ul-Jadid 44), the accused murdered his wife who had been living separately from him with their children for four years, because she did not consent to her daughter marrying her husband's nephew. The High Court felt that his wife had deprived him of the expression of the paternal emotion of love and attachment to his children, and the murder was a result of annoyance, that was a mitigating circumstance. The death penalty was reduced to life imprisonment.

In *Riasat Ali vs. The State* (1983 PCr.LJ 1996 Lahore) where the accused had killed his wife with two *danda* blows in front of her relatives because she complained to them about his cruel treatment, the High Court altered his conviction from Section 302 PPC to Section 304 (II) and reduced his sentence from life imprisonment to 7 years RI, on the grounds that the occurrence happened all of a sudden and the appellant had no intention to cause the death of the woman. According to the judgement: "It appears that the appellant got infuriated when the deceased in his very presence told Muhammad Rafi that he was instrumental in getting her married to an undesirable person. There was no pre-planning on the part of the appellant. Unfortunately, the *danda* was lying nearby and he suddenly picked it and gave two blows to her ... In the circumstances, the intention to kill cannot be presumed." The gender bias of the court was reflected in the presumptions made on behalf of the accused and an unconscious underlying disapproval of the inappropriateness of the wife's behaviour. The words in the judgement that the appellant "got infuriated when the deceased in his very presence told..." seem to sanction the appellant's anger in view of his wife's temerity in complaining about him in his presence. They also reflect the stereotyped attitude that it is natural for a husband to maltreat his wife, but not acceptable if she tries to speak about it in front of even her closest relations. The words "unfortunately, the *danda* was lying nearby..." further serve to absolve the appellant, placing the burden both on the *danda* for being there and on the wife for her socially inappropriate behaviour. The court condoning the murder of a woman is reflective both of the low value attached to women's lives, as well as of the social norms which deny women even the basic right to protest the violence being committed against them. It also reflects the distinction courts make between violence against women in the public or private sphere. A similar offence committed by another person in another place would not have been treated in the same way.

In *Sabir Ali vs. The State* (PLD 1986 Lahore 289), the accused murdered his 18-year-old wife, Salma. She had come back to her father's house a few months earlier and given birth to a son. On the day of the incident, Sabir Ali came and declared that he had come to take Salma away. Her father told him that it was not possible to send her straight away because he had not yet prepared the customary gifts for the occasion and asked him to wait a few days. At this refusal, Sabir attacked Salma with a knife, giving her 7 injuries. Her sister, Anwari, tried to intervene and also received knife blows. At the trial, Sabir Ali denied guilt and denied that there were any witnesses. He stated that Mst. Anwari, who was also his brother's wife, stage-managed her presence through self-inflicted injuries. He claimed he had turned Salma out of his house because she was an immoral woman, and his brother had similarly turned out Mst. Anwari, for which she blamed Sabir. The trial court sentenced Sabir Ali to death for murder. In the High Court, the appellant's counsel contended that "all was not well with the informant's family." He pointed out that it had been suggested that Salma's mother was living in adultery with someone, and also that Salma was a woman of easy virtue. On the basis of these circumstances, he contended that the prosecution concealed the fact that Salma was living in adultery and when the appellant came to fetch her, there was no one in the house except his wife and her paramour; thus he reacted violently. He, therefore, pleaded 'grave and sudden provocation.' The High Court stated that there were no circumstances in support of the argument for grave and sudden provocation. However, it held that the weakness in the prosecution case lay in the fact that Salma's father's refusal to send his daughter back straight away was not sufficient enough to enrage Sabir. Therefore, "In all probability, the refusal may have been provocative and something may have also happened between the appellant and his wife which appears to have been concealed." In view of this, the court was not inclined to confirm the death sentence and converted it to one of life imprisonment.

Thus, even if there is nothing on the record which can be brought within the very extended parameters of what constitutes provocation, courts presume such provocation to justify the lesser sentence, particularly so in the case where *only* a wife has been murdered.

In *Muhammad Habib vs. The State* (1992 SCMR 2331), the accused had allegedly turned his pregnant wife, Mst. Salma, out of the house 5-6 days earlier after a beating. On the day of the incident, Habib came to the house of his father-in-law, Mohd. Shabir deceased, and wanted his wife to accompany him back home. His father-in-law told him that he should bring his father with him as well so that he could negotiate the conditions of his daughter's safe return. The appellant refused to comply with this request and insisted on taking his wife back with him. The deceased flatly refused to let his daughter go under the given circumstances. There was a verbal altercation, and Habib raised a *lalkara* and, taking out a knife, stabbed him in the chest and ran away. Mohd. Shabir died. The trial court sentenced him to death and the sentence was confirmed by the High Court. However, the Supreme Court observed that the appellant and his wife had been living happily and only a few days before he had turned her out. The deceased refused to send his daughter with her husband and asked him to bring his father for negotiation.

According to the Supreme Court, "It was thereafter that the appellant flared up and stabbed the deceased." It added, "The situation perhaps could have been averted had not the deceased betrayed an attitude of marked refusal to send the wife of the appellant with him. It is discernible from the record that the appellant was then a young lad of less than 22 years and on the denial of the company of his wife must have been provoked. He inflicted a single blow on the deceased and did not repeat the same". Considering this as a mitigating circumstance, the death sentence was converted to life imprisonment.

In *Faqir Hussain vs. The State* (PLD 1993 Lahore 379), the accused killed his wife's brother and attempted to kill his wife, Bhirawan. The reason was that her brother wanted to take her to her sister's house for condolence on the latter's mother-in-law's death, but Faqir stopped her. When she insisted, Faqir started to beat her. Her brother stepped forward to rescue her, whereupon Faqir rushed into his hut, brought out a hatchet and attacked him. When Bhirawan tried to save him, he gave a hatchet blow to her head also. Faqir Hussain was sentenced to death. In appeal, the High Court, while believing the prosecution version, went on to add that it was due to the insistence of Mst. Bhirawan to go to the condolence that a dispute had arisen and when her brother intervened, Faqir flared up and in the heat of passion went to his hut and brought out a hatchet and inflicted one injury on each of them. He had not repeated the hatchet blows and there was no premeditation. It was a sudden flare up in which the appellant could not control his passions. The death sentence was converted to life imprisonment.

Inevitably, gender biased judicial thinking condones a husband's loss of control, shifting the blame onto the wife for inciting it and since domestic violence is considered a routine matter or a husband's prerogative, the intervention of even her brother to save her is considered provocation enough to mitigate his sentence.

In *Samson Masih alias Pappu vs. The State* (PLD 1994 Lahore 330), Mst. Nasreen's husband had been working in Saudi Arabia for 4-5 years. In his absence, his real sister's son, Samson Masih alias Pappu had been living with her and her children. He had allegedly been trying to persuade Nasreen to commit *zina* with him and, on her refusal, had threatened to kill her. On the night of the incident, Samson Masih went to her and wanted to commit *zina*, but she refused. He then sprinkled kerosene oil on her and set her on fire with a match, thereafter running away. In hospital, she made her statement, praying for action against the great cruelty that was done to her. About two weeks later she died. Samson claimed he had been wrongly involved in the case. He stated that Nasreen had asked him to have illicit intercourse with her, but he refused in view of his relations with her, on which she threatened to commit suicide. He further stated that at the time of setting herself on fire, no one else was present and he had taken her to the hospital. The trial court found him guilty and sentenced him to death. In appeal, the High Court held that the appellant had been rightly convicted and sentenced. Nevertheless, it went on to discuss that although the investigating officer had stated that no one from the locality had told him anything about the character of Nasreen, he had nevertheless concluded that Samson was having illicit relations with Mst. Nasreen Bibi deceased and the same fact had come to his knowledge during investigation. The court went on to add,

"It is surprising that the appellant used to live with the deceased in the absence of her husband as well as used to sleep in the same room. The genesis of the case is shrouded in mystery and it has not been brought on record that what happened immediately before the alleged occurrence." The High Court altered the sentence to life imprisonment.

In *Salahoon vs. Abdullah and another* (1995 SCMR 996), Abdullah had asked Salahoon, Mst. Kalsoom Bibi's father, for her hand in marriage, but had been refused because he was jobless and a vagabond. On the day of the incident, the accused came to Salahoon's house with a hatchet, and gave a hatchet blow to Kalsoom Bibi, as well as to Mst. Sukhan. The Sessions Court sentenced Abdullah to death. The High Court maintained the conviction but reduced the death sentence to life imprisonment, holding that "it appears to be an unpremeditated attack, the origin of which remains shrouded in mystery due to the presence of blood-stained *kassi* at the place of occurrence... We are, therefore, of the view that something appears to have occurred at the spur of the moment when the appellant came there which caused the occurrence... It can, therefore, safely be said that it was an unpremeditated attack and the appellant might have picked up the *kassi* from the spot and caused the injuries to the victims." Leave to appeal against the judgement of the High Court was granted by the Supreme Court.

B. RAPE AND OTHER SEXUAL OFFENCES

Before discussing the case law relating to other areas, it is necessary to mention that the Offence of Zina (Enforcement of Hudood) Ordinance was promulgated in Pakistan in 1979 and enforced in 1980. It relates to the offences of adultery/fornication (*zina*), rape (*zina-bil-jabr*), abduction etc. and has changed many earlier concepts. Apart from other changes, the law has made adultery and fornication punishable offences for women, changed the definition of 'adult' for the purposes of the Ordinance, and done away with earlier provisions which provided that sexual intercourse with a child below the age of 14 amounted to rape. We will not refer to the provisions of the Ordinance that relate to *hadd*, which have never been executed in Pakistan so far; but we will briefly refer to some definitions, provisions and *taazir* punishments which have been laid down in the Ordinance.

Section 2 (a) of the Ordinance defines **adult** as a person who has attained, being a male, the age of 18 years, or, being a female, the age of 16 years, or has attained puberty.

Section 4 states that a man and a woman are said to commit *zina* if they wilfully have sexual intercourse without being validly married to each other, and goes on to explain that penetration is sufficient to constitute the definition of sexual intercourse necessary for the offence.

Section 6 states that a person is said to commit *zina-bil-jabr* if he or she has sexual intercourse with a woman or man (a) against the will of the victim, (b) without the consent of the victim, (c) when the consent has been obtained by putting the victim in fear of death or injury, (d) when the offender knows that s/he is not validly married to the

victim and that consent is given because the victim believes that the offender is another person to whom the victim is or believes himself/herself to be married. Penetration is sufficient to constitute the sexual act necessary for the offence.

Section 7 provides that a person guilty of *zina* or *zina-bil-jabr*, who is not an adult, shall be punished with imprisonment of up to 5 years and may also be awarded whipping up to 30 stripes.

Section 10(2) provides that *zina*, liable to *tazir*, is punishable with rigorous imprisonment extending up to 10 years and whipping up to 30 stripes, while Section 10(3) provides that *zina-bil-jabr*, liable to *tazir*, is punishable with imprisonment of not less than 4 years or more than 25 years and whipping up to 30 stripes.

Section 11 refers to **kidnapping, abduction** etc. and provides a punishment of life imprisonment.

Section 16 refers to **enticement** or **detaining** of a woman with criminal intent, providing a punishment of up to 7 years.

And Section 18 covers **attempts to commit an offence**, providing for a punishment which can extend to half that for the actual offence.

Rape

Rape is the most horrendous form of sexual violence against women and girls. Difficult enough to prove anywhere in the world, since rape is usually an un-witnessed crime, it is even more difficult in a country where gender biases against women are strong, and myths and perceptions about the kind of women who get raped pervade. Failure to prove rape can lead to presumptions of consent, and consensual sex is a crime in law, thereby making the woman liable to punishment. Nor, with the new definition of 'adult' in the Ordinance, are minor girls exempt, since adulthood has been linked to physical puberty rather than mental maturity. The law has many other serious implications for women, but at this stage we are only concerned with how the judiciary has dealt with the issue of rape in Pakistan. It may be mentioned that the court of appeal for cases of rape and adultery is the Federal Shariat Court (FSC), while second appeals go to the Shariat Appellate Bench of the Supreme Court. Both have representation of *ulema* on the benches.

The early years after the introduction of the Ordinance, while the courts were still trying to grapple with interpreting and enforcing the new provisions, were amongst the worst for women in Pakistan. As it is, very few women report rape, largely because of the social stigma attached to extra-marital sex. In a patriarchal society which refuses to acknowledge the existence of sexual relations outside of marriage, blame invariably goes to the female involved. Experience of the courts ensures that there are even fewer reported cases, women reporting rape only in situations where they have no other choice i.e. in cases of pregnancy or if a case of *zina* is lodged against them.

Some cases in the early years highlight some of the main issues that emerged during that period. The case of *Mst. Jehan Mina vs. The State* (PLD 1983 FSC 183) was one of these. Jehan Mina was a 15-year-old girl, who was left in the care of her maternal grandfather since her father had died and her mother had remarried. Jehan Mina used to go for domestic work to the house of her maternal aunt. She then began to live with her maternal uncle, who learnt that she was pregnant. On being questioned, she told him that her aunt's husband and son had raped her. Her uncle lodged a report.

In court, Jehan Mina repeated her story, adding that her aunt had given her a beating when her uncle narrated the incident to her and her grandfather had wanted her to be handed over so that she could be killed. At the trial, the accused led no defence and were acquitted. The court did not believe Jehan Mina's statement, holding that she would not have kept silent about the violence to which she had been subjected for so long if she were truthful. It held that her statement was a confession of guilt and sentenced her to 100 stripes as *hadd* penalty. The FSC felt that the two accused had been correctly acquitted because they could not be convicted on the basis of the statement of a co-accused who was placing the whole blame on them. It held that Jehan Mina's statement could not be regarded as a confession, because it also contained an exculpatory statement, but commented that the failure to explain is sometimes the most incriminating circumstance. But it held her pregnancy as definite proof of adultery. It further held that she had the opportunity to complain about the rape to other relatives but did not do so till her pregnancy became apparent, so it was difficult to believe her statement about rape. It observed that she had given no details about the number of times and where and when *zina* was committed, or explained the force or threats used against her, or why she had kept quiet for so long. Her conviction was altered to one under Section 10(2) and she was sentenced to 3 years RI plus 10 stripes "in view of her tender age and also on account of the fact that her father was dead and her mother had contracted another marriage and she was, therefore, a girl who lacked the benefit of paternal (sic) affection." Her punishment was suspended, to be carried out after her child had attained the age of two years.

Apart from the injustice that Jehan Mina suffered from society and the system of justice, the case had serious future implications for victims of rape resulting in pregnancy. While rapists would have to be proved guilty, victims would be presumed guilty and the burden would be on them to prove their innocence. And if complainants of rape were made co-accused in their own cases, there would be no direct evidence against the offenders, which meant that the rapists would usually get off scott free.

A number of cases followed, in which pregnant victims who complained, were made the co-accused in their cases and convicted on charges of *zina*, while the alleged rapists were acquitted for want of evidence. In *Safia Bibi vs. The State* (PLD 1985 FSC 120), a 20-year-old blind girl was convicted and sentenced to 3 years RI and whipping by the Sessions Court for the offence of *zina*, while the accused was acquitted. Safia's father had reported rape, stating that she had given birth to a child as a result, but had been arrested and made a co-accused. The session's court took her pregnancy as evidence and her statement as a confession. However, the FSC stated that this was a clear departure from

the well-known principle that it is the duty of the prosecution to establish its case by evidence beyond any shadow of doubt. It also held that a confession had to be read as a whole, without excluding the self-exculpatory parts. Safia Bibi was thus acquitted.

At the same time, in cases of rape where the victims were not charged as co-accused, courts tended to suggest that they were willing partners, and converted the conviction to that of *zina*, thereby allowing the men a lighter sentence. Thus, women who managed to get some results by reporting rape did so at the risk of their own reputation and loss of self-esteem, since they were dubbed as consenting partners. Sometimes both of them – the rapist and the victim of rape – were convicted for *zina*. Benefit of doubt was often extended to males when the reporting females were made co-accused in the case. And the use of consent as a defence for accused men acquired great popularity. Consent was presumed from a number of factors – delay in lodging the report, absence of injuries or insufficient injuries on the body of the victim, the inadequate proof of resistance, the moral character of the woman, and her conduct after the event. This is a defence that continues to be successfully used.

In *Sohail Iqbal vs. The State* (PLD 1983 FSC 514), a young girl was raped after having her mouth and hands tied up. Her medical examination revealed a number of abrasions and contusions on her arms, as well as a fresh tear of the hymen, which was also congested and painful. The chemical examiner's report was also positive. Nevertheless, the court pointed out some 'improvements' in the stories of the victim and her mother, which were more in the nature of details and some additions. It also held that her injuries were self-inflicted, finding it strange that she did not receive any injury on the mouth when she had stated that she had been gagged and bound. Stating that the possibility of consent could not be ruled out, the conviction of rape was changed to one under *zina*.

In *Mohd. Asghar vs. The State* (PLD 1984 FSC 59), where the accused had been convicted for the rape of a 14-15 year old girl, the court held that the conduct of the girl in not raising an alarm showed that she was a consenting party. His conviction was altered to one under *zina* and the sentence reduced from 10 to 5 years.

In *Mohd. Asghar vs. The State* (PLD 1985 FSC 1), it was held that since there were no marks of struggle or violence on the body and private parts, and the victim had not even made a noise, would be suggestive of the fact that she was a consenting party.

In the case of *Bahadur Shah vs. The State* (PLD 1987 FSC 11), the court held that the statement of the victim was fully corroborated and supported by the medical and oral evidence and stated that they were satisfied that the charge of *zina* had been fully established by the appellant. However, it went on to hold that the absence of injuries on the victim's body led to the conclusion that whatever the reasons and circumstances, the victim had put up no real resistance and it appeared the act was done with her consent. The conviction of the appellant was altered to one under Section 10(2) and the sentence reduced to 4 years.

In *Mushtaq Ahmed vs. The State* (PLJ 1995 FSC 157), the court supported the trial court finding that the prosecutrix was a consenting party, despite the fact that she had 3 abrasions on the neck, one contusion on the back of the shoulder and a swelling below her right eye.

Legal technicalities can also be used to acquit or reduce the sentence of male offenders.

In *Habibullah and another vs. The State* (PLD 1983 FSC 251), the accused were charged for abducting and raping a 14-16 year old girl, whose father had died and who was living with a cousin of her father. They were sentenced to 10 years for rape and life imprisonment for abduction. In appeal, the court acquitted them of the charge of rape, holding that the girl appeared to be of loose moral character and the vagina admitted two fingers. On the charge of abduction, the court held that since the uncle she was living with was neither a guardian according to Muhammadan law, nor a guardian appointed by court, the charge of abduction could not hold since it involves removal from the guardianship of a guardian. The accused were accordingly acquitted.

In *Noor Ahmed and another vs. The State* (1989 SCMR 438), a police constable compelled the victim to accompany him, used abusive language and slapped her, ordered her into the rickshaw, and when passers by came to the spot upon her raising a hue and cry, told them that she was a vagabond and he was taking her to the police station. The court held that he had 'enticed' rather than kidnapped or abducted her and his sentence was reduced from life imprisonment to 15 years.

Prior to the introduction of the new law, there was relatively more space for a woman to get justice for rape, regardless of her sexual history, than there is currently.

Thus, in *Mukhtar Ali vs. The State*, where the medical evidence showed that the prosecutrix was accustomed to sexual intercourse, the High Court held that this afforded no justification on the part of the accused to appease their lust on her.

However, this case is an exception. Suggestions are inevitably made that the victim is of loose moral character, of easy virtue and a 'habitual' – accustomed to sexual intercourse. Often enough, these suggestions find their mark.

In (1997 PCr.LJ 1291), the court observed that no implicit reliance could be placed on the statement of a woman of easy virtue, unless it is corroborated by some independent evidence.

A number of cases refer to the character of the woman involved, and it is rare for a woman to be able to prove rape if the medical evidence suggests a sexual history, or if the defence can make sufficient allegations about her morality. As mentioned earlier, where rape is proved or there is a charge of *zina* where the woman is not an accused, courts are reluctant to give strict penalties, often reducing the sentence on the slightest pretext or even without it.

In *Zahoor Ahmed vs. The State* (PLJ 1995 SC 512), the court held that even the slightest penetration was sufficient to prove rape and the lack of semen in the vagina did not make a difference. The medical report confirmed that the hymen was not intact and certified that the victim was not habitual. However, the fact that there was no semen and there was redness on the outer part of the vagina, was considered a mitigating circumstance and the sentence was reduced from 14 to 5 years.

In *Karam Hussain vs. The State* (1997 PCr.LJ FSC 1717), while upholding the conviction for rape of a 15-year-old girl, the court reduced the sentence of 10 years to 6 years. In *Hassan Mohd. vs. The State* (1998 PCr.LJ 496), the conviction of the accused was upheld, but the sentence was reduced from 10 to 7 years.

A problem also arises in proving a case of rape when there is no corroboration for a victim's statement. Medical testimony can sometimes equally support the charge of *zina*. But most courts are reluctant to base convictions on the sole testimony of the victim. However, as early as 1984, it was observed in (1984 PCr.LJ FSC 1209) that in cases of *zina*, there were unlikely to be any witnesses other than the victim herself. It was held that it was not the number of witnesses but their quality and credibility that is to be considered. In (PLD 1991 SC 412), it was held that the sole testimony of the victim was enough for conviction if it inspired confidence. And in (PLD 1994 FSC 39), the court held that the solitary statement of the witness was sufficient to bring home the guilt of the accused.

Another issue that arose with the law was the position of girls who were married, but whose *rukhsati* had not taken place.

In *Riaz Hussain vs. The State* (PLD 1984 FSC 1), Mst. Shamim Akhtar was abducted, confined, threatened and raped by the appellant, with whom her *nikah* had been performed but *rukhsati* had not taken place. The medical report confirmed recent sexual intercourse and there were bruises on her breasts, thighs and chest. The trial court convicted Riaz for rape and sentenced him to 15 years RI. In appeal, the court felt that it had been misled by the bruises and had not considered that the husband may have affected them due to hard handling of his wife, since she admitted that she had put up no resistance. Holding that the relationship of husband and wife subsisted between them, the conviction was set aside.

In *Eiden vs. The State* (PLD 1995 FSC 127), the accused trespassed into the house, forcibly abducted the victim, kept her in confinement and raped her, but since he had a *nikah* performed with her in early childhood and a suit for the restitution of conjugal rights had been decreed in his favour, the court held that he was not liable under the law.

Courts are usually reluctant to admit that there is incest in our society, preferring to believe that this is a phenomenon that only exists elsewhere in 'depraved' societies. Thus, shutting their eyes to reality, cases of incest have often resulted in suspicion and disapproval falling on those who have dared to break the silence about the issue.

In the case of *Mohd. Akram vs. The State* (PLD 1992 SC 376 Shariat Appellate Bench), Mst. Ghulam Rakiya registered a case of rape against her father, Mohd. Akram. The victim's father was alleged to be a hard-headed man who had turned out his wife 6-7 years earlier. His wife had gone, leaving behind two sons and four daughters. Two years after his wife left, Mohd. Akram started raping his daughter, and since they lived in an isolated place, the victim and her brothers and sisters, who witnessed the shameful act, could not tell anyone about it. Two years before the report, Mohd. Akram married off the victim to one Tariq Mahmood and in exchange married his sister. But when Tariq did not fulfil the condition of living in his house, he was forced to divorce the victim and Mohd. Akram divorced and threw out his sister after beating her up. He then started raping his daughter again, beating up any of the children when they objected.

The older son left, unable to tolerate the situation. And when the father once again raped his daughter, she managed to escape with her other siblings when their father was asleep. After spending a night in the jungle, they went to their maternal relatives who helped them to lodge the report. In court, the victim repeated the charge against her father in an unambiguous manner and was supported by her elder brother. The medical report showed that there were no marks of violence on her body or private parts and "she was habitual of sexual intercourse." The father denied all charges, alleging that his wife had an old grudge against him, and had filed a suit for dissolution of marriage, and had threatened to teach him a lesson. The trial court sentenced the accused to 25 years RI with 30 stripes and the FSC upheld the conviction and sentence.

Mohd. Akram came up in appeal. The court stated that this was a very unfortunate case in which a girl had levelled a very heinous charge against her father. It observed that when such a charge is levelled by a daughter against her father, the matter should always be considered with due caution. It observed that it was an admitted fact that relations between the appellant and his wife were seriously strained "to the extent that she left his house for good without being divorced by him." It noted that his wife was living with Bashir, her maternal cousin and Jahandad, husband of Bashir's relative, while the natural course would have been to go to her mother or brother, and that they had played a prominent role throughout. It observed that the victim's statement "seems to be full of exaggeration."

Referring to her statements, the court said:

Now it is not believable that a person of nearly 60 years of age would commit the sexual act twice or thrice a day constantly for two or three years, even during the menstruation period. It is also hardly believable that a girl of mature age would tolerate such an act and would not be able to disclose this fact to any other person.

The court referred to the defence witness's testimony that "the appellant was a pious person performing religious obligations like prayers etc." It pointed out some contradictions between the statements of the victim and her brother, as well as their admission of sympathy with their mother. It held that the possibility of their having been tutored could not be ruled out. Being left just with the positive report of the chemical

examiner with regard to semen, the court relied on some contradictions pointed out by the appellant's counsel regarding the seals on the package, thus excluding it from consideration. Holding that it was equally possible that the case had been "cooked up" at the instigation of his wife, the appellant was allowed the benefit of doubt and acquitted.

A recent case *Mohd. Khalil vs. The State* (1997 PCr.LJ FSC 1639) reflects many of the issues that come up in Pakistan in relation to cases of rape. Mst. Rabia lodged a report disclosing that she and her parents were living as tenants in the house of Khalil, who was on visiting terms with them. She developed illicit relations with him, which resulted in her pregnancy. She delayed in filing the report because of her shyness and ignorance of the law. Finding her a consenting party, Rabia was arrested along with Khalil and both were sent for medical examination. At the trial, the parents testified that they were ejected from Khalil's house 3 months before the report was lodged and were also asked to vacate their next house being told that Rabia was of bad character. On reprimanding Rabia, she disclosed that Khalil had raped her at pistol point. Despite their efforts, Khalil and his parents refused to accept the hand of Rabia. In her statement under Section 342, Rabia stated that Khalil had raped her and thereafter shared her bed on the pretext that he would marry her. Due to his influence, she had been made a co-accused. Khalil denied the charges and deposed that he was a minor. The trial court opined that Rabia's pregnancy combined with the delayed report proved she was a consenting party. Khalil was held responsible for rape on the basis of her statement, the fact that she was residing in his house and the medical report in terms of his capability of performing sexual intercourse.

He was convicted under Section 7 as a minor and sentenced to 3 years RI. Rabia was sentenced to the same under Section 10. Khalil filed an appeal, while Rabia did not, but the FSC released her on bail and arranged for a lawyer to represent her. The case brought up the issues of: Rabia's report which made no allegations of rape, the fact of her pregnancy, her being made a co-accused, the delay in filing the report, and allegations about her being of easy virtue. What was also apparent, in view of past decisions and the law, was that Khalil would most likely get away with what he had done, while Rabia could get convicted. The unfairness of this situation, as well as the fact that Khalil came from a more well-to-do background, obviously concerned the court.

According to the FSC:

...how a landlord's son could (sic) marry a tenant's daughter. He could only satisfy his lust and sexual hunger, pleading later that he was a minor incapable of performing sexual intercourse.

The court rejected the suggestion that Rabia was a girl of easy virtue, stating that there was no evidence worth considering to this effect. But at the same time, it could not ignore the fact that she had admitted to illicit relations in her first report without alleging rape. Her ignorance of the law and shyness, which she admitted to in the report, are borne out by her admission. At the same time, the court was not quite able to condone Rabia's behaviour, holding that "we ourselves noticed her as a very clever girl, unlikely to be threatened for *zina-bil-jabr*."

Rabia's lawyer contended that Khalil, being from a landlord class, had a dominating position and her statement about rape should be accepted. However, the court was not inclined to accept this hypothetical proposition, and found it more plausible that she had consented to *zina* on the promise of marriage by a landlord's son. The court then tried to do justice to the situation, without indulging in too many legalities since these may have proved problematic. While being caustic about Khalil's 'minority,' the court did not interfere with what it thought had been a lenient view of the lower court and maintained the sentence. Rabia's conviction was also maintained but her sentence reduced to what she had already undergone.

The earlier years after the introduction of the Ordinance were the most traumatic for women in Pakistan. The hasty introduction of law without any understanding or concern about its ramifications inevitably created problems. But this was not the only problem. While the law had its own serious defects and problems, its introduction in a society where power relations between men and women are so unequal was bound to have a severe negative impact on women, as can be seen from the brief review above.

The promulgators of the law ignored the reality, for whatever reason, that harsh penal laws in a country without adequate legal protections in the criminal justice system had a real potential for danger. Moreover, the overall ignorance about the law, which continues to prevail, was bound to bring about its own complications. Finally, the sudden introduction of the laws without adequate homework being done on them, also caught the courts by surprise, as is apparent from the early years of trying to interpret its provisions and then having those interpretations overturned.

Women, invariably, were the main sufferers and remain so, as information continues to emerge about how the law has been used against them and how the criminal justice system has dealt with them. In all fairness, the courts have, within the limitations of the situation, made a genuine effort to address some of the real problems that have been thrown up in the context of women, sometimes resulting in rather paradoxical and contradictory judgements. In all honesty, it is the women's movement that has fought the battle to bring about this relative improvement. In this context, some of the judgements, which have moved ahead from the earlier negative or tentative ones, need to be looked at also.

In *Mohd. Siddique vs. The State* (PLJ 1990 SC 538 Shariat Appellate Jurisdiction), where a 13-year-old girl had been raped, the defence plea was that she was not of good character, that she had illicit relations with a neighbour and that the petitioner had been falsely implicated because he had objected to this. He was sentenced to 4 years RI and 10 stripes by the trial court, the FSC enhancing the number of stripes to 30. The medical report having confirmed that the victim had suffered a first act of sexual intercourse and the vaginal swabs being positive, the contention about her being used to intercourse was rejected.

The argument that the prosecutrix belonged to the lower strata in the locality and that their women are of easy virtue was thrown out with the observation that such people deserve more regard and respect from their more highly placed brethren. Holding that the victim had been subjected to cruelty in her tender age and that it had harmed her person and maybe her future also, the court's view was that the sentence had been much too lenient, which unfortunately it did not have the power to enhance. Objecting to the court pointing out that the accused was a "handsome young man," the court felt this was hardly a ground for leniency and deplored the fact that he had not mentioned the beauty and innocence visible in a child, a female victim.

In *Ajaib and others vs. The State* (1994 SCMR 1479 Supreme Appellate Court), a case in which two sisters were raped, the defence claimed that they were both of "chequered character." The medical evidence, while showing a number of injuries on both girls, also indicated the absence of hymens and vaginal orifices not admitting two fingers. The trial court convicted and sentenced the accused to 25 years RI and 30 stripes each, which was upheld.

In *Mohd. Ishtiaq vs. The State* (PLJ 1995 FSC 150), a case in which a Christian woman alleged rape and the trial court convicted and sentenced the accused to 6 years RI, the FSC noted that she was the daughter of an artisan in the village and a menial worker. Commenting on the role of feudal lords in rural society and the miserable life led by the womenfolk of the poor artisans because they are a free source of enjoyment to the feudal lords, the court dismissed the appeal.

In *Mohd. Sadiq vs. The State* (PLJ 1997 FSC 13), where a 14-15 year old girl had been raped by a 45 year old man, the court held that in the circumstances of her being a minor girl and he being of her father's age and armed, the question of free consent did not arise. It went on to say that even otherwise the presence or sign of force was not a prerequisite in every case.

In *Mohd. Ashraf vs. The State* (1997 PCr.LJ 1351), where a 15-16 year old girl had accused her father of rape and he was convicted and sentenced to 25 years RI and 30 stripes, the court held that even if the father had made no threat, the position of command, supervision, sustenance, shelter and protection which the father possessed as against his teenage daughter constituted sufficient compulsion that resistance or abstinence could not be expected. The court maintained that putting the victim in fear of injury by instruments of violence or otherwise is not the only ingredient of the offence, and sexual intercourse without the consent of the victim also amounts to rape, and the conviction and sentence was upheld.

There is still a long way to go. Whether the laws change or not, the courts have to learn and understand far more about how violence against women violates their fundamental rights of equality and security, about the circumstances in which women live, the effect of violence on them, how they respond to situations of violence, and the provision of justice to women in the context of an unequal situation.

Other Sexual Offences

The offence of attempted rape is always problematic both in terms of definition and proof. Since it also carries a fairly heavy penalty under the law, courts have had a tendency to skirt away from convictions under this head and to use the simpler route of convictions under Section 354 of the PPC, relating to outraging the modesty of women etc. The picture still remains fairly confused about what constitutes the offence of attempt to rape, although courts have tried to define it over the years. According to one definition, the act must come pretty close to accomplishing that result before the law will notice it. Another is that it is an act of such a nature that it is in itself evidence of the criminal attempt with which it is done. It has also been defined as any one or more of a series of acts leading to the commission.

The following have been held to be cases of attempt to rape:

(PLD 1982 FSC 105): A case where the appellant removed the *shalwar* of the victim, laid her down by force and enabled himself to be in a position to effect penetration was held to be attempt to rape.

(PLD 1982 FSC 179): The appellant entered the house by scaling the wall, caught hold of a 14-year-old girl alone in the house, bit her on the cheek, removed her *shalwar* and his own, but did not succeed in committing rape due to her screams and the arrival of several persons. The conviction and 3 year sentence for attempt to rape was upheld.

(PLD 1985 FSC 282): The appellant trespassed into the house at midnight, went to the victim's cot, untied her *shalwar* string and physically teased her. Conviction for attempt to rape was upheld, but the sentence was reduced to one year.

(PLJ 1991 SC 480): The 10-11 year old victim was dragged behind the sand dunes and forcibly the accused removed her *shalwar* as well as his own. The SC felt this was an attempt to rape and accordingly convicted him, but did not think it proper to enhance the sentence at this stage.

State vs. Qalb-e-Abbas, (Case FIR No. 52 dated 10.4.96, SJ Islamabad, Dec 24.7.98): The accused trespassed into the house of the victim under false pretences, pushed her into her bedroom, touched her breasts and kissed her. The husband came home and the accused ran away. He was convicted for an attempt to rape and sentenced to 10 years RI.

The following have been held to amount to outraging the modesty of a woman etc. under Section 354 of the PPC:

(PLD 1983 FSC 234): The 10-11 year old victim was dragged inside the house to a room and then the kitchen, her hands and mouth tied with a *dupatta* and an attempt made to untie the strings of her *shalwar*. The conviction was converted from attempt to rape into one under Section 354.

(1982 SCMR 951): The appellant was convicted and sentenced to 2 years under Section 354 PPC. On appeal, the sentence was reduced to 6 months. The High Court dismissed his petition. In the Supreme Court, it was submitted that an offence under Section 354

was not made out for slapping the complainant. But the evidence was that he also pulled her *burqa*, which got torn. The pulling and tearing of the *burqa* of a *purdah*-observing Muslim lady was held to amount to outraging her modesty.

(PLD 1987 Lahore 412): Haider Ali Malik was accused of an attempt to rape. It was alleged that he found Mst. Tazeem Akhter who was washing clothes in the open, went up to her, caught her by the arm and asked her to accompany him to the nearby field. She resisted, pulled herself away and slapped him, whereupon he tore her shirt. It was held that on the face of it, the facts described a mere preparation and attracted Section 354 PPC.

(PLD 1991 FSC 268): The appellant put both his hands on her mouth and tried to kiss her. Then he caught her arm and tried to throw her down for *zina*, tearing her shirt from her arm. His conviction was changed from one under attempt to rape to one under Section 342, and he was sentenced to 1 year on the plea that his mother having remarried, there was no one to look after his two sisters.

One particular case has been discussed in greater detail to get an indication of how the system deals with women who suffer violence.

(1989 PCr.LJ 1453): In the case of *Mohd. Ashraf and 3 others vs. The State*, it was alleged that Mst. Sajida Bibi (complainant) was present in her house in the afternoon along with her sisters, mother and grandmother, when suddenly Ashraf (appellant) entered the house through a window, raised a *lalkara* and lifted Sajida Bibi on his shoulders and raced towards the outer door of the house where the other three appellants, Aksar Khan, Nawab Khan and Karam Khan, armed with stick, hatchet and pistol respectively, were present. The gate of the *haveli* had no shutters. Ashraf passed Sajida Bibi on to the others. Aksar and Karam Khan caught hold of her legs and Nawab Khan held her arms. They took her to the rear of the house and in the *chowk* she was put down. Ashraf removed her *shalwar* by tearing it, while Aksar and Nawab tore off her shirt with the result that she became absolutely naked. Karam Khan pressed his pistol to her belly, threatening her not to raise an alarm and Ashraf pulled her breasts. The incident was seen by the other female relatives and Muhammad Khan, Sajida's maternal uncle, who appeared on the scene. The appellants left Sajida and fled. Her grandmother covered Sajida's naked body with her woollen *chaddar* and she was taken home. Sajida Bibi lodged an FIR the same day, and the medical examination showed three abrasions on Sajida Bibi's body and mentioned that she complained about pain in her breasts and arms.

At the trial, Mst. Sajida, one of her sisters and her grandmother gave eyewitness testimony. The appellants denied guilt, claiming false implication. The trial court believed the ocular evidence and the appellants were convicted under Section 354-A PPC (assault or use of criminal force to woman and stripping her of her clothes) and sentenced them to imprisonment for life. Ashraf was sentenced to a fine of Rs.10,000 or 2 years rigorous imprisonment in default. The other three were sentenced to Rs.5,000 fine each or one year's imprisonment in default. Ashraf was also directed to pay Rs.5,000 and the others Rs.3,000 each, as compensation to Sajida Bibi. The appellants filed an appeal against this judgement.

At the appeal stage, the counsel for the appellants assailed the decision of the trial court on several grounds, amongst them that the non-production of Mohd. Khan was fatal to the case, since he was the only male member who could have proved the offence. And he took up a legal objection that even if the prosecution case was true, no case is made out under Section 354-A PPC since this could only be applicable if Sajida had been exposed to 'public' view. According to him, she was only exposed to her family members, and the incident did not occur in a public place, merely by the side of the house.

The High Court believed the prosecution story but found "substantial force" in the submissions relating to the relevant section of the PPC. After examining the word 'public' in Webster's dictionary, the PPC and the CRPC, and the word 'view' in Webster's, the court held that the words 'public view' meant and included seeing or looking by the people of a nation, state or community, as a whole. Therefore, it felt that in the present case the evidence fell short of the definition, since Sajida was neither exposed to "any other member of the public except the accused and inmates of the house," nor was there any evidence on the record that the place was a public place. The court, therefore, changed the conviction to one under Section 354 PPC and sentenced the accused to 2 years rigorous imprisonment and a fine of Rs.1,000 each, or 6 months imprisonment in default, the fine if recovered to be paid to Sajida as compensation. Mohd. Ashraf's sentence under Section 452 was upheld, but the fine reduced to Rs.3,000. Given the benefit of Section 382-B, it was observed that they had already undergone the sentence and were to be released forthwith, and afforded two months to pay their fines.

The case is a classic example of how technicalities are used to condone violence against women and to deny justice to them. There was an obvious, seemingly conscious, misreading of the definitions e.g. the Webster's definition of 'public' includes '*known by, or open to the knowledge of,*' the PPC defines it as '*any class of public or community,*' and according to the CRPC it '*includes members of the public already in the locality as residents or visitors from outside.*' All these definitions are applicable in the present case. By no stretch of imagination could the family members or accused have been excluded from the definition. Supposing there had been a hundred accused persons and a hundred family members, would this still not have been 'public view?' In fact, the judgement, by using the words '*any other member of the public except the accused and inmates*' is itself admitting that these were also members of the public. And any place outside the house, whether anyone else saw the incident or not, is surely a 'public' place. It does not have to be a central or crowded place to be considered public. The court merely quibbled over these technicalities to be able to release persons who, in its opinion, had been too strongly penalised for a minor misdemeanour against what was, after all, just a woman. The grave offence of grossly violating a woman's dignity was thus completely trivialised.

CHILD SEXUAL ABUSE

Cases of child sexual abuse appear to have increased over the years, but there are no particular provisions of law relating to the offence. As such, the offences are covered by the same legal provisions as those applicable to adults. While the laws definitely require

amendment in this regard, the courts must also be sensitised to the gravity of the issue, the heinous nature of the crime, and its effect on children and ways of dealing with very young children in courts. The importance of harsh penalties for the offence must also be realised, since courts often tend to treat the offences at par with offences against women, or even more leniently, possibly with the attitude that the child will soon get over it, little realising the traumatic or long-term effects it may have. Mostly, it is only in very brutal crimes that offenders get severe penalties, though there have been a few exceptions.

(PLD 1981 FSC 317): A five-year-old girl was raped by her own brother, who was pubert but less than 18 years of age. Her vagina was torn and required stitching, and she was soaked with blood and semen. Being given the benefit of being a minor, he was sentenced to only 5 years by the trial court. The FSC felt he was not entitled to the benefit of Section 7 because he was an adult according to the definition, but there had been no appeal for enhancement.

(PLD 1985 FSC 298): A 10-year-old girl was raped. The medical report stated that there were no marks of violence on her body or private parts, though her gait was not normal and she walked with difficulty. The hymen was torn, and the vaginal swabs were stained with semen. The accused boy, said to be between 14-16 years of age, was sentenced to 7 years, which could not be changed for technical reasons as also because of the period already undergone.

(PLD 1987 FSC 33): A 7-8 year old girl was raped by a 13-14 year old boy. Her hymen had fresh bleeding tears, there was profuse bleeding of the vagina, and the pelvic floor was torn, with tears extending to the anal orifice. She had multiple bruises, abrasions, swellings on cheeks, lips, back, thigh, and abdomen, and was unable to pass urine or stools. The trial court sentenced him to 20 years RI. The FSC found him to be pubert and thus adult, but reduced his sentence to 7 years.

(PLD 1989 FSC 13): An attempt was made to commit *zina* with a minor girl aged 6 years. The accused removed her shirt and *shalwar* making her naked, he also removed his own and lying upon her, urinated at her. Sentenced to 7 years by the trial court, the FSC felt that keeping in view the young age of the accused (who was not a minor) and "the peculiar circumstances," the sentence awarded was a bit severe and harsh. The sentence was reduced to 4 years.

(PLD 1989 FSC 77): A 20 year old was convicted for the rape of a 5 year old girl and sentenced to 25 years RI. It had been a brutal crime, but the rapist's counsel argued that he would spend the prime of his youth in prison and when he came out of the prison at that advanced stage he would be worth nothing either to the family or society. The sentence was reduced to 10 years.

(PLJ 1990 FSC 97): The accused brutally raped a 3 year old girl and was sentenced to 20 years RI by the trial court. An attempt was made to plead insanity at the appeal stage, but was rejected and the sentence was upheld.

(PLJ 1993 FSC 23): The accused raped a 10-11 year old girl and was sentenced to 10 years RI. The FSC felt that the sentence was not adequate and enhanced it to 25 years RI.

(PLJ 1993 FSC 53): The accused abducted and raped a 5 year old girl and was sentenced to life imprisonment for abduction, and 25 years RI for rape. At the appeal stage, the appellant's counsel submitted that the sentence be reduced on the grounds that the appellant was overpowered by the sexual urge at the time. The conviction and sentence were upheld.

(PLD 1994 FSC 39): A minor girl of 10 was raped, and the rapist sentenced to 25 years RI. In appeal, the FSC held that he had committed a very serious offence and did not deserve any indulgence. The sentence was upheld.

(1994 SCMR 2102): A 12 year old girl was kidnapped by two brothers and raped. The court found that the conduct of the girl showed she was a consenting party to the whole affair, but the difficulty, according to the SC, was that being a minor, her consent could not be taken into account. The sentence was reduced from 20 to 15 years.

(PLD 1995 FSC 13): Since semen was not detected in the vagina after the rape of a 12 year old girl, the conviction was altered to one under attempt to rape and the sentence reduced to 2 years.

(1997 SCMR 1500): The accused caught hold of an 8-9 year old girl, pressed her breast and kissed her. In court, she also mentioned that he had opened the string of her *shalwar*. He was convicted by the trial court for attempt to rape and sentenced to 4 years and 10 stripes. The FSC dismissed his appeal with the observation that the victim's statement was confidence-inspiring. The SC held that improvements in the story had been made. The conviction was changed to one under Section 354 and the sentence reduced to a period already undergone.

(1997 PCr.LJ FSC 1689): A 5-6 year old girl was raped and the accused found guilty and sentenced to 10 years RI. In appeal, his counsel asked for leniency on the grounds that he was a Hafiz-e-Quran, which was harshly dismissed.

(1998 PCr.LJ FSC 666): A 6-7 year old girl was subjected to rape by a 14 year old boy. The boy was sentenced to 5 years as a minor, which was upheld by the FSC.

(Hudood Case No. 13 of 1997, Hudood Trial No. 04 of 1997, ASJ Rawalpindi): The accused, a *khadim* of the mosque, was caught naked committing rape on a 9-10 year old girl, also naked. While the hymen of the child was intact, semen was found on the carpet and vaginal swabs. Despite witnesses turning hostile, the accused was sentenced to 10 years RI for attempt to rape.

(Hudood Case No. 05 of 1997, ASJ Rawalpindi): A 10 year old girl was abducted and raped, but at the trial none of the witnesses supported the prosecution case, the father and victim stating that a compromise had been reached. The accused was acquitted for want of evidence.

C. WOMEN'S FUNDAMENTAL RIGHT TO LIBERTY, MOVEMENT AND CHOICE

The issue of women's fundamental rights of liberty, freedom and choice has acquired greater importance in recent years. While this was always an issue at the socio-cultural level and occasionally taken up in courts as well, it has become more acute since the introduction of the Hudood Ordinances and the introduction of Article 2.A in the Constitution. The former saw limitations placed on women's basic rights through criminal prosecutions, the latter re-opened religious debate and legal challenge on what women had hoped were settled issues. The attitudes of the superior courts in this regard have been largely inconsistent, contradictory and subject to a number of gender biases prevalent in society. A look at some of the case law on the subject over the last two decades proves most illuminating. Basically, the case law relates to cases of marriage by choice, though other related issues are also addressed. For the purposes of organisation, the cases have been divided according to the nature of the legal issue primarily involved, as well as the forums approached.

Writ Petitions for Quashment

Mst. Sughran Mai vs. The State (PLD 1980 Lahore 414): Mst. Sughran sought quashment of proceedings against her in court under Section 10 and 16 of the Zina Ordinance on an FIR lodged by her father, claiming that she was a minor of 14 and had been abducted by Manzoor. Mst. Sughran was arrested and produced before the trial court that sent her to a Dar-ul-Aman with the consent of both parties. Thereafter, upon the request of the police, she was sent to jail as an under-trial prisoner. The petitioner challenged the order of the trial magistrate, and the Session Judge, instead of handing her over to either side, ordered that she be lodged in a Dar-ul-Aman. Both her father and Manzoor challenged these orders through writ petitions, but both were dismissed. Sughran now filed the present petition seeking quashment on the ground that the charge of *zina* in view of the evidence already recorded would be an abuse of the power of the court, since she was of an age to contract marriage according to the documents produced. The High Court summoned the petitioner who admitted that she had married Manzoor of her own free will after attaining puberty. After examination of Islamic law, the court held that the petitioner had attained puberty. Dealing with the objection from her father that her marriage was void because it was held without the consent of her guardian, the court held that there was no force in this argument since a guardian has no authority to marry a woman who has attained puberty without her consent, and such a marriage cannot be held void merely because her guardian does not like it. Dealing with the objection that the marriage was void because it was *ghair kafoo* (not with an equal), it was held that there was nothing in the Quran or Hadith on this, and Islam levelled all social distinctions etc. Further holding that there was nothing on the record, nor is there likely to be any evidence to convict the petitioner of the charges against her, the court quashed the proceedings.

Mst. Samina Ali vs. Station House Officer (PLD 1995 Lahore 629): Samina sought amendment of her writ of harassment into one for quashment of the FIR registered under Section 11 of the Zina Ordinance. The petitioner disclosed that she was 19/20 years of age and the provisions of Section 11 were not attracted since she had contracted marriage out of her free will and consent with Ramzan. The High Court observed that the *sui juris* petitioner had categorically denied her abduction by the accused. It held that an investigating agency could not question the validity of the *nikah* contracted under the law – its validity can only be challenged before the competent court. The court quashed the FIR.

Lubna and another vs. The Govt. of Punjab (PLD 1997 Lahore 186): The two petitioners sought quashment of an FIR against them on the ground that they had committed no offence in the eyes of the law by having married each other. The High Court held that it was not possible to give declarations about the validity or existence of an alleged marriage. Holding that they had many remedies available to them e.g. appearing before various police officers, magistrates and the trial court, it held that it could not be said they were without adequate alternate remedies, which rendered the petition incompetent. The court went on to observe that a 'runaway marriage' in our society is not an appreciable act and thus the persons involved are not the kind who can be found to be entitled to relief in equity or in exercise of the court's discretionary jurisdiction.

Some other recent cases of quashment/against harassment:

- (1995 PCr.LJ 758 Lahore): Marriage, a civil contract, free consent, parties *sui juris* ... FIR quashed.
- (1997 PCr.LJ 594 Lahore): Question of validity of or dissolution of previous marriage to be decided by competent authority. In view of her statement of voluntary marriage now ... FIR quashed.
- (1997 PCr.LJ 788 Lahore): Petitioner *sui juris* married of her free will, not abducted ... FIR quashed.
- (PLD 1996 Lahore 709): Petitioner *sui juris*, contracting marriage of her own choice ... Police directed not to harass.

HABEAS CORPUS PETITIONS

Mukhtar Ahmed vs. Ghafoor Ahmed (PLD 1990 Lahore 484): Mukhtar Ahmed filed a petition for the recovery of Shehzadi, who he claimed was his wife and was being detained against her will by her parents. Mst. Shehzadi was recovered and made a statement that her *nikah* had been performed with Mukhtar, and that her parents were detaining her against her will. Shehzadi was lodged at a Dar-ul-Aman. At the next hearing, after hearing both parties, the court decided that no case was made for setting Shehzadi at liberty and her custody was restored to her father. The court held that the question of validity of marriage had to be decided by the competent court and that Shehzadi's custody by her real father was not illegal or improper.

Mohd. Khalid Jamshed vs. Malik Godha (PLD 1996 Lahore 462): The petitioner filed the petition for the recovery of his wife, Mst. Manzooran Mai, from the illegal custody of Malik Godha, her father. He claimed that, being of age, Mst. Manzooran contracted a valid marriage with him and performed her marital obligations. On the intervention of others, he had sent his wife to her father's house on the promise of proper *rukhsati*, but he had detained her in illegal confinement, was maltreating her, forcing her to marry someone else and there was grave danger to her life. The court observed that Pakistani courts could not ignore the social values, traditions, culture and code of morality of the country. Commenting that marriages contracted as a result of love bring hatred and shame to the parents, it stated that courts did not function in a vacuum. Holding that the girl's presence in her father's house was neither illegal nor improper, the petition was dismissed.

Hafiz Abdul Waheed vs. Asma Jehangir and another (PLD 1997 Lahore 301): Saima Waheed contracted a marriage with Mohd. Arshad of her own choice. Her father learnt about it and returned the *nikahnama* to Arshad's family stating that it stood cancelled. Saima escaped from the house and went to a shelter managed by Asma Jehangir and Hina Jilani. Her father filed a petition for her recovery, asking about the rights of parents in Islam in terms of obedience and whether the permission of a *wali* is a condition for a valid marriage. By a majority decision, the court decided that the marriage in question was not invalid.

Cases of *zina*/abduction

Mohd. Yousaf and another vs. The State (PLD 1988 FSC 22): Mohd. Yousaf and Mst. Saleem, a major, eloped. Mst. Saleem filed a writ in the High Court, but the SHO assured her that he was going to make no arrest since no case had been registered. Meanwhile, Mst. Saleem's parents, anticipating a plea of marriage, concocted the story of Mst. Saleem being married previously to Nazir. Nazir registered an FIR alleging abduction and *zina* against them. The co-accused claimed to be married and produced a *nikahnama*. The trial court disbelieved the entire prosecution evidence but, holding that the *nikahnama* of the two accused was a forged document, proceeded to hold them guilty of *zina*. The FSC held that the accused could not have been convicted if the entire prosecution evidence was disbelieved. It stated that ordinarily the assertion of a major woman and man that they have been living as husband and wife would have been sufficient to establish the factum of their being legally married. It quoted a judgement stating that reliance on or proof of *nikahnama* was not necessary to establish marriage. The appellants were both acquitted.

Mohd. Siddique and another vs. The State (1997 PCr.LJ 1655 FSC): Mohd. Sharif lodged a report against Mst. Zohra and Mohd. Siddique alleging *zina*. He claimed that he was married to Zohra and that Mohd. Siddique developed illicit relations with her and abducted her. They started living together and Zohra gave birth to a son. The appellants took up the plea that Sharif had divorced Zohra by way of *mubarat* and executed a witnessed *talaqnama*. Sharif denied it, stating that he had withdrawn his notice of *talaq* given through the union council. The appellants did not deny this but argued that since

the marriage was dissolved by way of *mubarat*, no notice of this was required and the marriage stood dissolved. The Court referred to a judgement of the Supreme Court whereby it was laid down that where there was a clash between an existing law and the injunctions of Islam with regard to the validity of a marriage, the injunctions would prevail for the purposes of the Ordinance. Holding that Zohra had been legally divorced, both appellants were acquitted.

Bail

(1997 PCr.LJ 1558 Lahore): Pre-arrest bail granted in an abduction case after the abductee filed an affidavit that she was not abducted and that she had married the accused of her own choice. The HC found no illegality in the order.

(1997 PCr.LJ 1810 Lahore): Pre-arrest bail granted in abduction case, holding that the *nikahnama* between the accused and the abductee was a correct and proper document, while the one submitted by her father was a forged document. The HC took great exception to the bail order stating that it was neither the appropriate court, nor could it be allowed that a young girl of marriageable age be allowed to live with a young man not within the prohibitory degree.

As can be seen, cases relating to a woman's right of choice in marriage and liberty to go where she wishes have been debated in Pakistan over the decades, and keep getting reopened, creating a situation of uncertainty and insecurity for women. While the problems existed even earlier, the introduction of the Zina Ordinance has given families and courts a further tool with which to harass women who violate social norms, subjecting them to the terrors of police stations, courts, jails and shelters. Social, cultural and religious arguments are all brought into play to deny women their rights. And while some courts move quickly to give them relief, others use their positions to give vent to their own retrogressive gender biases with total disregard for the principles of fundamental rights of all citizens. Whichever the forum, and however sympathetic the court, the biases creep in even when giving relief. The use of the words 'handing over or restoring custody' in the context of a woman is not only offensive, it reduces her status to that of an object or property, or at best a person not legally capable of making decisions for herself. And her confinement against her will in shelters, however well-meant or 'protective' is insulting to her as an individual and violative of her rights as a citizen. Courts exceed their own legitimate role when they move beyond their mandate of deciding the matter before them, and start looking into why women are demanding their liberty. Perhaps women will make wrong choices or decisions, but that too is their right. The inequality would become apparent if the courts were to ask themselves whether they would find it proper to confine men in jails or shelters if they thought they were likely to make mistakes. Moreover, the concern of the courts is restricted only to the possible pitfalls which unprotected women may face in the outside world; it is never extended to the violations they may suffer within their parental homes – after all, the family has to be protected, not the women within it.

BRIEF CONCLUSION

What is abundantly clear from this study is that the woman who undergoes violence in her life, whether physical, mental or through violation of her fundamental rights, faces heavy odds at every level in her quest for justice. Starting from her own home and family to society, to all the institutions intended to enforce, uphold or dispense justice, she faces the same lack of understanding and indifference to her plight, or even further violence and injustice. Starting with her own lack of awareness and information, she is discouraged from taking any action to safeguard herself or her rights. Society condones the violence and condemns her for taking any action that is not considered culturally appropriate, even if she loses her dignity, her self-respect or her life in the process. Her experiences with the police, jails and other forums expose her to further abuse. And her experiences in the court often leave her feeling that she was better off in the violent situation she lived in, whether at home, in jail or in a shelter. In many instances, women preferred death to facing the system of justice.

The review of judicial decisions confirmed many of the apprehensions expressed during the course of the interviews. Courts were, by and large, subject to strong gender biases, which they were, unfortunately, rarely able to put aside while making decisions. The strong impression that came across most often was, that the courts made up their minds first, and then concentrated on ways to justify their decisions.

With a few exceptions to the rule, some findings in this regard were:

- Women were often viewed as property, whether in terms of 'handing or taking them over' in cases of marriage of choice, or where crimes were condoned with the justification that certain men were 'entitled' to them and could make decisions on their behalf etc.
- Women were seen and treated as less equal in terms of capacity, hence they needed to be 'returned' to parental custody even where adult, or confined in shelters etc. for protection, or to help them in making up their minds, when no such perception existed about men.
- Women were expected to conform to myths and social expectations e.g. not answering back to husbands, not disobeying them, not complaining about them – even to their own relatives – and certainly not in leaving them just because they occasionally beat them up. Men who 'reacted' to this behaviour by inflicting further violence on them were condoned through mitigation of their sentences.

- Domestic violence was not viewed as violence. While judgements were articulate in expressing their views on women who violated social norms, there was rarely (if ever) even any implied criticism of the men who inflicted domestic violence on their wives.
- Women's lives had little value in the eyes of the courts, and murderers often got away with minimal sentences, which were more insulting than clear acquittals would have been.
- Women were held responsible for their own deaths on account of their immoral behaviour wherever it was possible for the courts to find even the remotest suggestion of socially unacceptable or inappropriate behaviour, and men got off with lower sentences since they were merely responding to situations unacceptable to them.
- 'Honour' was clearly rooted in women's bodies, which – equally clearly – were perceived as belonging to the men, thereby justifying their destruction if 'used' by anyone else.
- Moral judgements were made about women with impunity, including dead women who were not able to defend themselves. References to women as 'habituals,' 'of loose moral character' and 'of easy virtue' were used with ease, and suspicion of women's moral character was repeatedly used as grounds to justify violent crimes. Attitudes became particularly apparent in judgements, which allowed the consent of children to be used as a mitigating circumstance.
- Sex crimes were often indulgently treated as a natural outcome of the human failing of lust, rather than as brutal crimes of violence, and offenders were rarely severely penalised.
- While judgements based on socio-cultural norms were passed without any qualms against women or to condone men, socio-cultural conditions were often not taken into consideration when deciding cases against women e.g. where they floundered in cross-examination or delayed in filing reports, or where it was apparent from the situation that women were in a weaker position such as with a landlord, father etc.
- A variety of reasons were used for justifying gender-biased decisions – legal, technical, hypothetical or based on religious or social norms. And if none of these were available, sometimes no valid reasons were given for coming to a particular decision.

Much needs to be done to reverse the injustice that women are subjected to; from changing women's own perceptions, to enhancing their awareness, setting up and strengthening support structures, changing social attitudes, reforming the law and sensitising the enforcement agencies. All of these are critical needs. But this will be a long process, and none of it will ever be totally effective unless those charged with the ultimate responsibility of dispensing justice begin to understand what justice really means in the context of women.