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A STRUGGLE FOR JUSTICE

INCEST VICTIMS in PAKISTAN

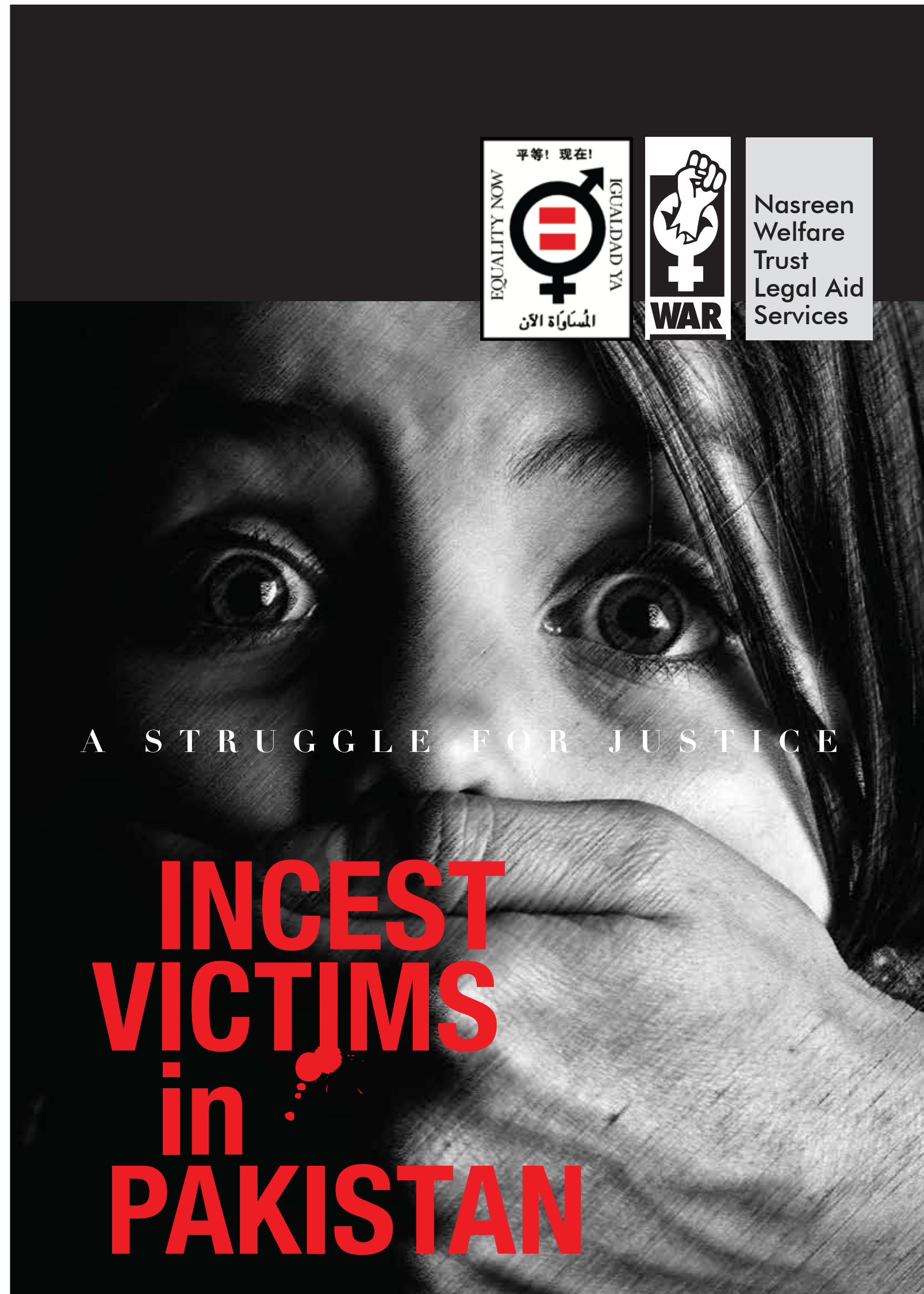


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*Results and Findings of Workshop on Sexual Violence
'Obstacles to Justice and a Search for Solutions' Lahore,
13-14 December 2010*

INTRODUCTION

Victims of sexual violence in Pakistan face numerous obstacles in their pursuit of justice. Added to the social stigma attached to victims of sexual violence is the fact that the justice system fails to protect victims, instead often re-victimizing them.

According to the 2010 annual report of the Human Rights Commission of Pakistan (HRCP), police statistics for the year show that 2,903 rape cases of women were reported.¹ The HRCP pointed out that these numbers are a fraction of the actual problem as a majority of sexual violence cases go unreported or are covered up. The few reported cases rarely make it past all the procedural hurdles in the justice system. According to Aurat Foundation, a women's rights organization, victims who report sexual violence face police obstruction and societal pressure, and perpetrators are either never apprehended or are released without charges.²

Child and adolescent victims are even more vulnerable and isolated as they often lack a support structure to report and challenge abuse and have especially limited access to justice. Sahil, a child rights organization, documented that in 2010 a total of 2,252 child sexual abuse cases were reported in the news out of which 1646 of the victims were girls.³

Incest is one of most invisible forms of sexual violence and young girls are the most common victims. As the perpetrator is most often a male family member and there is a strong tendency to protect the "honour" of the family at all costs, the rights and wellbeing of the victim are often sacrificed. Families generally keep the matter under wraps with devastating psychological, emotional and physical consequences for the victim. According to UNICEF, 40-60% of known sexual assaults within the family are committed against girls aged 15 years and younger, regardless of region and culture.⁴

In Pakistan incest victims have a very difficult time coming forward to report their cases and obtaining justice. NGOs working on the ground in Pakistan confirm that while incest is a frequent occurrence, the taboo surrounding the issue as well as the disbelieving attitudes of police, prosecutors and judiciary make it very difficult to address these cases and secure punishment of perpetrators. In addition, there is no specific provision for the crime of incest in Pakistan's Penal Code.

Due to a lack of data on the subject, women's rights organization War Against Rape, Lahore (WAR Lahore), Nasreen Welfare Trust Legal Aid Services (NWT) and Equality Now carried out a preliminary study on incest in Pakistan. This study was inspired by the case of Mariam (not her real name), a 15-year-old incest survivor, which was taken on by the three organizations and illustrated many of the problems incest survivors face in accessing justice. This study aims to identify such obstacles and provide solutions based on practices that have been successfully used in other places.

The study includes a survey of incest cases by WAR Lahore, a summary of published legal opinions in incest cases, identification of obstacles to justice and a compilation of good practice examples from other countries that have addressed similar obstacles. We hope this report will be used as a guide towards making the Pakistani judicial system more supportive of future victims which will have a deterrent effect on perpetrators.

I. MARIAM'S CASE

BACKGROUND

In 2009, WAR Lahore and NWT, with assistance from international women's rights organization Equality Now, took on the case of Mariam, a 15-year-old Pakistani girl who was raped by her father. The goal in taking the case was to set a legal precedent on incestuous rape, address barriers to access to justice for survivors of sexual violence, including incest, and ultimately target reform of the legal system (both laws and procedures) to ensure that survivors of sexual violence have access to justice.

FACTS OF THE CASE

Mariam, the eldest of six children, lived with her father and siblings. Her mother had moved out of the home after suffering years of physical and sexual abuse at the hands of her husband. About a month after her mother left, Mariam's father began molesting her during the night while her siblings were asleep. When Mariam resisted he would beat her and threaten to kill her younger brothers. One night, while her siblings were asleep, her father woke her and asked her to fetch him a glass of water. When she handed over the glass to him, he put his hand over her mouth, dragged her to a nearby room and raped her. A month later he raped her again.

Reporting to the Family

After the rapes, Mariam felt that she could not tell anyone what had happened to her because she was ashamed and scared. She felt that no one would believe her and she herself would be taunted by this shameful disclosure. In addition she was living under the perpetrator's roof and the perpetrator was in a position of authority over her, making the situation untenable. She finally confided in a school friend who informed her older sister who then told Mariam's aunt. The aunt then called Mariam's mother. The following day Mariam,

who was deeply disturbed, started crying in class and when her teacher asked her what was wrong, she told her what had happened. The teacher then called Mariam's mother and voiced similar concerns, based on her conversation with Mariam and witnessing Mariam's distress.

Reporting to the Police

When Mariam's mother took her to the police station to report the incident, Mariam was repeatedly questioned by several policemen to whom she related the same story. The policemen were sceptical and uncooperative and tried to dissuade Mariam's mother from filing a complaint, telling her that this would stigmatize Mariam for life. However, the Station House Officer (SHO) told Mariam's mother to think about the situation calmly and to discuss it with her relatives and come back the next day. The following day, Mariam's mother told him that they had decided to prosecute and the case was registered. This was progress in the Pakistani context, as cases are hardly ever registered without court intervention, bribes or political pressure and to have a case of incestuous rape registered within 24 hours of reporting was an achievement in this system.

Getting the Prosecutor to Prosecute

Mariam's maternal uncles, who are poor street vendors, initially hired a lawyer to follow the case. While her father, who owned a welding business, was initially arrested, he was granted post-arrest bail by the Sessions court within four days of filing the case, and Mariam's mother, the Complainant, was never served the summons to attend court and oppose the bail. The prosecution department which was meant to be ensuring the crime was properly prosecuted, further attempted to get the police to cancel the case as the investigating officer had declared Mariam's father '*not guilty*' without ever having conducted a proper investigation into the case. The lawyer hired by Mariam's uncles refused to follow the case unless a large amount of money was paid to him. At this point Equality Now and a lawyer from NWT decided to take on the case. NWT had to file an application for re-investigation, highlighting the investigating officer's misconduct. NWT managed to have the prosecutor (who had colluded with the investigation officer to suppress the summons and facilitate bail) suspended for prosecutorial misconduct and was successful in getting a senior police officer to reinvestigate the case.

Undergoing the Medical Exam

Mariam underwent a traumatic medical examination. The medico-legal officer who performed the examination was incredulous when she heard Mariam's story despite the fact that she found that her hymen was no longer intact. She referred Mariam to the gynaecology department for further tests, but the investigating officer misplaced the referral slips and no further tests were done.

Commencement of Legal Proceedings

The police report on completion of investigation (Challan) in Mariam's case was submitted to court in June 2009 and after the reinvestigation a supplementary Challan was submitted in April 2010. The hearings began in January 2011 but there were several delays due to the defence lawyer not being present and the judge being assigned to other cases. While Mariam and

her family went to the court regularly for months, they frequently had to leave without any proceedings taking place which imposed a significant hardship on them. There are no special waiting areas for women and child victims of sexual violence in the court premises, exposing them to being in proximity of the perpetrator.

Mariam and her family were far luckier than other complainants as they were not taken to the court in the initial stages of the trial in order to protect them from unnecessary hardship. Her lawyer also countered the delay tactics by the defence by asking the judge to impose fines on the defence for each delay. If there had been no outside financial support for Mariam and her family, it would have been impossible for them to afford the trial and litigation expenses.

The Trial

Mariam's lawyer filed an application for special measures including for holding *in camera* proceedings before the trial court in June 2010, requesting permission for screens and video evidence as befitting Mariam as a minor and vulnerable witness. The application for special measures was accepted by the court in acknowledgment of the need to protect Mariam from testifying directly in view of her father. WAR Lahore arranged for a hospital screen to be brought to the court at every hearing.

During the trial, the prosecutor made statements that were harmful to Mariam's case and her lawyer had to intervene. The prosecutor initially told Mariam's lawyer that the medico-legal examination went against their case as the examiner did not find sign of bruises. The medico-legal officer also testified in court that given that there were no marks of violence, in her opinion Mariam had consensual intercourse and had not been subjected to rape. The medico-legal examiner's lack of knowledge and the prosecutor's lack of diligent scrutiny and understanding of sexual violence and the law would have been extremely detrimental to the case had Mariam's lawyer not intervened to counter such assertions.

All in all, without an independent lawyer to represent her interests, Mariam's case would have been lost.

I. MARIAM'S CASE

The Judgment

*The State vs Khalid Amin son of Rehmat Ali Hudood
Case No. 236 of 27-04-10.*

On 22 July 2011, the court sentenced the perpetrator to death for raping his daughter. The judge stated that the defence's claim that the child accused her father of rape because she wanted to marry someone of her own choice was not plausible because such a dispute may lead a daughter to at most elope but not to 'damage the honour and integrity of her family.' He also stated that the medical evidence supported that intercourse had taken place and that absence of marks of violence did not mean that it was a consensual act. He went on to say that Mariam's father 'enjoys the very position of command, supervision, sustenance, shelter and protection which every father possesses against his teenage daughter and this fact constitutes sufficient compulsion that resistance or abstinence could not be expected.' The perpetrator was awarded the highest sentence for rape and sentenced to death by hanging. The perpetrator has appealed the decision and is currently in jail waiting for the appeal hearing.

While Equality Now and WAR Lahore do not support capital punishment, this sentence was an affirmation of justice for Mariam after over two years of persistent efforts. The judgment showed that the Pakistani justice system can work for vulnerable and typically voiceless victims of such unspeakable crimes.

The process was extremely difficult for Mariam, who stayed brave and fought for justice until the end; however, her pursuit of justice could not have been possible without key support from each of the three involved organizations. This included financial support from Equality Now that helped Mariam and her family rebuild their lives by making sure they have adequate housing and access to education for Mariam and her siblings; counselling and logistical support from WAR, Lahore in order to help her deal with her trauma and move beyond it to be able to testify in court; and legal support from NWT, without which her case would have been dropped without proper investigation.

Mariam's case is a testament to the fact that a dedicated, diligent and well coordinated effort by all the stakeholders can reap positive results, in an otherwise flawed legal system. Credit also goes to the judges of the Sessions court who allowed for special measures such as a screen.



II. STORIES OF INCEST SURVIVORS

II. STORIES OF INCEST SURVIVORS

WAR Lahore followed ten cases of sexual violence in the family in the province of Punjab during 2009-2010. Of the ten cases followed, the case of Mariam is described in section-I and a synopsis of the nine other cases is provided below. As there is no definition of incest in the Pakistan Penal system, WAR Lahore concentrated on cases of sexual violence by any family member perpetrated against a young, female victim.

WAR Lahore found these cases either through being directly approached for assistance, or through initial police reports or news reports of the incidents. Of the nine cases described below six were reported to the police and of these only one (the case of Aamina) resulted in a court trial for the perpetrator. The other cases were either not pursued by the victims or, to the extent that complaints had been filed, these were dropped, demonstrating the difficulty plaintiffs have both socially and legally in accessing justice. These stories highlight the vulnerability of girls and women within the home and emphasize the need for specific legislation to address these crimes. All names have been changed to protect the identity of the victims.

Saleha

17-year-old Saleha was married in 2007. Within months of her marriage she was raped by her father-in-law and two brothers-in-law who lived in the same house. On some nights she was raped by each of them one after another. When Saleha told her husband what was happening, he told her to keep it to herself. Due to the fact that he was financially dependent upon his family business he did not want speak out against the crimes. Saleha also confided in her husband's grandmother who expressed her disbelief and stated that her grand sons were 'not desperate enough' to rape their own sister-in-law. She accused Saleha of being romantically involved with someone and of making excuses to leave her husband's home.

After a year of marriage she had a daughter and stated that she was confident that the child's father was her husband. However, she is unsure regarding the paternity of her second child with whom she was pregnant at the time she spoke with WAR Lahore. She moved out of her husband's house without her daughter. After she confided in her mother about the rapes, her mother registered a case against the perpetrators.

Saleha and her family decided that they could not spend time waiting for justice especially given that Saleha's in-laws were well off and influential and taking forward a case could put her own family in danger. She received threats, was forced to go into hiding and is no longer pursuing the matter.

Saleha is fearful for her daughter's safety and is trying to get her back. While speaking to WAR Lahore she spoke of her feelings, "after being raped by so many men I feel numb inside. It has taken a toll on my health. I am always sad and I keep wondering why this happened to me? Had my husband been dead perhaps I could come to terms with it. How could I have undergone this torture with him in the same house?"ⁱ

Aasiyah

18-year-old Aasiyah was taken from her hometown of Karachi by her father to Islamabad in November 2009, where he raped her and then took her to a brothel and sold her in prostitution to various men. He then took her to the town of Hyderabad for the same purpose, but a

ⁱ. Reported in news paper on 22 February 2010

II. STORIES OF INCEST SURVIVORS

policeman approach them after hearing them arguing. The father ran away upon seeing the policeman and the girl was returned to her mother in Karachi following her month and a half long ordeal.

Aasiyah's mother Parveen registered a case with the police in Karachi but due to threats and pressure from her husband she was forced to move to Lahore with Aasiyah where she lives with a relative and works as a maid.

Though the medico-legal report and other evidence could possibly have been enough to convict the perpetrator, Aasiyah and her mother succumbed to pressure from relatives and village elders not to go ahead with the criminal case. Aasiyah's mother told WAR Lahore that having to move to Lahore to make a living and the unsupportive behaviour of police and her community had made it impossible for her to pursue the case.ⁱⁱ

Shahbano

Shahbano was visiting her sister's home for a few days in January 2010 and was raped by her brother-in-law Waseem when her sister had gone to the market. According to Shahbano, Waseem used brutal force to have sex with her. After the case was reported to the police, a quarrel erupted between Waseem and Shahbano's families. Since then both sisters have been living at their parents' home.

The police dismissed the case stating that the complainant had not pursued the case and claimed that the allegation was the result of an earlier enmity between the two families.ⁱⁱⁱ

Summaya

Summaya was raped by her step-uncle in late 2008. She was about 9-years-old at the time of the occurrence. Summaya's father divorced her mother Tasneem and Tasneem married a man named Shahbaz in 2007. In 2008 Tasneem had a quarrel with her husband Shahbaz and after an episode of domestic violence left his home to live with her relatives. Summaya was left with Tasneem's in-laws and second husband. It was during

this time that Shahbaz's younger brother raped her. When Summaya tried to resist, her step-uncle showed her a pistol and threatened to kill her.

When the child told her step grandmother about what had occurred, she made no effort to stop the violation from recurring and continued to make Summaya sleep in the same bed as her rapist. She even bathed Summaya and washed her clothing in order to hide any evidence.

In February 2010 there was an attempt at reconciliation between Tasneem and Shahbaz. When Tasneem went to her in-laws house and met her daughter, she found out about the incident and filed a police report. When speaking about the attitude of police, Tasneem described them as unsupportive and condescending. They made statements such as "you have lost your respect in society already so leave the case. Court procedures are lengthy and a lot of money will be needed." They said, "You are blaming an innocent man, you must have some grudge against him."

Tasneem did not reconcile with her husband and there is extreme hostility between the two families. She is an illiterate woman and now works as a maid and finds it difficult to pursue the case financially and logistically. Despite filing the initial police report, she decided to take no further legal action.

Summaya does not go to school. She seems psychologically disturbed and may be suffering from some internal injuries as a result of the rape. Her family says that she does not sit upright and is always lying in bed. "Our lives are ruined. No one helps us. If this is not a crime what is it? Don't people have daughters?" When asked what she thought would be an appropriate punishment for the crime, Tasneem replied, "He should be hung in front of everyone so that it is a lesson for all that this is an unacceptable crime."^{iv}

Zubaida

Zubaida was raped by her older brother at the age of 14. In August 2010, she was alone at her home when one of her four elder brothers came home and called her to one of the rooms in their house saying that he needed to discuss an urgent matter with her. Once inside the room her brother raped her and she fainted as a result.

ⁱⁱ. Reported in news paper on 16 January 2010

ⁱⁱⁱ. Reported in news paper on 26 January 2010

^{iv}. Reported in news paper on 23 March 2008

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She told her other brothers and her mother what had happened and the same evening Zubaida went to the police station and registered a case.

However, since then the perpetrator appears to have prevailed upon the family to drop the matter. The family changed their version of events and will not pursue the matter any further. ^v

Aamina

In August 2010, 14-year-old Aamina went to stay with her maternal grandparents for ten days and during her visits her maternal uncle Farooq who was in his early-thirties at the time began eliciting a sexual relationship with her.

The next month Aamina ran away from home with Farooq prompting a frantic search by her mother. When her mother arrived at the grandparents' home where Farooq lived she was told that Aamina had been brought there by Farooq. Aamina's grandparents had demanded that he leave and said that they would be sending Aamina back to her home in Rawalpindi. Instead of complying, Farooq and Aamina ran away again. When Aamina's mother inquired further she was led to a nearby village, where she found her daughter in the home of a family acquaintance.

A case under section 376 PPC was registered against Farooq. Her mother took Aamina back to Rawalpindi while Farooq was arrested. According to last reports Aamina is living with her parents in Rawalpindi and Farooq is in police custody while undergoing trial. ^{vi}

Humaira

Humaira is 27 years old. As a child, she was molested repeatedly by her maternal uncle. The abuse started when she was 10 years old. The perpetrator was affectionate to her and would shower her with attention and buy her sweets and gifts. Humaira said that the abuse mostly took place at night and she spent countless

sleepless nights in fear. Her extended family lived together and sleeping arrangements left her vulnerable to abuse.

Even when she complained to an aunt (sister of the perpetrator) the aunt made no effort to help. *"My aunt did not change my sleeping place even when I refused to sleep there ... I suspect that my aunt was herself facing the same situation."* Her aunt started crying and advised Humaira not to disclose the incident to anyone. She also said that when she told her aunt and her mother about what was happening they told her to keep it to herself. Her mother refused to believe her and said, *"My brother is not that desperate. You must have done something wrong and now in order to protect yourself you are blaming him."*

Humaira said that the abuse led her to lose interest in her studies and she has struggled academically and professionally ever since. Looking back she says that the incident has had a profound psychological impact. Even the thought of the abuse makes her angry and aggressive towards those around her. She says that she feels as if all the problems she is facing in her life are a result of the abuse she faced as a child. Along with feelings of shame and fear, Humaira developed an emotional attachment to her uncle as a child. When she found out that he was getting married she felt jealousy and anger.

She feels that parents should make sure to guard their children against abuse stating, *"Animals can also produce offspring. What is so special about humans if they can have children but cannot take care of them?"* When asked about punishment, Humaira said that, *"Even life imprisonment is not enough punishment for such a crime. The perpetrator should face a public trial so that everyone knows that he is a bad man."* ^{vii}

Ghazala

In 2007 WAR Lahore was approached by a woman who was a doctor by profession. She told WAR Lahore that her 22-year-old sister Ghazala, who was paralyzed from the waist down and confined to the house, had been showing signs of psychological strain for the past two years.

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Their father is a cardiologist working abroad and he would visit the family every two to three years. Ghazala would be morose during his time in Pakistan and would show greater signs of mental distress during these visits. It was only after years of suffering that Ghazala revealed to her sister that their father had been sexually abusing her for many years. He would sexually molest her while telling her that he loved her and warning her not to let anybody know what he was doing because they would never believe her.

WAR Lahore managed to provide counselling over the phone for Ghazala but could never meet her in person as Ghazala could not get to the WAR office. WAR tried to arrange a meeting at an alternate location but her sister was not able to transport her. Taking the case to court was not considered by the family given that the father was usually out of the country and they did not want to deal with the emotional upheaval and societal stigma of a public trial. ^{viii}

Amal

During 1998-99 a woman named Kausar came to the WAR Lahore office stating that she wanted a divorce from her husband. She had seven daughters and one son and was impoverished. At the time of separation in 1997, she decided to leave her two youngest daughters, aged 9 and 10 years with her husband, hoping that he would care for them and support them. She told WAR that a year after the separation a neighbour saw her husband molest his daughters at night while they were all sleeping on the roof of their houses. In particular he was seen near the older daughter's bed trying to take her clothes off. The neighbour shouted at the father to "stop" and called Kausar the next morning to take her daughters away from their father.

Kausar came and took the two girls to live with her. The older daughter Amal had suffered the most sexual abuse and she was severely depressed. When WAR Lahore followed up on the case in 2010 the family was

living in poverty and Amal was suffering poor psychological and physical health for which she is currently under treatment. She is fearful of men but has been engaged to a cousin. She had wanted to study further but the financial situation of the family as well as her mental state did not allow for her to pursue her studies. Her younger sister is married and expecting a child. When asked about the incident she becomes quiet and says she does not want to discuss it. Due to lack of resources, taking the case to court was not an option for the family. ^{ix}



^v. Reported in news paper in August 2010
^{vi}. Reported in news paper on 4 October 2010
^{vii}. Unreported Case 2010

^{viii}. Unreported Case 2007
^{ix}. Unreported Case 1998 - 1999

III. INCEST CASES IN THE PAKISTANI LEGAL SYSTEM

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In the experience of NGOs and legal aid clinics working on the ground, most cases of incest are never reported and if reported they rarely go to trial (as observed in Section II). Rape cases are only tried in Sessions Court and not at the magistrate level leaving only a handful that result in published decisions.

A review of published decisions on incest in the past 25 years was undertaken using information provided by Hassan & Hassan (Advocates) and lawyer Kiran Bokhari. The research yielded six decisions of the Federal Shariat Court, High Court and Supreme Court, which are described and analyzed below. In these, the respective judges ruled for the defendants in four cases - disbelieving the victims, calling their character into question, refusing to believe that incest was possible and accusing family members of trying to exact revenge through false allegations.

Shabeer Hussain vs. The State
2009 YLR 1573 Lahore High Court

A young girl alleged that her father raped her while she was alone with him in their home. The father claimed that he had beaten his daughter after having found that she was romantically involved with her cousin and the rape case had been registered against him due to his opposition to the relationship. The maternal grandmother and aunt of the victim supported the victim's claim but her mother refuted her statement. The accused was arrested for six months and petitioned for bail.

The court ruled in favour of the father stating that, "*It is highly improbable that the petitioner would have committed such a heinous offence with his own daughter in the presence of other children,*" and that, "*there is nothing on the record that the petitioner was a man of ill repute.*"

Very little importance was placed on the victim's testimony and it was ruled that since she was in her teens and had very little education, she could have been "*tutored*" by her relatives in order to frame her father and protect her cousin with whom she had "*illicit relations.*" It was also stated that the medical report contradicted the victim's version of events and the chemical examiner's report had not yet arrived. The accused was released on bail and sent back to live with his daughter despite the fact that her counsel alerted the judge that her life could be in danger.

Muhammad Iqbal vs. The State
2004 P.Cr.L.J. 1580 Federal Shariat Court

A girl of 17 or 18 years of age claimed that her stepfather and his nephew raped her while her mother was not at home. She was six months pregnant at the time she told her relatives what had transpired. Her uncle filed a police report against the stepfather and his nephew. The perpetrators were sentenced to 15 years imprisonment and a fine of Rs. 20,000 each. The perpetrators subsequently appealed the judgment.

The judge released the stepfather and his nephew on the basis that the prosecution had not proven its case beyond a reasonable doubt and that the evidence had previously been misread. The judge declared the victim "*unreliable*" because she hid the pregnancy for 6 months and labeled her a girl of "*easy virtue*" based on a medical report that claimed that her hymen was torn in multiple places.

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In addition, based on the fact that the victim frequently visited the home of her maternal aunt against whom a hudood* case had been registered, the judge ruled that the “conduct and character of the victim is not free from doubt and she had been roaming about according to her own free will.” The judge also stated that there was a property dispute between the victim’s mother and maternal uncles, which may have led to a conspiracy by the maternal uncles to target the victim’s step-father.

Muhammad Ashraf vs The State 1997 P.Cr.L.J. 1351 Federal Shariat Court

The victim in this case was a girl of 15 or 16 years of age and she alleged that her father had raped her at least 6 or 7 times in her mother’s absence. The victim became pregnant and the perpetrator immediately arranged an abortion. When he was confronted by the victim’s mother he threatened their lives and claimed that the pregnancy was a result of sexual relations between the victim and her maternal cousin. The father was sentenced to 25 years in prison by a Sessions court and filed an appeal.

The judge ruled in the victim’s favour claiming that a young girl could not by definition consent to sexual intercourse with her father even if no threat was made. “The very position of command, supervision, sustenance, shelter and protection which a father possesses as against his daughter constituted sufficient compulsion that resistance or abstinence cannot be expected.” The judge upheld the sentence of 25 years in jail and stated that it was “in no way excessive as it was not a case of satisfying the lust under bastardly compulsion once but of repeated assault” and such conduct deserves to be punished severely.

*x The Hudood Ordinances were enacted in 1979 by Military dictator Zia-ul-Haq with the intention of bringing Pakistan’s legal system closer to the precepts of Islam. They included laws on Zina (extra-marital sex), Qazf (false accusation of Zina), property, prohibition (of alcohol) and whipping.

Masood Aziz vs The State 1989 P.Cr.L.J. 1462 Federal Shariat Court

A 9-year-old girl alleged that her father had molested and raped her in their house. Her maternal uncle filed a police report on her behalf. Her paternal uncle and grandfather who lived in the house next door stated they did not hear the girl’s cries. A domestic servant sent by the grandfather to the accused’s house also claimed he did not hear her cries. The Sessions court sentenced the father to 25 years in prison and he appealed the case.

The accused was acquitted. The judge stated that the grandfather and uncle were in the next house and heard nothing and that there was evidence of animosity between the maternal uncle and father of the complainant. Problematically, the court said that it could not accept “that a father would rape or even abuse his daughter who is his own flesh and blood” and attributed the accusation to animosity between the accused and the maternal uncle of the complainant, once again marginalizing the victim.

Liaqat Ali vs The State NLR 1988 SD 494

This case involved an application for grant of bail by a man who was accused of raping his daughter after abducting her from her mother’s home. He had divorced the girl’s mother 12 years earlier and his co-conspirator in the kidnapping was his current wife’s brother. After the kidnapping and rape he tried to marry his daughter off to his current wife’s brother.

The judge granted bail to the accused because the victim’s story had too many discrepancies such as inconsistencies in her statement as to when and how many times she had been raped by her father. He also stated that there was a long history of enmity between the accused and the mother of the victim which may have led to the accusation.

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Farrukh Ikram vs The State PLD 1987 Supreme Court 5

This case involved an appeal to the Supreme Court by a man accused of raping his 12-year-old step daughter about 7 or 8 times over a span of 6 months on occasions when her mother was not home. On the last occasion, the girl’s 9 year old sister witnessed the crime through a hole in the wall. The accused threatened to kill both the girls if they told anyone about the incident. After their mother noticed their distress she asked them what was bothering them and they finally revealed the crime to her on the roof of their home. The step father claimed that he was being falsely accused by his wife as revenge for asking her permission to contract a second marriage

A Sessions court convicted and sentenced the accused to 25 years in jail. On appeal at the Federal Shariat Court the sentence was reduced to 15 years. At the Supreme Court appeal the lawyer of the accused attempted to make the case that the girl had consented to sexual relations as she had not revealed the incident for six months and there were no marks of violence. The judge pointed out that “The age of the victim at the time of the alleged offense was 12 years, which means she was a minor at that time and if she is a consenting party even then her consent does not lessen the gravity of commission of offense.” The judge upheld the Federal Shariat Court sentence of 15 years and ordered a previously suspended sentence of 30 strips ordered by the Sessions court to be carried out in a public place.



IV. AN EXAMINATION OF OBSTACLES TO JUSTICE

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The legal system presents almost insurmountable barriers to justice for victims of sexual violence, particularly incest. Dismissive and condemning attitudes of police, prosecutors, courts and medical examiners as well as cumbersome court procedures make the legal process disheartening and often re-victimizing.

Stigma as a Barrier to Reporting

When a crime of sexual violence occurs victims are often hesitant to report the crime, even to family members, out of shame, confusion, and fear. Even upon discovery, families may choose to keep the matter under wraps with devastating psychological, emotional, physical and educational consequences for the victim involved. Societal stigma presents obstacles at the family and community level as well as the justice system. To be associated with such a crime is considered a source of shame and families cover up the incident to protect themselves.

Upon trying to seek justice rape victims are often treated in a dismissive manner, accused of lying or having somehow brought the crime upon themselves. For these reasons, crimes are rarely reported which makes it extremely difficult to obtain numbers on prevalence. Mariam talked about her fear of not being believed when she initially made the complaint. She said, *"They will blame me, call me a liar and say no father could do such a thing."*

Police Attitudes

Sexual violence cases are often regarded with lack of seriousness by the police in Pakistan. If the victim reports the crime she faces significant hurdles. Her statement may be met with disbelief and condemnation by police and her behaviour and character may be called into question.

When Mariam's mother took her to the police station to report the incident, for example, Mariam was repeatedly questioned by several policemen to whom she repeated the same story. The policemen were sceptical and uncooperative and tried to dissuade Mariam's mother from filing a complaint, telling her that this would stigmatize Mariam for life. Mariam recalled her experience with the law enforcement and said, *"Many policemen called me a liar, fraud and said 'You are doing something wrong.' Very few of them understood what I was trying to say and few said that this girl should get justice. While I was describing the occurrence I was too afraid to tell all the details and frightened that they would harm me, kill me or punish me. I used to weep all the time then but I realized that nothing will change if I cry and I had to show courage."*

It is not uncommon for law enforcement to encourage reconciliation within the family as an alternative to legal recourse; as sexual violence issues are often regarded as domestic matters, victims are encouraged to deal with them within the home. Victims are told not to *'stain their families honour'* by registering such a case and to spare themselves and their families the difficulties and public shaming resulting from a long drawn out court trial. Police response may deter reporting of such crimes and in addition the police may let their own biases colour the investigation.

The police themselves may lack knowledge of relevant laws on sexual violence. Equality Now's partners in Pakistan have told of instances where the police have

been unaware of changes in the rape laws and have asked victims to present witnesses to the crime.

Prosecutorial Misconduct and Lack of Understanding of the Law

NGO experiences in Pakistan show that prosecutors may be susceptible to bribery and as a result may fail to prosecute fully or may even drop the case. Anecdotal evidence shows that perpetrators possessing wealth and influence are often able to buy their freedom without the victim's knowledge. For example, it is not uncommon for prosecutors, in collusion with the investigation officers and process servers, to deliberately suppress summons and not inform the complainant of a bail hearing. In Mariam's case, the initial prosecutor seemed to have been moving to get the case dismissed but her lawyer was successful in getting him suspended and reopening the investigation. Mariam's case also demonstrated the lack of understanding of laws on sexual violence by the prosecutors. The prosecutor, who is supposed to follow the law and promote justice, made statements that were harmful to Mariam's case and her lawyer had to intervene several times.

Long Drawn Out Trials

Lengthy trials and repeated adjournments are physically and emotionally exhausting for all those involved, especially the victim. Victims and their families are put in an economically and psychologically difficult situation by having to appear in court diligently only to have the case adjourned. The perpetrator and his lawyer may drag the proceedings on for months without regard for the time limits prescribed. The lengthy trial process may deter victims from following through with the case.

There were several delays in Mariam's case and she discussed how this was emotionally draining for her family. In Mariam's own words, "Both my uncles are poor people and to visit court they had to take leave from their work and when the defence lawyer did not appear in court we felt very low."

Insensitivity in Cross Examinations

During cross examinations, defence lawyers may treat victims without the appropriate sensitivity relating to their age and the violation allegedly committed against them, without any objection from prosecution and presiding officers. Irrelevant questions about behaviour, past sexual history, dress and motivations may be brought into proceedings by defence who often mirror the police in terms of not believing the complainant, calling the victim's character into question or marginalizing the seriousness of the violence committed. Such attitudes serve to further re-victimize the complainant and to deter reporting of sexual violence and incest cases. ^{x*}

Untrained Medico-legal Officers

Female medico-legal officers who conduct the physical examinations of rape victims and prepare the medico-legal report used at trial are few in number and not readily available. According to the Surgeon Medico-legal Punjab, this is because families do not want their daughters to work with victims of sexual violence, especially when it involves trips to the hospital during night time hours. Male medico legal officers who work with male victims of sexual violence significantly outnumber female officers available to work with female victims. In addition, medico-legal officers may bring their own biases and stereotypes into their reporting. For example one medico-legal officer recounted that if the victim is wearing western clothing or has her eye brows groomed she would fill out the report stating that the girl is *habitual*' (of 'loose morals') when it comes to sexual relations. Such a report with no scientific basis may irreparably harm the case.

Given the importance of medico-legal testimony in legal proceedings involving sexual violence, it is extremely important for medico-legal officers to be properly trained, cognizant of legal standards and objective in their work. Currently there is a lack of knowledge of the law and the requirements of stringent and professional medico-legal evidence which if applied would result in a higher conviction rate. The lack of professionalism of medico-legal officers is borne out by Mariam's case

^xi. In 2002, the Law & Justice Commission of Pakistan deliberated upon deleting Article 151(4) of the Qanoon-e-Shahadat Order [Law of Evidence] '84, which provides that when a man is prosecuted for rape, it may be shown that the survivor was of 'generally immoral character'. This suggestion was discarded.

where the medico-legal testimony was faulty and biased and Mariam was disbelieved by the examiner. Mariam said "I felt humiliated. The doctors who are assigned to conduct medical examinations of girls in my situation should speak to us kindly and believe us. She inflicted on me the same pain I had experienced on the occurrence of the rape." The medico-legal officer also testified in the court that in her opinion, given the lack of marks of violence, Mariam had engaged in consensual intercourse and not been subjected to rape, showing a lack of knowledge of forensic science and the law.

Lack of Special Measures for Young Victims

Adolescent girls have an especially difficult time in trials. An analysis of incest decisions (presented in section III) show judges citing young age, lack of experience and education as reasons for girls being used as scapegoats by relatives who may be out for revenge or monetary gain. As a young girl's behaviour and character is called into question it is likely that the experience will be especially psychologically damaging during the formative years when she is struggling with issues of identity.

Pakistan does not have arrangements for young victims or witnesses to testify out of sight of the perpetrator, either through the use of *in-camera* proceedings or screens. As seen in Mariam's case, before entering the courtroom there are no separate waiting rooms so victims are often made to wait in close proximity to their victimizers. Visiting the court was a traumatizing experience and when asked about the most challenging aspect of the case Mariam said, "Visiting the court was the most difficult part I experienced." She talked about the painful experience of waiting before the hearing and said, "There is no separate waiting area for complainants and their families. I hated waiting in court because it was full of men who stared at us. There should be separate sitting areas for women and children in courts. Also victims like me should only be called to court when it is necessary and once present testimony should be recorded promptly so we do not have to wait for hours."

Mariam was thankful that her lawyer had pushed for permission to have a screen separating her during the hearing and that WAR Lahore had brought it for the hearings. She said, "If this facility had not been provided it would have been extremely difficult for me to testify without immense fear." Most minor victims do not have the chance to testify screened off from their rapists.



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Information taken in large part from the report of an expert group meeting organized by the United Nations Division for the Advancement of Women (DAW) and the United Nations Office on Drugs and Crime (UNODC) in May 2008 entitled ‘Good Practices in Legislation on Violence Against Women’, and a related handbook.⁵

A. Laws on specific forms of sexual violence against women and girls

Legislation should:

- be specific about the forms of violence it penalizes in order to provide clarity to complainants/survivors as well as people in the law enforcement and judicial system
- have specific provisions on incest, and on sexual abuse by other non-familiar duty-bearers with power over the complainant/survivor, lest these crimes go unreported

Most countries, including those in the Muslim world have specific legislation regarding incest. Such laws provide varying definitions of incest and many limit the crime to abuse of children. For example:

- Article 376A of the Malaysian Penal Code penalizes incest and defines it as having sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person.⁶
- Article 103 of Turkey’s Criminal Code Law No 5237 imposes punishment for performance of sexual abuse by antecedents, second or third degree blood relations, step father, guardian, educator, trainer, nurse and other persons rendering health services and responsible from protection and observation of a child, or by undue influence based on public office.⁷

- Article 267 of the Egyptian Penal Code penalizes sexual intercourse with a child committed by a person related to the child or responsible for the child’s upbringing, or having authority over the child.⁸

B. Investigation and legal proceedings

Access to justice depends not only on clear and comprehensive laws but also on rules and procedures that ensure that personnel in charge of providing access to justice are accountable, proceedings are timely, evidence is properly collected and presented and complainant’s rights are respected.

1. Duties of police officers

Legislation should provide that police officers:

- respond promptly to every request for assistance and protection in cases of violence against women and girls, including incest, even when the person who reports such violence is not the complainant/survivor
- upon receiving a complaint, conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor

Police play a crucial role in any coordinated response to violence against women. However, female survivors/complainants of violence often hesitate to call police because they fear that they might not be taken

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seriously or be considered to be lying and may have little confidence in the justice system. Laws increasingly include provisions on the duties of police officers in cases of violence against women, which should include responding to complaints of incest. For example:

- Article 7 of Ghana’s Domestic Violence Act (2007) states that police officers must “respond to a request by a person for assistance from domestic violence and shall offer the protection that the circumstances of the case or the person who made the report requires, even when the person reporting is not the victim of the domestic violence” and Article 8 goes on to elaborate upon the duties of the officer.
- Section 30 of the Philippines Anti-Violence against Women and their Children Act (2004) imposes a fine against village officials or law enforcers who fail to report an incident of violence.

2. Duties of prosecutors

Legislation should:

- establish that responsibility for prosecuting violence against women lies with prosecution authorities and not with complainants/survivors of violence, regardless of the level or type of injury
- require that complainants/survivors, at all relevant stages of the legal process, be promptly and adequately informed, in a language they understand, of their rights

Given the fear and intimidation to which complainants/survivors are subjected, it is important that public prosecutors, or their equivalent, be assigned to cases of violence against women and girls. Such prosecutor involvement was one of the central elements of the original legal reform on domestic violence in the United States of America. In Austria, ex-officio prosecution is exercised in cases regarding all forms of violence, regardless of the level of injury.

Lack of information and/or misinformation regarding the legal process can be intimidating for the complainant/survivor - precluding her from engaging fully and completely in the case; deterring her from continuing with the prosecution, particularly in cases of domestic violence; and threatening her safety. For example, if there is a change in the perpetrator’s bail and/or imprisonment status and the complainant/survivor is not informed, the complainant/survivor may not be able to keep herself safe. If the complainant/survivor is not informed of relevant court dates and proceedings, she may not understand what is happening and/or miss important dates. Further examples of how the law can provide appropriately include:

- Section 9 of Namibia’s Combating of Rape Act (2000) places duties on prosecutors to ensure that the complainant/survivor receives all information pertaining to the case.
- Reforms to the Code of Criminal Procedure in Austria in 2006 introduced the right of the complainant/survivor to be informed if the perpetrator is released from arrest.
- The Spanish Act Regulating the Protection Order for Victims of Domestic Violence (2003) provides complainants/survivors with the right to be constantly informed about their legal proceedings, including any change in the process and the eventual release of the offender.
- Section 29 of the Philippines Anti-Violence against Women and their Children Act (2004) requires prosecutors and court personnel to inform the complainant/survivor of her rights and remedies.

Cases of violence against women are often dropped without any explanation or reference to the complainant/survivor. In order to address this issue, various countries have introduced provisions in legislation, such as Instruction 8/2005 of the State’s General Prosecutor Office in Spain which requires prosecutors to explain to complainants/survivors why their case has been dropped.

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3. Encouraging timely and expedited proceedings

Legislation should:

- provide for timely and expeditious legal proceedings and encourage fast-tracking of cases of violence against women

Delays in the conduct of trials may increase the risk to the complainant/survivor of retaliation, particularly if the perpetrator is not in police custody. In addition, delays often deter the complainant/survivor from proceeding with prosecution. A few examples of how this has been addressed around the world include:

- In India, the sexual harassment complaint committees mandated by the Supreme Court in *Vishaka v. State of Rajasthan* AIR 1997 S.C.3011 to address sexual harassment complaints are required to establish a time-bound process.
- In a number of countries, including Spain, South Africa, the United Kingdom, and various states in the United States of America, procedures have been introduced to expedite (i.e. “fast-track”) cases regarding violence against women in the courts.
- The Spanish Organic Act on Important Reviews of the Code of Criminal Procedure (2002) introduced fast trials for specific offences and enables cases of domestic violence to be judged within 15 days of the offence.

4. Rights of the complainant/survivor during legal proceedings

Legislation should:

- guarantee, throughout the legal process, the complainant/survivor’s right to:

- decide whether or not to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony
- when appearing in court, give evidence in a manner that does not require the complainant/survivor to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, screens, closed circuit television, and video links
- protection within the court structure, including separate waiting areas for complainants/survivors and defendants, separate entrances and exits, police escorts, and staggered arrival and departure times
- testify only as many times as is necessary
- request closure of the courtroom during proceedings, where constitutionally possible
- a gag on all publicity regarding the victim and other individuals involved in the case (as necessary to protect the victim’s identity), with applicable remedies for non-compliance
- cross-reference witness protection legislation, where it exists

Legal proceedings often re-victimize complainants/survivors. It is therefore important to ensure that legal proceedings are conducted in a manner that protects the safety of the complainant/survivor and provides her with options for her participation in the process. Existing examples include:

- Namibia’s Combating of Rape Act (2000) stipulates that the complainant/survivor has the right to attend court personally, or to request that the prosecutor present the relevant information on her behalf if the accused has applied for bail.

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- Section 5 of the Rape Victim Assistance and Protection Act (1998) in the Philippines provides for closed-door investigation, prosecution or trial and for non-disclosure to the public of the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities.
 - The Domestic Violence Act (2007) of Ghana notes in Section 13(2) that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, and that the court may take the steps it considers necessary to separate the respondent from the victim or the witness, without sacrificing the integrity of the proceedings.
- In the case of child victims, the use of video recording, separate interview rooms, screens or curtains in order to separate the child from the accused during court proceedings is recommended. Several countries provide for such measures within their laws⁹ including:
- In Fiji, a parent or a guardian may ask the prosecutor for a screen to be put around the child.
 - The removal of the accused from the courtroom while the child testifies is another measure provided in some domestic systems such as in Brazil's Código de Processo Penal (art. 217), Kazakhstan's Criminal Procedural Code (art. 352(3)) and Switzerland's Loi fédérale sur l'aide aux victimes d'infractions, (arts. 5(4) and 10(b)). In such circumstances the accused is usually allowed to view the child's testimony from a separate room.
 - The Amendment to the Criminal Procedure Code (2006) of Austria allows certain witnesses and victims who are very young or vulnerable to be questioned using audio and visual transmissions so they may not be re-victimized.

Restricting public access to the courtroom and/or not allowing publication of courtroom proceedings can protect the complainant/survivor from intimidation, embarrassment and potentially harmful encounters when attending court and when giving testimony.

- The Namibian Combating of Rape Act (2000) places strict restrictions on publishing the identity of the complainant to ensure that her privacy is protected.
- The Sexual Offences Bill under consideration in Mauritius would restrict dissemination of information about the complainant/survivor, declaring it an offence to "publish, diffuse, reproduce, broadcast or disclose, by any means, particulars which lead, or are likely to lead, members of the public to identify the person against whom the offence is alleged to have been committed."
- Under the Kenyan Sexual Offences Act (2006), the gag on publications and process extends to the identity of the family.
- With respect to the offence of rape, the Indian Evidence Act was recently amended to prohibit the disclosure of the identity of a complainant/survivor in any publication (s.228).

It is important to cross-reference existing witness protection legislation, as is the case in the Kenyan Sexual Offences Act (2006), so as to ensure that complainants/survivors in violence against women cases are fully aware of its existence and contents.

5. Issues related to the collection and submission of evidence

Legislation should:

- mandate proper collection and submission to court of medical and forensic evidence, where possible; and impose a penalty for negligence

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- mandate the timely testing of collected medical and forensic evidence
- allow a complainant/survivor (with exceptions in cases of minors where consent of a guardian may be needed) to be treated and/or examined by a forensic doctor without requiring the consent of any other person or party, particularly including a male relative
- ensure that evidence is collected in a manner that protects the rights and dignity of the complainant/survivor and avoids undue harassment of the victim
- state that medical and forensic evidence might not be required in order to convict a perpetrator
- provide the possibility of prosecution in the absence of the complainant/survivor in cases of violence against women, where the complainant/survivor is not able or does not wish to give evidence

The diligent collection of medical and forensic evidence is an important duty of public authorities. Various countries are applying greater diligence in the collection of evidence in cases of violence against women, and complainants are increasingly encouraged to access services where they may safely and confidentially preserve medical and forensic evidence.

- Under the United States of America Violence Against Women and Department of Justice Reauthorization Act (2005), states of the US must ensure that survivors have access to forensic examination free of charge even if they choose not to report the crime to the police or otherwise cooperate with the criminal justice system or law enforcement authorities.
- In Kenya, guidelines developed under the Sexual Offences Act (2006) stipulate the protection of the dignity of the survivor in the gathering of evidence and require that: evidence is gathered in the least intrusive manner possible; there are a limited number of sessions; and the medical form is detailed and easily understood by all parties, including the court.

- Legislation in the United States of America and Australia mandates that medical examinations of children who have undergone sexual violence be ordered only when absolutely necessary and that the examination should be the least intrusive as possible.

Forensic and medical evidence may not be available in court proceedings for a variety of reasons, including: complainants' lack of knowledge regarding the importance of such evidence; fear of medical examination; actions taken that may unintentionally compromise evidence, such as washing after being sexually assaulted or time lapse in seeking services; lack of available facilities or personnel trained in the collection of evidence in cases of violence against women in a manner sensitive to the complainant/survivor; and the nature of the violence. It is therefore important that legislation also allow for the prosecution and conviction of an offender based on the testimony of the complainant/survivor and/or other available evidence.

6. No adverse inference from delay in reporting

Legislation should:

- prohibit courts from drawing any adverse inference from a delay of any length between the alleged commission of violence and the reporting thereof
- require that the presiding judicial officer in any case of violence against women inform the jury, assessors or himself/herself that a delay in reporting should not be held against the complainant

Complainants/survivors of violence often delay in reporting the violation to public authorities. Such delays may be due to a number of reasons, including: the complainant's/survivor's fear of stigmatization, humiliation, not being believed, and retaliation; financial or emotional dependence on the perpetrator; and distrust in, and lack of access to, responsible institutions, resulting from geographically inaccessible courts and lack of specialized criminal justice personnel.

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Despite these legitimate circumstances, delays in the reporting of violence against women are often interpreted as demonstrating that the complainant/survivor is unreliable. Many countries are now legislating to ensure that adverse inferences are not drawn from any delay between an act of violence against women and the reporting of the violation to authorities. For example:

- Section 7 of the Namibia Combating of Rape Act (2000) provides that: "In criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of a complaint".
- Section 59 of the South Africa Criminal Law (Sexual Offences and Related Matters) Act (2007) contains similar wording.
- Section 16 of the Philippines' Anti-Violence against Women and their Children Act (2004) states that the court shall not deny the issuance of a protection order due to lapse of time between the act of violence and the filing of the application.

**7. Removing the cautionary warning/
corroboration rule**

Legislation should abolish the cautionary warning/corroboration rule in regard to complainants in cases of sexual violence by either:

- stating that "it shall be not necessary to require corroboration of the complainant's evidence"
- creating an assumption of the complainant's credibility in sexual violence cases
- stating that "the credibility of a complainant in a sexual violence case is the same as the credibility of a complainant in any other criminal proceeding"

The cautionary warning is a practice by which a court warns itself or the jury that it is dangerous to convict on the uncorroborated evidence of the complainant/survivor (otherwise known as the "corroboration rule"). This practice is based on the belief that women lie about rape and that their evidence should be independently corroborated. It continues to be implemented in a number of countries, particularly in common law and "Sharia" jurisdictions. However, many countries have removed the warning/rule from their legal systems.

- The Cook Islands Evidence Amendment Act (1986-7), based on New Zealand legislation, provides that, where law or practice previously required that the evidence of a rape or sexual assault survivor be supported by corroboration in order to gain a conviction, it is no longer required.
- Similarly, Section 5 of the Namibian Combating of Rape Act (2000) provides that: "No court shall treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence."

**8. Evidence of complainant/survivor's
sexual history not to be introduced**

Legislation should:

- prevent introduction of the complainant's sexual history in both civil and criminal proceedings

In many countries, a complainant/survivor's prior sexual history continues to be used to deflect attention away from the accused onto the complainant. When the complainant/survivor's past consensual sexual experience is admitted into evidence it can be used to affect her credibility to the extent that she is not believed and the prosecution does not succeed. Evidence related to the complainant/survivor's past sexual history has been used during sentencing of the perpetrator to reduce the severity of the sentence. Complainants/survivors of sexual violence have often been "re-victimized" when questioned by defence attorneys about details of their private sexual conduct.

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Laws which prevent the introduction of evidence of a survivor's sexual behaviour that is unrelated to the acts that are the subject of the legal proceeding can help protect women's privacy and avoid introduction of evidence that could prejudice the judge, or jury against the survivor. Examples in existing legislation include:

- The United States Federal Rule of Evidence 412, as amended by the Violence Against Women Act (1994), prohibits the introduction of unrelated evidence regarding the complainant's sexual history in both civil and criminal proceedings.
- Section 293(2) of the New South Wales, Australia, Criminal Procedure Act (1986) states: "Evidence relating to the sexual reputation of the complainant is inadmissible."
- The Indian Evidence (Amendment) Act (2003) removed the section of the former Evidence Act which allowed the impeachment of the credibility of a complainant/survivor to a rape/attempted rape.

C. Protection orders

Legislation should:

- make protection orders available to survivors of all forms of violence against women

Protection orders are among the most effective legal remedies available to complainants/survivors of violence against women. They were first introduced in the United States of America in the mid-1970s, offering an immediate remedy to complainants/survivors of domestic violence by authorizing courts to order an offender out of the home. All US states now provide for protection orders. Such orders vary greatly in their specificity regarding the length of the order, its enforceability, who may apply for and issue it, and whether financial support or other relief may be ordered.

Experience has shown that complainants/survivors of forms of violence other than domestic violence also

also seek protection orders and a number of recent legislative developments have extended the application of such orders accordingly, such as:

- Chapter 6 of the Mexican Law on Access of Women to a Life Free of Violence (2007) makes protection orders available to survivors of any form of violence defined in the Act, including violence in the family, violence in the workplace or educational settings, violence in the community, institutional violence, and femicide.
- The Forced Marriage (Civil Protection) Act 2007 in the United Kingdom allows courts to issue an order for the purposes of protecting (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage.

D. Sentencing

**1. Consistency of sentencing with the
gravity of the crime committed**

Legislation should provide that:

- sentences should be commensurate with the gravity of crimes of violence against women
- sentencing guidelines should be developed to ensure consistency in sentencing outcomes

Sentences imposed in cases of violence against women within countries have varied, been inconsistent and often influenced by discriminatory attitudes held by justice officials regarding complainants/survivors of violence against women. Efforts have been undertaken to reduce sentencing discrepancies and to ensure that sentences in cases of violence against women are commensurate with the gravity of the crime committed. Experience shows that the introduction of sentencing guidelines may contribute to the normalization of sentences imposed in cases of violence against women. For example:

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- In the United Kingdom, the Sentencing Guidelines Council finalized Sentencing Guidelines on the Sexual Offences Act (2003) in 2007. Mandatory minimum sentences have been implemented in a number of countries in an attempt to reduce sentencing discrepancies. However, experience varies regarding their efficacy and deterrent value.

2. Restitution and compensation for survivors

Legislation should:

- provide that sentences in criminal cases may include the payment of compensation and restitution from the perpetrator to the survivor
- state that while compensation may be an element in penalizing perpetrators of violence against women, it should not substitute for other penalties, such as imprisonment
- make provision for the creation of a Government-sponsored compensation programme, which entitles survivors of violence against women to apply and receive a fair amount of compensation

An aspect of sentencing which has not been fully utilized is the possibility of requiring the perpetrator to pay compensation to the survivor. However, an increasing number of countries are enacting legislation that allows for the award of compensation in criminal cases, such as:

- Article 11 of the Guatemalan Law against Femicide and other Forms of Violence against Women (2008) which provides reparation proportional to the damage caused by the violence.
- In Spain, a special fund for survivors of violent crimes and crimes against sexual freedom was established by the Act Concerning Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom (1995).



CONCLUSION

This report highlights the difficulties women and girls are faced with in accessing justice in cases of sexual violence, particularly incest. While Mariam's case resulted in a judgment in favour of the victim, this was made possible through relentless support by a strong independent lawyer, a local NGO and an international advocacy group. Our aim in highlighting the issues in this report is to advocate for reform of laws (particularly adding a provision on incest to the Pakistan Penal Code) and procedures (such as special measures for victims and speedy trials) to guarantee that the dignity and rights of victims are safeguarded by the system and to ensure better implementation of laws through capacity building of relevant legal, forensic and law enforcement personnel. All three organizations authoring this report stand ready to assist in bringing about such changes.

Results and findings of Workshop on Sexual Violence – ‘Obstacles to Justice and a Search for Solutions’ Lahore, 13-14 December 2010

Equality Now and WAR Lahore convened a two-day workshop on ‘Sexual Violence – obstacles to justice and a search for solutions’ in Lahore, Pakistan. The meeting was held at the Punjab University Law College in Lahore on 13-14 December 2010 and brought together individuals with experience in working with women and girls who are victims of sexual violence in Pakistan to jointly strategize on ways to enhance access to justice for victims of sexual violence with a special focus on victims of incest. Participants included 59 activists, lawyers and service providers from across Pakistan. There was also representation of judges and medico-legal personnel.

The workshop addressed issues encountered by victims of sexual violence to access justice and rehabilitation. Cases of sexual violence, especially incest, in Pakistan are shrouded in silence and often go unreported because of the formidable social stigma attached to them. In the rare instance that cases are reported, victims face insurmountable barriers in their quest for justice and sometimes end up being re-victimized through the justice system. Often the police resist registering complaints, perpetrators are either never apprehended or freed with impunity, the legal system also does not have victim friendly procedures and discourages many victims from accessing justice, and victims’ access to timely physical and psychological care is extremely limited. It was felt that there was a need for a comprehensive national dialogue to put forth solutions to various obstacles victims face in seeking justice.

The workshop aimed to analyze problems with the justice system by highlighting obstacles encountered by victims in accessing justice and drew upon legal reform examples from other countries.

It sought to identify services that are needed by victims of sexual violence, such as health and psychological services and shelter, and examine services that are currently being provided. In addition, it sought to develop strategies to prevent such violence by examining its root causes and engaging the media to change prevalent gender stereotypes that contribute to such violence. Special emphasis was laid on examining the handling of incest cases within the legal system, an issue that has thus far received scarce attention in Pakistan. The following are recommendations that came out of the workshop on the topics of prevention, access to justice and services.

Recommendations:

Prevention of sexual violence against women and girls (including incest) in Pakistan

1. Empowerment of Girls

It is essential that girls are empowered through knowledge of their bodies and their rights, including through awareness raising and the formation of peer groups. Schools need to be involved in such activities.

2. Role of Media

The media must play a positive role in properly reporting cases of sexual violence and challenging gender stereotypes. To prevent violence, it is essential to get rid of the social acceptance of such violence and the stigmatization of survivors. The media can play a critical role in this regard. It is important to have standard operating procedures and a code of ethics for the media whereby they avoid sensationalizing cases of sexual violence but rather follow up on cases and avoid disclosing the identity of the victim without consent.

3. Role of the State

The State must properly train all its officials who have direct contact with survivors or potential victims of sexual violence (including at the grassroots level) as well as all those who influence policy in this regard.

4. Role of the Community

Communities must be sensitized to issues of sexual violence so as to empower them to prevent such violence and also to decrease the stigma of such violence on survivors. Community watch groups can be formed in this regard which should comprise people from different walks of life, such as religious and community leaders, parents, teachers, students, union counselors, doctors, lawyers, etc.

5. Role of Caregivers

Caregivers play an essential role in protecting children and instilling values. Caregivers should have knowledge of issues affecting adolescents and impart such knowledge to children.

Improving the capacity of the legal system to address violence against women and girls (including incest)

Participants identified the following issues that need to be urgently addressed in the legal system, and made the following recommendations:

1. Amendment of the rape law

The rape law needs specific provisions on (a) sexual assault and molestation, (b) incest, and (c) sexual abuse by persons in position of trust or duty-bearers.

2. Institution of victim-friendly procedures in court

To protect victims from harassment and re-victimization through the legal process, it is necessary to institute certain procedures including: (a) placing of screens in courtrooms so that a victim does not have to confront her rapist again if this would prove too traumatic;

(b) giving the victim the option of having in camera proceedings; (c) preventing harassment of victims during cross examination as well as the use of obscene/vulgar language; (d) expediting trials in sexual violence cases so that the case is finalized within 6 months; and (e) having specially trained judges from within the existing pool to address cases of sexual violence.

3. Police training

The first contact that survivors have with the legal system is the police. To give victims access to justice, it is essential to ensure that all police personnel (especially those manning police stations) are properly trained to address, register and investigate cases of sexual violence, including by ensuring that such training is a key part of the police academy curriculum.

4. Medical examination

Given that many victims of sexual violence are in urgent need of medical attention, the Health Department should give a right of physical examination to victims without need of a police docket or court order.

Provision of services and support for victims of sexual violence (including incest)

1. Accessibility of services

To make services more accessible it is important to (i) conduct relevant research and data collection on issues related to sexual violence to build a case for the need for provision of services and develop policy-based recommendations based on this research; and (ii) conduct an outreach campaign targeting government institutions responsible for providing services and civil society organizations that are already providing services.

2. Quality of services

To ensure quality service provision for survivors of sexual violence it is essential to (i) build the capacity of all service providers to provide better services;

(ii) develop and implement standardized protocols and guidelines for service provision and binding minimum standards of professional conduct; and (iii) advocate for a rights-based service provision with all organizations providing services and all governmental stakeholders addressing cases of sexual violence (such as police, medico-legal examiners, judiciary, etc)

3. Speed of Service

It is crucial that services be provided as quickly as possible to avoid further harm to the survivor. In this regard it is recommended that (i) a well-knit and well-publicized referral network be formed so that survivors can be properly referred to the appropriate services; and (ii) advocacy be conducted to ensure prompt medico-legal examination of survivors, immediate registration of First Information Reports (FIR) by the police, and expeditious disposal of cases in courts.

4. Transparency and accountability of service providers

It is essential that all services be transparent both to survivors and to donors and funders. In this regard it is recommended that (i) monitoring and evaluation of all programmes be mandatory and service providers be given the capacity to monitor and evaluate their programmes; (ii) regular programmatic and financial audits be conducted and principles of good governance implemented; and (iii) all services solicit regular feedback from beneficiaries and use this feedback to improve programming.

5. Rehabilitation and reintegration of survivors

To empower survivors it is essential to (i) ensure self-reliance, foster their autonomy and self-determination and avoid false dependency; (ii) streamline government institutions to provide sustainable support as long as needed; (iii) engage in awareness-raising and build community acceptance of survivors.

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