Fighting Domestic Violence - Pakistan

5. Prosecutorial considerations

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# 5.1 Police procedures

# 5.1.1 When do the police get involved in domestic disputes or legal actions?

The police do not get involved in domestic disputes very often, there are many barriers between women and the police in Pakistan and domestic violence goes unreported in the majority of cases. Unfortunately, affected women have no access to lodge a first information report, as there are only nine female police stations and seven complaint units in the whole country. Three complaint units in Islamabad have been established since September 2010 in collaboration with the National Police Bureau and German Technical Cooperation.

The majority of women are not aware of female police stations and complaint units.Other women do have some access to general police stations but they are ignored because of political and male dominance factors. Sometimes they are victimized and raped because of political activities and even in police custody.

According to Amnesty International (1999), Human Rights Watch (2003) and the Human Rights Commission of Pakistan (2003), women are raped in police stations and many incidents go unreported. In addition, in some cases, the police torture women from opposition political parties, allegedly on the orders of the government.[37]

According to a representative of the Human Rights Commission of Pakistan, it is "very difficult" to lodge a complaint at a police station because police officers do not take domestic violence victims seriously and, in the view of the Human Rights Commission, police believe that husbands have the right to beat their wives. In addition, according to Country Reports 2011 "abused women usually were returned to their abusive family members."

# 5.1.2 What circumstances effect law firm involvement?

No information is available.

# 5.2 Standard of proof

# 5.2.1 Is proof required by any legal means?

No information is available.

# 5.2.2 Are there any requirements regarding evidence and documents?

Medico-legal evidence is available but not required. As many police officers in Pakistan do not view domestic violence as a criminal matter, victims are often not referred to medico-legal examinations for evidence gathering. Police typically ask victims to reconcile with their abusers, as they deem domestic violence a "private matter."

In rape cases, Pakistani courts generally require "positive proof of penetration" and physical evidence, such as genital injuries, to corroborate the victim's testimony as to the nonconsensual nature of the intercourse. This renders utterly indispensable a timely and meticulous medico-legal examination of victims as well as a sophisticated understanding of its merits and limitations on the part of the courts.

In many cases of sexual assault, medical evidence may provide the only corroboration of the complainant's case, confirming not only the fact that sexual contact or intercourse took place — and with a particular individual — but also that such contact took place without the complainant's consent. Although medical evidence cannot in and of itself prove a lack of consent, it can be strongly suggestive that sexual contact or intercourse was the result of assault and not agreement.

Medical evidence also plays a critical role in domestic violence cases: a medico-legal doctor's evaluation of the nature and extent of the injuries determines the legal classification of incidents of domestic abuse and, consequently, the seriousness of the charges. However, concerns about the medico-legal system in the context of domestic violence remain largely theoretical because, in the overwhelming majority of cases, the police simply do not conceive of domestic violence as a criminal matter, nor do they refer victims for medico-legal evaluations.[38]

Under the Pakistani Criminal Procedure Code, when women come to the police station to file complaints against their abusers, police enforcement agencies have the responsibility of detailing the nature of the crime, requesting a medico-legal exam, escorting the survivor to that exam and delivering all results and evidence to the prosecutor. However, cases are rarely handled in this manner. Instead, police officers usually advise survivors to reconcile with their abusers. Survivors are informed that filing a complaint would bring dishonor to their family and such familial issues should be settled in the privacy of one's home, without intervention by the state.[39]

# 5.2.3 Is proof "beyond a reasonable doubt" required?

In terms of evidentiary standards, a woman must prove rape beyond a reasonable doubt, but her alleged rapist is given the benefit of the doubt. If she is unable to meet this burden of proof, her insufficient rape claim constitutes prima facie evidence of adultery.[40]

# 5.2.4 Is the standard of proof different for ex parte orders?

No information is available.

# 5.3 Affirmative defenses

# 5.3.1 Are affirmative defenses available to the accused?

No information is available.

# 5.3.2 Is willful intent required?

No information is available.

# 5.3.3 Are false accusations punishable for the victim?

Victims can be accused of adultery in situations where they are not married to their abuser/rapist, this is because "sexual relations" between parties who are unmarried are considered "fornication" and are deemed an offense under the Protection of Women (Criminal Laws Amendment) 2006 Act. This offense is punishable by imprisonment for up to five years and a fine not exceeding PKR 10,000. An accusation of adultery must be lodged directly with the court. It is considered an offense to make false accusations of adultery and fornication.[41]

Victims are often stigmatized and blamed for the gender-based violence that they have experienced, and have often been labeled as the "false accuser."[42]

# 5.3.4 How is consent discussed in the law?

Islam does not force women to marry without their consent. The woman's consent is essential to accept a marriage proposal to accept a marriage proposal, and the man must promise to give an amount of money to the woman who he is going to marry and this money is called mahr.[43] This is not the legal definition of consent in Pakistan, but could provide some additional context as Islamic law heavily influences Pakistan. Many online sources point to the "age of consent" instead of consent as a whole.

# 5.3.5 Is self-defense or insanity a defense?

No information is available.

# 5.4 Witness status

# 5.4.1 What is a witness's duty to testify honestly and completely?

In its July 2017 report, the UN Committee on Economic, Social and Cultural Rights expressed its concern:

The Qanun-e-Shahadat Order (Law of Evidence) 1984, stipulates that the value of women's court testimony is half that of a male witness. It is also concerned that women are facing difficulties in seeking judicial remedies because law enforcement officials and judges lack awareness of women's rights, because women lack awareness of their own rights and of the judicial procedures to claim those rights, because women do not trust the justice system and because there is insufficient free legal assistance.[44]

# 5.4.2 Who may abstain from testifying in certain situations?

Please refer to Section 5.4.1.

# 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Please refer to Section 5.4.1.

# 5.4.4 What is the impact of domestic violence on witnesses who are children?

Please refer to Section 5.4.1.

# 5.4.5 Can children be called upon to testify?

Please refer to Section 5.4.1.

# 5.4.6 What is the effect of a child victim on the charges against the offender?

Please refer to Section 5.4.1.

# 5.5 Penalties and sentencing; penalty enhancements

# 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

Qisas and Diyat refer to forms of punishment for the perpetrator for committing these violent crimes, namely physical retribution and compensation, respectively. The survivor or her heirs can either pardon the offender or request Qisas or Diyat. Unfortunately, not only are many women persuaded by the police and the judges to drop their charges, but many of their family members also force them to return to their husbands in order to avoid any family dishonor. Thus, the legal system is essential to protecting women's fundamental rights because their families often disregard these rights. However, survivors are further oppressed whenjudges disregard instances of violence as private and domestic disputes. In some cases, the state may invoke taz'ir punishment, also known as imprisonment, even after a settlement has already been reached. However, this punishment is purely at the discretion of the judge. Thus, these cases are again frequently dismissed as the male-biased judicial system does not recognize domestic violence as a crime and the international community fails to take any action.[45]

# 5.5.2 Are there criminal penalties?

Yes, but these are not always enforced. First-time domestic violence offenders are expected to face up to one year in prison and repeat offenders will face up to two years of incarceration. These may seem like light sentences in many instances, but they are a step in the right direction.[46]

In Pakistan, domestic violence is not considered a crime under any specific law. Its different aspects are considered under different laws. As domestic violence ranges from minor injuries to causing death, all the laws related to injury and the death penalty are crucial. In 1979, the Hudood Laws were enforced as part of the "Islamization processes" of General Muhammad Zia-ul-Haq in Pakistan. These laws also included the Zina (rape) Ordinance and the Qazaf (allegation of adultery on the spouse) Ordinance (1979). Different categories of crimes and punishments ranging from criminal intimidation to murder are also available in the Pakistan Penal Code of 1860, but at this stage both parties would have already decided to go their separate ways. When the parties go to a police station for registering cases against each other, then it is presumed that they are no longer in a spousal relationship, and it is a sign of enmity and an end of all negotiation and mediation.[47]

# 5.5.3 What is the result of a violation of an existing order for protection?

No information is available.

# 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

Protection officers will be liable to inform the defendant whenever a complaint is received. Resisting protection officers will be punishable by up to six months imprisonment and a fine of up to PKR 500,000.

The defendant will be liable to bear all the expenses of the complainant in case the court orders it. If the defendant refuses to pay, then the court can order the payment to be deducted from their salary, if applicable. Defendants can be cuffed with GPS tracking bracelets, if ordered by the court. Those attempting to remove or tamper with the tracking bracelets will be jailed for up to one year and fined between PKR 50,000 and PKR 200,000. Defendants will not be allowed to apply for an arms license or procure weapons, and weapons already registered in their name will have to be submitted in court.[48]

The Human Rights Commission of Pakistan report said prosecution rates for domestic violence and sexual offenses were low, with women frequently afraid to report the crimes or being intimidated into withdrawing complaints. It recorded more than 900 rapes and sexual assaults in 2015, 279 instances of domestic violence, 143 of burning, 833 kidnappings and 777 suicides and attempted suicides. The Human Rights Commission of Pakistan reported 987 honor crimes in 2015, with 1,096 female victims and 88 male victims, including an unknown number of children.[49]

# 5.6 Post-release restrictions

# 5.6.1 Does the law notify the victim of the offender's release from custody?

No information is available.

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