



Gender-based Violence Medico-Legal & Forensic Work in Punjab

A Policy Brief



Gender-based Violence

Medico-Legal & Forensic
Work in Punjab



Background:

Committed to promote gender equality and eradicate structural, socio-economic and cultural disadvantages that marginalize women and endanger their lives, Pakistan has put into place numerous measures to strengthen justice and redress for survivors of gender-based violence (GBV) as well as new laws. Despite such measures, women survivors' access to justice confronts various factors that obstruct progress on achieving Target 5.2 of Sustainable Development Goal 5 on gender equality: eliminating all forms of violence against women and girls.

This policy brief addresses the challenges and gaps in medico-legal examinations, forensic examinations and tests in cases of physical and sexual violence against women in the light of empirical research conducted in Punjab with multiple stakeholders and textual analysis of provisions.¹

¹The studies carried out in collaboration with the Punjab Social Welfare Department with support from UNFPA and FCDO in Multan, Lahore and Vehari are: (1) *Barriers to Access & Uptake of Public Sector GBV Services by Women Survivors of Violence* and (2) *Comparative Analysis of Three VAW Service Delivery Models in Punjab*. <http://www.pakistantoday.com.pk/2015/09/14/uncategorized/pilot-programme-to-reduce-violence-against-women-established-in-punjab/>

Purpose and Scope of Medico-legal Examination

Medico-legal Examination (MLE) refers to a medical examination for the purposes of criminal investigation and trial. Such an examination determines the nature of injury inflicted on the victim/survivor. In cases of sexual offences, the MLE establishes the occurrence of sexual activity and collects evidence from the body and clothes of the victim. The forensic evidence, together with the MLE report (medico-legal certificate or MLC), serves as evidence in the trial of the case.



Statutory provisions relating to medical examination of the survivor/victim and DNA testing: The legal provisions for medical examination of a survivor/victim in case of rape, certain other sexual offences² and DNA tests of relevant materials were added in the Criminal Procedure Code (CrPC) in October 2016.³ The consent of an adult survivor, and in case of a minor of her/his parent or guardian, is required. Under the law, the medical examination of an accused can be done with force in case he refuses to consent.⁴ The law has also specified the particulars of a medical examination report.

The province of Punjab has a three-tier medico-legal system. At the first tier, the initial medico-legal examination is carried out at the Rural Health Centres, Tehsil Headquarters Hospitals, District Headquarters Hospitals and at Teaching Hospitals, as the case may be. The second tier consists of District Standing Medical Boards which are the First Appellate Authority. The third tier is the Provincial Standing Medical Board which is the final Appellate Authority.⁵

²Unnatural sexual offences (section 377) sexual abuse (377-B)

³Sections 164-A and 164-B CrPC.

⁴Section 53-A CrPC.

⁵The District Standing Medical Boards act as First Appellate Authority and the Provincial Standing

CHALLENGES & ISSUES FOR VIOLENCE SURVIVORS IN MEDICO-LEGAL EXAMINATIONS

There are numerous challenges and issues in medico-legal examinations as detailed below:

1. Flawed & outdated guidelines for medico-legal examination in sexual offences

In 2020 the Punjab Department of Health (DOH) issued revised guidelines and proforma for conducting a medico-legal examination⁶ of female survivors/victims of sexual assault. The Lahore High Court struck down all those directions which directly or indirectly asked for or permitted a two-finger test (also called virginity test or digital examination) in these guidelines and directed the DOH to issue revised guidelines.⁷



⁷Sadaf Aziz etc v. Federation of Pakistan etc 2021 PCrLJ 205.

Differing directions and contradictions in practice cause problems and challenges in conducting medico-legal examinations and preparing subsequent reports. These include:

a. Introduction of a judicial order for medico-legal examination without basis in the law.

The very first direction in the Punjab DOH guidelines is that a medico-legal examination of a female victim of a sexual offence shall only be undertaken on a judicial order as per the Protection of Women (Criminal Laws Amendment) Act, 2006 (WPA). However, the Act has no such provision.

In principle, following amendments to the CrPC in 2016, WPA's statutory provisions supersede any other rules, SOPs or guidelines for medico-legal examinations. This is not the case in practice, however. Research revealed that judicial orders continue to be sought prior to conducting MLEs.⁸ This perceived need of a judicial order obstructs and delays medico-legal examinations since the order can only be obtained from the concerned magistrate during the courts' working hours. The duty magistrate goes off-duty after a certain hour and, on public holidays especially, may only be available for a few hours.

Investigation Officers note that when cases are reported after the courts' working hours, the unavailability of the magistrate will frequently delay MLEs. This delays the entire investigative process. Additionally, when the concerned magistrate is not available, this entails an extra trip for the survivor whose presence is required before the magistrate. Should a survivor be unable to make this additional trip, this creates further delays in permission and, therefore, her MLE. The need to visit multiple offices to obtain the judicial order adds to the burden of the violence survivor and her family.

Delays in the MLE are highly detrimental since forensic samples can only be collected when the examination is done within a specified time period after the occurrence of the alleged offence.⁹ Delays negatively affect the findings in the medico-legal report and, hence, survivors' access to justice.

The practice is not uniform, however.¹⁰ Several medical officers in RHCs and THQs reported not asking for the Magistrate's order and undertaking medico-legal examinations on the basis of the police requisition (called 'police docket' this is the official document recording reported crimes and investigation conducted into such a crime).¹¹

⁸Prior to the statutory amendments of the CrPC in 2016, medico-legal examinations of females were regulated by Rule 25.22 of the Police Rules, 1934 and instructions given in the Punjab Medico-legal Manual.

⁹See points 18 & 19 of the Punjab Health Department's 2020 guidelines. These state that if a woman reports a sexual assault within 96 hours, all evidence including swabs must be collected. It may be vaginal, anal or oral depending upon the nature of the assault. The same guideline warn that the likelihood of finding evidence after 72 hours is greatly reduced. The direction for collection of all evidence up to 96 hours is given in case a victim may be unsure of the number of hours lapsed since the assault. However, evidence on outside of the body and on clothing can easily be collected after 96 hours. There is direction to collect a high vaginal swab near cervix only up to 48 hours after the assault.

¹⁰Even in Lahore, as per police investigation officers, some hospitals did not ask for such an order.

¹¹Under Rule 25.39 of the Police Rules, 1934, the requisition is sent on the [what] specified under this rule. This includes mentioning the nature of injuries and the examination requested.

These health professionals said they had never received the Guidelines of November 2020 issued by the Punjab Department of Health that were unknown to them.

b. DOH instructions to record the history of victim/survivor in the medico-legal report introduces subjective opinions of medico-legal officers.

Medico-legal officers (MLOs) lack understanding of their role within the criminal investigation and trial process which is to assist the investigation and trial based on their expertise. Instead, they try to cross-examine the survivor if her description of the incident varies from the information recorded in the police FIR, often using details narrated to the MLO that were not – and are not required to be – recorded in the FIR. When asked about their role, one MLO said: *“We have to ask these details because women lie”*.

The Guidelines require MLOs to record in writing the detailed history of the incident with time and date of incident.¹² The prescribed proforma requires recording of any previous such incident, whether the episode was singular or multiple, the estimated duration and number of assailants and descriptions of incident(s) *“in the words of the narrator”*. In practice, MLOs deviate from this by asking about and recording the survivor’s history in the medico-legal certificate in ways that violate the privacy and dignity of the person. The manner in which findings are written in the

MLC can introduce inconsistencies as well as contradictions with the survivor’s statement to the police. Inconsistencies and contradictions then provide the accused materials with which to challenge the survivor’s testimony in trial.

c. Practice of two-finger test in contravention of higher courts orders.

In January 2021, the Lahore High Court (LHC) struck down the practice of the so-called virginity or the *“two-finger” test*.¹³ It further declared that sections of the 2020 Guidelines issued by the Punjab Primary & Secondary Healthcare Department that try to continue the practice by using other names, such as per-vaginum examination, and either directly or indirectly enable the two-finger test, are illegal and against the Constitution. The Supreme Court (SC) has also declared the two-finger test a violation of the right of dignity of a person, right to life and equality before law and equal protection of law.¹⁴ The 2021 Anti-Rape (Investigation and Trial) Act, too, forbids any such test.¹⁵

Despite prohibitions, MLOs continue to use such tests to varying degrees. MLOs were unaware of the Lahore High Court and Supreme Court decisions.¹⁶ One female MLO said that she learnt of the prohibition of the two finger test in a court hearing when she was questioned by the defence counsel as to why she conducted such a prohibited test. Another MLO believed that the two-finger test helped to determine if the act was with force and through coercion or otherwise.

¹²Paragraph 5 of guidelines and point 3 of proforma.

¹³Sadaf Aziz case etc v. Federation of Pakistan etc 2021 PCrLJ 205.

¹⁴See Atif Zareef etc v. The State PLD 2021 SC 550.

¹⁵Section 13 of Anti Rape Act, 2021.

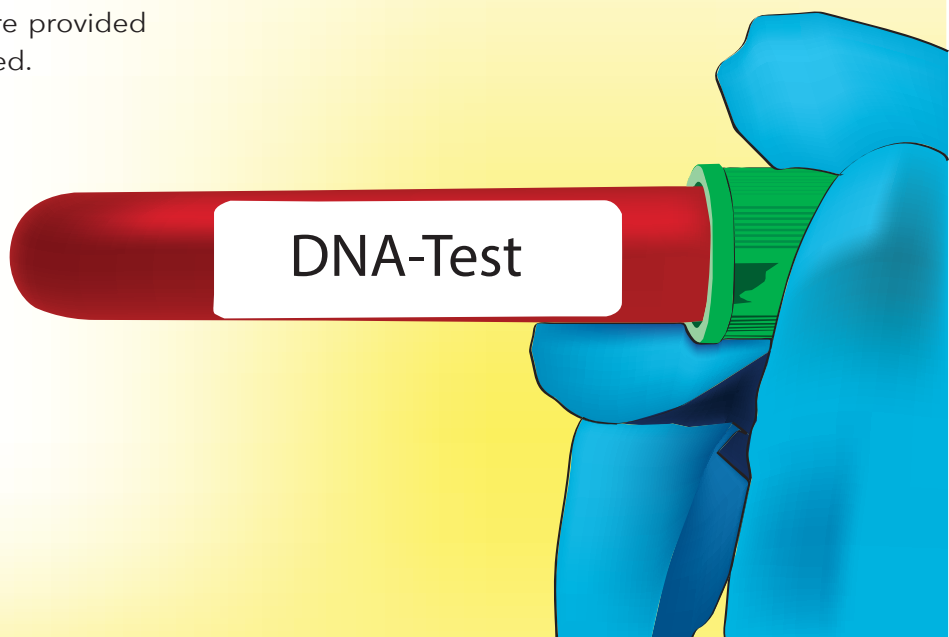
¹⁶Arif Zareef v State PLD 2021 SC 550.

2. Lack of forensics labs, equipment & non-compliance with Guidelines

a. Lack of Sexual Assault Evidence Collection Kits (SAECKs).

The Punjab Forensics Science Agency (PFSA) is supposed to distribute special kits called the Sexual Assault Evidence Collection Kits (SAECKs) for MLEs in cases of sexual assault. PFSA simultaneously issued guidelines for collecting, preserving and transporting forensic evidence. Unfortunately, SAECKs are not produced in Pakistan, and SAECKs were not available to the MLOs in 2021. One MLO said kits stopped being provided after 2019; others reported that such kits were provided in 2019-2020, but then discontinued.

The PFSA guidelines for collection and preservation of samples are not followed, resulting in loss of samples and/or sample quality for forensic tests. In the experience of police investigation officers interviewed in Lahore only one hospital¹⁷ often used SAECKs for the collection and preservation of samples, and two other hospitals used such kits occasionally.



¹⁷Munshi hospital.

In March 2020, the PFSA reported in a case before the Lahore High Court that in 2019, SAECKs were used in less than 9 percent of sexual assault cases submitted to the PFSA.¹⁸ The case related to a DNA test that was negative because the samples had not been preserved and sent to the laboratory in the required manner.

The PFSA official also informed the court that doctors make swabs with non-sterile objects such as matchsticks, ice-cream sticks, broomsticks and twigs and then use them to collect evidence from the survivor's vagina and/or rectum. Also that when large cotton plugs are used as swabs, these can cause injury or infection and also jeopardize the DNA analysis owing to contaminants and potential inhibitors.

The lack of earmarked supplies and budget allocation for forensics work in the Department of Health system is especially problematic when SAECKs are not issued as required. In addition to the risk of injury, infection and contaminated forensic evidence, this puts added pressure on the survivor who may be asked to purchase items such as swabs and containers to bag the evidence.

One SHO shared the problem in handling samples the police confront as they have no facility to preserve these. Another said that samples for forensics tests are deposited in the police station's *maal khana*, the police station place to store all case properties before being taken to Lahore by a constable. Distance can impede forensic work. In Vehari, for example, the nearest mobile unit of Punjab forensic to collect evidence from the crime scene for police is located in Sahiwal.

There is an insufficient number of forensics labs. The single lab in Lahore cannot meet the requirements of the entire province (it also provides services to other provinces).

¹⁸Muhammad Ayaz Shamas v. The State and another 2020 P Cr. L J 914 [Lahore] decided on 11 March 2020.

3. MLOs appointed without required training

According to the Primary and Secondary Healthcare Department notification,¹⁹ a one-month practical training “*shall be mandatory*” of newly inducted Casualty Medical Officers/Medical Officers/Women Medical Officers before commencing medico-legal work. Concerned medical college teaching hospitals are responsible for such training. None of the MLOs interviewed had completed the four-week mandatory practical training course, regardless of experience and service tenure.

A few had attended half the course or attended other short trainings on forensics work. All MLOs stressed that the mandatory forensics course in the MBBS was insufficient for medico-legal work and expressed a great need for focused training.

There is a dire lack of expertise. In December 2021, data provided by the Punjab Primary & Secondary Healthcare Department in a case before the Lahore High Court,²⁰ revealed that only 10.45% of medical officers in Punjab meet the qualifications necessary to carry out medico-legal work.

The lack of training on and awareness of the DOH 2020 Guidelines and PFSA Guidelines means that critical evidence in sexual assault cases is not collected. Most MLOs said that they did not collect evidence from the clothes of the survivor unless she came for an examination in the clothes she was wearing at the time of the assault. (They also do not accept clothes brought in separately by the victim.) This has no basis in law, SOPs or any guidelines. Indeed, the Guidelines of the both the DOH²¹ and PFSA²² for collecting forensic evidence have clear directions on how and what to collect from the clothes of the victim worn at the time of assault.



¹⁹Notification No. SO(H&D) 7-1/2018 dated 18.05.2018.

²⁰WP 17716/2021 Muhammad Nasir v Justice of Peace, etc. heard on 24-12-2021 [Lahore High Court].

²¹Point 11 states that detailed examination of the clothes worn at the time of incidence should be included in the report as regards tears/stains. These tears and stains should be encircled and signed. Clothes should be packed, sealed and handed over to police for onward transmission to PFSA, Lahore for detection of blood/semen, their grouping and DNA analysis.

²²PFSA guideline say: Victim's underwear and garments worn at the time of assault should be collected and packaged in the envelope provided in the sexual assault evidence kit.



4. Non-communication of Guidelines, SOPs & directions issued by higher courts

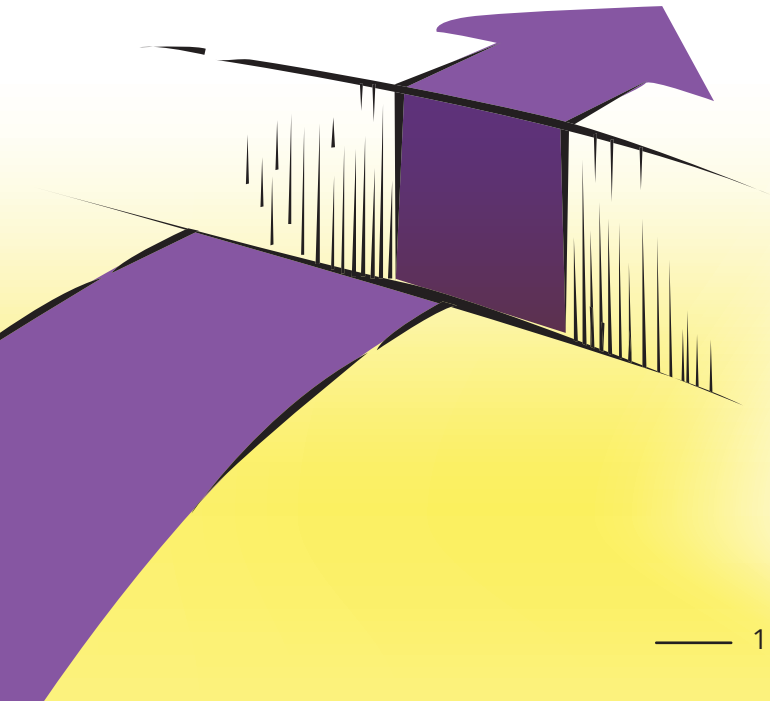
None of the MLOs interviewed had copies of – or access to – either the Department of Health or PFSA guidelines. All complained that because such information was not circulated by the DOH, they only learn about such matters coincidentally, for example when they appear before a medical board when a MLC is challenged, or in a court case, or through their own Internet search.

5. Accused benefit from delayed PFSA reports that delay investigation & trials

MLOs are required to record their final opinion in MLCs after receiving the PFSA reports. MLOs, police investigation officers and the Public Prosecutors all corroborated the delay in PFSA reports. One MLO in Multan District reported that she had conducted 100 medico-legal examinations but rarely receiving PFSA reports in a timely manner. The few reports on which she gave her final opinion, arrived only during trial after the investigation stage.

Public Prosecutors report that they keep sending reminders to the PFSA but receive a standard reply stating that the case is under process.

One prosecutor said that reports are long delayed and as a result, they schedule a doctor's testimony at the end of the trial so as to preserve a chance of receiving the report by then.



6. Medico-legal work: a neglected sector of the health department

All MLOs concur that medico-legal work is a neglected part of the health system and overburdens their regular routine work. The lack of required equipment and infrastructure adds to their problems. Medical officers receive only a nominal remuneration for this extra work,²³ and have to be available at odd hours without any reward. Most doctors, especially those posted at RHCs and THQs, are made to do all sorts of medico-legal work, including autopsy, without any training. One senior doctor said that medico-legal work is not a priority for the department, and doctors suggested that a separate cadre of medico-legal and forensics work should be established in the Department of Health. It is worth noting that the lack of equipment for carrying out MLEs can become an excuse for seeking bribes and payments from the survivor and her family as well.



²³As per information given by the MLOs the remuneration is Rs. 70 per examination.

Recommendations

To ensure effective medico-legal procedures, the following actions are recommended:

- Department of Health must update, notify and circulate revised Guidelines and SOPs as per the directions issued by Lahore High Court in the Sadaf Aziz etc. v. Federation of Pakistan etc. 2021 PCrLJ 205 case, and the requirements of the Criminal Law (Amendment) Act, 2021 and Anti Rape (Investigation & Trial) Act, 2021; and
 - ▶ Circulate revised Guidelines and SOPs to all medical officers as well as medical personnel assisting them in all three tiers of Punjab's medico-legal system.
- Department of Health to provide SAECKS and other equipment necessary to carry out medico-legal examinations at all approved medico-legal facilities;
 - ▶ If these are not available, ensure necessary equipment and supplies are earmarked and made available to all approved medico-legal facilities.
- Government should explore possibilities of local production of SAECKS.
- Train medico-legal officers in forensics matters and ensure that no medical officer is assigned the tasks of a medico-legal officer without having completed the mandatory course for medico-legal officers.
- Introduce and make mandatory gender sensitization trainings for all medical professionals, starting with those serving as medico-legal officers.
- Issue notices removing the practice of a judicial order for medico-legal examination of a female victim and only retain the conditions mentioned in section 164-A CrPC.
- Expand the number of forensics labs so that the single lab in Lahore -no longer has to meet the requirements of the entire province as well as providing services to other.
- Ensure mobile forensics units of PFSA to collect evidence from the crime scene at least at every district headquarter.

This Policy Brief addresses the challenges and gaps in medico-legal examinations, forensic examinations and tests in cases of physical and sexual violence against women in the light of empirical research conducted in Punjab with multiple stakeholders and textual analysis of provisions. Based on multi-stakeholder empirical research and careful textual analysis, conducted by Shirkat Gah – Women’s Resource Centre in collaboration with the Punjab Social Welfare Department with support from UNFPA and FCDO, it also provides recommendations for improving the situation.

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