



Sexual Offences, Police Investigation & Prosecution in Punjab

A Policy Brief



Sexual Offences, Police Investigation & Prosecution in Punjab



Background:

Since 2016, numerous laws have been enacted to strengthen justice for survivors of gender-based violence (GBV), including sexual offences, and measures instituted to facilitate reporting and the prosecution of offences to eliminate impunity. Yet, the impact falls short of desired results due to various factors such as gaps in the text of the law, overlaps and duplication of laws that create confusion in the application of particular laws.

This policy brief, based on multi-stakeholder empirical research and textual analysis of two studies, focuses on gaps, flaws in police investigation and challenges in collaboration between police investigation officials and public prosecutors who are the two critical players of the criminal justice system.

The brief also discusses the issues emerging in research undertaken during a transition period during which the Anti-Rape (Investigation and Trial) Ordinance, 2020 was in force when the Anti-Rape Act was enacted but not being implemented in practice. The Act has is still not fully implemented in Punjab because two critical facilitating structures have not been established and operationalized: the Anti-rape crisis cells in designated hospitals and Special Sexual Offences Investigation Units (SSOIs) in every district. Also impeding access to justice is law enforcement officers' perceptions about and attitudes towards GBV and survivors.

¹ Section 29 of the PPWVA, 2016 provided for formulation of the rules within 120 days of the enactment of the law.

Police officials' perception about sexual violence against women

A hostile and prejudiced attitude about sexual violence cases was evident amongst all police official interviewed, that is, SHOs and Investigation Officers (IOs), including those of special GBV cells in Lahore. These perceptions and attitudes of officials result in faulty, careless investigations and low rate of convictions.

Police officials dismissed the majority of rape cases. In the words of one SHO, "The majority of violence against women cases are fake. Social media is destroying the family set up. The FIRs are false and complainants falsely implicate people as accused", while "genuine" cases are not generally reported to the police. Another SHO said, "People have made it [rape] a business. They register cases alleging a rape offence and extort money, especially in rural areas. The case is registered and when victim is taken for medical examination, doctor writes, 'nothing happened'." The attitude prevails amongst women police too, one female SHO saying,

"more than 90% cases are fake, fabricated, and planted. There should be ways to prevent the registration of false cases. A woman comes to register a case and says she has been raped over a period of time. She could not report [earlier she says] because she feared him [the perpetrator]. This is not understandable. If she could come now and report, why didn't she come earlier? First, rape can happen under duress, but what about repeated cases? It's not possible. Such rape cases are planted, they only waste the police's time."

Most police and IOs confine 'genuine' cases of sexual crimes to those in which severe physical violence has been inflicted. There was little understanding of the terms "against the will" and "without consent" specified in the definition of rape.



Lack of awareness about legal amendments

Since 2016, amendments in the Pakistan Penal Code (PPC) and the Criminal Procedure Code (CrPC) include: the addition of new offences of sexual violence against women and children in the PPC,¹ enhanced sentences of existing offences² and procedural safeguards in the investigation and trial of offences.³ The Criminal Law (amendment) Ordinance 2020 and Anti-Rape (Investigation and Trial) Ordinance 2020 further amended the definition of rape, procedure for investigation and trial of rape and other offences of physical and sexual violence against women and children.⁴ Interviews with police officials revealed they were not fully aware of legal amendments. Very few knew about the changes in the definition of rape introduced by criminal laws (amendment) Ordinance 2020, months after its enforcement.

Some had heard about the 2020 Anti-Rape (Investigation and Trial) Ordinance, but only that under this law, the investigation of rape and some other cases was to be carried out by Joint Investigation Teams (JITs). In part, this lack of awareness is due to the poor-to-no enforcement of these two ordinances and the fact that no new SOPs were issued for guiding police work in the field.



¹For example, offences of sexual abuse, child pornography,

²For example, enhancement of sentences of offences of sexual abuse, rape of minor or of person with mental or physical disability.

³These included amendment in procedure of recording of FIR, statement of survivor before police during investigation, non-disclosure of identity of survivor, trial in camera, use of audio video link during trial and such other measures.

⁴The Criminal laws (amendment) Act 2021 and Anti Rape (Investigation and trial) Act, 2021 were promulgated as ordinances in December 2020 and remained in force till 13 August 2021 as Ordinances. In the Anti Rape Ordinance 2020 and later in the Anti-Rape Act 2021, many procedural provisions are similar to the amendments made in the CrPC in October 2016.

Insufficient women in the police force

There is no statutory direction that female officers will investigate rape cases. Section 9 of the 2021 Anti-Rape Act requires cases mentioned in the law's two schedules to be investigated by Special Sexual Offences Investigation Units (SSOIs) that preferably are to have one female member. After the Supreme Court decision in the Salman Akram Raja case,⁵ the Inspector General Police, Punjab issued detailed SOPs⁶ for investigating rape cases in the light of the guidelines issued by the Supreme Court in this case. Clause 2 (iii) of these SOPs states,

"Investigation of the female Rape case shall be conducted preferably by a woman police officer (not less than ASI/SI). In case, sufficient number of such [Investigating Officers] IOs are not available in a police station, the CPO/DPO of the district shall depute such an officer from elsewhere."

In practice, there is no real compliance of this particular clause. In February 2020, the Supreme Court while hearing a bail matter in an alleged rape case,⁷ asked for explanations from senior police officers as to why the case was investigated by a male official in violation of the SOPs.

The Court ordered concerned senior police officials to recirculate the SOPs in English and Urdu to the police force for compliance.

In Lahore, to ensure rape and other sexual abuse cases were investigated by female officers, Gender Based Violence (GBV) cells were established in October 2017, but no changes were made in the rest of the province. To meet the requirements of CrPC sections 154 and 161⁸ requiring the presence of a female police official during the recording of an FIR and recording the survivor's statement before the police during investigation, some police stations included a woman constable in the investigation. The shortage of women police officers means investigations in rape cases continue to be carried out by male police. Similarly, ad hoc measures have been adopted to meet the requirements of SSOIs for investigations under the Anti-Rape Act. Available information indicates that SSOIs have only been formally notified in some districts by the District Police Officers in keeping with the directions issued by the Punjab Inspector General Police on 30 December 2021.

⁵2013 SCMR 203

⁶SOPs were issued on 20-08-2013

⁷Babar V. The State Criminal Petition No. 1420-L of 2019 decided on 11-02-2020

⁸Sections 154 and 161 were amended in October 2016 and for cases of acid burn, outraging modesty of a woman, stripping a woman naked in public and rape, the presence of a female police officer or a female family member or any other person with the consent of the complainant/victim was made mandatory during registration of FIR or victim's statement before police during investigation.

The acute shortage of female police officers has led districts to adopt dissimilar models, including the inclusion of female constables in the units, to meet the requirement of one female police officer. District Khanewal, for example, has formed a single 5-member SSOIU for its 18 police stations, consisting of a male inspector, a woman sub-inspector and three women constables. With 22 police stations, Bahawalnagar has formed SSOIUs at the police circle level, attaching a female officer in each, except for two circles where one female official is attached to two police units. In Sahiwal, officers in each of the 17 police stations have been designated as investigation officers under this law - of the 36 officers so designated, there are only three women in as many police stations. In Layyah, which has more women officials, the 7-member SSOIU for eight police stations consists of: a male police inspector, four women sub-inspectors, one female constable and one male constable. Lahore district has not yet established any SSOIUs. Instead, the pre-existing GBV Investigation Cells investigate cases of rape and sexual abuse while other cases in the schedules of the Anti-Rape law are dealt with as per previous arrangements.



Heavy workloads & insufficient Investigating Officers and budgetary allocations

Staffing

Excepting in Lahore, the separation of police investigation and operations branches at the district level under article 18 of the Police Order 2002 has not been fully achieved. The District Investigation Branches (DIB), envisaged as a separate unit unattached to any police station, have not been established. In the absence of separate operations and investigation wings, the same officers undertake both investigation and operations duties. In February 2022 it was reported that the Punjab police planned to separate operation and investigation wings.⁹

All the police stations visited were short of staff, negatively impacting investigations. Shortage also means that police officials give priority to tasks that, if left unattended, could result in disciplinary action such as court duties and complying with orders from superiors. One investigation officer said, *“if an IO gets a call from a superior officer to attend to another case, they stop work on whatever case they are handling, including violence against woman – even rape – to comply with the directions of the superiors; so the case in hand suffers.”*

The SHO VAWC police station underscored that, *“It is absolutely impossible for two IOs at this police station to take up the investigation of sexual crimes of the entire district.”* The GBV investigation cell in City Division Lahore is responsible for investigating the rape and sexual abuse cases of 22 police stations with a team of two women IOs, one male ASI (who assists in investigation and arrest of the accused), five male constables and four women constables. A third female IO was transferred to another division and has not been replaced. The Cell In-charge affirmed that, *“shortage of personnel is our biggest problem. I have about 26 cases for investigation and 13 or 14 cases are with my other colleague. The whole day we have to run from one police station to the other or from one court to the other for one thing or the other.”*

Frequent transfers, especially of SHOs, add to the problem. One police station visited¹⁰ in July 2021 was operating under its 4th SHO since January; each SHO in charge for only a few months.

⁹<https://www.dawn.com/news/1674193>

¹⁰Police station Luddan in district Vehari

Insufficient budgets

Police investigation budgets are insufficient and IOs do not have any official cash in hand for investigation related expenses. This leads to an additional financial burden on complainants/victims as well as corrupt practices.

According to the police officials interviewed, police officers are obliged to bear the costs of investigation from their own pockets, including for DNA tests. Reimbursements are delayed and are often less than incurred amounts. A positive development in this regard is that reimbursements of investigation expenses are now disbursed directly to the IO's account.

A woman SHO in Multan reported that the IO is obliged to take forensic samples as well as the survivor and accused for buckle swabs to the Punjab Forensics Science Agency (PFSA) in Lahore. The additional expenses for food and lodging in Lahore are not covered in any investigation expenses head and are mostly borne by the parties to the case. An anomaly is that the investigation budget allocated for a rape case is Rs.2500, much lower than for other offences, according to the GBV cell responsible for investigating rape and sexual abuse cases of 12 Lahore police stations. This burdens the IO as well as the parties to the case.

Exacerbating the problem, in 2019-20, the share of the Punjab Police in the provincial budget dropped to 5 percent from 9 percent in 2011-12. The resultant reduction of 3 billion rupees in 2020, decreased the investigation budget by PKR 77 million.¹¹

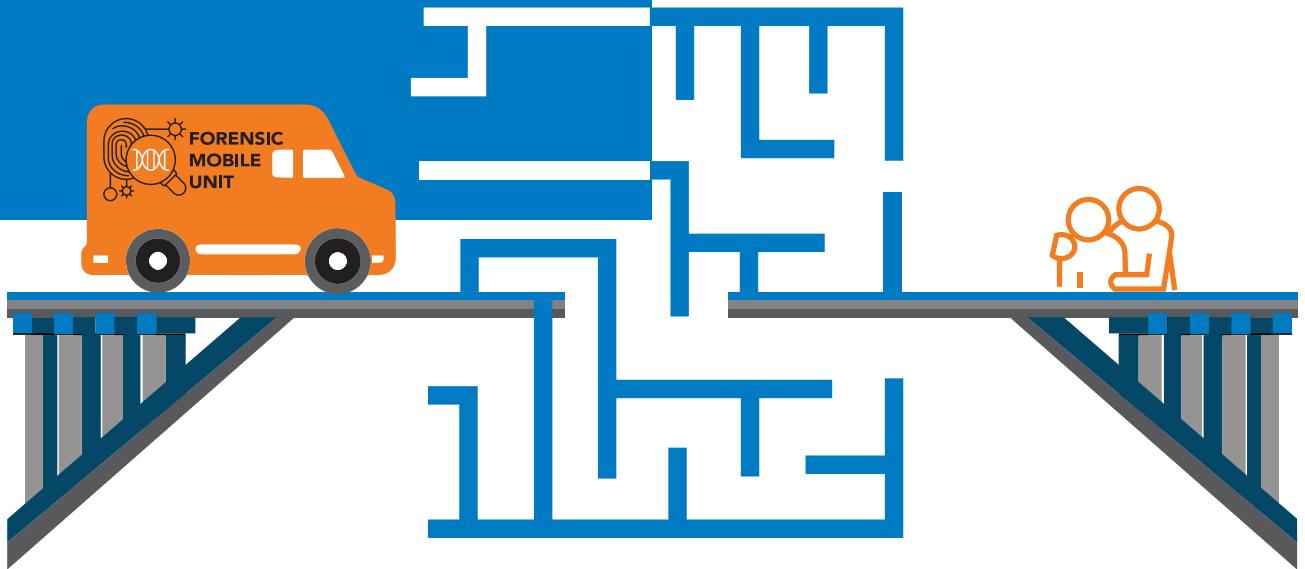
Inadequate budgets affect the quality of investigation, increase the costs borne by the case parties, mostly the complainant side, and create delays in investigation. Limited budgets mean that IOs lack necessary facilities and equipment, such as vehicles, investigation kit bags with required accessories and even facilities to preserve forensic samples prior to transportation to the PFSA. Research found samples were being stored in the *maal khana* (place in police station where all case properties are kept) of the police station and then taken to Lahore by a constable.

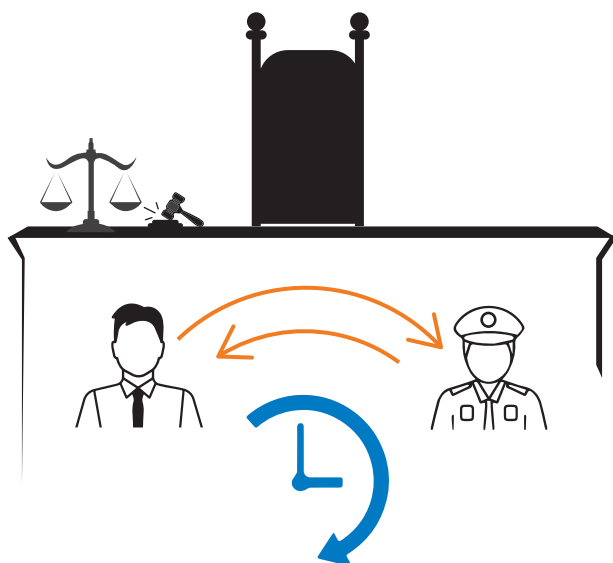
¹¹<https://www.dawn.com/news/1560535>

Challenges in support and coordination from other units in investigation

Improving the working of the criminal justice system, requires all actors of the criminal justice system - including the police, prosecutors, medico-legal officers, area magistrates, trial court judges and district criminal justice coordination committees - to perform their statutory functions diligently and in a coordinated manner. Unfortunately, coordination remains a major challenge.

Investigation officers outside Lahore face considerable challenges in terms of required support from other relevant units of police and mobile forensic units of the PFSA. The district crime scene protection units are not readily available in rape cases, and not every district has PFSA mobile units to assist the collection of evidence from the crime scene for forensic analysis. For Burewala city, for example, the nearest forensic mobile unit is in Sahiwal.





Delayed PFSA reports

All police officials and public prosecutors (PPs) complained about delays in receiving reports from the PFSA, for which they have to send numerous reminders. To ensure reports are heard during trial, many Prosecutors arrange for the medico-legal officer's evidence to be taken at the closure of the prosecution evidence stage. However, PSFA reports during the investigation period would help IOs improve investigation to obtain convictions in courts.

Police-Prosecutor cooperation

The investigation of a criminal case is the exclusive responsibility of the police; the concerned Public Prosecutor (PP) has a supervisory official's role and investigation officers are bound by his advice.¹²

The concerned PP scrutinises every police report related to the investigation of the case before it is submitted to the relevant court. In addition to statutory provisions, in December 2011, SOPs for effective police-prosecution cooperation spelt out the roles and responsibilities of PPs and IOs during the investigation and trial of a criminal case. The SOPs' list of offences for special focus includes cases of violence against women (abduction/kidnapping, rape). Despite statutory provisions and SOPs, there appears to be a lack of clarity between the police officials and public prosecutors about their respective roles and functions. Both sides blame each other for defective investigation, delays in submission of challans and the low conviction rate in cases of violence against women (VAW).

¹²See section 9 of Punjab Public Prosecution Service Act, 2006 and SOPs for effective police- prosecution cooperation formulated on 14-12-2011

The common complaints of police investigators included that:

- ♀ It is difficult to find designated Public Prosecutors for consultation and advice.
- ♀ In most cases, the contact with PPs occurs at the time of submitting challans, not before. Typically, this leads to a long list of objections from PPs which delays the challan submissions in the trial courts – a delay for which police may be reprimanded by superior officers.
- ♀ PPs demand gratification for approving challans or any other report of the IOs, such as the discharge of the accused or for a cancellation of the FIR.
- ♀ IOs are not trained in forensic matters, don't preserve swabs or other forensic samples properly when submitting these to the PFSA. For example, IOs send vaginal swabs to the PFSA in glass jars instead of thick paper bags which weakens or destroys evidence.
- ♀ Police officials are still unaware of the supervisory role of the prosecutor during investigation.
- ♀ There is a shortage of PPs who, in addition to scrutinising challans and other reports from IOs, have duties in multiple courts.

The common complaints of the Public Prosecutors were that:

- ♀ IOs are supposed to consult the PP from the moment the FIR is registered but seldom do so.
 - ♀ Rape cases often depend on circumstantial evidence which IOs do not properly collect; hence cases fail because the chain of investigation does not link with the crime.
 - ♀ The prosecutor cannot convert a weak investigation into a strong case. He can only deal with curable flaws in investigation if consulted in time.
- The lack of effective collaboration between the IOs and PPs and lack of clarity of their respective roles have come up before the higher courts numerous times. For example, in a VAW case, the Lahore High Court after reviewing the relevant legal provisions about the function of the investigation¹³ and of the prosecution, held that the public prosecutor was not a post-office for onwards submission of police investigation to the court, but had the authority to add or delete sections in or from the police investigation report.¹⁴

¹³4(1), CrPC describes the function and duties of the investigator regarding steps during investigation to ascertain whether an offence has actually been committed and if so, by whom.

¹⁴Nadeem alias Deema V. District Public Prosecutor, Sialkot and 7 others 2012 P Cr. L. J 1823 [Lahore]

The Supreme Court, reviewing delays in submission of challans in the Khyber Pakhtunkhwa province, described the responsibilities of both and held that:

*“The Prosecution Institution is required to ensure that the police properly investigate cases and the investigation report is comprehensive and accords with the law. The object of the Prosecution Institution is not to create hurdles in the timely submission of investigation reports (challans).”*¹⁵

Recognizing delays in the submission of challans, the Punjab Public Prosecution Department issued a notification on 11th August 2021,¹⁶ directing that submissions be made directly to the central office of the District Public Prosecutor to enter in the Case Management Flow System (CMFS) for effective monitoring. Delays persist however.

In a 2022 case, the Lahore High Court took note of delays in the submission of police challans and the lack of required supervision by public prosecutors. The Court directed all officials involved in the criminal justice system to ensure timely submission of challans by the police and to check the delays in trials of cases.¹⁷

The Anti-Rape (Investigation and Trial) Act has a long list of offences the SSOIUs are to investigate. This requires a lot of work on the part of special PPs to effectively implement the law. Very clear rules are required under the Anti-Rape Act for both public prosecutors and investigation officers to complement statutory provisions, SOPs and judicial pronouncements.

¹⁵Amjid Khan vs. The State through A.G. Khyber Pakhtunkhwa and others, 2021 SCMR 1458

¹⁶Notification No.Dir(O&R)PPD/7-31/2011 dated 11th August 2021

¹⁷Muhammad Razzaq V. The State & another CrI. Misc No 23198-B/2022 Decided on 18-08-2022

Recommendations

- ♀ Separate the operations and investigation wings of the police as per article 18 of the Police Order 2002 and establish independent District Investigation Branches (DIBs) in every district with their separate budgets at the earliest.
- ♀ Increase the investigation budgets and allocate budgets for the SSOIUs units for effective investigation under the 2021 Anti-Rape Act.
- ♀ Ensure SSOIUs have all the requisite facilities, including separate vehicles and other facilities, to preserve samples for forensic tests.
- ♀ Enhance the number of PFSA mobile forensic units so there is at least one unit in every district.
- ♀ Formulate rules for investigation and prosecution under the Anti-Rape Act.
- ♀ Formulate very clear SOPs for investigation officials especially keeping in view the amended definition of rape under The Criminal Laws (amendment) Act 2021 to supplement existing statutory provisions and rules.
- ♀ Train all police officials to be placed in the SSOIUs, irrespective of rank, in relevant provisions of laws, rules and SOPs and handling of materials for forensic tests before their postings. For this, institute separate specialised trainings on gender sensitization and orientation about sexual offences.
- ♀ Increase the strength of public prosecutors and attach one special public prosecutor with each SSOIU to supervise investigation and scrutiny of police reports. Ensure this designated prosecutor does not have any court duties as a prosecutor.
- ♀ Adopt measures to ensure that the District Public Prosecutors play a more proactive role in the supervision of police investigation by the prosecutors and initiate actions against IOs providing faulty investigation or not complying with the statutory provisions, rules or the SOPs.
- ♀ Ensure the Punjab Criminal Prosecution Service Inspectorate fully carries out its mandatory duties of monitoring the performance, work and conduct of prosecution service to improve efficiency under section 4 of The Punjab Criminal Prosecution Service Inspectorate Act, 2018.

This Policy Brief reviews key issues in police investigation as well as challenges in collaboration between police investigation officials and public prosecutors as two critical players of the criminal justice system. 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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