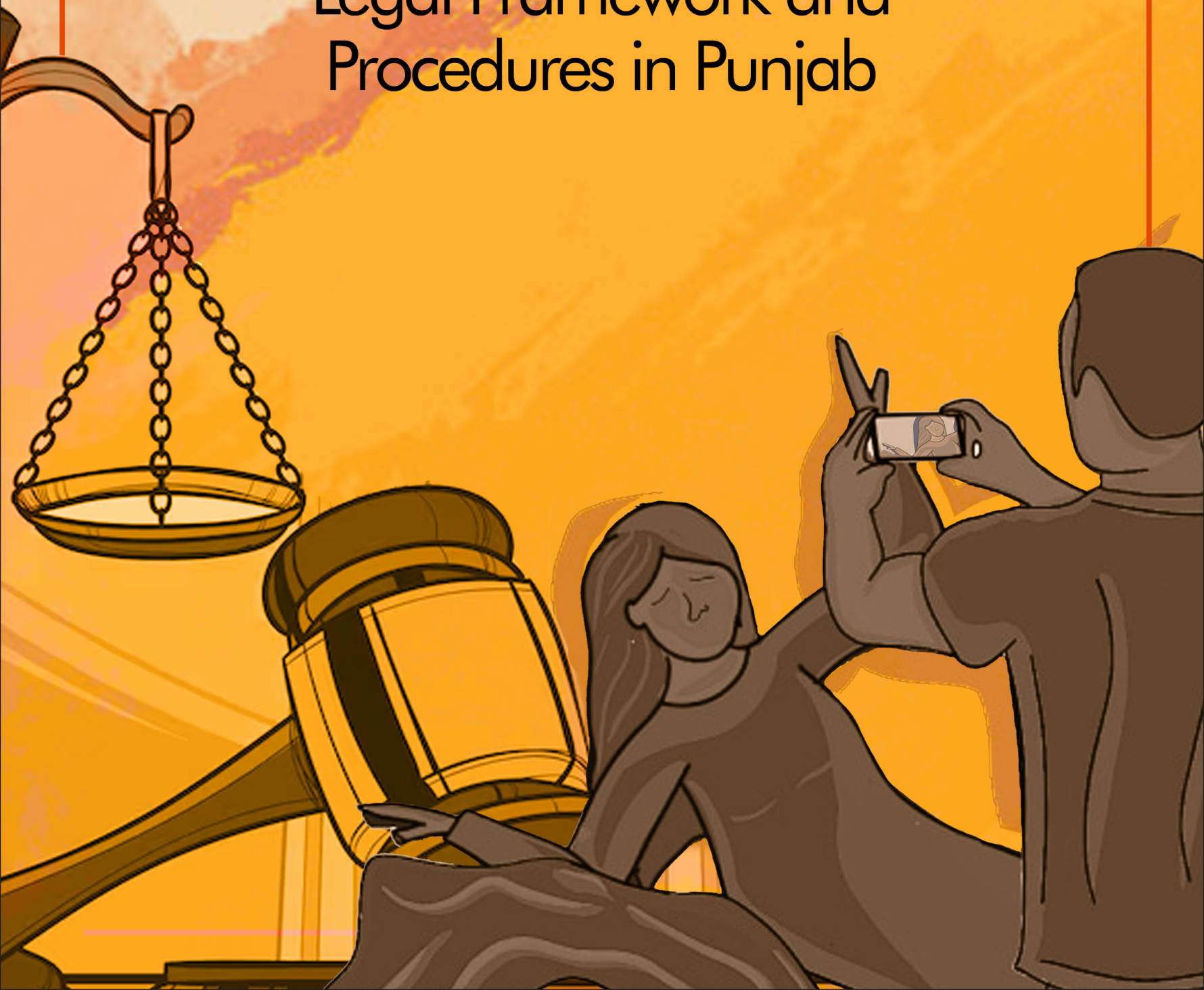




# SEEKING JUSTICE FOR GBV SURVIVORS

Legal Framework and  
Procedures in Punjab



1-7

**Message from the President**  
**Acknowledgments**  
**Acronyms**  
**Foreword**  
**Introduction**

8-16

**Legal Framework Governing GBV**

Anti-Rape (Investigation and Trial) Ordinance, 2021 and the Criminal Law (Amendment) Ordinance, 2020

Transgender Persons (Protection of Rights) Act 2018

Zainab Alert, Response and Recovery Act, 2020

Punjab Women Protection Authority Act 2017

Punjab Protection of Women against Violence Act 2016

Prevention of Electronic Crimes Act 2016

Criminal Law (Amendment) (Offenses relating to rape) Act, 2016

Protection of Women against Harassment at the Workplace Act 2010 (Punjab Amendments of 2012 and 2020)

Protection of Women (Criminal Laws Amendment) Act of 2006

Acid and Burn Crimes Act, 2014 (ICT)

Rape and Other Sexual Offenses in the Pakistan Penal Code 1860

17-21

**Access to Justice for GBV Survivors**

Reporting GBV

Medico-legal Examination and Report

Forensic Analysis of Evidence

Prosecution

22-27

**GBV Courts in Punjab**

Standard Operating Procedures for Prosecutors

Practice Note for Judges

Summary of Procedure for GBV Reporting and Trial

Conclusion

28-33

**Annexure**

Civil Remedies for Family Law Disputes in Punjab

The Marriage Contract

Registration of Marriage under Punjab Muslim Family Law Ordinance, 1961

Dower (Haq Mehr)

Polygamy

Maintenance (Nann-o-Nuqqah)

Talaq (divorce)

Khula

Divorce through the Dissolution of Muslim Marriages Act 1939 ("DMMA")

Procedure for Obtaining Civil Remedies for Family Law Disputes in Punjab



## Message from the President

### Global Neighbourhood for Media Innovation

Dear Friends, Colleagues and Esteemed Readers,

It is with profound appreciation that I introduce our latest publication, "Seeking Justice for GBV Survivors: Legal Framework and Procedures in Punjab." In a society where the echoes of gender-based violence have lingered for far too long, this comprehensive guide marks a significant step towards both enlightenment and empowerment.

Gender-based violence remains a deeply concerning issue that affects countless lives, tarnishing the very fabric of our society. In this context, knowledge becomes a powerful weapon, capable of dispelling darkness and guiding us towards a more just and compassionate world.

This publication holds particular significance as it endeavors to serve a diverse audience. It is a beacon for those seeking clarity amidst the complex landscape of legal provisions and redress mechanisms, providing a vital resource for researchers, journalists, digital content creators, and, most importantly, survivors themselves. In a world often shrouded in confusion, this guide seeks to illuminate a path towards understanding, healing, and action.

Our mission at the Global Neighbourhood for Media Innovation (GNMI) has always been one of transformation. I would like to extend heartfelt gratitude to the Bureau of International Narcotics and Law Enforcement Affairs (INL) for their invaluable support, which has been instrumental in making this endeavor possible. Together, we envision a future where the darkness of GBV is replaced by a society that values every individual's rights, safety, and dignity.

I extend my heartfelt gratitude to the dedicated team whose tireless efforts have brought this publication to fruition. Their commitment to shedding light on these critical issues is truly commendable.

As you embark on this journey of exploration, legal awareness, and redress mechanism, remember that each page you turn is a step closer to a more enlightened and informed society. Let us stand united in our pursuit of a Pakistan, where gender-based violence is but a distant memory and where the principles of justice, equality, and respect prevail.

With profound regards,

Najia Ashar  
President  
Global Neighbourhood for Media Innovation (GNMI)

## Acknowledgments

The Global Neighbourhood for Media Innovation extends its heartfelt appreciation to the dedicated individuals and organizations whose contributions were instrumental in the creation of this publication. We wish to extend special recognition to the Bureau of International Narcotics and Law Enforcement Affairs, a division of the United States Department of State, for their invaluable support.

The success of this endeavor would not have been possible without the exemplary leadership and guidance of Ms. Najia Ashar, President of GNMI, and the insightful supervision provided by Mr. Husnain Raza, Program Director.

GNMI appreciates the hard work and commitment of our Consultant Ms. Aliya Ali Khan, for developing all content included in this publication; the GNMI Team for their editorial, logistical, design and illustration support, and the esteemed Experts who attended the Stakeholders Consultation in Lahore and validated the content and findings included in this publication.

All rights to this Publication are reserved with the Bureau of International Narcotics and Law Enforcement Affairs (INL), United States Department of State and cannot be copied, otherwise used, replicated, or distributed without the prior consent and permission of the INL.





## Foreword

Journalists play a pivotal role in advancing justice for survivors of gender based violence (GBV) on their path to recovery. Their role as advocates for survivors before their family, society and the general public, lawyers, police personnel, can go a long way to ensure swift prosecution and speedy trials for survivors. Pressure applied by media persons in today's digital world is undoubtedly given more heed than any other. However, on the other hand, it is also up to journalists to protect survivors' right to privacy, ensure informed consent before stories are made public, and guarantee publicity of correct information regarding a survivor.

In recent years, Pakistan has seen a number of cases involving female survivors of gender based violence, all of which have been closely covered by print, electronic and social media. It is no doubt, that the inordinate attention gained by Zainab's child abuse case (2018), the gang-rape of a woman on the Lahore - Sialkot Motorway (2020), Noor Mukaddam's murder case (2021), and the domestic murder of Sara Inam by her husband in Islamabad (2022), gave a lot of reason to the justice system to prosecute these cases swiftly and award punishments to accused perpetrators. Had the media not played a role in publicity, coverage and keeping the public up to date with the progress of cases, the aforementioned cases along with several others like them, albeit low profile ones, would have languished in court for years.

This publication has been compiled to serve as a resource for media persons, journalists and reporters who cover stories and write articles on gender based violence (GBV) cases. Information included herein relates to the legal framework applied to GBV, process of registration of cases, the procedure to have a medical examination followed by generation of a medico-legal certificate, prosecution of cases, legal aid mechanisms available for survivors, and proceedings in GBV courts across the province.

It is hoped that this publication and subsequent training will prove beneficial to media persons who interview, accompany, and serve as "companions" for survivors of GBV.

Aliya Ali Khan  
Gender Expert and Consultant GNMI

# Introduction

In recent years, there has been a noteworthy increase in reported cases of gender-based violence (GBV) in Punjab. Being the most populous province of the country, it is no surprise then, that the incidence of violence against women is also the highest compared to other provinces. In 2021, 9734 cases of violence against women were reported across the province. This is a considerable increase from 2020, when 8797 cases were reported across the province. These figures include numbers obtained from the Inspector General of Police, for murder, rape, gang rape, attempted murder, beating, honor killing, acid burning, incest, stove burning, custodial rape and Wannai. Since 2016, analysts and policy-makers have been attributing the increase in reported cases to greater access of women-specific institutional mechanisms such as the women police stations, gender desks at police stations, shelter homes, crisis centers for women, and gender based violence courts across the province.

However, survivors' protection, rehabilitation and empowerment remain dependent largely on the quality of resources available, rather than the quantity thereof. While large districts invariably have a greater number of resources, their quality is questionable, given that time and resources for training of staff are severely limited, coupled with limited engagement of specialized trainers, short staffing, and budget constraints at most institutions. Furthermore, differing levels of sensitization of stakeholders towards the frame of mind, trauma, psychological and physiological grief borne by survivors, leaves considerable room for improvement for most response and support services for survivors.

Low conviction rates (between 5 to 10 per cent), especially in cases of GBV is unsurprising in a justice system where opportunities for specialized training and budgets to afford modern investigation tools are severely limited. Prosecutors, also inadequately trained, misguide investigators, leading to collection of little admissible evidence. In Lahore, the capital city of Punjab, an overall case load of 3,000 cases per month is common - typically divided between no more than ten investigators with one investigating officer managing up to 40 cases at one time. Given a systemic absence of digital and technological evidence collection methods and witness protection programs, police and prosecutors are forced to rely on eye witness statements and confessions, which many a time are coerced, forged or prejudiced.

Cases of GBV suffer further, due to intimidation of witnesses and survivors, external influence during trial, and out of court settlements that result from the Islamic Law of "Diyat". Stigma attached to survivors and social pressure suffered by families often push survivors to withdraw their cases, leaving the accused person with an "acquittal", and further diminishing citizen's confidence in the judicial system.

Another problem which is peculiar to rural areas and people from uneducated communities is the use of informal judicial systems, which usually comprise of community or family elders who make decisions. Unfortunately, these archaic practices continue to operate across the country, and are particularly common in rural Punjab; decisions by informal jirgahs have often resulted in heinous penalties and violent punishments, such as honor crimes or gang rape, for women.

In recent years, the criminal justice system has opened various new avenues and routes for survivors of GBV; smoother processes for reporting of incidences of violence, timely medico-legal examinations, availability of human resource to prosecute cases, ready access to legal aid, and availability of 24/7 shelter homes that also provide psycho-social support.

The law has holistically supported female survivors of GBV. While legislation has periodically been enacted by all Assemblies, Federal and Provincial, it has been done so in a “reactive” manner, i.e., when the need arose. Implementation of enacted laws, however, is questionable across the country. Analysts have frequently claimed that in Pakistan the issue is not that violence is not criminalized; rather, it is that laws are not implemented stringently enough.

Throughout the course of this research, a comprehensive exploration will illuminate several key facets. These encompass, among others, legislative measures criminalizing violence against women, redress, and support mechanisms available to survivors of GBV, the step-by-step procedure for GBV survivors post an incident, and the requisite documentation and institutions for gathering GBV evidence. Furthermore, the study will delve into supportive measures and redress offered by the private sector and non-governmental organizations. Notably, the recent expansion of the Punjab Women Protection Authority's jurisdiction across the province has streamlined criminal justice processes, facilitated by the collaborative efforts of the Authority, its dynamic District Women Protection Officers, Women Protection Officers, and the 24/7 helpline. This will thoroughly scrutinize the roles, functions, and authority of these institutions and officers.

<sup>1</sup> Punjab Gender Parity Report (2021) available at [www.pcs.w.punjab.gov.pk](http://www.pcs.w.punjab.gov.pk)

<sup>2</sup> World Bank Group Report (2010)

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> This Crooked System: Police Abuse and Reform in Pakistan, Human Rights Watch (2016)

<sup>6</sup> Ibid.

## Legal Framework Governing GBV

In the last 10 years, the Federal and Provincial Governments in Pakistan have been progressively enacting legislation to enhance protection, security, redress mechanisms, and means of empowerment for women across the country. However, implementation of laws continues to be the weakest link to justice for survivors.

### Anti-Rape (Investigation and Trial) Ordinance, 2021 and the Criminal Law (Amendment) Ordinance, 2020

In response to a “pandemic of sexual violence” across the country, the National Assembly passed the Anti-rape (Investigation and Trial) Ordinance in 2021, along with a Criminal Law (Amendment) Ordinance; both of the above were passed after the unfortunate instance of gang rape suffered by a mother who was driving with her children on the Lahore - Sialkot Motorway. At the time, swift action was taken by the police; forensic and blood evidence was collected from the crime scene, statements of the victim’s family were recorded, and 12 suspects were arrested along with precious items stolen from the victim’s car. However, succumbing to pressure from civil society and international women’s rights agencies, the Government of Pakistan passed the Anti-rape (Investigation and Trial) Ordinance along with the Criminal Law (Amendment) Ordinance. Essentially, these laws codified procedures already in place and implemented by police, medical and forensic units, and prosecution departments, when dealing with a rape case which goes to trial. For instance, gender-based violence courts, which were piloted at the Districts and Sessions Court in Lahore in 2017, were also a requirement under the Ordinance, to ensure speedy trials, with sensitive Judges, Prosecutors and legal aid providers. The Act does, however, bring in new “Special Sexual Offenses Investigation Units” for investigation of offences of rape, gang rape, sexual abuse, unnatural offences, child sexual abuse or pornography.

The Ordinance prohibits disclosure of the victim’s identity and provides for establishment of a fund to provide financial assistance and support to survivors, including for engagement of legal counsel. Furthermore, reports of rape must be registered by the police immediately, and trials concluded within 4 months. For the first time, the crime of rape carries a penalty of “chemical castration,” life imprisonment and in some cases, the death penalty. It also goes a step further than the 2016 legislation, in mandating a medical examination within 6 hours of the reported incident; the 2016 legislation codified the need for a medical examination to be conducted within 72 hours of the incident. Victim’s statements would be recorded through video-link and trials conducted in-camera, to ensure victim’s safety, and leaving no room for external pressure.

Landmark provisions in the Act seek to codify recent judgements of Superior Courts in Pakistan, including prohibition of the two-finger virginity test, questioning the survivors’ character on moral grounds, and exploring through her past. Questioning on such matters will be deemed of no probative value and will be disregarded by the Judge.

---

<sup>7</sup> Ibid.

<sup>8</sup> (State 2020)

<sup>9</sup> Violence against Women in Pakistan, by Menaal Safi Munshey, published by Oxford Human Rights Hub (2015)

<sup>10</sup> Motorway gang-rape shocks nation;” Express Tribune (September 2020)

<sup>11</sup> Court to deal with GBV cases opens in Lahore;” SHARP (October 2017)



Furthermore, recording of the survivors' statement under section 164 of the Code of Criminal Procedure (Cr.P.C.) would not be done in the presence of the accused person; nor shall the survivor be forced to be in the same room as the accused person.

The Act also prescribes that Medico legal Certificates (MLC) issued by the District Headquarter Hospital (DHQ) after completing a medico-legal examination of the survivor, must include name and address of the survivor, name of the person by whom she was escorted to the hospital, age of the victim, description of the material taken from the person of the victim for DNA profiling (e.g. semen, blood, etc.), marks of injury on the victim, general mental condition of the victim, and other material particulars in reasonable detail, including the condition of her clothing, shoes, hands, etc. The report must also state precise reasons for the doctor to have arrived at each conclusion.

Regarding DNA Tests, the Act specifies that the test must only be done with consent, and the survivor may be accompanied by her natural guardian. Time limitations (up to 72 hours, but preferably 6 hours after the incident) mentioned in the Act and confidentiality of all findings of the test must be ensured at all times.

A notable feature of this legislation is the establishment of a national sex-offender registry, to keep record of all those convicted of rape in Pakistan. Furthermore, it outlines offences of sexual abuse of children, including making and distributing child pornography. The Ordinance directs public educational institutions to provide awareness and targeted education to protect children from sexual abuse and harassment.

## 🔗 **Transgender Persons (Protection of Rights) Act 2018**

The Transgender Persons (Protection of Rights) Act, 2018 provides equal rights to transgender people and safeguards their rights through legal recognition of their self-declared or identified status as man or woman. The original Act also included enabling transgender people to obtain identification documentation and change their gender in the National Database & Registration Authority (NADRA) to reflect the gender they identify with, rather than the one they were born with. However, as per a 2023 Judgement given by the Federal Shariat Court, while transgender persons may choose a gender they identify with, the sex on their national identity will remain the one they were born with.

Most significantly, however, the transgender persons act prohibits harassment of and discrimination against transgender people at home, in public spaces, in educational, and social settings.

In addition, the Act also recognizes transgender persons' right to inherit property, vote, educate themselves, get employment, healthcare, peacefully assemble, access public places and hold public office. It also obligates local governments to facilitate and include transgender persons in institutions such as shelter homes, hospitals and prisons. Finally, the Act directs local governments to initiate public awareness and training programs.

Complaints of harassment at workplaces and public spaces can now be addressed at local police stations, Tahaffuz Markaz (also a kind of police station in all districts of Punjab), or women police stations across the province.

## 🔗 Zainab Alert, Response and Recovery Act, 2020

In 2019, Pakistan saw the abduction, rape, and heinous murder of Zainab, a 7-year-old girl from Kasur, which sparked outrage against the Government and the Judiciary, from most quarters across the country. This widely televised outrage resulted in the Federal Government, through the National Assembly, passing the Zainab Alert, Response and Recovery Act of 2020 (ZARRA). Later it transpired that this case was among a few hundred cases of child sexual abuse which involved influential personalities within Pakistan. Under this Act, an Agency and a smart-phone application have been set up, to report and locate missing children. It also includes a mechanism and jurisdiction to report and ensure action on reports of child sexual abuse.

The Sindh High Court was informed in 2021 that 240 cases had been registered on the Application, and 165 of these had been resolved. The ZARRA Agency had developed “more than 170 live dashboards” which were accessible to District Police Officers (DPOs), Regional Police Officers (RPOs) and the Inspector General (IG) himself. The website and smart phone application can be accessed online through the ZARRA website, which also includes detailed instructions on how to use the application and register complaints.

## 🔗 Punjab Women Protection Authority Act 2017

In 2017, the Punjab Women Protection Authority (PWPA) Act was passed, to implement and set up district-level mechanisms for protection of women outlined in the Punjab Protection of Women from Violence Act (PPWVA) of 2016. While the types of violence covered have been defined by the PPWVA, the PWPA was envisaged as the body to ensure implementation of the PPWVA. The Act tasked the Authority with setting up district women protection centers or violence against women centers across the province, appointing District Women Protection Officers (DWPO), Women Protection Officers (WPO), launching a 24/7 helpline to provide rescue and recovery services to women, preparing emergency shelter homes for women, engaging panels of legal aid providers in each district, and in this way bringing together all redress mechanisms for survivors of violence under one roof; that of the women protection center.

District Women Protection Committees, headed by the District Women Protection Officer were meant to bring together all relevant stakeholders, from police to health (forensic experts), prosecution, social welfare, mediation service providers, and psychosocial support providers, needed for a workable and comprehensive safety and protection mechanism for women.

Although the PWPA Act was passed in 2017 in Punjab, its implementation and jurisdiction were limited to district Multan. In November 2022, in response to a Petition filed in the Lahore High Court (LHC), the Court ordered the Social Welfare and Bait-ul-Maal Department (SWD), the parent department under which the PWPA operates, to expand the jurisdiction of the PWPA Act to 36 districts of Punjab.

<sup>12</sup> 3 in Azad Jammu and Kashmir, 8 in Balochistan, 5 in Islamabad, 59 in KPK, 63 in Punjab and 32 in Sindh.

<sup>13</sup> The ZARRA system can be accessed at [www.zainabalert.com](http://www.zainabalert.com).

Detailed instructions on how to use the App and report instances of kidnapping or child sexual abuse are available on the website.

To successfully accomplish this mammoth task, the SWD is utilizing its current workforce and infrastructure; the 12 SBB Human Rights Centers (SBBHRC) will serve as women protection centers; Darul Amans (DUA) currently located in 36 districts will serve as shelter homes and women protection centers where SBBHRCs are not located; prosecution department has been mobilized to nominate a Prosecutor for GBV cases in each district; legal aid will also be provided through the same department; District Health Authorities have nominated focal persons in each district; and the Lahore High Court has instructed all District Judges (1 per district) to nominate one Sessions Court as the GBV Court in all districts.

The aforementioned roll-out plan also includes engagement of existing SBBHRC Managers as District Women Protection Officers (DWPOs) and Social Welfare Officers (SWOs) as Women Protection Officers (WPOs). In districts where SBBHRCs are not present (24 districts), Superintendents of Darul Amans will perform functions of DWPOs and Psychologists will undertake duties of WPOs.

## Punjab Protection of Women against Violence Act 2016

Punjab was second in line (Sindh being the first) to introduce and successfully pass legislation to protect women from domestic violence and provide substantive redress to survivors. The Punjab Protection of Women against Violence Act 2016 was a landmark piece of legislation, passed to protect women from instances of domestic, physical, sexual, psychological, and economic abuse, stalking and cybercrime, perpetrated by their husband(s), sibling(s), adopted children, and/or relatives, living within the same house as the Complainant woman.

Women across Punjab can access the redress mechanisms provided by the PWPA by calling their toll-free helpline (1737) and seeking help from the call center agent, who will then connect her to the available DWPO or WPO. Under the Act, Women Protection Officers and District Women Protection Officers have been granted powers to rescue women from their homes and temporarily place them in shelter homes provided by the Punjab Women Protection Authority. The Act prescribes that following an incident of domestic violence, the complainant, DWPO or WPO must file a complaint with the Magistrate to obtain an Interim (only until a detailed Order is passed), Protection, Residence or Monetary Order against the perpetrator. Following this, the accused person must respond to the complaint within 7 days, after which the Magistrate will rule on the matter. If the Court is satisfied that violence has been committed against the complainant or is likely to be committed by the accused person, a Protection Order can be issued. Such an order would prohibit the two parties from communicating, restrict the accused person's movement in and around areas where the complainant is known to be such as her place of work, marketplaces, children's schools, etc., order the accused person to move out of the residence ("Residence Order"), surrender any weapons, wear an ankle bracelet to track his movements, refrain from violence or threats to the complainants' family or relatives, etc.

Residence Orders provide the complainant woman the right to reside in her marital home and orders the accused person to move out. Furthermore, it restrains any person from evicting her and/or her children, although she may be relocated to a shelter home for her own safety and rehabilitation, if the Court deems it fit and required.

<sup>14</sup> It is noteworthy that the Authority has jurisdiction in the original 36 districts of Punjab, even though Punjab currently has a total of 41 districts.

Monetary Orders are given by the Court in favor of the complainant if she has suffered financial loss or harm during the course of Court proceedings. They can also be given, however, if she has incurred medical expenses due to violence perpetrated by the accused person, and any expenses needed for her to maintain her dependent children.

As per the provisions of this Act, women may directly approach the women protection center as well. Staffed with DWPOs and WPOs, the women protection centers are one-stop centers that provide all services that survivors of violence may need, including a shelter, a police station, mediation services, psychological care, mediation services, legal aid, prosecution, and a Magistrate.

It is pertinent to mention, that unlike the domestic violence legislation in Sindh, legislation in Punjab does not criminalize the act of domestic violence itself. Proceedings under the PPWVA are civil in nature, and not conducted in criminal court under the PPC.

## **Prevention of Electronic Crimes Act 2016**

The Prevention of Electronic Crimes Act, 2016 (“PECA”) was enacted to address the prevention of cybercrimes and unauthorized acts with respect to electronic devices, electronic means of communication, and digital media (including social media). It is applicable to every citizen of Pakistan wherever he may be and also to every other person for the time being in Pakistan. With respect to women and gender based violence, the PEECA is vital for protection and prevention of cyber harassment, hate speech, abuse and misuse of information, photographs and videos. Critics of PECA contend that it violates due process and the fundamental right to express one’s opinion freely on an online platform. Furthermore, PECA is also notorious in giving overwhelming powers and authority to the Pakistan Telecommunications Authority (“PTA”) to remove content from online platforms, if officials find it immoral, offensive or anti-state. Analysts have also criticized PECA for violating the right to privacy, in that it permits law enforcement agencies to access private correspondence, given that they believe the correspondence is anti-state or has inferences or links to “terrorist activities”.

---

<sup>15</sup> The Prevention of Electronic Crimes Act 2016: An Analysis by Eesha Arshad Khan, Sheikh Ahmed Hasan School of Law at LUMS

<sup>16</sup> Ibid.



In case any person has concerns regarding online harassment, unlawful use of their digital property, or abuse of information, the following procedure may be followed to obtain redress:

Abuse of  
Information  
Online

Complaint of immoral,  
anti-state or terrorist  
content

**Complaint to the FIA  
(through Digital  
Rights Foundation)  
Helpline  
0800 - 39393**

Cyber  
Harassment

Removal of content  
offensive to a person

## ➤ **Criminal Law (Amendment) (Offenses relating to rape) Act, 2016**

In 2016, following disturbing reports of rising cases of sexual and gender based violence across the country, and falling conviction rates for perpetrators of these crimes, the National Assembly passed the Criminal Law (Amendment) (Offenses relating to rape) Act of 2016, which in essence, amended the Protection of Women (Criminal Laws Amendment) Act of 2006, to ensure that the offence of rape is non-compoundable, i.e. that punishment is guaranteed for proven perpetrators of rape, and cannot be excused on grounds of compromise, “Diyatt” or “out of court settlement”. Rape remains a criminal offence in Pakistan, under section 376 of the Pakistan Penal Code (PPC), 1860. This Amendment was essentially passed to ensure that in cases where survivors of GBV resile their testimony or withdraw their cases due to social or family pressure, intimidation by the perpetrator or community influentials; cases can still proceed to prosecution and punishments still be given out at the discretion of Judges. In essence then, rape was made a crime against the State, which did not need a victim’s testimony as long as evidence of a forced sexual act against the victim was present.


This Act also included rape in the list of offences that are categorized as fasad fil arz i.e., acts of menace; those that are dangerously against the moral standards of society. For the purpose of rape, this means that trials would be conducted in anti-terrorism courts. However, due to the 2021 Amendment and introduction of GBV Courts across the country, this earlier Amendment appears redundant now.

This Amendment was considered a breakthrough and “win” for Activists in Pakistan, who had been advocating for rape to be considered a crime against the State for years.

## ➤ **Protection of Women against Harassment at the Workplace Act 2010 (Punjab Amendments of 2012 and 2020)**

The Protection of Women against Harassment at the Workplace Act, originally passed by the National Assembly in 2010 to cover the ICT area, was also passed by Punjab Assembly in 2012. It provides protection against harassment at the workplace and covers employees of public sector and private registered organizations by providing for the Office of an Ombudsperson to deal with complaints of harassment, and formation of inhouse Inquiry Committees led by a panel of senior employees of the organization. The application of the law has been extended to domestic and home based workers as well. The law is not restricted to harassment of women at the workplace but applies to all persons covered in its ambit.

Harassment defined in the law covers all forms of sexual harassment, including unwelcome sexual advances, requests for sexual favors, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.



Workplace includes place of work or the premises where an organization or employer operates, a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out. Sexual advances may occur after working hours and outside the workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.

## 🔗 **Protection of Women (Criminal Laws Amendment) Act of 2006**

This dynamic piece of legislation passed by the National Assembly, to make multiple Amendments to the Pakistan Penal Code (PPC) 1860, was a moment of triumph for analysts, activists and stakeholders of gender development alike. Before the passage of the 2006 Amendment, a case for rape could only be made through the notorious Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Hudood Ordinances), which failed to adequately distinguish between rape of an unmarried woman and fornication, thus strangely converting cases of rape into trials of fornication. Furthermore, there was an inadequate distinction between rape of a married woman and adultery, thus also bringing about issues during trial. Another issue which pertained to the Hudood Ordinances and their trial of rape was the evidentiary requirements of the “act of rape”. As per the Act, the act of penetration must have been witnessed by 3 pious Muslim men, which is a practical impossibility. Punishments were also equally severe: that of stoning to death.

Through the 2006 Act, rape along with several other crimes against women, were made a part of the PPC, thus criminally penalized with death sentences, imprisonment, and heavy fines.

## 🔗 **Acid and Burn Crimes Act, 2014 (ICT)**

According to reports by the Acid Survivors Foundation, victims of acid violence are targeted with an intention to maim, disfigure and/or blind. Resultantly, female survivors are unable to perform everyday household tasks and childcare duties. Although acid violence rarely kills, it causes severe physical, psychological, and social scaring, and victims are often without legal recourse, have limited access to medical or psychological assistance, and suffer from loss of earnings.

To counter an abysmally high number of cases of acid violence against women across the country, the National Assembly passed the Acid and Burn Crimes Act in 2014. This Act penalized “acid attacks” or attacks with corrosive substances which tended to destroy, dismember, or maim any person. Persons found guilty of acid and burn attacks were liable to 7 years rigorous imprisonment, while those whose victims died due to an acid or burn attack were liable to rigorous imprisonment for life. Furthermore, survivors now have access to monetary interim relief in case they have suffered loss of income, medical expenses, or any other damage due to the acid attack. The Act also provides for speedy trials, to be concluded within 7 days, to provide maximum relief to survivors.

## Rape and Other Sexual Offenses in the Pakistan Penal Code 1860

Over the years, criminal law amendments have been passed by the National Assembly, to bring perpetrators of GBV to justice. An Amendment in 2006 and one in 2011 being the most pertinent, most forms of violence against women have now been criminalized across Pakistan. These sections and corresponding penalties are detailed below.

PPC sec.	Nature of Offence	Punishment
310-A	Giving a female in marriage or compelling her into marriage as Badal e Sulh, Wannai or Swara	3 to 7 years imprisonment & Rs. 5 lacs fine
354	Assault or criminal force to outrage modesty of a woman	Up to 2 years imprisonment or fine or both
354-A	Assault or use of criminal force and striping off (a woman's) her clothes in public	Death sentence or imprisonment for life and fine
365-B	Kidnapping, abducting a woman to compel her for marriage	Imprisonment for life or fine
371-A	Selling a woman for purpose of prostitution	Imprisonment up to 25 years and fine
371-B	Buying a woman for prostitution	Imprisonment up to 25 years and fine
376	Rape	Death sentence or imprisonment 10 to 25 years and fine
376 (2)	Gang rape	Death sentence or imprisonment for life to each offender
376 (3)	Rape of minor, physically or mentally disabled woman	Death sentence or imprisonment for life & fine
376 (4)	Rape by a public servant, police officer, doctor, jailor taking advantage of official position	Death sentence or imprisonment for life & fine
377-B	Sexual abuse of under 18 years	14 to 20 years imprisonment & Rs. 1 million fine
496-A	Enticing or taking away or detaining a woman with criminal intent	Imprisonment up to 7 years and fine
498-B	Coercing or compelling a woman in any manner to enter into marriage	3 to 7 years imprisonment & Rs. 5 lacs fine if the woman is under 16 or a non-Muslim 5 to 10 years imprisonment & Rs. 1 million fines.
498-C	Compelling or arranging or facilitating marriage of a woman with Holy Quran	3 to 7 years imprisonment and Rs. 5 lakhs fine
509	Insulting modesty or causing sexual harassment at a public place (including inter alia markets, public transport, streets or parks, bus stops, etc.) or that occurring in private places including, inter alia office spaces, private gatherings, or homes.	



## Access to Justice for GBV Survivors

Access to justice comprises of citizens' ability to obtain formal or informal remedies from justice-sector institutions for any and all their grievances, according to international human rights standards. Essentially, a country must have a legal framework that gives citizens' rights; citizens must be aware of their rights; have access to affordable, quality legal representation; and have the ability to take their grievances to an institution that will provide them with accessible, affordable, timely, effective, efficient and impartial remedies. comprises the elements needed to enable citizens to seek redress for their grievances and to demand that their rights are upheld. Delivery of justice must also be impartial and nondiscriminatory. Legal empowerment is another crucial component of access to justice. Empowerment can only truly be achieved when the masses are fully aware of their rights and processes to claim their rights.

The post-2015 sustainable development agenda requires States to provide access to justice for all and build effective, accountable, and inclusive institutions at all levels (Goal 16). Globally, one can gauge the success of a criminal justice system by the number of convictions awarded to accused persons. Effortlessness of reporting crimes, process and swiftness of arrest, witness interviews and examinations, evidence collection, followed by prosecutorial performance are all factors that indicate the presence of rule of law and greater access to justice in a country.

In Pakistan, however, successful prosecution of crimes committed against women is contingent on a number of factors, including inter alia women's knowledge and access to institutions that will provide them with redress. Women's unwillingness to register cases and pursue lengthy trials is a major factor contributing to impunity for perpetrators. Few survivors choose to report cases; and those who do report struggle to seek justice in the country's convoluted and disjointed legal process. Social pressure to withdraw cases due to tarnished reputation, delayed and incomplete collection of evidence, incompetent investigation officers, budgetary constraints of law enforcement, overburdened prosecution operating within a limited budget, resiling witnesses, out of court settlements, improper collection and preservation of DNA evidence, desensitized medical service providers, lawyers, prosecutors and other ancillary staff are a few circumstances that hinder a GBV survivors' access to justice, and result in a lower incidence of conviction in cases of GBV. Culturally driven mistrust of the police also forces victims to sometimes drop charges, resulting in non-prosecution and impunity for perpetrators.

<sup>17</sup> Understanding Effective Access to Justice, OECD and OSF, (2016)

<sup>18</sup> Ibid.

<sup>19</sup> Access to Justice and Legal Empowerment, World Bank Group, (2009)

<sup>20</sup> SDG Tracker, Institute for Health Metrics and Evaluation (IHME)

<sup>21</sup> Punjab Gender Parity Report 2019 & 2020

<sup>22</sup> (WHO, Preventing Intimate Partner and Sexual Violence against Women 2010)

## Reporting GBV

Government of Pakistan has made significant strides in curbing violence sanctioned by cultural practices and norms or through misinterpretation of religious tenets; however, a justice system that is strong enough to withstand unequal power dynamics between classes and genders, and does not culturally discriminate against survivors who speak out for their rights, has not been seen in Pakistan thus far. After all, the Government has little or no role in out of court settlements and compromises between perpetrators and survivors, or their families. In several instances, cases are not reported due to pressure of retaliation, social ostracization, loss of reputation, diminished prospects of marriage (if the survivor is unmarried), and even proposals of marriage from perpetrators.

In Punjab, however, trends in recent years have shown an increase in overall reporting of cases of GBV. Whether the cases reported are successfully prosecuted is another story. As per statistics obtained from the Office of the Inspector General Punjab (IGP), reported cases of rape increased by 14.7% from 2020 to 2021, murder increased by 0.67%, attempted murder increased by 13.7%, domestic beating increased by 30.7%, gang rape cases increased by 22.8%, and acid burning increased by 21.4%.

An increase in women-related and gender sensitive redress mechanisms across the province, including women police stations, gender cells at police stations, help desks at police stations, complaint management by the 15 police helpline and the Women Safety Smart Phone Application set up by the Punjab Safe Cities Authority, induction of more women in Punjab Police; periodic and regularly revised gender sensitive training curricula for Judges and Prosecutors; expansion of the Punjab Women Protection Authority to all districts of Punjab; and active helplines for legal redress and seamless reporting, are some measures that have improved women's access to justice and increased reporting of GBV across Punjab.

The procedure for reporting an incident of GBV is fairly simple. The survivor, her family, or other person who wishes to report the incident on her behalf needs to approach the police station nearest to the place where the incident of GBV has taken place and inform the Station House Officer (SHO) or other police personnel available at the police station about the incident.

Alternatively, incidents of GBV can also be reported through the 15 police helpline, which is accessible and active across Punjab. Helpline call center agents connect callers with the nearest police station to their named location, so as to also guide survivors or accompanying family members, friends, media persons, or other persons, about the location of the nearest police station.

A further alternative for survivors who have smart phones, is the women safety smart phone application set up by the Punjab Safe Cities Authority. This Application is available for use on both Android and Apple smart phones and can easily be downloaded through the Play Store or iCloud. Once downloaded, the user is required to enter their CNIC and proceed to use the application to report an incident of GBV or chat online with live chat-agents who can guide the survivor regarding the location of the nearest police stations.

<sup>23</sup> National Policy on Ending Violence against Women and Girls; Planning Commission, Government of Pakistan

<sup>24</sup> Gender based violence Court, Handbook and Training Manual for Prosecutors; Asian Development Bank (2019)

Following implementation of the Punjab Protection of Women from Violence Act of 2016 and the subsequent Punjab Women Protection Authority Act of 2018, to all districts of Punjab (via Order of the Lahore High Court from November, 2022), survivors of domestic violence (physical, sexual, emotional or economic) may call the PWPA Helpline 1737 to communicate with the District Women Protection Officer (DWPO) or in her absence, the Women Protection Officer (WPO) and ask such Officer to rescue her from her location. Once rescued, the DWPO or WPO will accompany the survivor through all processes needed, including reporting the incident in the nearest police station, visiting the nearest hospital for a medico-legal examination, registration of FIR, and subsequently making arrangements in the district shelter home, if she is unable to return to her residence.

Once reported, the police will require details of the incident, including the place where it took place, time of day, eyewitnesses who can verify the incident, information regarding the perpetrator, and any other information that the survivor can provide at the time. On the basis of details provided, the police will lodge an official, written report, called a First Information Report or FIR. FIRs are lodged for cognizable offences, one in which the police have authority to arrest a person without getting a warrant from the court. In case of cognizable offences, police can begin investigation on their own, without orders from the court.

Any person who knows about the act of violence or crime, can lodge an FIR. It is not necessary for the victim to file the FIR herself; a police officer, media person, concerned person, friend, family member, or any other person can also file an FIR as and when they come to know about an offence, as long as the person has witnessed the act/incident, has knowledge of the incident, or is the victim of the incident.

After filing an FIR, the police station where the FIR has been registered begins the investigation process.

If for any reason, the police do not register an FIR; disciplinary action can be taken against the concerned officer through intimation in writing to the District Police Officer (DPO), Capital City Police Officer (CCPO, in case of Lahore), or other higher officers such as the Deputy Inspector General (DIG) Investigations, or Senior Superintendent of Police (SSP) Investigations.

The Police may also not begin investigation of a case, if the registered case is not serious in nature, there is insufficient ground for investigation, or that resources are being utilized to investigate a serious crime. If the Police does not investigate a case, they must record reasons in writing for not conducting an investigation, as per section 157 of the Code of Criminal Procedure, 1898.

To fill out the form of FIR under section 154 of the Code of Criminal Procedure 1898, the police must write down information regarding the offence on the prescribed FIR form. It is the right of the person registering the case and lodging the FIR to ask the police to show them information written in the FIR register, to verify and confirm its accuracy. Once information is entered, the person filing it must sign it. Such a person must also keep a copy of the FIR for their own record. Persons who cannot read or write must record a thumb impression on the FIR document. Name, address, date, time, location of the incident being reported, facts as per the knowledge of the person recording the FIR, use/misuse of weapons etc. must all be mentioned in the FIR, along with any names, addresses, description etc. of witnesses, is applicable.

<sup>25</sup> Center for Peace and Development Initiatives (CPDI), Pakistan (2009)

## Medico-legal Examination and Report

If the survivor has suffered an incident of physical or sexual violence, she will need a Medico-Legal Examination (MLE) to be conducted, and a Medico-Legal Certificate (MLC) to be issued, in order for a First Information Report to be filed. Such MLC will be proof of sexual or physical assault, or both, and prove as useful evidence during trial, if the survivor chooses to go ahead with trial.

When the survivor visits the police station nearest to the incident and informs them of her injuries (if they are not evident), she must ask for a “medico-legal docket” to be issued in her favor. This docket is the basis upon which doctors will conduct an MLE. The medico-legal docket includes the survivors’ name, time of incident, time of report, short history of the survivor, present signs of survivor needing an MLE (if any). The concerned police station will henceforth send a female Constable or Lady Police Officer (no specific rank is required) with the survivor, to the nearest Government hospital, for instance District Headquarter Hospital (DHQ) or Tehsil Headquarter Hospital (THQ), for an MLE.

The following timelines are important to bear in mind, when dealing specifically with a survivor of sexual violence and collecting evidence from her person for the purpose of submission to the Punjab Forensic Science Agency:

1	Evidence of vaginal sex/rape	120 hrs	2	Evidence of anal sex	72 hrs
3	Evidence of oral sex	24 hrs	4	Evidence of bite marks	96 hrs

If for any reason, the police do not issue a medico-legal docket, then the survivor, her family or friend who is accompanying her, must get in touch with a lawyer immediately. Such lawyer will draft an Application to the area Magistrate, along with a copy of the survivors’ CNIC, to issue a medico-legal docket in favor of the survivor. An Order issued by the Magistrate can henceforth be submitted to the Medical Superintendent (MS) of the DHQ or THQ which is nearest to the survivors’ location, for an immediate MLE to be conducted and MLC issued.



## Forensic Analysis of Evidence

Upon filing of FIR, the police may also send articles such as clothing, shoes, hair samples, etc. To the Punjab Forensic Science Agency's (PFSA) local office for collection and processing of forensic evidence. Processing forensic evidence may take time, since the PFSA has a limited number of units per district. However, since forensic evidence never disappears, it can be processed with delay as well, as long as samples are collected and stored.

The Punjab Forensic Science Agency (PFSA) is a state-of-the-art forensic science laboratory in Lahore, Punjab. Operating since 2011, it is the second largest laboratory in the world that provides crime laboratory services in 14 disciplines including audio visual analysis, forensics, crime scene investigation / death scene investigation, DNA and serology, firearms and tool marks, forensic photography, latent fingerprints, narcotics, polygraph examination, questioned documents, forensic toxicology and pathology and histology and trace chemistry. PFSA plays a vital role in the prosecution of GBV cases, due to its unique characteristic of identifying culprits and repeat offenders. It is especially useful in compiling data of offenders. It is also useful in absolving individuals that may be falsely accused. DNA can never be incorrect and is peculiar to each individual. Upon collection, DNA evidence is submitted to the PFSA by Investigation Officers (IO of the Police), which is then analyzed and matched with the DNA of the accused. If the DNA of an accused person matches that found on the crime scene, there is nothing that can save the accused person from conviction.

## Prosecution

Upon filing of FIR, the police may also send articles such as clothing, shoes, hair samples, etc. To the Punjab Forensic Science Agency's (PFSA) local office for collection and processing of forensic evidence. Processing forensic evidence may take time, since the PFSA has a limited number of units per district. However, since forensic evidence never disappears, it can be processed with delay as well, as long as samples are collected and stored.

The Punjab Forensic Science Agency (PFSA) is a state-of-the-art forensic science laboratory in Lahore, Punjab. Operating since 2011, it is the second largest laboratory in the world that provides crime laboratory services in 14 disciplines including audio visual analysis, forensics, crime scene investigation / death scene investigation, DNA and serology, firearms and tool marks, forensic photography, latent fingerprints, narcotics, polygraph examination, questioned documents, forensic toxicology and pathology and histology and trace chemistry. PFSA plays a vital role in the prosecution of GBV cases, due to its unique characteristic of identifying culprits and repeat offenders. It is especially useful in compiling data of offenders. It is also useful in absolving individuals that may be falsely accused. DNA can never be incorrect and is peculiar to each individual. Upon collection, DNA evidence is submitted to the PFSA by Investigation Officers (IO of the Police), which is then analyzed and matched with the DNA of the accused. If the DNA of an accused person matches that found on the crime scene, there is nothing that can save the accused person from conviction.

<sup>26</sup> Website of Punjab Forensic Science Agency, [www.pfsa.punjab.gov.pk](http://www.pfsa.punjab.gov.pk)

## GBV Courts in Punjab

According to a direction issued by the Lahore High Court on December 14th, 2022, all District and Sessions Courts across Punjab were informed that the Chief Justice of Lahore High Court has nominated Senior Civil Judge (Family Division) and Additional District and Sessions Judge-I in each district to deal with cases under the Punjab Protection of Women against Violence Act of 2016. The direction also makes room for alternative appointments in case the posts mentioned above are vacant in any district. This direction implies that all cases of domestic violence including physical, sexual, emotional, and financial abuse, will directly be referred to the Senior Civil Judge (Family Division), while criminal matters will be correspondingly filed with the Additional District and Sessions Judge-I in the district.

As per the Anti-rape (Trial and Investigation) Act of 2021, the Federal Government is bound to create “special courts” which have the same powers as Sessions Courts for the prosecution of GBV offences enlisted in the Act (and the Table above).

It is pertinent to mention here, that the first GBV Court was inaugurated by the then Chief Justice of the Lahore High Court, Justice Mansoor Ali Shah in 2017, within the premises of the District and Sessions Court, Lahore. The Judge nominated as the “GBV Judge” and the Prosecutor nominated for the Court were both provided comprehensive training by esteemed trainers affiliated with the Asian Development Bank. Through the same initiative funded by the Asian Development Bank, comprehensive Standard Operating Procedures for Prosecutors and a “Practice Note for Judges” were also formulated and distributed to authorities for implementation.

The distinct features of the GBV Courts include fast-tracking of cases, confidentiality and privacy of witness statements and evidentiary proceedings, court-appointed companions, and speedy trials. The victim is provided a trained "Female Support Officer" who escorts the victim to the waiting room and then to the court. In special circumstances, the victim may be allowed to testify in Court via video-link. Screens are also available to protect survivors from facing their abusers and reliving their trauma.

A monitoring exercise conducted 1 year into establishment of the GBV Court in Lahore revealed that barring some teething problems, the GBV Court was contributing towards an increased conviction rate for cases of rape (rise from 2 to 16%). Although efforts of the Lahore High Court and District Judiciary were also appreciated by the CEDAW Committee in 2020, even the Committee maintained the need for further improvement in access to justice to ensure nondiscrimination, implicit bias and reprisals towards survivors of GBV.

<sup>27</sup> Training Manual used for Training of Prosecutors and Judges is available at <http://event.development.asia/system/-files/materials/2019/12/201912-pakistan-gender-based-violence-court-handbook-and-training-manual-prosecutors.pdf>

<sup>28</sup> The following SOPs and Guidelines were notified in 2017 and issued to all District and Sessions Judges across Punjab. The extent to which they are being followed is however, unknown since no follow up or monitoring study or survey in this regard has been conducted since 2017.

<sup>29</sup> Special Mechanisms to Address Violence against Women in Punjab, Punjab Commission on the Status of Women (2018), available at [https://shirkatgah.org/shirkat/wp-content/uploads/2020/02/PCSW\\_SAW-Study\\_Print-version\\_Ff.pdf](https://shirkatgah.org/shirkat/wp-content/uploads/2020/02/PCSW_SAW-Study_Print-version_Ff.pdf)

<sup>30</sup> Punjab Gender Parity Report 2021

Another monitoring study conducted by Punjab Commission on the Status of Women in 2017 (published in 2018) concluded that attitudinal discrimination in Prosecutors and Judges (even those trained in gender and apparently far more sensitive than their counterparts), lack of efficient strategies to tackle resilient and hostile witnesses and survivors, and limited prosecution due to lack of evidence or insufficient admissible evidence, are problems that still persist in GBV trials. However, the study also lauded the GBV Court in that it led to an increased number of cases brought to trial and those prosecuted.

## Standard Operating Procedures for Prosecutors

In light of the Supreme Court's guidelines in PLJ 2013 SC 107 (Salman Raja's case), and the Criminal Law (Amendment) (Offence of Rape) Act 2016, the Lahore High Court, Directorate of District Judiciary and the Asian Development Bank formulated the following Guidelines in 2017, to be followed in cases of Gender Based Violence (GBV). At the time, these were to be followed by the pilot GBV Court (Special Court) set up within the premises of the District and Sessions Court, Lahore.

### Objectives

1. To ensure that all trials involving women who are victims of GBV are conducted in a sensitive manner.
2. To safeguard the rights of women victims and witnesses and guarantee that they are not subjected to undue or illegitimate pressure or influence.
3. To adopt international best practices in dealing with cases of GBV so that access to justice for women improves.

For prosecution of cases concerning GBV, all Courts, especially the Special Court, shall mandatorily follow the following Guidelines:

1. Before recording the Victim's Statement, the Magistrate shall ensure that the victim is comfortable and is free from any illegal or undue pressure.
2. If the Victim does not wish to appear in Court, her statement will be recorded by a female Magistrate. Psychiatrists, psychologists, and experts in sign language will be engaged by the Court, if necessary.
3. Cases of this nature will be disposed off as soon as possible, preferably within 15 days.
4. Examination-in-Chief and cross-examination of the Victim must be conducted on the same day. Evidence can be recorded via video conferencing as well. The judge will ensure that no degrading or humiliating questions are asked of the Victim.

<sup>31</sup> GBV Courts in Pakistan: a gap in gender equality remains but a promising start; Zarizana Abdul Aziz for Oxford Human Rights Hub blog (2020)

5. If the Victim or her family is being threatened in any way, the Court shall immediately direct the Assistant Superintendent of Police to investigate and submit a Report within 2 days. The Court shall also ensure that sufficient protection is provided to the Victim and her family.
6. During Examination-in-Chief and cross-examination of the Victim, no irrelevant persons will be allowed in the Court. This may also include the accused person(s).
7. Proceedings of cases of GBV will be conducted after regular Court hours, and with use of cameras, where necessary.
8. Screens, one-way glass, closed circuit television or other arrangements will be made, if required. Judge will ensure that lawyers present in Court will stand far away from witnesses/Victim.
9. Witness Care Video Link rooms may be established to record evidence of Victims or vulnerable persons so that they feel comfortable. If the Victim wishes, “supporting persons” or Advocates may be present while evidence is being given.

## Practice Note for Judges

In addition to the aforementioned guidelines or SOPs for Prosecutors, the following Practice Note for Judges was also formulated by the Asian Development Bank in 2017, to give smoother effect to the SOPs, and to further ensure that proceedings are conducted in a gender sensitive manner, without prejudice and hindrances that may inhibit survivors.

### **Objectives**

1. To enable cases of GBV to be prioritized and conducted in a gender sensitive manner.
2. To recognize that Victims of GBV are mainly women and children who must be encouraged to report these instances and pursue trial of perpetrators.
3. To adopt international best practices in dealing with cases of GBV so that access to justice for women improves.

### **Highlights**

1. Upon reaching the Court, the Victim will be met by a “female support officer”, an employee of the Court, who will escort the Victim to a protected place so as to avoid contact with the accused and the general public. The female support officer will subsequently accompany the Victim either to the e-court room or



the Courtroom as required and remain with the Victim while she gives her statement.

2. Adjustments are to be made to the proximity of the witness box, so that the witness does not have to confront the accused, or vice versa.
3. Lawyers will be seated at a separate bar table and shall remain seated unless they are speaking or questioning witnesses.
4. If the Victim chooses to give her statement in Court, then arrangements will be made to remove the accused from the room. The female support officer shall be seated near the Victim.
5. Video facilities are to be made available for the Victim, if she chooses to record her statement in the e-courtroom. Positioning of the video camera will allow the Victim to see the trial courtroom, particularly the Judge and counsel.
6. If identification of the accused is required, a camera can be positioned in a way so that the Victim can see the accused person and confirm his identity as the perpetrator.
7. Persons present in the trial courtroom will only be able to view the Victim on camera if she chooses to use the e-courtroom to record her statement.
8. The Judge will enlist 3 cases for hearing on each day, unless circumstances require otherwise. The Judge will also inform the Victim that she will be able to take breaks during questioning.
9. The Judge will ensure that all questions asked from the Victim are asked sensitively and in appropriate language, with regard for the Victim's age, educational level, cultural background, and physical and/or mental disabilities.
10. The Judge may at any time, make Orders to provide specific protection and other arrangements to ensure the Victim and her family's security.
11. To ensure that Victims do not resile, the following measures can be taken as and when appropriate:
  - (i) The Judge may ask the Victim to come to his Chamber and ask her why she has resiled. All answers will be recorded so that further action may be taken.
  - (ii) The Judge may adjourn the case until the following day or other suitable day and make arrangements to protect the Victim or her family measures.
  - (iii) The Judge may direct the Assistance Superintendent of Policy/Sub-divisional Police Officer of the concerned area to look into the matter and provide a report on action taken within 7 days.
  - (iv) If appropriate, the Judge may direct that trial continue and that the Victim be required to give evidence on a day of her convenience, with suitable Protection Orders in place for her own protection. If the Victim is hostile, cross-examination may be done in writing or in the manner specified in the Guidelines.

12. If the Victim refuses to attend trial on the day set for hearing, the case may be adjourned to another date, and a summons be issued to the Victim. If the Victim cannot be found or does not attend or record her statement otherwise, Prosecution may still proceed with trial if there appears to be sufficient evidence which can be used to prove the offence.

Pursuant to Article 161 of the Qanun-e-Shahadat Order, the Judge may ask any question, in any form, at any time from the Victim or other witnesses. Furthermore, the Judge may order production of any document or other evidentiary material necessary for proceedings.

## Summary of Procedure for GBV Reporting and Trial



<sup>32</sup> The last few months have been harrowing for Pakistani women; Nida Kirmani for Al Jazeera; 2021

<sup>33</sup> Punjab Gender Parity Report, 2022



## Conclusion

Gender based violence has severe consequences on women's physical, mental, social, and economic wellbeing. Analysis of reported cases of violence from Punjab reveals widespread prevalence of domestic violence, rape and other forms of sexual violence, harassment, assault, and systemic discrimination against women. In addition to this, harmful customary practices and social norms contribute to treatment of women across the province, as well as offering impunity for perpetrators. Out of court settlements, compromises, threats of reprisals and pressure from their own families discourage women from reporting violence committed against them. For these reasons, it is estimated that approximately 80% of cases involving GBV are not reported in Pakistan. This is also due to impunity granted to perpetrators who, many a time, are influential, pressurize families of survivors to drop their case, or make an offer of marriage to the survivor. Data compiled by the Punjab Public Prosecution Department reflects incredible variances between convictions and acquittals awarded in cases of VAW, thus making it vital for the Government to introduce reforms that tackle institutional flaws such as outdated investigation techniques, few number of forensic laboratories, limited staff trained in collection of forensic evidence and medico-legal examinations, and a weak witness protection system. Although Punjab shows considerable promise in terms of establishment of a GBV Court and the Punjab Women Protection Authority, such steps must continue on a larger scale, in order to ensure that women can live their lives with dignity and safety.

---

<sup>34</sup> Women's Rights = Human Rights: Pakistani Women against Gender; Western Michigan University Journal of Sociology and Social Welfare, June 2010

# Civil Remedies for Family Law Disputes in Punjab

## The Marriage Contract

Under Islamic Law, Marriage takes effect through a Contract, and is based on the principles of offer and acceptance, where the intention and mutual understanding to enter into “marriage” is made clear by both the concerned parties or their representatives.

For a valid marriage to take place, the following prerequisites are essential:

- a) A declaration or offer of marriage by or on behalf of one party and acceptance by or on behalf of the other party.
- b) Both parties must have legal capacity to marry, i.e., girls must be over 16 years of age, and boys must be over 18 years of age, and both must be of sane mental state.
- c) Both offer and acceptance must be expressed in one sitting. The offer can originate from either side.
- d) The free and full consent of both parties

Note: Although a guardian can give a minor (below 16 years for girls, and below 18 years for boys) in marriage, such a marriage will not be considered valid for registration, and penalties present for parties in the Punjab Child Marriage Restraint Act of 1929 (amended and passed in Punjab in 2015) will apply.

- e) The presence of adult, sane Muslim witnesses (two men or one man and two women).
- f) Fixation of dower (Haq Mahr)

---

<sup>35</sup> This section contains Civil Remedies that are permissible under Family Laws applicable in Punjab. Although this publication was strictly supposed to contain information on Criminal Justice Redress Mechanisms for Survivors of GBV, inclusion of family laws and remedies was recommended by Experts present at the Stakeholders Consultation convened in Lahore in May 2023, and have thus been included herein.



## **Registration of Marriage under Punjab Muslim Family Law Ordinance, 1961**

Every marriage solemnized under Muslim Law must mandatorily be registered in accordance with the provisions of the Punjab Muslim Family Law Ordinance 1961 (amended and passed in Punjab in 2015). As per provisions of the Act, the Union Council grants licenses to one or more persons, to be called Nikah Registrars.

Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance, be reported to him by the person who has solemnized such marriage. Whoever contravenes this clause is liable to simple imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### Documents required at the time of Marriage

- ☞ CNIC of Groom & Bride
- ☞ One valid and Attested copy of fathers of both, the bride and the groom
- ☞ CNIC of the two/three witnesses
- ☞ CNIC of person who solemnizes the Nikah or registered Nikah Khwan (Optional)
- ☞ Nikah Nama copy (Urdu)

### Documents Required for Registration with Union Council

- ☞ Original Nikah Nama
- ☞ Copy of Nikah Nama (Attested)
- ☞ Copy of CNIC (Groom and Bride)
- ☞ Copy of CNIC of fathers of both, the bride and the groom
- ☞ Copy of passport in case either party is a foreign national
- ☞ Copy of "B" Form in case bride's age is less than 18 years
- ☞ Copy of List of dowry articles with receipts (optional, but highly recommended)

## **Contracting Marriage without Wali**

In *Abdul Waheed v. Asma Jehangir* (PLD 1997 Lah 331), the Lahore High Court confirmed that an adult Hanafi Muslim woman can contract herself in marriage without her Wali's consent. An essential requirement for validity of contract is the woman's consent and not the Wali's.

## **Dower (Haq Mehr)**

A "Dower" is a sum of money or other property to which the wife is entitled to receive from the husband as consideration for the marriage. It is often referred to as the "consideration of marriage." It is a mandatory obligation and the law applicable in Pakistan requires it to be fixed at the time of marriage. (Column 13-16 of the Nikah Nama form).

## Kinds of Dower

### Prompt Dower:

This is the type of Dower which has to be paid to the wife before marriage is consummated or on wife's demand and if the husband refuses to pay such dower, then wife can refuse to live with the husband and can approach court for a decree for payment of the same.

✦ In case the wife lives separately from husband due to non-payment of dower she would be entitled to maintenance by the husband. If the husband fully and finally refuses to pay dower, the wife can seek divorce on this basis and such action on her part would not remove her entitlement to what is rightfully owed to her as dower.

✦ In case the husband dies, the wife's claim of dower would be the highest priority among "loans" to be returned from the deceased husband's property.

### Deferred Dower:

This type of dower can be paid at a later time during the subsistence of marital life. In case marital life comes to an end due to divorce or death of the husband, dower amount has to be paid. According to section 6 of Muslim Family Laws 1961, if the husband marries another woman without the prior permission of his existing wife, the amount of deferred amount has to be paid immediately.

### Customary Dower (Hanafi school of thought):

If the dower amount is not fixed at the time of Nikah and it is agreed between the parties that dower will be fixed at a later time, then such a Nikah is valid. In case of a dispute, the family court can be approached to fix the dower amount. Where the court has to fix the dower amount, it keeps in view the following:

- I. Dower amount fixed for other women in the bride's family
- II. Wealth status of the husband, social standing, salary, ownership of assets etc.

Where no details about the mode of payment of dower are specified in the Nikah Nama or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

## Polygamy

Under the Punjab Muslim Family Laws Ordinance ("MFLO"), during the subsistence of an existing marriage, no man shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

In case a man wishes to contract a second marriage, an application for permission of second marriage shall be submitted to the Chairman Union Council. Such an Application shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained.

The Nikah Registrar or the person who solemnizes the Nikah shall accurately fill all the columns of the Nikah Nama form with specific answers of the bride or the bridegroom. If there is any contravention, the bridegroom is liable to punishment of simple imprisonment for a term which may extend to one month and fine of twenty five thousand rupees.

On receipt of the Application the Chairman shall ask the applicant (man who wishes to contract a second marriage) and his existing wife or wives each to nominate a representative, and the Arbitration Council (constituted from within members of the Union Council and includes the Chairman (Union Council) so constituted may, if satisfied that the proposed marriage is necessary and just, grant the permission applied for. In case of contravention, he shall be punished to simple imprisonment for a term which may extend to three months and fine of one hundred thousand rupees.

Any man who contracts another marriage without the permission of the Arbitration Council shall be liable to:

- (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
- (b) upon complaint to the Union Council, be punishable with the simple imprisonment which may extend to one year and with fine of five hundred thousand rupees.

## **Maintenance (Nann-o-Nufqah)**

Under Islamic as well as Pakistani law, a father or a husband is obliged to pay maintenance for his child and his wife, respectively. This obligation continues until the child reaches the age of majority in the case of a son, and until marriage in case of a daughter.

A husband's obligation to maintain his wife continues until separation and/or divorce. If a husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may, in addition to seeking any other legal remedy available, apply to the Chairman Union Council, who shall constitute an Arbitration Council to determine the matter. The Arbitration Council may subsequently issue a certificate specifying the amount which must be paid as maintenance by the husband.

If a father fails to maintain his child, the mother or grandmother of the child may, in addition to seeking any other legal remedy, apply to the Chairman UC, who shall constitute an Arbitration Council. The Arbitration Council may subsequently issue a certificate specifying the amount which must be paid by the father as maintenance of the child.

The suit for maintenance can also be filed in the Family Court, as prescribed in schedule of the Family Court Act.

## Talaq (Divorce)

Talaq signifies the dissolution of marriage, or the annulment of a legal marriage through pronouncement of certain words.

### **Divorce is of various kinds:**

The Ahsan (single pronouncement of triple talaq, however revocable during the 90 day iddat period); Hasan (three pronouncements in three successive months, to take effect after the third pronouncement), Bid'a (one pronouncement of irrevocable talaq), Mubarah (divorce by mutual agreement/consent of the parties) and Talaq e Tafweez (delegation of right of divorce to the woman under column 18 of the Nikah Nama).

### **Divorce:**

A divorce by talaq is the mere arbitrary act of the husband, who may repudiate his wife at his own pleasure, with or without cause. But if he adopts that course, he is liable to repay her dower, and as it seems, to give up any jewels or paraphernalia which she brought with her from her marital home i.e., dowry articles.

Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife. In case of contravention of this provision, he shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

The Iddat Time is 90 days. The Chairman UC will constitute an Arbitration Council within 30 days of the receipt of notice, for the purpose of bringing about a reconciliation between the parties. If the wife is pregnant at the time of Talaq it shall not be effective till the pregnancy continues. Furthermore, talaq must be prescribed when the wife is not menstruating; talaq pronounced when she is menstruating is not effective.

Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

### **Khula**

Khula is the right of a woman in Islam to divorce her husband. In Pakistan, this right is practiced through an Application to the family court, and the court granting divorce to the woman after 90 days of her Application. In order to get khula, she need not give any reason to the Court; however, in practice, women are questioned regarding their reason for asking the Court for khula and legally bound to include such reasons in their applications.



## Divorce through the Dissolution of Muslim Marriages Act 1939 (“DMMA”)

Grounds on which women may seek divorce from the Family Court include:

- (1) Whereabouts of the husband are not known for a period of 4 years (considered “abandonment”);
- (2) Wife has not been maintained for 2 years;
- (3) Association with women of ill-repute or leading an infamous life, or forcing her to live an immoral life;
- (4) No conjugal relations without a reasonable cause for a period of 3 years;
- (5) Cruel conduct (physical, mental torture, financial, emotional abuse) by the husband;
- (6) Obstructs wife in observance of her religious profession or practice;
- (7) Husband has taken another wife in contravention of the procedure for polygamous marriage given in MFLO;
- (8) Husband has more than one wives and does not treat his wife equitably;
- (9) Option of puberty; or
- (10) Any other form of divorce recognized under Muslim personal law etc.

## Procedure for Obtaining Civil Remedies for Family Law Disputes in Punjab

Matters which can be resolved by the Union Council	Matters for which Family Court must be approached
<ul style="list-style-type: none"> <li>1. Recovery of Maintenance</li> <li>2. Recovery of Dowry Articles</li> <li>3. Complaint against Polygamous husband</li> <li>4. Divorce by Mutual Consent (Mubarah)</li> <li>5. Obtaining Divorce Certificate</li> </ul>	<ul style="list-style-type: none"> <li>1. Khula</li> <li>2. Complaint of Early Age Marriage</li> <li>3. Divorce under DMMA</li> </ul>
<ul style="list-style-type: none"> <li>- Application to Union Council</li> <li>- Chairman UC to form Arbitration Council</li> </ul>	<ul style="list-style-type: none"> <li>- Petition to be filed in Family Court</li> </ul>
<ul style="list-style-type: none"> <li>- Decision of Arbitration Council is binding on parties</li> </ul>	<ul style="list-style-type: none"> <li>- Family Court to pronounce decision within legally prescribed time period</li> </ul>



- 📍 Address: 66-L P.E.C.H.S Block 2, Main Kashmir Road, Karachi, Sindh, Pakistan
- ☎ Phone: +92-2137246137
- 🌐 Website: <https://gnmionline.org/>
- ✉ Email: [info@gnmionline.org](mailto:info@gnmionline.org)
- 📘 Facebook: <https://www.facebook.com/gnmionline>
- ✂ Twitter: <https://twitter.com/GnmIonline>
- 📷 Instagram: <https://www.instagram.com/gnmiofficial/>
- 🌐 <https://www.linkedin.com/global-neighborhood-for-media-innovation-gnmi>



© **Global Neighbourhood for Media Innovation (GNMI)**

**Address:** 66-L P.E.C.H.S Block 2, Main Kashmir Road, Karachi, Sindh, Pakistan.

**Phone:** +92-21 37246137

**Email:** [info@gnmionline.org](mailto:info@gnmionline.org)

**Website:** <http://www.gnmionline.org>

[2023]

**Disclaimer:**

All rights of this document are reserved. No part of this manual may be photocopied or reproduced in any form without written permission from the publisher. Moreover, no part of this publication can be stored in a retrieval system, transmitted by any means, or recorded or otherwise, without written permission from the publisher.