

## HANDOUT A

### GENDER ISSUES CONDUCTING GBV AND RAPE CASES - CASES REFERRED TO IN SLIDES 19 TO 23

#### DELAY IN REPORTING RAPE -3 cases

##### Case 1 (PAKISTAN CASE)

**Case 2 *People v. Ilao* (G.R. Nos. 152683-84, December 11, 2003). (The Philippines)** On appeal.

“As the trial court found, complainant did not divulge the first incident of rape out of fear for her life and that of her family. She could have kept her ordeal forever in silence were it not for the second incident which engendered her continuing fear of a repetition thereof, unless she could put a stop to it. This reaction appears typical of a woman who has been abused. **Rape is a harrowing experience and the shock concomitant to it may linger for a while.** It is upon this fear springing from the initial rape that the perpetrator hopes to build a climate of psychological terror, which could numb his victim to submissiveness. (emphasis added)

**Case 3 *People v Ilagan* (G.R. No. 144595. August 6, 2003). (The Philippines)** On appeal.

“[as to] the delay in reporting the case to the authorities, suffice it to state that **delay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.** Rape is a traumatic experience, and the shock concomitant with it may linger for a while. **Oftentimes, the victim would rather bear the ignominy and the pain in private, rather than reveal her shame to the world or risk the rapist’s carrying out his threat to harm her.**” (emphasis added)

#### RELEVANCE OF MORAL CHARACTER OR VIRGINITY OF VICTIM – 4 cases

**Case 1 *People v. Ilao* (G.R. Nos. 152683-84, December 11, 2003). (The Philippines)** On appeal.

“The assertion of appellant that the private complainant was a married woman, and was no longer a virgin, will not exculpate him from criminal liability for rape. **Well-settled is the rule that in rape cases, virginity of the victim is not an element of rape.**” (emphasis added)

**Case 2 *People v. Jason Navarro, Solomon Navarro and Roberto Olila (acquitted)* (G.R. 137597, October 24, 2003) (Philippines)**

“The defense’s attempt to depict the victim as a woman of loose morals deserves scant consideration. **The victim’s character or reputation is immaterial in rape, there being absolutely no nexus between it and the odious deed committed. A woman of loose morals could still be the victim of rape, the essence thereof being carnal knowledge of a woman without her consent.**

The argument of appellants that the victim must have consented to the sexual act, if indeed there was, because she acquiesced to go with them and had the opportunity to leave their company at any time she wished, is a *non sequitur*. **Freely going with a group for a ride around is one thing; freely having sex with one of the members thereof is another.** (emphasis added)

**Case 3 *People v. Wilson Suarez, et al.* (G.R. Nos. 153573-76 April 15, 2005) (The Philippines)**

“In a last -ditch effort to discredit the 14-year-old complainant, the defense attempted to picture her as a girl of loose morals. Suffice it to state that **such debasement of her character does not necessarily cast doubt on her credibility, nor does it negate the existence of rape.** It is a well-established rule that in the prosecution and conviction of an accused for rape, **the victim’s moral**

character is immaterial, there being absolutely no nexus between it and the odious deed committed. Even a prostitute or a woman of loose morals can be the victim of rape, for she can still refuse a man's lustful advances." (emphasis added)

**Case 4. *State of Punjab v. Gurmit Singh & Ors*, 1996 AIR 1393; 1996 SCC (2) 384 (Anand J) (India, Supreme Court)**

'The trial court not only erroneously disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterised her as a girl "of loose morals" or "such type of a girl". ... We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a judge. ... The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole – where the victim of crime is discouraged – the criminal encouraged and in turn crime gets rewarded! ... **Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone [and] everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court'** (emphasis added)

**WHETHER COMPLAINANT CONSENTED AND ABSENCE OF VISIBLE INJURY – 4 Cases**

**Case 1 *People v. Ilao* (G.R. Nos. 152683-84, December 11, 2003) (The Philippines)**

"The fact that private complainant ***did not resist or attempt to flee or shout for help does not negate force or intimidation. Different people react differently*** when confronted by a shocking or a harrowing and unexpected incident, for the workings of the human mind when placed under emotional stress are unpredictable. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Moreover, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective. (emphasis added)

**Case 2 *People v Ilagan* (G.R. No. 144595. August 6, 2003) (The Philippines)**

Physical resistance need not be established in rape when intimidation is exercised upon the victim herself. As held in *People v. Las Pinas, Jr.*, ***the test is whether the intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. When resistance would be futile, offering none at all does not amount to consent to sexual assault. The law does not impose upon a rape victim the burden of proving resistance.*** (emphasis added)

**ABSENCE OF INJURY DOES NOT MEAN THAT THE VICTIM CONSENTED SEXUAL ASSAULT**

**Case 3 ...AIR 1927 Lah 222**

Partial penetration not resulting in injury to the hymen is sufficient to constitute the offence of rape.

**Case 4 *The State v Shabbir alias Kaka s/o Moza Jhamke and Fozia Bibi. Jazeela Aslam Addl Sessions Judge, Sheikhpura. FIR No 1499/10***

Medical examination revealed that the 14/15-year-old victim looked frightened and disoriented. There was no mark on her body. Local examination revealed fresh bleeding from her vagina, a torn hymen and a lacerated wound on the side of her vagina.

“The statement of the victim that the accused persons committed rape one by one when she was under their significant control must be accepted as true. Obviously, she is being under fear could not raise any alarm and if she did, nobody would have heard or come to her rescue, as it was a cold winter midnight of 27<sup>th</sup> and 28<sup>th</sup> December. **Also, if there is no mark of violence on the visible parts of her body, it is not indicative of non- resistance.** The peculiar circumstances of the case are such as altogether exclude the elements of consent and character of a girl of the age of 14/15 years.

#### **WHETHER WOMEN RAPE VICTIMS ARE UNRELIABLE AND THEIR EVIDENCE MUST BE CORROBORATED (4 CASES AND REPORT EXTRACT)**

##### **Case 1**

.....1983 SCMR 90 **get name of the Case and brief quote**

##### **Case 2 Amanullah v The State PLD 2009 SC 542**

The ocular account of a rape victim was preferred over DNA. Reports of “so called experts” are only corroborative in nature and required only when the ocular testimony is of doubtful nature

##### **Case 3 Imran v The State 2016 PCr LJ 1888 (Sindh)**

Application for bail which was refused. Testimony of rape victim is of vital significance and unless there is compelling reason, then no corroborative evidence is required

##### **Case 4 The State v Muhammad Afzal S/O Ghulam Haide. Amjad Ali Shah Addl Sessions Judge Narowal Case FIR No.109/2010 19.01.2012**

Observations:

- “Needless to say that in cases of zina-bil-jabr/ rape there is seldom an eyewitness because such type of crimes are committed away from the public places but there is a plethora of case law to the effect that even then conviction can be passed on the sole testimony of the victim if it rings true. (ref 1983 SCMR 901 and 2984 PSC (FSC) 727

- “in many cases conviction was passed despite absence of injuries on the person of the victim on the ground that she was over powered by the assailant one way or the other. Reliance is placed on 1975 SCMR 394, 1975 SCMR 69, 1977 P Cr LJ 352, PLJ 1982 FSC 80.

- “Moreover, all medical evidence is ultimately corroborative in nature and cannot take the place of direct oral evidence of rape especially when it is supported by the eyewitnesses and in that situation the conviction can be passed on this basis even in the absence of corroborative evidence like semen grouping and DNA test”

- “in our socio—religious texture of the society no daughter would normally level false allegation of Zina against her real father nor the other real daughter or wife of the accused can come forward to support such allegation unless it is true. The only plea taken by the accused and suggested to the PW’s is that of general bad character of the victim... with the allegation that she had illicit relations with... The question was answered in negative by them. Moreover, this is the usual allegation always repeated against women folk in our society whenever their relationships with male partners/relatives become strained”

## **GENDER STEREOTYPING AND WHETHER WOMEN FABRICATE ALLEGATIONS OF RAPE AND DELAY IN REPORTING**

**International commission of Jurists (2015), *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice*. Geneva. Switzerland**

### **Extracts**

#### **II. DOUBTING WOMEN'S TRUTHFULNESS: THE APPLICATION OF PROMPT COMPLAINT, CORROBORATION AND CAUTIONARY REQUIREMENTS**

It is often believed that women fabricate allegations of rape and sexual assault. Underlying this may be general stereotypes to the effect that women are untruthful or related assumptions that due to shame and stigma women will not admit to having had consensual sex outside of marriage and thus will lie, saying such premarital or extramarital sex was non-consensual, or ideas that women easily make allegations of rape when they want to cause harm or seek revenge. The inaccuracy of this belief is now verified by data that demonstrates that the percentage of women who fabricate sexual assault complaints is very low. Moreover, it is increasingly accepted and understood, that in fact allegations of sexual assault are not easy to make...(P11)

#### **UNDERLYING HARMFUL STEREOTYPES OR ASSUMPTIONS**

No matter what their form, prompt complaint rules and practices in cases of sexual assaults against women are inconsistent with the prohibition of gender discrimination including the duty "not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence."<sup>41</sup> They embody the belief that "real" victims of sexual violence will report the violence quickly and give legal form to inaccurate and impermissible assumptions as to what is to be "expected from a rational and ideal victim," or what is considered "to be the rational and ideal response of a woman in a rape situation."

These beliefs are incorrect. There is no evidence that delayed reports of sexual violence are less truthful. In fact, statistics indicate that most crimes of sexual violence are never reported at all. As the Supreme Court of California noted, "the overwhelming body of current empirical studies, data, and other information establishes that it is not inherently "natural" for the victim to confide in someone or to disclose, immediately following commission of the offense, that he or she was sexually assaulted." Instead survivors are often afraid of reporting the crime because of stigma and shame. If the perpetrator is someone the survivor knows personally, as is often the case, it can be even more difficult to report the crime. (P12)

#### **UNDERLYING HARMFUL STEREOTYPES OR ASSUMPTIONS**

Corroboration requirements in sexual assault cases embody the skepticism with which women alleging sexual assault have historically been treated and reflect the inherent assumption that women fabricate claims of sexual assault. As the High Court of Australia noted, corroboration requirements rely on the view that "female evidence in such cases is intrinsically unreliable."

There is no legitimate reason for the application of a different approach to corroboration with regards to the testimony of survivors of sexual violence than with regards to the testimony of victims of other crimes. As the Court of Appeal of Kenya observed, “there is neither scientific proof nor research findings that we know of to show that women and girls will, as a general rule, give false testimony or fabricate cases against men in sexual offences.”

As the Bangladesh High Court held, “the testimony of a victim of sexual assault is vital, and unless there are compelling reasons which necessitate corroboration of her statement, the court should find no difficulty in convicting an accused on her testimony alone if it inspires confidence and is found to be reliable.” To do so, the Court noted, would be to treat victims of sexual violence equally with other victims and witnesses of violent crimes, for whom decisions of credibility are made on a case by case basis and not subject to general rules.

The *per se* imposition of a requirement that a victim’s testimony be corroborated in sexual assault cases is discriminatory and contradicts the duty of the authorities, outlined by the Committee on the Elimination of Discrimination against Women to ensure that “legal procedures in cases involving crimes of rape and other sexual offenses ... be impartial and fair, and not affected by prejudices or stereotypical gender notions.”

Corroboration requirements also reflect often mistaken notions of how sexual assault occurs and what kind of conduct it involves. For example, it is often assumed that true allegations of any sexual assault crime will be easily ‘corroborated’ or substantiated by physical evidence because such crimes involve physical force or a physical struggle in which the victim or perpetrator suffers injury. However, as will be discussed in Section IV, these assumptions are inaccurate. (P14)