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Addressing Sexual Violence, Rape and Harassment of Women, Children and Transgender Persons

Recommendations for Interior Ministry, Punjab

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1. Understanding Gender Crimes

In gender studies the term *gender* refers to proposed social and cultural constructions of masculinities and femininities.

According to World Health Organization, 'gender' refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women whereas 'sex' refers to the biological and physiological characteristics that define men and women.¹

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- World Health Organization

Accordingly, the concept of 'gender crime' is rooted in the same socio-economic structures that assigns gender roles to different people in a society, due to which all genders do not have equal status, protection, agency or privilege in a given society and so a crime is more likely to be committed against the more vulnerable of the group or class of persons as a result of their gender because the structures that defines their role, often do not offer equal protection of their rights so as to maintain a status quo of dominance and control. It is in this context of unequal power relations that prevail in a society that gender crimes need to be viewed in. Unless we truly acknowledge this and pledge to eliminate and address these discriminatory practices and unequal status and protection, we may never be able to overcome the emergency of gender crime prevalent in the society.

'Gender Crimes' must be viewed in the context of unequal power relations that prevail in the society and the discriminatory biases and practices rooted in the archaic cultural norms to overcome the emergency of rising incidences of gender crime in Punjab.

The United Nations defines *Violence against Women* as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.²

The Punjab Protection of Women against Violence Act 2016, which has currently been notified in Multan only, defines violence against women more comprehensively in, Section 2 (r) as,

“violence” means any offence committed against the human body of the aggrieved person including abetment of an offence, domestic violence, sexual violence, psychological abuse, economic abuse, stalking or a cybercrime;

¹ https://www.who.int/health-topics/gender#tab=tab_1

² Article 2, UNGA Resolution 48/104 Declaration on Elimination of Violence Against Women, 1994. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/095/05/PDF/N9409505.pdf?OpenElement>

Explanations.- In this clause:

(1) “economic abuse” means denial of food, clothing and shelter in a domestic relationship to the aggrieved person by the defendant in accordance with the defendant’s income or taking away the income of the aggrieved person without her consent by the defendant; and

(2) “psychological violence includes psychological deterioration of aggrieved person which may result in anorexia, suicide attempt or clinically proven depression resulting from defendant’s oppressive behaviour or limiting freedom of movement of the aggrieved person and that condition is certified by a panel of psychologists appointed by District Women Protection Committee;”³

The terms gender-based violence, domestic violence, and violence against women convey similar concepts and are often used interchangeably. However, *Violence against women* is more specific than *gender-based violence*, in that it only applies to people who identify or present as women.

- Friends of UNFPA

The **Transgender Persons (Protection of Rights) Act, 2018**, which extends to the whole of Pakistan, although, does not define the term ‘violence’ but it does define the term ‘Harassment’ in Section 2 (h) as:

“harassment” includes sexual, physical, mental and psychological harassment which means any aggressive pressure or intimidation intended to coerce unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with living, mobility or work performance or creating an intimidating, hostile or offensive work or living environment including the attempt to punish the complainant for refusal to comply with such requests or to bring forth the complaint;’

Due to special vulnerability of all children, whether male or female, and rising incidences of abuse against them and other vulnerable genders/class of persons, we shall be referring to all kinds of violence against them collectively as a form of ‘Gender Based Violence’ or ‘Gender Crime’ for the purposes of the recommendations including child sexual abuse⁴ and unnatural offences⁵ as defined in Pakistan Penal Code (PPC), Violence against Women (VAW), Sexual Violence, Sexual Abuse and/or Harassment.

For our purposes however, we would be either using these terms interchangeably or under the umbrella term of ‘gender crime’ or ‘gender-based violence’ unless stated otherwise.

³ <http://punjablaws.gov.pk/laws/2634.html>

⁴ Section 377A, Pakistan Penal Code 1860

⁵ Section 377, Pakistan Penal Code 1860

2. Magnitude of the Problem

The data below is from Punjab Commission on Status of Women's Gender Parity (PCSW) and Human Rights Commission of Pakistan's (HRCP) Reports as well as from Punjab Police (PP) website. It shows a consistent rise particularly, in gang rapes which are often premediated and planned as opposed to the idea that sexual crimes as crimes of lust. In fact, they are crimes of power and impunity.

	2020	2021	2022
Rape	3773	4329	1185 (till end of April)
Gang Rape	219	269	75 (till end of April)
Harassment	Workplace: 71 Online: 602 Others: 1562	Workplace: 133 Online: 794 Others: 2437	No Data
Others	Incest: 56 Custodial Rape: 8 Rape of Minors: 193	No Data	No Data

In 2021, at least **1,896 cases of child abuse** were documented across the country between January and June, according to one estimate, although the number is likely higher. Of these, **1,084 cases involved sexual abuse** – HRCP Report 2021

**Least Reported Cases/Data Relates to those of Transgender Persons.
They are most vulnerable.**

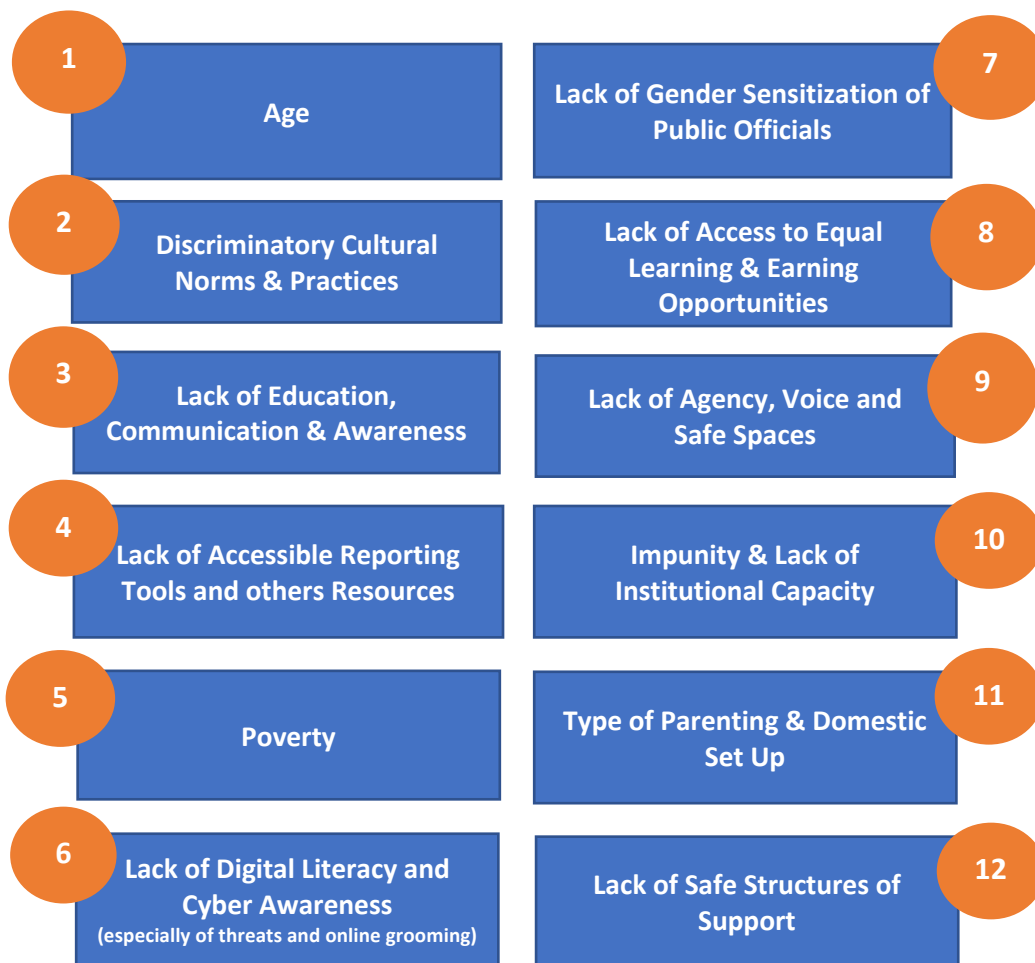
Cause: Lack of Safe Spaces and Police Stations where Transgender can lodge complaints.

Sexual Crimes are
crimes NOT 'crimes of
lust' but of 'power'
and 'impunity'.

2.1 What are the Factors that Increase Vulnerability and Risk for Different Genders?

The factors that may cause or aggravate the vulnerability of a particular gender or class of persons such as ‘children’ who are then, as a result of those factors more susceptible to violence being committed against them are multiple.

Some of these are presented below:



3. Prominent Causes of Inability to Address these Crimes



4. State and Its Role

A State always has two questions before it:

Preventive & Preemptive Measures

- What Can the State Do to Curb these Incidents?

Post Crime Response & Measures

- How the State Responds to the incident and what process and support is there for victims?

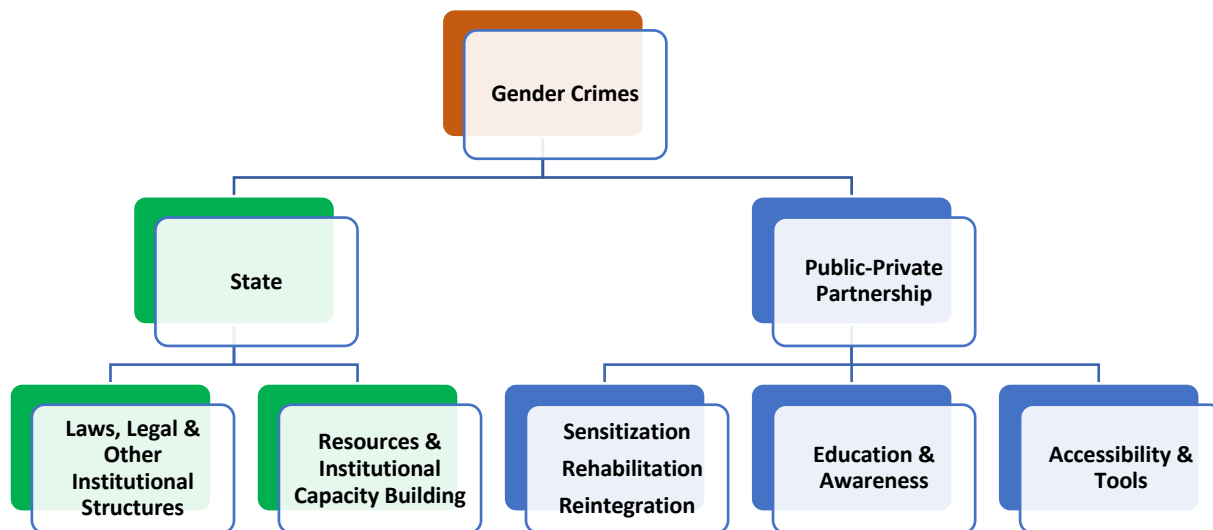
5. How the State should Approach this Issue?

The state has to work in two spheres.

The first pertains to the domain in which the state may be involved directly such as where legislative amendments or passing of new laws are required or where funds have to be allocated for administrative and capacity building of the enforcement agencies and institutions.

The other sphere is in which the state and its administrative units and departments may require active and on-field support of NGOs and development sector as well as with grassroots activists and organizations and informal networks or other spaces and establishments. The government should therefore, endeavour to develop linkages and public-private partnerships with all the concerned stakeholders, including with the vulnerable communities, groups and children.

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5.1 What Should be the Underlying Philosophy?

- Certainty and NOT Severity of Punishment shall deter.
- Focus should be on Prevention and/or Survivor-Sensitive Lens towards any Reform Endeavour.
- Zero Tolerance Policy for Victim-Blaming by Public Officials including Medico-Legal Officers, IOs, Prosecution and Others.
- Developing Participatory, Holistic, Gender and Child Sensitive, Transparent Processes and Consultative Procedures, Policies and Structures.

6. Selected Existing Laws

1. Fundamental Rights in the Constitution of Pakistan 1973
2. Pakistan Penal Code 1860⁶
3. Code of Criminal Procedure 1898
4. Punjab Destitute and Neglected Children Act 2004
5. Punjab Protection against Harassment of Women at Workplace Act 2012
6. Punjab Protection of Women against Violence Act 2016
7. The Transgender Persons (Protection of Rights) Act, 2018
8. The Workers Children (Education) Ordinance, 1972
9. The Child Marriage Restraint Act, 1929
10. The Punjab Reproductive, Maternal, Neo-natal and Child Health Authority Act 2014
11. Punjab Fair Representation of Women Act 2014
12. The Punjab Prohibition of Child Labour at Brick Kilns Act 2016
13. The Punjab Restriction on Employment of Children Act 2016
14. The Juvenile Justice System Act, 2018
15. The Criminal Law (Amendment) Act 2021⁷
16. The Anti-Rape Act (Trial and Investigation) 2021⁸

7. Existing State Structures

1. Violence against Women Centres (Multan)
2. Dar ul Amans
3. Dar ul Falahs
4. Crises Centres
5. GBV Courts⁹
6. Helplines

⁶ Covers provisions on child sexual abuse and unnatural offences and s509 on harassment in general.

⁷ Redefines rape extensively and includes gang rape in PPC.

⁸ Status of notification to be confirmed.

⁹ May still require formal legal cover.

8. What kind of Legal Reforms are Required?

1. Punjab should adopt the amendments to its harassment at workplace act along similar lines as the national assembly.¹⁰
2. Have Anti-Rape Act amended to include transgender persons to make it more inclusive, review it in line with other laws, remove anomalies and/or any uncertainties and then notify it.¹¹
3. Update or pass a new child protection law or policy with a focus on safe campuses and safe learning spaces with a participatory and child sensitive approach.¹²
4. Penal repercussions for officials who victim-blame.
5. Harmonize age of child to any person under-age of 18.
6. Define and criminalize 'necrophilia' in law.

9. Steps that Need to be Taken

Steps that Need to be Taken

Multipronged and Coordinated Strategy at all Levels



¹⁰ We have worked on this with Federal Ministry of Human Rights and can assist Punjab for this as well if required.

¹¹ We have worked on this as well and can provide input.

¹² Separate recommendations for this are attached as annexure below.

10. How to Go About it?

1. Formulate a diverse working group of experts and with nationwide representation of concerned bodies and stakeholders including from Media, medical, legal and NGO sector etc.
2. Create sub-groups based on each area of action and expertise.
3. Designate the point person responsible for each group and with whom all coordination will be done by working group or by an authorized person/secretary.
4. Set clear timelines and create simple, effective and coordinated and user-friendly reporting mechanisms.
5. Meet online/in-person for periodic updates and progress.
6. Conduct wide ranging awareness including with men, parents and in online spaces.
7. Invest in training and capacity building of concerned officials and Increase Women in Justice Sector.
8. Develop SOPs, especially for first respondents, medico legal, Police etc.
9. Set timelines for trial along with monitoring mechanism in accordance with law.
10. Adopt GBV Court model and give it legal cover via notification as required under law.
11. Amend law where needed and strengthen existing platforms where they exist.
12. Engage with civil society and create a network of action and support.
13. Empower, children, women and transgender persons and revisit framing of incidents that does not put blame on victim, avoid passive aggressive undertones while reporting or talking about it.
14. Liaison and collaborate with unassuming establishments for creating awareness among vulnerable groups, especially where they have ease of access in society.
15. Send recommendations for developing safe and inclusive public transportation network and infrastructure for women, children and other vulnerable persons.

11. What kind of Sub-Groups can be Created?

1. Media Reporting and Awareness
2. SOPs/Guidelines (for first respondents, investigation, trial, court set up etc)
3. Monitoring and Evaluation/Implementation and Compliance
4. Inter-Provincial/City and Inter Expertise/Stakeholder Coordination
5. Legal and other support
6. Trainings and Capacity Building

12. Annexures – Child Protection in Educational Institutions

Recommendations of Experts on Safe Campuses and Child Protection in Educational Institutions.¹³

COLLECTIVE OBSERVATIONS OF EXPERTS

1. Currently, there is no holistic national or provincial policy framework, guidelines or law that covers child protection as a whole that is operative.
2. After the 18th amendment, the 2005 National Plan of Action against Child Sexual Abuse and Exploitation could also not be implemented.
3. The 2005 Plan of Action envisages 5 core principles on which any future policy/guidelines or law should be developed, in that, any future guideline/policy/law must cover:

a. Prevention

b. Protection

- *develop the sense of the principles and objectives of the Constitution and respect for the rights of women and minorities in the students;*
- *educate and encourage the students to defend the freedom of religion at all times, against all forms of abuse and violations;*
- *develop courses for realizing the importance of minority education;*
- *create awareness amongst students of minorities about their responsibilities and an appreciation of their rights and obligations as citizens of Pakistan;*
- *achievement of true democracy arising from the existing inequalities between different strata of the population and measures necessary for re-dressing these inequalities;*
- *propagate counter narrative to violence, terrorism and extremism;*
- *develop the narrative of unity, faith, discipline and tolerance amongst the students; and inculcate respect for all religions especially amongst the students.*

c. Recovery and Rehabilitation

d. Participation

e. Monitoring and Evaluation

4. Punjab Child Protection and Welfare Bureau founded under Punjab Destitute and Neglected Children Act which does not look upon as school going children as falling within their mandate of protection. This law could be amended to increase the scope of the bureau to cover protection for any child against the different forms of abuse they are likely to suffer or be vulnerable to because of their age.

¹³ <http://learnpak.com.pk/wp-content/uploads/2020/12/Final-Institutional-Reforms-and-Holistic-Policy-Recommendations-for-Child-Protection-in-Educational-Settings.pdf>

5. HEC has a policy on harassment for higher education but a coherent, holistic and participatory policy/guidelines/framework at school level should also be developed and implemented.

6. Particular care and protection towards differently-abled and minority children must also be included.

7. Currently, Pakistan has no operative registry/database of sex offenders that can enable background checks of persons dealing with children such as teachers. Under Police Order 1934 such a registry is to be maintained however, it is not being maintained.

8. Until we don't have such data, we will not be able to move towards a coherent and integrated system of background check over teachers and other personnel dealing closely with children at a hiring level.

9. Pakistan is a party to the global initiative of 'ending violence against children in schools which encompasses 'safe learning' as an agenda.

10. Crimes against children remain a national issue under purview of fundamental rights of children and Pakistan Penal Code defines some of these crimes consistently at the national level such as in S377A, however, the overall child protection mechanism and its implementation has to be articulated at the provincial level for which a participatory approach that includes children as well as other stakeholders will have to be adopted.

11. There is a need to sit with the all provinces at the national level to design standards which include safe learning where after the education department would be bound to ensure safe learning standards are reflected in their operations in schools.

12. There appears to be no mechanism in some schools to access directors/senior management or any other designated and competent authority to address complaints of students.

13. Students are often not aware of their rights and avenues and means of redressal of complaints.

14. Any government officers that do tend to visit public schools to keep a check on attendance and lectures currently, do not inquire into the mental health or complaints of students related to any abuse etc. They should be trained to do so or any other mechanism that can address this gap should be developed and inculcated within the guidelines of safe learning and safe campuses. Child Protection and Safe Campuses 24

15. Children have a lot of stories and hardly any avenues to express themselves. They need a mechanism through which they can reach out to concerned authorities.

16. Our culture does not encourage open communication between parent(s)-child(ren).

17. There is denial on part of individuals within the governmental framework as regards occurrence, scale and frequency of child abuse.

18. Teachers should not be allowed to "become friends" or interact in any capacity other than the professional capacity with the students.

3. Currently, there is no system to disaggregate provincial education budget on the basis of gender.

POLICY RECOMMENDATIONS AND WAY FORWARD

1. To consolidate child protection, universal child safeguarding standards should be developed in response to local context and based on a consultative and participatory process between provinces, federation and all other stakeholders.
2. Sexual harassment of students should be covered in a separate and holistic child protection in educational institutions law.
3. Sexist harassment or gender-based harassment/discrimination should be a separate head and defined separately.
4. 2010 workplace harassment Law is currently silent the liability of those who may be complicit, aid or abet harassment at workplace so it should be reformed to reflect that.
5. To make the process participatory, an open call to students should be made and they should be encouraged to send in their recommendations or a 'Charter of Demands' which can be included and taken up in consultations with stakeholders while developing national child safeguarding standards.
6. Scope and mandate of child protection and welfare bureau should be expanded to cover all children by amending Punjab destitute and neglected children act.
7. Child protection policy/guidelines template should be drafted and shared with all educational institutions, including madrassahs and other informal educational settings.
8. Sensitivity trainings to be mandated for every staff, admin and faculty in all educational institutions, including Madrassahs and other informal educational settings.
9. External and internal accountability mechanism should be embedded in the protection framework so that in addition to internal mechanism students have means to access independent avenues as well as such as in shape of a helpline or list of numbers that can include contact details of line ministry or of the relevant department or other bodies that can offer assistance.
10. Any internal reporting and protection mechanisms in schools must compose of nonteaching faculty/staff or those that are not directly involved in teaching or managing the students on a daily basis. Moreover, child participation in inquiry committees whether through an alumni network or other means should be insured in inquiry committees.
11. Registration of teachers with an authority (DEA or DRA) along with any record of offences should be maintained. In absence of proper data, policy papers and recommendations can be hard to present.
12. Teachers and staff must be trained and be given and explained the child protection policy that applies before they are hired.
13. Policy to be accessible and explained to all students with direct access to point of first contact so that the student or parents/guardians have all information regarding accessing remedies and procedures.
14. Same gender sexual intercourse should be defined as rape by amending s 375 PPC.
15. Ban corporal punishment in Punjab via legislation.

16. Educational institutions should develop screening for substance abuse and adopt measures to curb use and exchange of narcotics in and around their campuses
17. No soliciting tuitions policy for all teaching staff of the institutions should be made a term of their contract of employment.
18. Role of parents and their engagement and involvement to back their children must be encouraged.
19. There is a need to address the impact and relevance of traditional ‘authoritarian’ schools vs more consultative, inclusive and participatory learning platforms and adopt policy guidelines or framework accordingly.
20. Sensitization and capacity building trainings and workshops at all levels of implementation and impact should be conducted and a continuous process of engagement and reflection be adopted to improve.
21. Data protection and privacy of school students must also be ensured so that their personal details like their contact numbers, address and emails are safeguarded.
22. Private schools, Madrassahs and informal educational settings should be included and be made part implementation of child safeguarding principles and framework.
23. Collective voices should be raised to ensure accountability of private institutions to public at large even if no formal regulatory mechanisms currently exist.
24. More information on how to get involved, how to assist, and how to access the reporting mechanisms and other forums should be made easily available in user-friendly terms so that all concerned stakeholders, groups and citizens know how and what they can do to play their part.
25. The gender lens should be introduced at a very early stage when budget call circulars are being sent to the departments concerned.

The Full Text of the Consultative Session on Child Rights and Safe Campuses - Recommendations for Policy and Institutional Reforms can be accessed here:

<http://learnpak.com.pk/wp-content/uploads/2020/08/CPSC.pdf>

The Full Text of the related paper on Child Protection and Safe Campuses by LEARN and Faces Pakistan can be accessed here:

<http://learnpak.com.pk/wp-content/uploads/2020/12/Final-Institutional-Reforms-and-Holistic-Policy-Recommendations-for-Child-Protection-in-Educational-Settings.pdf>