

There is no 'honour' in killing

Don't let them get away with murder

(Booklet on criminal procedures)

Basic questions answered

Hassam Qadir Shah

For Shirkat Gah



Shirkat Gah Women's Resource Centre

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Edited by: Nabila Malick



Shirkat Gah; Women's Resource Centre

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Introduction

What is 'honour' killing?

'Honour killing' is a term used to denote the murder of women (and also sometimes men) under the pretext of restoring and/or reviving the 'lost honour' of the family. Mostly, victims of 'honour' killings and/or crimes of violence are accused of inappropriate sexual behaviour that, it is claimed by those committing the murder, led to the loss of family 'honour'. In Pakistan, the 'inappropriate behaviour' for which hundreds of women have lost their lives includes exercising their right to marry or divorce without the specific approval of family members and challenging oppressive traditions such as supporting the right of a daughter to marry someone she chooses.

The fact that the practice of 'honour' killings/crimes has a long history and occurs in many parts of the world under different forms and names is no consolation. Of concern is that the practice remains a shamefully celebrated and accepted crime in many places including Pakistan; that women are abused, maimed and killed on mere suspicion and accusation; that innocent women are killed for reasons that have nothing to do with their own acts: to secure property, to extract money from someone, to ensure a lesser sentence when a man has murdered another man for reasons totally unrelated to any woman; that the physical murder of such women is compounded by destroying their life and memory by falsely accusing them of sexual misbehaviour. No one close to these women is allowed to mourn them, to remember them, to seek justice for their death.

It is alarming that such violence against women seems to be on the increase - a fact corroborated by credible statistics collected both by government and various human rights organizations. According to government statistics, in Sindh alone, at least one woman is killed every single day in a crime justified by reasons of 'honour'. At a recent seminar, the Inspector General of Police in Sindh conceded that in the year 2000, nearly 1000 women were killed in Pakistan out of a total world figure of 5000 classified as 'honour' killings. If the global figure cited by the top police official is correct, it means that nearly 20 per cent of all women killed for 'honour' crimes were Pakistani women.

Though it may well be that the reality is even grimmer than the horrific picture we see (since these shocking figures are based on the reported cases only), the high figures for Pakistan are also the direct result of deliberate classification of many murders, specially of women, as 'honour' crimes by the perpetrators in a bid to get lesser sentences by appeal to social sentiments.

Though 'honour' killings and crimes take many forms, this publication concerns itself specifically with the infamous practice known in Sindh as *karo kari*, in Baluchistan as *siyahkari*, in Southern Punjab as *kala kali* and in the NWFP as *tor tora*. In each language the meaning is the same: women and men condemned by their family and/or community as 'black' for acts of sexual misconduct. The custom dictates that both the 'guilty' man and woman be killed or punished. In practice, however, more women than men lose their lives to this practice. Not infrequently, greater mobility and resources allow men so-accused to escape the revenge of family and community by physically running away. Women are rarely able to exercise that option and when women do, they are pursued more arduously than men

by male relatives bent upon murder even if they have to cross international borders to do so.

In the past, an important factor in the continuation and possible increase of murders under the pretext of *karo kari* was the silence that surrounded the subject. Today, in Sindh, thanks to commendable work first by journalists and then civil society groups, the wall of silence is slowly beginning to crumble. In other provinces, silence prevails. The voices speaking out against the practice need to be strengthened, especially amongst the concerned communities. To help break the silence, Shirkat Gah – Women's Resource Centre working with local organizations has started to map the phenomenon of *karo kari*, *siyahkari*, *kala kali* and *tor tora* through field research (including case studies and focus group discussions) to document the practice and changes having taken/ taking place, to understand how concerned communities perceive the practice and to identify with local groups how best to intervene. We hope that sharing the findings will help bolster the voices breaking the silence. (see *The Dark Side of 'Honour' – Women Victims in Pakistan; Special Bulletin 2001*)

A second pivotal factor that promotes violence and death in the name of *karo kari* is that, all too frequently, the murderer/offender gets off scot-free or with a minimum sentence. This deplorable impunity results from a social acceptance in our patriarchal society permeating the institutions of the state that it is justifiable for a man to seek revenge for reasons of 'honour'. Consequently, in most cases, the community intervenes in the shape of a *jirga* or *wadero* or other local influentials to bring about a compromise (*razinama*) and the case either does not reach the court or is withdrawn. Should the case be completed in court, far too frequently, the sentence awarded is far milder

than those handed down in murder cases not seen as linked to issues of 'honour'.

Previously, the milder sentences resulted from the provision of the "grave and sudden provocation" clause introduced in law by British colonial rule and incorporated as Section 300 in the Pakistan Penal Code (P.P.C.). In layman terms, this Section meant that if someone was provoked to the point of losing his control and getting angry enough to kill the person responsible for this provocation, he could be let off the hook for murder provided he justified his anger. And, as thick volumes of court judgments show, a woman's perceived infidelity was justification enough.

This provision was deleted from the statute books in 1990 after the introduction of the Qisas and Diyat Ordinance. Yet, even though the penal code no longer recognises any special defence for crimes of 'honour' or passion, the courts continue to accommodate the concept of "grave and sudden provocation" while acquitting the accused altogether or when delivering reduced sentences to men claiming 'a matter of honour' as their defence for murder.

Finally, a major obstacle in challenging the impunity of those who murder in the name of honour is the sheer ignorance of law and its procedures of the majority of those who seek justice for the deaths of the victims. This booklet aims to break the cycle of impunity in cases of 'honour' killings by clarifying common misperceptions about the law and by providing information on some basic aspects of the law and the operation of the legal machinery in Pakistan as it relates to murder.

It is organized into the following chapters: What the law says on the issue; What actually happens in *karo kari* cases with an analysis from a legal perspective; What is an

F.I.R and what it should contain; Investigation & arrest; and, finally Inside the Court Room. It is hoped that this will help guide those seeking justice for women victims murdered in the name of 'honour'. Samples of important official documents, re-typed and formatted for readers' convenience, are also printed at the end of the book.

WHAT DOES THE LAW SAY

Does the law acknowledge the plea of ‘honour’ (*ghairat*) as acceptable ground for killing?

The present law does not contain any provision which can mitigate the offence of murder committed in the name of *ghairat*. Earlier, Section 300 of the Pakistan Penal Code (P.P.C) contained a provision of "grave and sudden provocation" that provided lesser punishment for crimes committed in the name of *ghairat*. But these provisions, related to bodily hurt and murder, were repealed by the introduction of Qisas and Diyat Ordinance in 1990. This Ordinance was promulgated during the interim government of the caretaker Prime Minister, Ghulam Mustafa Jatoi, in compliance with an order of the Shariat Appellate Bench of the Supreme Court. The Ordinance remained in force till 1997 through repeated presidential promulgation till it became an Act of Parliament in 1997 during the Nawaz Sharif government.

Earlier in Pakistani law, the plea of “Grave and Sudden Provocation” was available under Exception (1) to Section 300 of the old Pakistan Penal Code that read as follows:

“Except in the cases hereinafter excepted, Culpable Homicide is murder if the act by which the death is caused is done with the intention of causing death”.

Exception (1) Culpable Homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of person who gave the provocation or causes the death of any other person by mistake or accident”.

The Qisas and Diyat law was introduced through a Criminal Law Amendment Ordinance VII of 1990 promulgated by the president. It was never formally presented and debated in the Parliament and remained operative in the form of re-promulgated Ordinances for almost seven years. It finally became an Act on April 4, 1997 in compliance with an order of the Shariat Appellate Bench of the Supreme Court. This Act now covers all offences against the human body and provides for *qisas* (retribution) and *diyat* (bloodmoney).

Does the law have any built-in trap doors to allow the guilty to escape full and proper punishment for their crimes?

The omission of the provision of “grave and sudden provocation” seems intentional on the part of the legislature to allow absolutely no room in law for any concessions. But the law and the judiciary are apparently two different things. While the law is clear and unforgiving in the context, some judges of the superior courts of Pakistan have tried to read between the lines to apply the earlier concept of justified anger. Quite a few reported judgments in the form of case-law have once again mitigated the offence of murder in the context of so-called ‘honour’ crimes. This is the reason that even today the defence tries to make out a false plea to mitigate the offence of intentional murder to escape the normal penalty of murder.

What is the recent stance of the Supreme Court in this context?

The Supreme Court and High Courts have in some very recent judgments criticized this trend.

In *Rasul Bukhsah vs. The State*, (2000 SCMR 731), about an occurrence pertaining to the Province of Balochistan, the honorable Supreme Court held that the murder could not be condoned on the ground of *siyahkari* and notwithstanding such allegations had to be punished with death in the absence of mitigating circumstances.

In another case of Mianwalli district in Punjab *Akram Khan vs. The State*, (PLD 2001 SC 96), the Supreme Court held that the defence plea of the accused that he committed the offence under the impulse of '*ghairat*' under grave and sudden provocation did not weigh with the honorable court. The honorable Supreme Court expressed its view on the issue in the following words:

"It appears that defence plea was cooked up at the trial in order to create a dent in the prosecution version. Legally and morally speaking, nobody has any right nor can anybody be allowed to take law in his own hands to take the life of anybody in the name of 'ghairat'. Neither the law of the land nor religion permits so-called 'honour' killings and it amounts to intentional murder (qatl-i-amd). Such iniquitous and vile act is in violation of the fundamental rights as enshrined in Article 9 of the Constitution of Pakistan, which provides that no person would be deprived of life or liberty except in accordance with law and any custom in that respect is void under Article 8 (1) of the Constitution."

Does Islam allow killings in the name of ‘honour’?

Far from it, Islam explicitly forbids such brutality. It does not accept the plea of “grave and sudden provocation” or ‘*ghairat*’ under any circumstances. In the case of *Abdul Zahir vs. The State*, (2000 SCMR 406), the honourable Supreme Court has laid down that, by and large, all the cases of “grave and sudden provocation” would not *ipso facto* fall within the purview of Section 302(c) of the P.P.C. particularly those of *qatl-i-amd* (intentional murder) of wife, sister or other very close female relatives at the hands of males in the allegation of *siyahkari*. In this context their lordships not only made reference to observations of Maulana Muhammad Taqi Usmani, (PLD 1989 SC 633), they also referred to an article authored by professor Rafiullah Shahab, a religious scholar, published in the English daily *The Nation*. The learned scholar after referring to Verse 35 of Surah Al-Ahzab, Verse 228 of Surah Al-Baqrah, Surah Al-Noor and the Hadith of the Holy Prophet (p.b.u.h) has opined that a man cannot even divorce his wife on the charge of immorality. He has to prove the charge in a court of law. If someone accuse their spouses without having witnesses other than themselves then the testimony in denial renders the accusation null and void. It would be highly instructive to reproduce Verses 4 to 9 of Surah XXIV (Al-Nur) of the Qur’an:

- ❖ And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation) flog them with eighty stripes and reject their evidence ever after, for such men are wicked transgressors
- ❖ Unless they repent thereafter and mend (their conduct) For Allah is Oft-Forgiving, Most Merciful.

- ❖ And for those who launch a charge against their spouses, and have (in support) no evidence but their own, - their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth.
- ❖ And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.
- ❖ But it would avert the punishment from the wife, If she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie;
- ❖ And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth."

(translation by Yusuf Ali)

Rafi Ullah Shahab concludes in the following words:

"Thus, while killing accused women is not Islamic by any standard, the believers are not even allowed to divorce them without establishing their accusation. We profess our love for Islam and demand its enforcement in the country, but ignore clear Quranic injunctions about the rights of women. Dozens of innocent women are slaughtered in the name of 'honour' in our society. Almighty Allah eliminated the evil of the Jahilliah period, and thus, no case of so-called 'honour' killing was reported in the early period of Islam".

In another such case, the Quetta Bench of the High Court has traced the history of this important issue and has discussed in detail different Quranic injunctions and religious traditions while stating this argument to hold that the religion does not permit the killing of women and men in

the name of 'honour'. The observations of the honourable High Court in this case are as follows:

"Nobody is allowed to take law in his hand in the name of so-called ghairat. This is not only against the injunction of Islam but law and Constitution too. Illegal centuries old customary practice cannot be preferred over the dictates of Allah as revealed in Surah Al- Noor, Hadith of the Holy Prophet (p.b.u.h) in Owamer Lil Jani's case and the Constitution/law. Life cannot be taken away in Islam or law on the basis of mere accusations or rumours or otherwise. Siyahkari has nothing to do with the teaching of Islam." (PLJ 2001 Cr.C.Quetta 978 D.B)

What major changes have been introduced through Qisas and Diyat laws?

The laws of Qisas and Diyat have made offences relating to the human body compoundable and in the event of murder, a person's legal heir(s) have the right to make a compromise with the offender under Sections 309 and 310. In the first provision, legal heir(s) can forgive the murderer in the name of God without getting any monetary compensation in the form of *diyat*, while under section 310 the legal heirs can compromise after receiving *diyat* in their respective shares. The minimum value of blood money is provided for under Section 323 P.P.C. and is fixed (which shall not be less than the value of 30630 grams of silver on the first day of the month of July each year, determined by the Federal Government by a notification in the official gazette). While this varies according to the price of silver, it currently stands at approximately Rs.250,000.

How has this shift of decision-making from the State to the individual affected common people?

The provision has its fair share of critics who arguably believe that it has made common people vulnerable to economic, social and political pressures all of which are exploited by the rich and the powerful to save their own lives. A poor man may be cornered into compromising even for the most heinous crimes in lieu of a hefty payoff, for instance. This promotes the practice of settling murder cases and especially cases of *karo kari* through a compromise or *razinama*. The present law allows the legal heirs of the victims to do *razinamas*.

What is a *razinama*?

Razinama is a settlement/compromise - a statement of reconciliation reached between two parties involved in any kind of dispute. Before the introduction of Qisas and Diyat Ordinance, the provision of compromise was not part of the law. However, the Ordinance provides room for compromise in matters of bodily hurt and also murder. The punishment for murder was either death or life imprisonment.

Chapter Two

ANALYSIS OF CASES

Case One

Her name was Nargis, she was 25. It was 2 in the afternoon. Shakoor, her husband, had asked her to prepare a meal for a guest. He had invited Suleman, from the same village, to eat with him. Shakoor and Suleman's families had a dispute over a pocket of land. The local wadero, said the villagers later, had made mischief and incited Shakoor against Suleman. So on that afternoon, on the pretext of sharing a meal with him, his brothers brought Suleman home and shot him outside the house. Nargis was making tea and roti. She heard the gunshots and ran to the door. She started to scream. "No, no, don't kill him! He's innocent!" she wept. Other villagers came running, too. Her husband was shouting: "I have killed him; he was karo with my wife". She was crying. She ran back into the house. Shakoor followed her; he had an axe in his hand. She grabbed a copy of the Qur'an from the shelf, held it to her breast, pleaded with her husband, begged him not to kill her, she said she was blameless, he hacked her to death. He had married her only a month earlier. There's the FIR, filed at the nearest police station, and the post-mortem report. There was a raziinama, a reconciliation arranged by the wadero, and Shakoor was freed by the police. Nargis and Suleman are dead. The wadero said Shakoor and his brothers should pay Suleman's family Rs. 15,000 for gouging out his eyes and cutting off his nose.

Case Facts

(as recorded in the F.I.R)

Complainant:	Brother of Suleman
Accused:	Nargis' husband Shakoor
Reason of murder given in F.I.R:	<i>karo kari</i>
Date/year:	24/ 9/ 98
Time:	Missing from the F.I.R
Did it reach the Court:	No
Result:	Accused was freed after obtaining a <i>razinama</i> through a <i>jirga</i>

Case Analysis

In the first case, Nargis aged 25, alongwith Suleman, aged 40, were murdered on the pretext of *karo kari* and an F.I.R was registered. In this case the real motive was some dispute of land between the parties. A formal F.I.R was registered, the accused Shakoor, husband of Nargis who committed the double-murder was arrested. He remained behind bars for about two years. Subsequently, following the intervention of the local *jirga* the parties reached a compromise, and the accused was freed.

Nowhere does the F.I.R of this case mentions the real motive for the murders. Details of the facts are not recorded

in a proper manner. A lot of important facts are missing, leaving room for doubt. The role of the local *wadero* (feudal), who leads the *jirga* in the area, is highly condemnable since he has brought about a compromise that negatively affects the case.

Points to ponder

- ❖ Real motive for murder was the land dispute and not *karo kari*.
- ❖ Details were not properly recorded.
- ❖ Why did the brother settle for a *razinama*?
- ❖ Should the power to sign a *razinama* rest with 'vulnerable' heirs of the deceased?

Case Two

Iffat Bibi was 25. She had a son. Her husband's name was Mokarram Ali. One day, he accused her of having an affair with his cousin, Haider, threw her out and sent her back to her father's house. Some months later, he changed his mind. He'd made a mistake, he said. He declared his wife was 'achhi' or clean. He wanted her back but her father refused. The father had found another man who was willing to pay more money for his daughter. Mokarram Ali could have his wife back for Rs. 150,000 but he did not have that kind of money. "You called her kari with your cousin," said the father. "Get your cousin to pay me compensation". A jirga was held. All the men were there. Iffat Bibi was not. She was never asked what she wanted for herself. The wadero decided that Haider would hand over his own fiancée to Iffat Bibi's brother as compensation. Thus another woman's fate was decided. All the men were satisfied, except Haider. Mokarram Ali was now permitted to visit his wife in her father's home. She got pregnant again. Her brother still wanted Haider's woman, promised as compensation to his family. Haider refused. Iffat Bibi's husband had retracted his accusation and taken her back. If she was not kari, how could he be karo?, he asked. To get Haider's woman in compensation the brother would have to kill his sister as kari. Iffat Bibi was sitting in her father's courtyard nursing her child when her brother hacked her to death with an axe. We do not know what happened to the child.

Case Facts

(as recorded in the F.I.R)

Complainant:	Iffat's father
Accused:	Iffat's brother
What happened to the accused:	Arrested, still in jail
Reason of murder given in FIR:	<i>karo kari</i>
Date/ year:	15/10/2000
Time:	Missing from the F.I.R
Did it reach the Court:	No
Result:	Case is pending due to incomplete documentation.

Case Analysis

The brother kills his sister so he can get another man's woman. The reason given in the F.I.R is *karo kari* by the complainant, who happens to be both the deceased and the accused's father. This is a total misrepresentation of the actual occurrence, which drifted far away from the original domestic misunderstanding. However very few people can make that distinction and keep their focus on the facts.

The accused was arrested but the case has not reached the court. Cases like these need to be pursued with dedication. The fact that the accused is the son of the complainant may very well be one of the reasons causing the delay.

Points to ponder

- ❖ Reason for murder was brother's desire to have another man's woman not *karo kari*.
- ❖ Details were not properly recorded.
- ❖ Why is the case not being pursued?

Case Three

Rahmatay was 12 years old. Her father had promised her in marriage to Naveed in exchange for Naveed's sister as a wife for his son. But the men in the two families subsequently got embroiled in a bitter dispute. Naveed and his brothers wanted revenge, perhaps land or money. Naveed informed Rahmatay's father that he was coming the next day to marry his daughter. The father could not refuse: Rahmatay had already been bartered away for another woman. So the child was dressed in bridal pink, and readied for her wedding. The village mullah balked at performing the Nikah because the girl was too young. Naveed put a gun to his head. Rahmatay was married and taken away. That very night, her 'wedding' night, Naveed pumped five bullets into her young body and killed her. She had confessed to being kari with her cousin, he said, and so she deserved to die.

Case Facts **(as recorded in the F.I.R)**

Complainant:	Rahmatay's father
Accused:	Rahmatay's husband
Accused:	Arrested, still in jail
Reason of murder given in F.I.R:	<i>karo kari</i>
Time/ Date/ year:	1 March 2000 (0100 hr)
F.I.R registered:	the next day
Did it reach the Court:	The police have yet to submit a <i>challan</i> (a final report of investigation)
Result:	Case is pending

Case Analysis

In the case of Rahmatay, reading the F.I.R shows that the real motive is the previous enmity between the parties on the basis of *watta satta*, which resulted in the unfortunate occurrence. But the motive given in the F.I.R is *karo kari*. It is suggested that if there is any previous enmity between the parties and the occurrence is the result of any personal vendetta it should be incorporated in the F.I.R to obtain the conviction. Such lapses on the part of the prosecution (i.e those making the complaint) also give benefit of doubt to the defence (i.e the person accused of murder).

Points to Ponder

- ❖ The real motive is enmity but the F.I.R only mentions *karo kari*.
- ❖ This appears to be a premeditated murder. The pursuit of justice and conviction is weakened by the complainant's misguided F.I.R.
- ❖ Why is the laboratory report still missing?
- ❖ Why is the case not being pursued?

Case Four

Zainab, 40, had been married to her husband Ghulam Mustafa for twenty-two years. Her father had given her to Ghulam Mustafa in exchange for the latter's sister as a wife for him. Zainab was different. She had been to school, and after she raised her six children, she decided to get a job; she had been working for three years as a Lady Health Visitor at a primary health centre in the small town of Kot Mithan. Then her daughter Rabia decided to marry a man of her own choice, Sajawal Abro, which raised a storm of opposition in her family. Her mother supported her and, in the end, helped her marry Sajawal. Zainab's husband, father and brother took the matter to court where they claimed that Rabia had been kidnapped by Sajawal Abro. Zainab testified in court against her family and on her daughter's behalf. On returning home her husband shot and killed her. He claimed that he had 'found' her with one, Abid Abro, and killed her as kari. Zainab's father supported her husband's accusation.

Abid Abro and his family claimed he'd been away in Larkana for three days prior to the killing. The whole town knows, they said, that Zainab had been killed as kari because Abid Abro, who was the head of the Abro clan, had supported Sajawal's marriage to her daughter Rabia. Zainab was dead and received a kari's burial: there was no ritual bathing or funeral prayer – she was buried in a hole in the ground with no stone to mark the grave or remember her by. She was a kari, said her father, and karis do not deserve any better. But Zainab's three sons believe their mother was innocent and their father murdered her. They went to the spot where she was buried, prepared a grave for her and covered it with flowers.

Case Facts

(as recorded in the F.I.R)

Complainant:	Zainab's father
Accused:	Zainab's husband
Reason of murder given in the F.I.R:	<i>karo kari</i>
Date/ Year:	10/12/99
Did it reach the Court:	No
Result:	<i>Challan</i> is incomplete

Case Analysis

In this case Zainab was murdered because of the fact that her daughter had contracted a marriage against the wishes of the family with the exception of Zainab, who supported her. Being an educated working woman, Zainab fought against the local customs in support of her daughter. This fact is totally missing in the F.I.R. The person with whom her name was linked as *kari* (Abid Abro) is a local *wadero* who helped her in marrying her daughter off according to her wishes.

In such a situation, an F.I.R should contain the actual facts of the case rather than the narration that the murder was committed on the pretext of *karo kari* to obtain a conviction.

Points to ponder

- ❖ Actual reason of murder i.e. a woman daring to challenge local customs should be mentioned instead of *karo kari*.
- ❖ Police should be pursued to submit an interim *challan* even if the complete *challan* is not prepared as the court can start trial on the basis of interim *challan*.

Case Five

Saba, 35, was married to Ali Akbar. One day, Ali Akbar's cousin, Kashif, on the report of his 16-year-old son, accused Saba of being kari with one, Abdullah. According to some people of the village, Kashif and Abdullah had been embroiled in a long running dispute and Abdullah wanted to get even with Kashif. Ali Akbar refused to believe Kashif's accusation against his wife but Kashif was more resourceful: the local wadero, Nurul Hassan Junejo, would decide on a settlement, through a faislo. Saba, now branded a kari, was taken and held in the wadero's home where she was physically abused and lost the child she was carrying. At the faislo, while Ali Akbar continued to insist that his wife was innocent, the wadero imposed a Rs.

110,000 fine on Abdullah, the alleged karo, to be paid as compensation to Saba's relations (presumably, as is customary, with a percentage for the wadero himself). Abdullah fled from the village. Ali Akbar went to the Superintendent Police to ask for help in getting his wife back from the wadero. But the wadero was more powerful: the police arrested Ali Akbar instead, releasing him only after they made him put his thumbprint on a blank paper to use as a divorce document.

Upon his return to the village, Ali Akbar's relations told him he was shameless and "without honour" and they turned him out and sold his house. Meanwhile, with the assent of the wadero,

Saba's brothers made a deal with the Mengal tribe in Baluchistan to sell their sister in marriage for Rs. 80,000. Ali Akbar went to the brothers, the Qur'an in hand, and pleaded to have his wife back. They refused. He went to the Mengal sardar and, again hand on the Qur'an, asked him to forbid his tribesmen from buying his wife. The Mengal sardar,

Mohammad Amir Mengal, talked to Wadero Nurul Hassan Junejo who told him that Ali Akbar was "without honour". So Saba, who lost her home, her husband, and her child, was sold into 'marriage' to another tribe. Ali Akbar is still trying to get her back.

Case Facts

There was no F.I.R. The case has never been registered.

Case Analysis

In the peculiar circumstances of this case it is suggested that whenever a person tries to report the matter to the concerned police station and they show reluctance in writing the report, the informant/ complainant should immediately file a writ petition in the High Court for the registration of a criminal case. The facts and circumstances of this case clearly reflect that if Saba is detained by someone against her wishes this is a very grave penal offence which should be properly pursued.

Another very effective remedy in such a situation is that if the whereabouts of the detainee are known then without wasting any time one should file a petition in the nature of habeas corpus in the High Court under Section 491 of the Cr. P.C. It is definitely a very speedy and efficacious remedy for the production, right to free movement and right to life and security of the detainee.

Marriage of a woman during the subsistence of an earlier marriage is also a penal offence under Section 494 of the P.P.C.

Points to ponder

- ❖ The police refused to register an F.I.R
- ❖ The husband, as complainant should have gone to the High Court to file a Writ Petition.

PROBLEMS IDENTIFIED

Analyses of five cases from Sindh, selected from the 20 case studies conducted by Shirkat Gah and local organisations, reflect the kind of common mistakes people make in lodging the F.I.R. The F.I.R is an important document, therefore, it is very important to state facts in a manner that will ensure conviction.

Time of occurrence: Some of the cases do not have the time/ date and exact place of occurrence of the incident recorded. The absence of any of these basic facts makes it almost impossible to prove a connection between the accused and the incident.

The Motive: In most/all cases, the complainant knows that the murder was committed due to other specific reasons he has allowed *karo kari* to be stated as motive for murder in the F.I.R. This is absolutely unnecessary since it supports the offender's claim. When the underlying reason for murder is believed to be something else mentioning the word *karo kari* can damage the case of the prosecution in the court. The actual reason for the crime as understood by the complainant should be mentioned as the motive and the word *karo kari* should be avoided. The defence will most probably take the *karo kari* plea but will have to first disprove the motive mentioned in the F.I.R.

Delayed Reporting: In some cases, the FIR was lodged several days after the occurrence of the incident. This can present serious problems for the prosecution and often weakens the case to the extent that it can result in the acquittal of the accused. The police is suppose to collect evidence from the scene of crime and any delay in reporting

results in loss of evidence like blood stained earth and crimes empties (bullet-shells) and weapon. In murder cases preferably, body should remain at the spot for police investigation, as there are certain columns of inquest report (*report marg*) that need to be filled, prior to the postmortem, accordingly.

As soon as a case gets registered in the form of an F.I.R in a police station, the defence starts mobilizing its resources to prevent a conviction. The defence uses every possible means, which include threats, pressures and offering economic compensations, etc. If a complainant is not very closely related to the deceased, he/she is more likely not to sustain the pressure and retract his/her earlier statement. Or make a compromise. To avoid all this it is advised to encourage a close relative, who was present at the scene of the crime, to file the F.I.R.

Witnesses named in the F.I.R: Witnesses present at the scene of crime named in the F.I.R should preferably be close relatives who will not change their statements under any sort of pressure. Eyewitnesses carry a lot of weight in the court of law. Make sure they are named in the F.I.R and their statements recorded under Section 161 Cr.P.C.

Importance of an F.I.R: The F.I.R is critical to the case because it is the basis on which the entire police investigation and legal proceedings will take place. It is therefore very important to state facts in a manner that will ensure conviction.

F.I.R

What is an F.I.R (First Information Report)?

Whenever a crime is committed, to set the legal machinery in motion, a formal report has to be lodged with the concerned police station of that area.

When the report is lodged at the police station, the police officer who records and registers the report is legally bound (under Section 154 Cr.P.C – Criminal Procedure Code) to record it in the form of a First Information Report (F.I.R). An F.I.R is registered under Section 154 Cr.P.C and the importance of this Section is that whenever information of a cognizable offence is given orally to an officer in charge of a police station, he has to write it down and he has to read it to the informant who has to sign or thumb mark the same and the written information has to be entered in a book to be kept by the officer in a form prescribed by the Provincial Government. Precisely the form containing the above information is known as F.I.R, which sets the machinery of law into motion.

What is the difference between cognizable and non-cognizable offences?

Any offence in which the police can take direct action like arrest and investigation is known as cognizable offence and those offences in which the police can take direct action only after obtaining a formal permission from the concerned area magistrate to investigate the offence are known as non-cognizable offences.

For the purpose of clarity, minor offences in which there is no injury or only minor injury etc., are non-cognizable offences.

The relevant provisions regarding cognizable and non-cognizable offences and the procedure that has to be adopted are contained in Sections 156 and 157 of the Cr.P.C.

What is the difference between a complaint and an F.I.R?

When any offence is reported to the police outside the police station it is written in the form of a complaint. For example, suppose an incident takes place 8-9 miles away from the closest police station and on the way to the police station, the person wanting to register an F.I.R (the complainant) happens to meet a police officer of the concerned police station and decides to lodge the complaint right there and then, outside the police station itself. The police officer will write down the report on the statement of the complainant and send it to the concerned police station to have it formally registered as an F.I.R with an allotted number. However, before the case is given an F.I.R number from the concerned police station and entered into the *roznamcha* (a daily register maintained at the police station), this report only has the status of a complaint and not an F.I.R.

Note: The person making a complaint should be well aware of this fact that he is making the complaint to the police officer of the concerned police station and not to the police officer of any other police station as the territorial jurisdiction of every police station is fixed. Secondly he should also make sure that at the end of the complaint before signing/thumb-marking it the exact time and date is

mentioned on it and he should also take a copy of the complaint.

What kind of information should be recorded in the F.I.R?

There is no hard and fast rule as to what an F.I.R should contain except that it must contain all facts available at the time. While analyzing the facts and circumstances of the five cases and keeping in view the criteria laid down by the judgements of the superior courts while acquitting or convicting the accused persons, the following important tips should be kept in mind at the time of formally registering the matter with the police in the form of an F.I.R:

- ❖ **When and where it occurred:** The F.I.R should contain the specific **date, time of the day, and year** of the occurrence. Giving the exact location of the occurrence is equally important.
- ❖ **Motive for Crime:** The actual motive should be very clearly stated in the F.I.R. The F.I.R should not state that the occurrence took place as a result of *karo kari*. The witnesses to the motive should also be mentioned very specifically in the F.I.R as this aspect could prove crucial in obtaining conviction of the culprits.
- ❖ **Avoid Delay:** F.I.R should be registered promptly as in many a case the delay in lodging the F.I.R becomes fatal to the prosecution's case, resulting in the acquittal of the actual culprits of a serious offence like murder. The police is suppose to collect evidence from the scene of crime and any delay in reporting results in loss of evidence like blood stained earth and crimes

empties (bullet-shells) and weapon. In murder cases preferably, the body should remain at the spot for police investigation, as there are certain columns of inquest report (*report marg*) that need to be filled, prior to the postmortem, accordingly.

- ❖ **Who should lodge the complaint:** The person who reports the matter is known as the complainant (*mudai*)(see page 39 for who can be a complainant). Care must be taken to ensure that the complainant should be someone who can sustain the pressure of the subsequent developments of the investigation. Pressure to withdraw the complaint may come from inside the extended family (*biradari*) or the local influentials who may want to exploit the issue for their own vested interests. In some cases, pressure may even be exerted from so-called spiritual leaders (*pirs*) etc.
- ❖ **Witnesses to the event:** If possible, the F.I.R should also contain at least two eyewitnesses to the actual occurrence so that the evidence of one may be corroborated by the other but this is not a legal compulsion. Similarly in cases of circumstantial evidence where no direct evidence is available then the witnesses of motive, recoveries from the spot (crime empties i.e bullet shells and weapons etc), witnesses to the last scene before and after the occurrence are also equally important to obtain the conviction.

What to do if the police refuses to register the F.I.R?

Option 1- The magistrate: If the police refuse to register the F.I.R of the case due to any reason, a complaint to this

effect can be made directly to the area magistrate. Normally the court of area magistrate is located in close proximity of the concerned police station. The magistrate, taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the magistrate. This too will put the legal machinery into action.

Option 2 – Higher Judiciary: The matter can be brought to the notice of the concerned High Court in the form of a Writ Petition for registration of the case. The Writ Petition has to be filed through a counsel. The attitude of High Courts in such Writ Petitions is very encouraging.

What can you do if the F.I.R of a particular case already exists but you do not agree to the contents or feel that the facts are being deliberately compromised to ensure relief for the accused at the trial stage?

If the F.I.R already exists and you are not satisfied with its contents you must immediately file a supplementary statement by appearing before an investigating officer (IO). An Investigating Officer is a police officer entrusted with the case after the registration of the F.I.R. This Officer can be of any rank or designation, i.e., Assistant Sub Inspector, Sub-Inspector, Station House Officer, etc. The supplementary statement should be filed promptly. It is highly advisable to approach a counsel at this point. If the IO refuses to record the statement, a complaint can and must be made at once to the magistrate.

Who can become a complainant?

Anybody, other than the offender can become a complainant. However, as the legal procedures are long and tiring and require a great amount of patience and resilience it is always advisable to encourage a close relative present at the spot, who is unlikely to settle or compromise under pressure, to become the complainant. In a recent development to check crime, the police have also been given the authority to become complainants themselves. And, an SHO in Larkarna has filed the first case of *karo kari* in his own police station on 12th November, 2001.

What is a *challan*?

Challan, as a word is defined nowhere in the Criminal Procedure Code but it is used frequently as a legal term in court proceedings as the formal report of investigation under Section 173 of the Cr.P.C. Simply stated, it is the result of the investigation containing the name(s) of the accused and the witness(s) and other relevant documentary evidence on the basis of which the trial has to be conducted. Under Section 173 of the Cr.P.C., the police are required to submit at least an interim *challan* within 17 days of the filing of the F.I.R if the final *challan* is not yet complete.

INVESTIGATION & ARREST

When and under what circumstances can the police make an arrest?

The police can make an arrest when sufficient incriminating evidence is available against the accused to link him/her with the crime in question. There should be an F.I.R registered on the prescribed Proforma; supported by the statements from the witnesses recorded under Section 161 of the Cr.P.C.; in case of death a postmortem report, otherwise a medical report in the form of MLC (medicolegal certificate) or MLR (medicolegal report), preferably by the police. If all or any of the above provide tangible incriminating evidence against the accused, he/she can be arrested.

What happens in the cases where the offenders themselves appear before the Station House Officer and confess to their crimes?

The procedure remains the same. They are detained in the police station but formal arrest is made only when the procedural requirements are fulfilled. The police visit the spot of the incident and get somebody else to file an F.I.R (as a complainant). Once they complete the documentation, and if all facts support the statement of confession, they arrest the person confessing to the crime.

Note: Normally the person who has committed the offence cannot become the complainant of the case as his statement before the police about his guilt is hit by Article 38 of the Qanoon-e-Shahadat Order (Law of Evidence), which states that the confession of an accused before a police officer is not a legal piece of evidence.

This is also necessary to prevent the culprit to claim mitigation in cases of *karo kari* from day one.

How to pursue the investigation for the conviction of the offenders?

- ❖ After the registration of the F.I.R, it should be made clear to the Investigating Officer that he should immediately record the statement of the prosecution witnesses, preferably on the same day. The prompt recording of such testimony is also mandatory under Section 161 of the Cr.P.C.
- ❖ In the event of the offence of murder, the postmortem should be promptly conducted by the doctors at district headquarters hospital in cities, otherwise in rural health centres at tehsil headquarters .to ascertain that the death has occurred by violence.
- ❖ Efforts should be made to ensure the prompt formal arrest of the accused by frequently visiting the police station to persuade the police for formal arrest of the accused.

According to Section 173 of the Cr.P.C, the police must submit the interim *challan* within 17 days, even if the final challan is not complete. However, in cases of so-called 'honour' crimes, it is a common practice of the police to delay the submission of the *challan* in the court. Therefore,

pressure must be kept on the Investigating Officer for a timely submission of the *challan* in the trial court to allow the trial to begin as early as possible.

Chapter Five

INSIDE THE COURT ROOM

What happens once the *challan* is submitted in the court?

The court appoints a public prosecutor and allows time to the defence lawyer and the public prosecutor to prepare the case. The complainant can also engage his own lawyer - called the complainant counsel - to assist the public prosecutor to conduct the trial.

Can a conviction be based on the testimony/evidence of the close relatives of the victim?

There is a common misconception that a close relative of the deceased/victim should not be the complainant as his/her evidence would be discarded on the basis of close relationship to the victim. The recent view of the Superior Courts is that mere relationship is no ground for discarding the evidence of any witness/complainant. In a number of reported judgments of the Superior Courts, convictions are based on the testimony of witnesses closely related to the victim.

What is the role of the complainant once the case goes under trial?

The complainant plays a vital role during the trial, he has to help prepare the witnesses for their examination in the court. He also has to engage a proper counsel and assist him throughout the trial.

What to do if the accused is acquitted by the Criminal Court?

An appeal can be filed against the acquittal within 30 days of the judgement with an Appellate Court under Section 417 of the Cr.P.C. In this case the law of limitation is very strict and if 30 days pass without any appeal being filed, the judgement attains finality.

What to do if the accused is awarded a lenient sentence by the Criminal Court?

If the accused has been found guilty but you feel the sentence is lenient and should be enhanced, you can file a revision petition under Section 435/439 of the Cr.P.C to Appellate Court within 2-3 months. As there is no law of limitation for filing revision petition except that it should be filed within a reasonable time.

SAMPLES OF PROFORMAS

COMPLAINT

Statement of Martha Bibi d/o Jalal Masih, caste Christian r/o Yohanabad aged about 22 years

Stated “ I was married to Yaqoob Masih s/o Khuda Buksh about five years ago. I gave birth to two sons from the loins of Yaqoob Masih. My husband is a drug addict. Today my husband demanded money for the purchase of intoxicant which I refused to pay telling him that I was doing labour and from where should I provide him money. On this he got enraged and started beating me. He sprinkled kerosene oil on me and thereafter set me on fire. In the meantime, Asad s/o Bashir caste Christian r/o Shah Jamal Fazlia Colony and Nazir Masih s/o Jalal caste Christian came there. My husband Yaqoob Masih had tortured me many times even previously. On seeing Asad and Nazir my husband Yaqoob Masih ran away. My brother Nazir and Asad brought me to General Hospital. My husband Yaqoob Masih has burnt me. Legal proceedings be taken against him. I have heard my statement, which is correct.

(Thumb impression of Martha bibi.)

Police proceedings: At this time on learning about the present occurrence I along with Rahmat Ali Constable no. 4716 and Liaqat Ali Constable no. 13566 have reached the emergency ward of General Hospital. After obtaining the permission of the doctor, the statement of the informant was recorded which was read over to her and was explained to her who admitting the above statement to be correct, put her right thumb impression on it, which I verify to be correct.

According to the contents of the statement Section 324 PPC is found attracted, therefore, the statement is sent to police station through Rahmat Ali Constable no. 4716 for the registration of the case. After entering the case, its number be intimated to me. I am busy in investigation.

Signature in Urdu

Ghulam Nabi ASI

Police Station, Nishtar Colony, Lahore.

Dated: 10/8/99: At 11/50 pm.

From General Hospital Lahore.

F.I.R

1	Time and date of the Report	12/20 am (night)	11/8/99	Date and time of departure from the Police Station	8 am 12/8/99
2	Name and residence of the informant/ complainant		Statement of Martha Bibi d/o Jalal Caste Christian r/o Yohanabad. Age: 22 yrs sent by Ghulam Nabi ASI.		
3	Brief description of the offence along with the section and of the articles if lost.		U/S 324 PPC Injuries caused by burning.		
4	Distance and direction of place of occurrence from police station.		In the vicinity of Yohanabad situated at a distance of 2 km towards south of the Police Station.		
5	Proceedings relating to police investigations and if there is delay in lodging the F.I.R the reason be stated.		The case was registered on the receipt of complaint.		

Signature: Maqsood Alam; Designation: ASI

(Write F.I.R below)

Note: Under the F.I.R signature or thumb impression/ seal of the informant should be taken along with the signature of the officer who recorded the F.I.R for its attestation.

Stated “ I was married to Yaqoob Masih s/o Khuda Buksh about five years ago. I gave birth to two sons from the loins of Yaqoob Masih. My husband is a drug addict. Today my husband demanded money for the purchase of intoxicant which I refused to pay telling him that I was doing labour and from where should I provide him money. On this he got enraged and started beating me. He sprinkled kerosene oil on me and thereafter set me on fire. In the meantime, Asad s/o Bashir caste Christian r/o Shah Jamal Fazlia Colony and Nazir Masih s/o Jalal caste Christian came there. My husband Yaqoob Masih had tortured me many times even previously. On seeing Asad and Nazir my husband Yaqoob Masih ran away. My brother Nazir and Asad brought me to General Hospital. My husband Yaqoob Masih has burnt me legal proceedings be taken against him.”

I have heard my statement, which is correct.

(Thumb impression of Martha bibi.)

Police proceedings: At this time on learning about the present occurrence I along with Rahmat Ali Constable no. 4716 and Liaqat Ali Constable no. 13566 have reached the emergency ward of General Hospital. After obtaining the permission of the doctor, the statement of the informant was recorded, which was read over to her and was explained to her who, admitting the above statement to be correct, put her right thumb impression on it which I verify to be correct.

According to the contents of the statement, Section 324 PPC is found attracted, therefore, the statement is sent to police station through Rahmat Ali Constable no. 4716 for the registration of the case. After entering the case its number be intimated to me. I am busy in investigation.

Signature in Urdu

Ghulam Nabi ASI

Police Station, Nishtar Colony, Lahore.

Dated: 10/8/99: At 11/50 pm.

From General Hospital Lahore.

In the police station: At this time the statement of Musammat Martha Bibi complainant recorded and sent by Ghulam Nabi ASI regarding offence of attempted murder against Yaqoob Masih has been received in the police station through Rahmat Ali Constable no. 4716 for the formal registration of the case on which the F.I.R under the above Section has been recorded and copy of the FIR is being sent to Ghulam Nabi ASI for investigation through the person who brought it. SHO is in the *illaqa* (territorial jurisdiction of a police station) for official duty. He would be informed about the registration of the case.

Signature

Maqsood Alam ASI

Police Station Nishtar Colony, Lahore.

Dated: 11/8/99.

F.I.R SPECIMEN

F.I.R No.____Police Station____Zila____Date/Time of occurrence_____

1	Time and date of the F.I.R		Date and time of departure from the police station	
2	Name and residence of the informant/ complainant			
3	Brief description of nature of crime			
4	Distance and direction of the place of occurrence from police station			
5	Proceedings relating to police investigation and if there is delay in lodging the F.I.R the reason be stated.			

Signature_____ Designation_____

POST-MORTEM REPORT

Yearly No. _____

On the body of { Name _____
Father's Name _____
Or _____
Husband Name _____
Caste _____
Residence _____
Sex----- Age-----

District-----

Body brought by	Body identified by
When brought, village <i>thana</i> , district	

DATE AND HOUR OF

Death	Examination of body	Dispatch of matter to Chemical Examiner
Symptoms observed before death		
Information furnished by police		

N.B. – The Medical Officer will observe the state of all the agrees and when he finds no disease or injury, he should write in the appropriate place word "Healthy".

L-EXTERNAL APPEARANCE

Mark of ligature on neck and dissection etc.	
Condition of subject tout emaciated, decomposed etc. clothing	
Wounds bruises position, size, nature	

II- CRANIUM AND SPINAL CORD

N.B. – The Spinal need not be examined unless any indication of disease or injury exists.

Scalp, skull and vertebrae

Membranes, Brain, Spinal cord

<u>III-THORAX</u>	
1. Walls, ribs and cartilage	
2. Pleura	
3. Larynx and trachea	
4. Right lung	
5. Left lung	
6. Pericardium and heart	
7. Blood vessels	

<u>IV – ABDOMEN</u>	
1. Walls	
2. Peritoneum	
3. Mouth, Pharynx & Esophagus	
4. Diaphragm	
5. Stomach and its contents	
6. Pancreas	
7. Small intestines and their contents	
8. Large intestines and their contents	
9. Liver	
10. Spleen	
11. Kidneys	
12. Bladder	
13. Organs of generation external and internal	

V-MUSCLES, BONES, JOINTS

Injury	Disease or Deformity	Fracture	Dislocation

VI – REMARKS BY MEDICAL OFFICER

Probable time that elapsed- (a) between injury and Death	
(b) between death and postmortem	

Station-----

Dated-----

Signature & Designation of
Medical Officer

Medico-Legal Report / Certificate (MLR / MLC)

No.	Name-----	Son of-----	Age-----	Sex-----	Caste-----	Occupation-----
	Residence-----Name of-----Date of Examination-----					
Date and hour of arrival----- No. and date of police docket----- No. and name of Constable----- If admitted { Date of admission----- { Date of discharge----- Date and hour of report sent to police-----			PARTICULARS OF INJURIES OR SYMPTOMS IN CASE OF POISONING			
Space for particulars as to further reference to the case – date of giving evidence in the Court, or despatch of articles said to contain position. Two identification marks:-			Name of injuries----- (Simple, grievous or dangerous) Probable duration of injury	The kind of weapon used or poison suspected in case of poisoning		

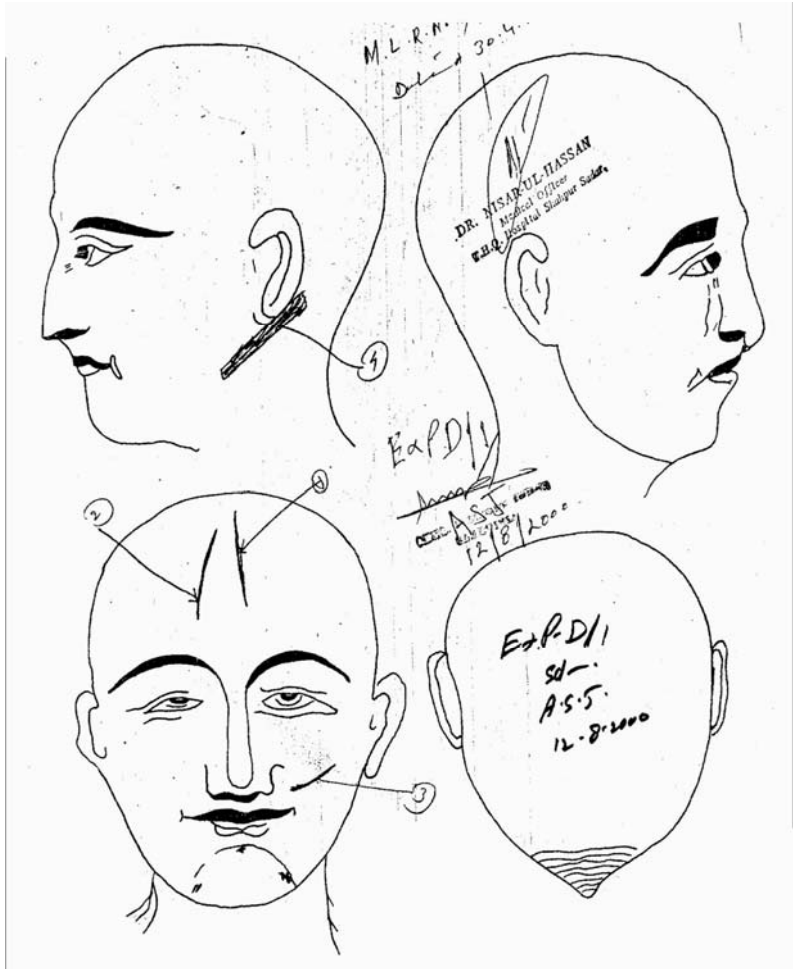
----- In police cases
 No fee received
 Examining Medical Officer

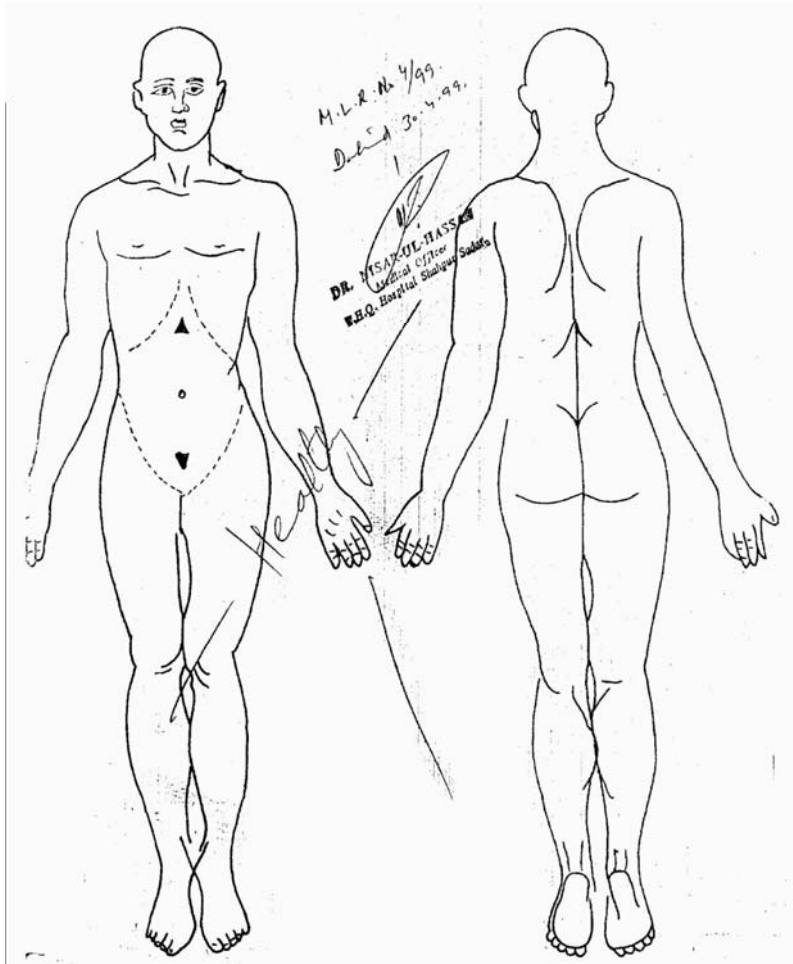
Dated-----of-----

In private cases
 A fee of Rs.-----
 paid to the Medical Officer

Examining Medical Officer

Signature or thumb-impression of private party





STATEMENT OF WITNESS

Case F.I.R No: 216/99 dt: 11/8/99 U/S 324 P.P.C Police Station Nishtar Colony

Statement of Asad s/o Bashir Caste Christian r/o Shah Jamal, Fazlia Colony, Ichara, Lahore,
U/S 161 Cr. P.C.

Stated: “ I along with Nazir s/o Jalal came to Yohanabad to see Martha Bibi. As soon as we entered the house we heard an alarm and entered the house and saw Mussamat Martha Bibi who was crying because fire was burning her. She had been put on fire by Yaqoob Masih by sprinkling the kerosene oil from the stove on her. Both of us started putting out the fire and the accused Yaqoob Masih ran away. Yaqoob Masih is a drug addict who used to beat Martha Bibi. Yaqoob Masih set Martha Bibi on fire and has committed the brutal act. He be punished severely.

Signature in Urdu of Ghulam Ali ASI
Police Station Nishtar Colony,
Dated:11/8/99

