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Rape in Pakistan: the real verdict

[Ayesha Khan](#), 17 May 2011

The gang-rape of Mukhtaran Mai launched a nine-year court battle that concluded with a verdict by the Supreme Court of Pakistan acquitting all but one of the accused. Her case illustrates how both the formal and informal systems of justice share the same hostility to women who defy social norms and demand justice in cases of rape, says Ayesha Khan

On April 21st, the Supreme Court of Pakistan issued its [verdict](#) in the case of Mukhtaran Mai, acquitting all but one of the accused in the famous gang-rape case that made [headlines](#) around the world nine years ago. The victim was a young illiterate woman from rural Punjab, who alleged that she was raped by a group of men from a dominant caste and class group in her village as retribution for a transgression committed against one of their women by her younger brother, age 12 at the time. Breaking with social norms, Mukhtaran had filed charges against the accused and publicly denounced them. Supported by human rights activists and women's groups, she appeared on television, gave newspaper interviews, joined in women's activist meetings, and travelled to Europe and the United States to highlight her cause. She became a household name in Pakistan.

Whether or not this verdict is overturned after the next and final appeal is filed, there are important lessons to be learned from the details of this case and the manner in which it was handled. Women's rights activists and their supporters in Pakistan will recognize what the verdict was actually about—the audacity of a woman speaking out publicly and attempting to get the criminal justice system to assert that her rape was a violation that should not go unpunished. Her very survival is an insult to the guardians of this system.

About the author

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Let us consider what happens when a rape case is pursued in Pakistan. If a woman, or someone acting on her behalf, wishes to file a complaint of rape, her statement needs to be recorded at a police station. This first step is exceedingly difficult to take, because police officers regularly

humiliate women who allege sexual violation. They doubt the veracity of their stories, delay or refuse to file the complaint if it concerns influential people, and/or conduct half-baked investigations. These are all grounds later on, if the case makes it to court, for dismissal of the case.

As legal activists working in Karachi to support rape survivors [report](#), if a woman is too composed at the police station, and even brings along evidence such as soiled clothing, that is reason for the police to assume that she is lying. If she admits to knowing the rapist, or being related to him, again she is treated as a liar, and if she was out of the house alone at the time of the rape she doesn't stand a chance of recording an accurate First Information Report (FIR) with the police. If she is married, and therefore not a virgin, then the case further diminishes in importance.

The [trial](#) of the accused in Mukhtaran Mai's case fully reflected these norms. Two out of the three Supreme Court judges argued that she waited an inordinately long time (over a week) before filing the FIR with the police in 2002. They further maintained that there was insufficient evidence based on the police investigation and that Mukhtaran herself gave an inconsistent testimony in court. They doubted the veracity of her account with regard to gang-rape, arguing that she fabricated the story due to a personal vengeance motive against the accused. The fact that she had been briefly married once before, and thus was not a virgin, added to the difficulty in gathering evidence of rape. However, they did believe that one of the accused did indeed rape her, mainly because he himself acknowledged having had intercourse with her.

“It is [utterly disappointing](#) that insufficient police investigation and delay in registering a case with police have been made basis for acquittal of the accused,” was the official response released by the Human Rights Commission of Pakistan, a non-governmental organization. Women's groups expressed their [shock](#) as well. The verdict was disappointing but not surprising.

In Pakistan rape is a social calamity – the accused and his family, but more so the victim, are understood to have suffered disgrace due to as a result of the allegation. For example, in a different court ruling granting bail to another alleged rapist, the judge observed that the accused had been languishing in jail for the duration of the trial, although he came from a “respected Syed (belonging to the lineage of the Prophet) family” and his suffering was detrimental to his family's reputation. Despite the fact that rape is a non-bailable offence, judges can exercise discretion when cases drag on too long - which is most often the case in Pakistan.

Defence and prosecuting lawyers, as well as judges, often see their role as facilitators of an amicable settlement. Lawyers may persuade, harass, or intimidate the prosecuting witnesses to change their testimony or back off from pressing charges and settle. In their view the very best settlement is one in which the victim and her rapist are joined in marriage, restoring the reputations of both parties. These attitudes and beliefs reflect accurately social norms that use the sexual control of women as powerful methods of ensuring their obedience.

The informal justice system holds more sway in matters relating to sexual conduct (or misconduct) than the formal criminal justice system in Pakistan. It also brokers settlements between aggrieved parties. The informal system relies on tribal or clan-based *jirgas*, councils of

male elders representing their kinship group, to settle disputes at the community level, although they do not form a part of the formal system. These *jirgas* are quickest to issue judgements on couples accused of illicit relations and to oversee their punishments as well, based on customary practices that often violate the actual law. (Honour killings are integral to this tradition.) Settlements among families or clans often include the payment of money by the offending party to the victims, but in the absence of adequate money the payment takes the form of offering women or girls, as well as cattle, as compensation. In a more recent example, a *jirga* in the province of Sindh ordered 12 minor girls to be handed over in marriage as part of a settlement in the murder of four men - in other words [three virgin girls to compensate for one man](#). The police has arrested some of those involved in the *jirga*, but in such cases their prosecution and conviction is unlikely.

Mukhtaran Mai was sent to a *jirga* held by the clan representing the accused to make amends for their allegation that there had been an illicit relationship between her younger brother and one of their women relatives. Since Mukhtaran belongs to a less influential clan, low in the social hierarchy of the area, her family did not press ahead with their own charges that Mukhtaran's younger brother had actually been raped by relatives of the accused. Instead, Mukhtaran was forced to appear before the *jirga* to apologize for his alleged illicit relations with a woman. But the *jirga* representing the accused suddenly decided not to accept her apology and instead punish to her and her family by raping her. The police in her area may have been aware of what was happening, but they would not take action on their own initiative in defiance of a *jirga* ruling. Afterwards, the rapists were confident they had silenced her and her family forever.

But Mukhtaran Mai herself defied the informal systems of justice by filing a FIR with the police and [pursuing her case](#) through numerous appeals in the formal courts of law for nine years. She travelled around the world to share her story and received accolades for her [bravery](#). She grew from an illiterate young woman to become the [founder of a school](#) for girls in her village. New York Times journalist [Nicholas Kristoff](#) advocated for her cause internationally, referring to her as a “national treasure” for Pakistan.

But at home, she was perceived by too many lawyers, judges, media and ordinary people, to be deepening the shame of her rape by taking it “outside”, and bringing disgrace to the country in the eyes of the world. In 2005 then President Parvez Musharraf said in an interview with the Washington Post that many people in Pakistan believed that [alleging rape was a good way to get oneself asylum to live abroad](#), referring to other prominent cases in which women had fled the country out of fear for their lives after alleging rape at the hands of influential people. There was also political pressure to drop the charges; it has been alleged that a government minister has been [threatening](#) her, on behalf of the accused, to drop the case since 2006.

Her growing renown only made the stakes higher for the guardians of both the formal and the informal systems of justice, who appeared to share the same dim view of women as commodities to be bartered in the name of maintaining social stability. It appears that they needed to teach her an exemplary lesson. Hence it became more important than ever to establish her unreliability as a witness to her own rape.

Soon after the Supreme Court verdict Mukhtaran appeared on a popular evening [news programme](#). The host opened the show commenting on the day's event and introducing her unpleasantly as a woman who had "travelled all over the world". He then proceeded to probe her about details of the case, particularly why she had waited so many days to file the FIR, and invited the views of two other men on the panel. They launched into a detailed discussion, wondering aloud about the quality of the evidence. As the discussion began to veer towards explicit details of the rape, Mukhtaran took out her earplugs and calmly walked out of the studio. Apparently Mukhtaran has worn earplugs on television interviews before as well, to block out the insulting remarks made by other guests and maintain her focus on what to say. The host and panellists hardly missed a beat and continued their conversation about her rape.

One of the first comments she made to the press after the verdict was to express deep concern for those women and girls who had filed charges of rape based on her example, and who now stood to be [humiliated all over again](#) by hostile courts. A leading women's rights organization, Aurat Foundation, compiles data on violence against women, and reports that out of a total of 8,000 cases of violence in 2010, [928 were rape cases](#). The actual figure is estimated to be much higher, since most cases go unreported. Out of those cases that make it to court, there is a three percent conviction rate. Unbelievably, Pakistan is a country where rape is a crime that the state is bound to prosecute even if the victim does not file charges, although this is not widely known and hardly practiced. But Mukhtaran's example had encouraged activists, and women lawyers pressed ahead with rape cases in the hope of securing more convictions.

Mukhtaran Mai has said on numerous occasions that her life is in danger. She requested police protection in her village while the case was inching its way to the courts, and the government grudgingly gave her a policeman or two to sit at her door. The relatives of the accused live a stone's throw from her own home, and now the accused themselves will be returning. The lesson to be learned from her case so far is that speaking out and fighting for justice has only earned her powerful enemies in the formal and informal justice systems alike.

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