

THE OTHER SIDE OF GENDER JUSTICE: SCIENTIFICALLY MEASURING AND PREVENTING FALSE-CASE VICTIMIZATION WHILE PROTECTING GENUINE COMPLAINANTS

AUTHOR – KARTHIKEYAN J* & GAYATHRI J**

* STUDENT AT AMITY LAW SCHOOL NOIDA, AMITY UNIVERSITY.

** ADVOCATE, MADRAS HIGH COURT

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ABSTRACT:

The gender justice discourse has largely confined itself to the protection of the victim, feminist legal reform, and frames of violence prevention, whilst the study of false accusations is fragmented amongst procedural law, criminal adjudication, and judicial pronouncements. While literature acknowledges the reputational, psychic, and legal injuries inflicted by false accusations, there is scarce study about the burden produced by the procedure itself in various legal regimes. This study seeks to fill this gap by exploring whether evidence standards, police action, and procedural safeguards create different levels of burden in accusation-driven proceedings. I conceptualize this research as an exploration of feminist readings of due process at the procedural level; it does not seek to critique protected legislation but instead analyzes how institutional design plays a mediating role for competing concerns over complainant protection and adjudicative impartiality. I use a comparative doctrinal methodology by examining statutory rules, rules of procedure, and judicial precedents in India, the UK, Canada, and Australia for pre-trial interventions, evidence review, and post-acquittal corrective measures. The study operationalizes "procedural victimization" as a discrete category of harm engendered through the legal process, rather than its outcome; it uses FAIM or "False Accusation Impact Model" to measure procedural burden across four dimensions—reputational harm, legal limbo duration, socio-economic disruption, and institutional delay correction. Findings suggest procedural justice is contingent not on the protection of vulnerable but rather on the interplay of evidentiary review, police power, institutional safeguards etc. in early stage proceedings. The paper proposes an objective measure to assess balance within these gender-protective legal systems.

Keywords: legal reform, Procedural Justice, Gender Justice False Accusation, False Accusation Impact Model (FAIM), Judicial process, Wrongful prosecution, Legal Reform, Procedural Fairness, Institutional bias.

1. INTRODUCTION

Gender justice has emerged as a normative legal tool for redressing structural disempowerment in terms of vulnerability, legal access, and institutional power. Across many legal systems, gender protective laws against domestic violence, sex crimes, sexual

harassment, and protection of victims were passed to cure historical underreporting, disbelief, and patriarchal biases of criminal

justice processes (Farina, 1990; Hudson, 2002)⁹⁵¹. They effectively promoted a shift from formal to substantive equality in criminal law's operation by expanding complainant rights and increasing the capacity of institutions (Mulder, 2017)⁹⁵². In many instances, these statutes have taken their place as core pillars of contemporary criminal justice policy and gender-responsive criminal adjudication.

Recent procedural research recognizes, however, that the regimes of legal protection can only exist within a specific institutional setting. Criminal procedure is no longer exclusively concerned with guilt versus innocence but rather allocates legal risk, reputational jeopardy, state compulsion, and institutional credibility to the disputing parties (Silbey & Sarat, 1988; Damaska, 1974).⁹⁵³ Theories of procedural justice further argue that legitimacy is a function not of outcomes but of fairness, transparency, and proportionality in adjudication (Tyler, 2006; Nunn, 2020). In accusation-based processes, this distinction is key as legal harms can exist irrespective of any trial outcome.

Focus on gender justice has so far concentrated almost exclusively on complainant vulnerability, barriers to reporting, and institutional under-enforcement. Feminist legal theory has demonstrated compellingly how the law has victimized claimants via skepticism and exclusion in past evidentiary proceedings (Farina, 1990; Fellmeth, 2000), and comparative criminal law has emphasized the crucial importance of procedural mechanisms for victims' ability to report and be recognized (Johnson, 2025; Cavallini, 2024)⁹⁵⁴. However, minimal academic work has focused on how the law treats allegations that are withdrawn, unsubstantiated, or dismissed by the courts.

This omission is critical, as burden may arise independent of trial outcome; arrest, public declaration, reputational damage, career disruption, social stigma, mobility constraints, and protracted litigation can result in a concrete cost where no conviction has resulted (O'Hear, 2007; Fontanelli & Busco, 2016)⁹⁵⁵. Procedural scholars have recognized the secondary harm inflicted by legal institutions, unrelated to a verdict, since the act of accusation alone brings social costs (Galligan, 1996; Duff et al., 2007). Few have examined the harms of the legal process as institutional outcomes of a particular kind of procedural design.

The literature on false accusation has tended to split between prevalence debates, evidentiary validity and due process issues (Rumney, 2006; Avalos, 2017) as well as victim centric justice versus procedural fairness in campus adjudication and other forms of misconduct proceedings (Triplett, 2012; Konradi, 2017); in each case, typically addressing the issue as a normative concern and not as a comparative institutional inquiry.

Within India, concern about malicious false accusations under domestic violence, sexual offenses, dowry laws, etc. Has gained judicial attention in various cases in recent years (Social Action Forum for Manav Adhikar v. Union of India, 2018).⁹⁵⁶ While judges have expressed concern about the lack of legal remedies after acquittal, reputational damages, delay, and the cost of protracted proceedings, these judgments tend to be largely piecemeal and anecdotal (State of Bihar v. Bihar Distillery Ltd., 1997).⁹⁵⁷ There is also growing recognition in recent research about the psychological, familial, and economic consequences of prolonged accusation-based legal proceedings (Bharti, 2025). However, a comparative framework for assessing such procedural costs has not yet been developed.

⁹⁵¹ *The British Journal of Criminology*, Volume 42, Issue 3, 1 June 2002, Pages 616–634, <https://doi.org/10.1093/bjc/42.3.616>

⁹⁵² EU Non-Discrimination Law in the Courts: Approaches to Sex and Sexualities Discrimination in EU Law' by Jule Mulder.

⁹⁵³ Damaška, M. (1973). Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study *Vol. 121, No. 3 (Jan., 1973)*, pp. 506-589 (84 pages).

⁹⁵⁴ Giovanni Cavallini, "Victims and Criminal Procedure," 2024.

⁹⁵⁵ O'Hear, Michael M., Plea Bargaining and Procedural Justice. *Georgia Law Review*, Vol. 42, No. 2, 2008, Marquette Law School Legal Studies Paper No. 07-02, <http://dx.doi.org/10.2139/ssrn.982220>

⁹⁵⁶ *Social action forum V. UOI & Ors AIR 2018 SC 4273*

⁹⁵⁷ *State Of Bihar & Ors. Etc. Etc. vs Bihar Distillery Ltd. Etc. AIR 1997 SC 1511*

2. PROBLEM STATEMENT

Current gender-protective legal frameworks were conceptualized to combat structural inequality: unequal access to courts, underreporting of violence, and a distrust of complainants throughout criminal adjudication. Reforms to laws pertaining to domestic violence, sex offenses, harassment, and victim compensation have expanded procedural responsiveness, focusing on proactive justice, risk-based policing, and complainant-centered procedures (Farina, 1990; Hudson, 2002). This movement toward substantive equality is integral to contemporary gender justice. Yet, the development of protection-oriented procedural mechanisms has also fueled scholarly debate on the division of burdens within accusatorial processes, prior to any legal determination.

Scholarship in procedural justice contends that the legitimacy of law hinges less on results and more on procedural fairness, proportionality, and neutrality (Tyler, 2006; Nunn, 2020). Criminal procedure itself constitutes a system that assigns coercive power, public notoriety, evidentiary risk and societal acceptance between disputing parties (Silbey & Sarat, 1988). There is far less literature that has studied the negative procedural consequences that arise for complainants when accusations either fail to lead to indictment, are withdrawn, or are dismissed, despite a significant body of literature on barriers to complainant access to legal mechanisms.

The problem is substantial: accusation-based legal processes can cause damage regardless of conviction. The imposition of arrest, public accusation, job loss, protracted litigation, social stigma, and delayed acquittal each constitutes a tangible negative outcome before any judicial finding can be issued (O'Hear, 2007; Fontanelli & Busco, 2016). Judicial opinions in several jurisdictions including India, have acknowledged reputational injury and hardship caused by the lengthy prosecution of criminal proceedings

under gender-protective statutes (Arnesh Kumar v. State of Bihar, 2014)⁹⁵⁸ these concerns, however, are dispersed through specific cases, rather than being part of a consistent, comparative study.

Therefore, the primary legal question this study examines is whether we possess a meaningful institutional way of measuring how procedural design affects the distribution of burden during accusatorial proceedings. Is it, or is it not, a case that thresholds for evidence, police discretion, pretrial intervention, and remedy distribute differently across jurisdictions? This will inform whether our protective procedures serve both complainant access and procedural fairness and proportionality when accusations cannot be supported.

3. RESEARCH GAP AND SCHOLARLY CONTRIBUTION

The extensive body of scholarship concerning gender justice, procedural fairness, and criminal adjudication has given the world a lot of insight into complainant protection, feminist legal reform, and obstacles to reporting. Feminist legal theory has explored how exclusion, evidentiary skepticism, and patriarchal presumption foreclosed access to the justice system to perpetrators of gendered harms (Farina 1990; Fellmeth 2000), while other criminal procedure scholarship has examined the implications of due-process, evidentiary standards, and legitimacy in an accusation-based system (Roach 1999; Nunn 2020). These lines of inquiry have yet to significantly integrate one with the other when exploring the procedural repercussions of accusations that are never proven, are withdrawn, or are dismissed by the court. Other literature surrounding false accusations similarly does not integrate these lines of research but instead centers around prevalence claims, reporting credibility, or how institutions respond to allegations of falsity (Rumney 2006; Avalos 2017)⁹⁵⁹, or a collision between victim-centric and proceduralist ideals

⁹⁵⁸ Arnesh Kumar vs State Of Bihar & Anr AIR 2014 SC 2756

⁹⁵⁹ The Cambridge Law Journal, Volume 65, Issue 1, 12 March 2006, pp. 128 – 158 <https://doi.org/10.1017/S0008197306007069>

(Triplett 2012; Konradi 2017) rather than conceptualizing accusation-based harm as institutionally caused injury. A crucial gap in the comparative law literature is the absence of a scalable mechanism for understanding the procedural burden created in the process of legal processing itself. No studies consider the ways in which evidentiary thresholds, investigative protocols, prosecutorial discretion to arrest and prosecute, and the unavailability of remedies following acquittals distribute procedural burden across systems (Fontanelli & Busco, 2016; Johnson, 2025); procedural burden is discussed but not operationalized as a comparative legal tool. I seek to fill that void by identifying a bounded concept of institutionally produced harm, procedural victimization, and operationalizing it using a procedural victimization tool: the False Accusation Impact Model (FAIM). By merging procedural justice theory with comparative doctrine on the substantive laws governing India, the UK, Canada, and Australia, I build a tool to assess the tension between complainant protection and procedural proportionality.

4. RESEARCH QUESTIONS

Drawing on procedural justice theory and research on comparative criminal procedure (Tyler, 2006; Nunn, 2020)⁹⁶⁰, this research will explore the impact of institutional design on burden allocation in accusation-based legal regimes by addressing the questions posed above. Specifically:

1. How do evidentiary rules, discretionary arrests, and protections on the procedures of law influence the allocation of legal burden in accusation-based regimes across different jurisdictions?
2. How far do gender protective legal regimes reconcile protection of the complainant on the one hand and the procedural proportionality and the legitimacy of due process on the other

hand? (Roach, 1999; Fontanelli & Busco, 2016).

3. How can "procedural victimization" be made operational as an empirically quantifiable comparative category, by means of FAIM?

5. OBJECTIVES

The study sets out to investigate the way procedural design in gender-protective legal systems formulates an accusation-based burden prior to the outcome of adjudication. Adopting insights from the literature on procedural justice and comparative criminal law (Nunn, 2020; Roach, 1999), the project intends to: (i) assess the impact of evidentiary thresholds, police arrests and investigative checks on procedural outcomes; (ii) compare responses of institutions across India, United Kingdom, Canada and Australia; and (iii) construct the False Accusation Impact Model (FAIM) as a quantifiable measurement of institutional and procedural victimization and proportionality within accusation driven legal process.

6. LITERATURE REVIEW

Scholarship addressing gender justice, procedural fairness, and accusation-based legal processes spans a wide number of doctrinal traditions, yet none is analytically unified. It is possible to categorise existing literature into four linked categories: feminist legal reform and complainant protection, theory of procedural fairness, scholarship on false accusations, and comparative criminal procedure. While all of these are relevant for understanding institutional fairness, there is limited intersectionality in their analysis of the burdens that are produced during proceedings involving allegations that cannot be substantiated.

6.1 Gender Justice and Protective Legal Frameworks

⁹⁶⁰ G. Alexander Nunn, Law, Fact, and Procedural Justice, 70 Emory L.J. 1273 (2021).

The field of gender justice scholarship largely focuses on remedying substantive inequalities within the criminal justice system. Feminist legal theorists argue that women have suffered discrimination at the hands of our current evidential regime through the generation of complainant distrust, deficits in credibility, and the systematic lack of recognition of gender-based harms. A body of protective legislation—including domestic violence statutes, sexual offence provisions and harassment laws—has emerged to address the systemic failures at the level of reporting and prosecution. A comparative criminal procedure analysis further demonstrates the link between substantive equality and the need for procedural accommodation to account for vulnerable suspects with unequal access to the law.

6.2 Theory of Procedural Fairness and Institutional Legitimacy

Procedural justice scholarship focuses attention away from substantive outcomes of legal process, onto the nature of the process itself. Tyler (2006) argues that an institution will gain legitimacy from impartiality and procedural consistency rather than the accuracy of verdicts; this is echoed in legal process literature, which claims that the legal system distributes stigma, coercive state power, and social legitimacy among legal actors. Nunn (2020) asserts that fair procedures must balance truth-seeking with accountability. Comparative approaches illustrate that legal systems promote fairness by their very design regarding access, review and safeguarding.

6.3 False Accusations and Procedural Harm

The area of scholarship focusing on false accusations is divided between a doctrinal analysis and an empirical investigation into the phenomenon. Rumney (2006) examines false accusations in sexual offence proceedings and highlights the problems of estimating prevalence and ensuring evidential reliability. Avalos (2017) criticises punishment and social stigmatization for making false allegations, arguing that excessive concern over the

fabrication of accusations is an incentive for more genuine claimants to come forward. A Due Process focus, meanwhile, emphasizes the harm to reputation, legal uncertainty, and procedural asymmetry of proceedings predicated on accusation; Roach (1999) has demonstrated how such processes can affect dignity. Work on false accusations acknowledges that unproven accusations can inflict social stigma, unemployment and prolonged involvement in the legal system, though these issues remain primarily descriptive in nature rather than institutional in scope.

6.4 Comparative criminal procedure and institutional variation

Jurisdictions vary immensely with regard to their procedural requirements for obtaining an arrest, prosecuting the case and remedies after acquittal (Cavallini, 2024). The procedures each criminal system adopts to strike the balance between truth-seeking and individual rights vary depending on institutional context. This body of work shows how systems manage legal burdens by developing various mechanisms to intervene earlier in proceedings; however, none of these studies examines the accusation burden as a free-standing institutional variable.

What is noticeable across each of the thematic domains listed above is the lack of a singular, coherent framework to address how procedural structures can produce actionable harm at the institutional level. Scholarship on victim protection, due process and false accusation proceeds in parallel, not in tandem with an evaluation of institutional and procedural issues, rather than their relationship.

7. THEORETICAL FRAMEWORK

This study builds on two bodies of normative theory: procedural justice theory and due process jurisprudence. These theoretical traditions both provide a normative and institutional framework for analyzing fairness within accusation-based legal systems. Together, these traditions shift the focus of

criminal adjudication away from simply an outcome based on guilt determination toward a conception of law as a means for distributing legitimacy, burden, and institutional power between disputing parties (Silbey & Sarat, 1988; Damaska, 1974).

Procedural justice theory asserts that an institution's legitimacy does not derive merely from substantive results, but from the perception of fairness with which processes are administered. Tyler (2006) proposes that legal compliance and institutional trust are gained when people believe legal processes to be neutral, consistent, transparent, and participatorially fair. Similarly, Nunn (2020) argues that legal procedural legitimacy consists of balancing the reliability of evidence with a procedural fairness standard in adjudicative processes. In accusation-based proceedings, this means the principles of procedural justice are of great importance because of the great likelihood that coerced state power will be brought to bear in the legal process long before an adjudication takes place.

According to the due process theory, proportionality, evidentiary reliability, and protection from arbitrary state intrusion are primary concerns. The traditional due process doctrine has viewed the procedural rules it elaborates as checks on state power, demanding that burdensome state action be brought about only through state-sanctioned institutions. (Roach, 1999). Feminist legal scholarship, however, has critiqued traditional due process as failing to acknowledge historically unequal access to justice for complainants (Farina, 1990; Fellmeth, 2000). Consequently, a number of contemporary jurisdictions are balancing the due process safeguards required for defendant protection against the due process-oriented protection needed to mitigate under-enforcement.

The present study occupies this gap. The argument is not that protection for complainants is incompatible with due process. Rather, this study conceives complainant

protection as a due process alternative and argues that, due to their competitive nature, due process and complainant protection must be calibrated procedurally. It is through this procedural justice and due process comparison that the study asks and tests whether legal design burdens the parties in a proportionally equal way in the face of evidentiary uncertainty, giving it the theoretical ability to operationalize the concept of procedural victimization as a concrete, measurable outcome through the False Accusation Impact Model (FAIM).

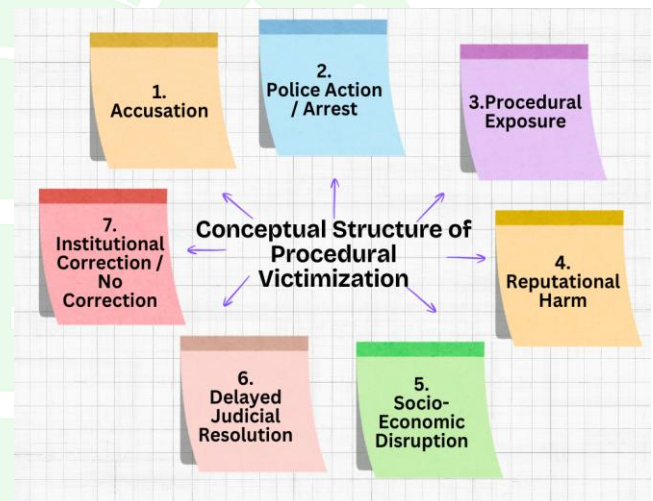


Figure1: Conceptual Structure of Procedural Victimization

8. CONCEPTUAL MODEL

Because there has been no systematic, measurable way of capturing accusation-based procedural burden, this article introduces the False Accusation Impact Model (FAIM) as a theoretical construct that captures the institutionally created harms attendant to legal proceedings. Existing procedural scholarship recognizes that legal processes themselves are generative of harms apart from adjudicated outcomes, yet these are often conceptual and underspecified in comparative criminal law (Silbey & Sarat, 1988; Fontanelli & Busco, 2016).

FAIM operationalizes procedural victimization as a structured form of harm resulting from institutional processing of accusations prior to the establishment of the truth. The theory draws

from procedural justice theory and due process law to assert that the legitimacy of institutions can only depend upon appropriate assignment and distribution of state coercion (Tyler, 2006; Roach, 1999). Unlike an adjudication focusing on establishing the truth of an accusation, FAIM seeks to gauge the exposure of accusation-based processes to specific legally-produced harms, including but not limited to legal, reputational, and socioeconomic losses during a phase where there is insufficient information to establish either guilt or innocence.

FAIM Operationalizes procedural burden through four linked forms of harm:

1. Reputational Harm, which captures the social stigma, media intrusion, and long-term damage to professional credibility occasioned by false accusation (Galligan, 1996).
2. *Temporal Legal Uncertainty* measures the delay of substantive decision and lingering ambiguity of proceeding, which

produces a lack of closure and prolonged investigatory purgatory (O’Hear, 2007).⁹⁶¹

3. Socio-Economic Disruption documents the impact on work, income, social bonds, and family structure, including loss of employment, significant debt accumulation, ostracism, and dislocation (Bharti, 2025).⁹⁶²
4. Institutional Delay Correction documents provision and utilization of ex-post acquittal redress, stigma mitigation, and procedural correction (Johnson, 2025).

FAIM translates each category of procedural impact into discrete, measurable components, creating a comparative framework to assess how different legal systems create harm during periods of uncertainty. FAIM serves as an institutional heuristic, not a critique of specific protections.

FAIM Dimension	Operational Indicator	Measurement Variable	Procedural Relevance	Comparative Legal Significance
Reputational Harm (Galligan, 1996; Silbey & Sarat, 1988)	Public identification, media exposure, social labeling	Degree of public visibility during proceedings	Measures stigma generated before adjudication	Evaluates whether confidentiality protections reduce accusation-based harm
Temporal Legal Uncertainty (O’Hear, 2007; Nunn, 2020)	Duration of investigation, pendency of trial, delayed acquittal	Length of unresolved legal status	Assesses procedural burden caused by prolonged uncertainty	Indicates efficiency and proportionality of adjudicative timelines
Socio-Economic Disruption (Bharti, 2025)	Employment loss, litigation costs, family instability	Extent of financial and social displacement	Captures secondary harms produced	Measures institutional spillover effects beyond

⁹⁶¹ O’Hear, Michael M., Plea Bargaining and Procedural Justice. Georgia Law Review, Vol. 42, No. 2, 2008, Marquette Law School Legal Studies Paper No. 07-02, <http://dx.doi.org/10.2139/ssrn.982220>

⁹⁶² Mishra, D., Reddy, A., Gupta, S., & Bharti, J. (2025). *State of India’s Digital Economy: A Subnational Perspective*, 2025. [Indian Council for Research on International Economic Relations \(ICRIER\)](https://www.icrier.org/).

			during legal processing	courtroom outcomes
Institutional Delay Correction (Fontanelli & Busco, 2016; Johnson, 2025)	Expungement, compensation, reputational restoration	Availability of corrective legal remedies	Evaluates whether legal systems reverse procedural harm after acquittal	Assesses institutional accountability and restorative capacity

9. Methodology

This study uses a comparative doctrinal legal research approach to assess how procedural rules affect the distribution of accusation-based legal burden among gender-protective justice systems. A doctrinal research design is fitting in cases where the question concerns interpretation of statutes, judicial reasoning, and institutional protective measures embedded in procedural law (Hutchinson, 2015). A comparative approach is then necessary to analyze how each legal system distributes the burden of proof, police discretion, and the adjudicative protection.

Four common-law jurisdictions—India, United Kingdom, Canada, and Australia—were chosen, as the former countries share common adversarial traditions and varied approaches to accusation-sensitive processes, the latter country's legal architecture serving as the contrast. Primary sources of law in the selected jurisdictions consist of specific statutes related to gender-protective offences, case law from appellate courts, procedural laws and codes, and institutional reports regarding arrest powers, evidential screening, interim protections and post-acquittal relief measures. Jurisdictions were compared not based on offenses, but on stages within the procedure.

Using thematic coding of legal provisions, this study identifies the recurring institutional variables across jurisdictions, such as evidential threshold review, length of legal uncertainty, reputation risk

and remedial processes (Van Hoecke, 2011). Comparative findings are then applied through the False Accusation Impact Model (FAIM) allowing the analysis of procedural effects as quantifiable institutional variables, instead of stand-alone doctrinal observations.

10. COMPARATIVE ANALYSIS

Compared criminal procedure suggests that the burden of accusation-based law is influenced by legal rules that guide criminal investigation, arrests, pretrial evidentiary screening and appellate review rather than the substance of the protective statute itself. Though the United Kingdom, India, Canada and Australia adhere to the common law tradition, they differ greatly in the way they protect complainants while ensuring a proportional procedure.

India's gender-protective statutes (i.e. Section 498 A of the Indian Penal Code, and domestic violence laws)⁹⁶³ mandate an early phase to prevent the loss of evidence and further harm. However, courts have also raised concerns over arrest automatism, prolonged investigations, and reputational damage that accusation-based laws can inflict. For example, the Indian Supreme Court's ruling in *Arnesh Kumar v. State of Bihar* (2014)⁹⁶⁴ ordered police officers to exercise restraint while making arrests and to employ procedural safeguards that limit routine detentions. Subsequent judgments have reflected growing concerns about over-inclusive procedure at the pre-arrest and investigation stages, even though post-acquittal redress

⁹⁶³ Section 498A, Indian Penal Code, 1860

⁹⁶⁴ *Arnesh Kumar vs State Of Bihar & Anr* AIR 2014 SC 2756

mechanisms remain comparatively weak to address lingering reputational harm.

The United Kingdom applies a more formal process for pre-accusation evidentiary screening by entrusting such responsibility to the prosecutors and applying Crown Prosecution Service charging standards. Police investigative discretion is also moderated by principles of proportionality which demand reasonable sufficiency of the evidence before initiating charges (Ashworth & Redmayne, 2010). Pre-trial protection against stigmatizing media publicity through anonymity laws and strict disclosure procedures in England mitigate, at least to a degree, the stigma resulting from the accusation-based process (Roberts & Zuckerman, 2010), though it remains susceptible to protracted investigations. The British procedure manifests better filtering of cases at the initial phases.

Canadian criminal procedure is characterized by strong due process protections in the

Canadian Charter of Rights and Freedoms with respect to arbitrary detention, disclosure requirements, and procedural fairness (Roach, 1999). Judicial control over admissibility of evidence ensures greater safeguards against coercive pre-trial interference and promotes a better balance between protection of complainers and neutrality of proceedings (Paciocco & Stuesser, 2020), yet negative publicity sometimes arises despite these procedural rights.

In Australia, victim-centric legislation coexists with quite sophisticated evidentiary filtering and a somewhat structured and processualized criminal justice system, with prosecutors usually deciding on the escalation of criminal proceedings in states (Freiberg, 2017). Suppression orders and confidentiality laws also are better utilized in some states than others in Australia.

Table 2. Comparative Jurisdictional Matrix: Procedural Safeguards Across Jurisdictions

Jurisdiction (Supporting Literature)	Arrest Threshold	Evidentiary Screening Mechanism	Confidentiality / Identity Protection	Post-Acquittal Corrective Measures	Procedural Burden Assessment
India <i>(Indian Penal Code, 1860)</i>	Broad police discretion, though moderated by judicial restraint	Limited pre-charge evidentiary screening	Restricted anonymity protections except in select offences	Weak reputational restoration and compensation mechanisms	High procedural exposure due to early intervention and delayed correction
United Kingdom <i>(Ashworth & Redmayne, 2010; Roberts &</i>	Arrest subject to proportionality and necessity tests	Strong Crown Prosecution Service (CPS) review	Partial anonymity and disclosure safeguards	Moderate institutional correction through acquittal-based remedies	Moderate procedural burden with stronger evidentiary filtering

Zuckerman, 2010)		before charge			
Canada (Roach, 1999; Paciocco & Stuesser, 2020)	Charter-based limits on arbitrary detention	Prosecutorial and judicial evidentiary oversight	Publication bans and privacy protections in selected proceedings	Limited formal reputational rehabilitation	Moderate burden moderated by constitutional safeguards
Australia (Freiberg, 2017; Johnson, 2025)	Controlled through prosecutorial and judicial discretion	Moderate-High evidentiary screening prior to escalation	Expanded suppression orders in several jurisdictions	Stronger post-acquittal confidentiality and correction measures	Lower procedural burden due to layered review mechanisms

Comparative analysis reveals that the burden of accusation-based law depends primarily on three institutional factors: the stringency of evidentiary screening; the discretion enjoyed by the authorities on arrest; and the remedies provided against improper procedure. Procedures that permit early interference without proportional review generate greater burdens; procedures with multilayered evidentiary screening show more balanced outcomes. Thus, fairness depends more on how the institutions protect the citizen than on protective laws themselves.

11. FINDINGS

The analysis indicates that procedural burden in the context of accusation-based systems is dependent not on the presence of gender protective legislation, but the way the alleged crime and allegation are dealt with within institutions. The procedural harm, irrespective of either guilt or final legal judgment, appeared prior to adjudication in each of the four states surveyed. These results are consistent with claims made within the procedural justice literature stating that institutional legitimacy is

based on process as well as on outcomes (Tyler, 2006; Nunn, 2020).

One key finding of the analysis is the link between the extent of the evidentiary review and the amount of procedural burden. The two states which utilize a structured method of prosecution and have threshold-based evidentiary assessment (the UK and parts of Australia) possessed comparatively lower levels of premature procedural exposure. Such systems reduced the burden and the extent to which a formal allegation had serious implications during initial investigation because evidence must reach a required evidentiary threshold before an arrest is made (Ashworth & Redmayne, 2010; Freiberg, 2017). Systems which allowed coercive measures to be taken prior to robust evidentiary assessment did possess a higher degree of stigmatizing arrest-related shame and long periods of legal limbo.

A second crucial finding is that arrest discretion leads to a high extent of procedural victimization. The data show that due to the use of discretionary arrest in both states and in pre-verdict arrest for instance in India where it acts as a punitive force on the defendant outside the

purview of adjudication (Arnesh Kumar v. State of Bihar, 2014) state systems are subject to high degrees of institutional burden even before any fact has been verified and, the data support socio-legal theories stating that often coercive actions have an undue amount of long term effects which, are unlinked to the verified evidence (Damaska, 1974; O’Hear, 2007).

Thirdly, it must be stated that the systems that included post-acquittal correction were woefully underdeveloped. Although a person is declared innocent and formally gains their legal standing, there is no real post-conviction rehabilitation to prevent reputational stigma, economic loss, or procedural remedies for the ordeal of prosecution, supporting socio-legal findings suggesting that the legal processes end at the trial phase without proper reversal of secondary harms (Galligan, 1996; Fontanelli & Busco, 2016).

Additionally, it is apparent that procedural burden comes in cumulative stages rather than individual occurrences; these events such as reputational stigma, financial instability, psychological distress, and legal uncertainty are layered and increase from stage to stage (Bharti, 2025) specifically when a formal charge has been publicly entered and the actual judicial process is not immediately concluded.

The FAIM Model is a tangible way in which to understand the impact of these procedural occurrences and provides an empirical basis with which to compare these varied states, demonstrating that the way in which due process is best understood is through the calibration of institutions, not a dichotomous approach of victim versus defendant. Systems with well-calibrated proportional evidentiary review, careful use of coercive measures, and a correctional phase appear to exhibit less procedural burden without inhibiting the complaint from bringing a formal charge against another.

In sum, procedural justice in gender-sensitive legal systems relies more on how the systems are structured to spread burden under times of

uncertain evidentiary knowledge rather than the specific laws and intent behind those laws.

PROCEDURAL HARM TIMELINE

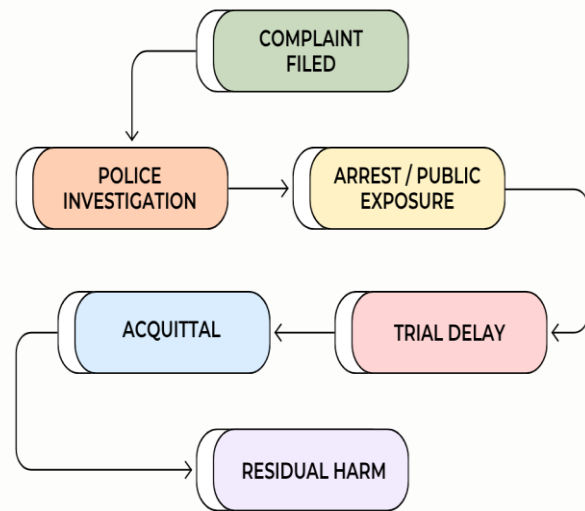


Figure 2: Procedural Harm Structure: Processual Mapping of Harm Generation Across Stages of Criminal Procedure

12. POLICY RECOMMENDATIONS

This comparative study suggests that achieving fairness under accusation based legal systems requires institutions to adapt rather than reduce gender-protective legislation. Law reform needs to center on increasing procedural proportionality rather than excluding complainants from the process. First, there should be graduated evidentiary screening procedures before state coercion occurs. Pre-arrest or pre-charge judicial/ prosecutorial screening could curb unnecessary procedural escalation while ensuring that protection goals are not jeopardized (Ashworth & Redmayne, 2010). Such preliminary screenings will be useful in situations of late evidence discovery or issues involving complainant credibility.

Second, procedural rights must be reinforced with arrest and search standards mandating clear evidence of necessity, proportionality, and an assessed risk (Arnesh Kumar v. State of Bihar, 2014). An example from Arnesh Kumar suggests that automatically imposing pre-arrest custody in accusation-sensitive cases can be restricted

without harming objectives of gender protection and procedural integrity. Increasing the legitimacy of procedures in states where coercion is dependent upon evidence rather than prophylactic precaution increases procedural integrity (Roach, 1999).

Third, post-acquittal restorative justice mechanisms (e.g. Reputational rehabilitation, expungement of records, and restricted compensation) must be instituted in legal systems. Secondary harm in an accusatory-sensitive case is not addressed by current procedure in spite of acquittal or withdrawal of accusations (Fontanelli & Busco, 2016). Procedural correction beyond judgment should be part of the institutional framework.

Finally, comparative jurisdictions must institutionalize impact assessment tools, such as the False Accusation Impact Model (FAIM), to analyze distribution of burdens across actors in the legal process as it relates to investigation design, media coverage, and procedural delay. This tool might help reinforce institutional accountability without compromising the normative mandate of gender-justice legislation.

13. CONCLUSION

This paper explored when procedural harms occur in accusation-based legal systems and how institution-based harm cannot be assessed through adjudication alone. While gender-protective laws are necessary to achieve structural equality and to increase complainant access to justice, a comparative study demonstrates that the legal design for pre-trial and investigation phases influences the way the legal burden falls on the accused. Procedural justice thus rests on more than the intent of lawmakers but in the conjunction of evidentiary threshold, arrest discretion, internal review processes, and redress measures (Tyler, 2006; Nunn, 2020). It is in the context of pre-trial and investigative phase that in India, UK, Canada and Australia procedural consequences have been discovered such as; harm in terms of; damage of reputations, uncertainties during protracted

legal processes, loss of economic stability, loss of social relationships and delay in institutional correctives. It shows that harm does not occur solely due to protection of law per se, but the legal procedures in the processes (Galligan, 1996; O'Hear, 2007). Comparative analysis revealed that a two-layer evidence review coupled with moderate coercive intrusion produces a balanced procedural outcome without harming the protective objectives for the victims.

This research has developed the idea of a procedurally victimized individual into a concept of an institutionally wronged victim, operationalizing this idea with the construction of FAIM or the False Accusation Impact Model. Bridging procedure-based justice theories with comparative criminal procedure analysis, it proposed an institution-oriented approach in evaluating legal fairness in a gender-aware judicial system. The conclusion is that the legal procedure to achieve legal legitimacy is not to do away with the protection law but with redesign of legal system, proportionate allocation of burdens under circumstances of evidentiary doubt.

14. Future Scope

Follow-up studies could advance the False Accusation Impact Model (FAIM) through empirical testing using data from court case files, acquittals, and follow-up outcomes for subsequent procedural proceedings. A comparative approach might consider the impact in civil law systems, media impact on character damage, and responses within institutional settings in cases of restorative measures following acquittals. Criminological research, including behavioral psychology, alongside the legal analysis of such cases through legal analytics can lead to greater measurement of procedural victimization as a new category of comparative procedural justice scholarship (Johnson, 2025; Cavallini, 2024).

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