

CRIMINAL JUSTICE SYSTEM AND COMPLAINT WITHDRAWAL IN SEXUAL ASSAULT CASES

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Although there is considerable influence of socio-cultural factors on withdrawal of complaint in sexual assault cases, institutional failure in the criminal justice system exacerbates the problem even more. The formal legal system prevailing in India, although strengthened with progressive legislation and judicial decisions, fails in its practical enforcement. This mismatch between law in books and law in action results in creation of an atmosphere wherein the survivors begin to lose faith in the system, resulting in withdrawal of complaints.

Various institutional obstacles emerge in the process of dispensation of justice in the form of insensitivity shown by the police, complications arising out of forensic examination, difficulty in conducting investigations, and delay of the trial. All these result in violation of the survivor's dignity and create anxiety in them, resulting in their reluctance to pursue legal remedy. Another crucial problem is associated with the procedures followed by the police, which involve an unwillingness to file FIRs, victim blaming, and informal settlements. Likewise, the delay in investigations and trials diminishes the strength of evidence against the accused and prolongs the suffering of the survivor, forcing them to give up on the case and leave the court procedure behind.

Furthermore, the lack of institutional support in terms of legal aid, counseling, and protection systems for the victim exacerbates the situation. While measures such as fast-track courts and compensations are available to victims, their sporadic application undermines their usefulness as means to obtain justice. This part of the paper discusses the institutional challenges that result in a withdrawal from filing complaints. The interplay between inefficiency, insensitivity, and lack of accountability within the legal system and socio-cultural factors contributes to the creation of a vicious circle. The conclusions are based on the empirical data obtained in the current research.

Role of Police

The police are the first institutional interface of rape victims, and the police reaction plays an important role in the direction that the case may take. Ideally, the police must play the role of facilitators of justice by registering the complaint on time, investigating it sensitively, and creating a conducive atmosphere for the complainant. In reality, however, deficiencies within the structure of policing tend to work against the victim and become a major reason for the withdrawal of complaints. The first problem arises from the

lack of willingness among police personnel to register FIRs, even though this is mandatory according to Section 154 of the Code of Criminal Procedure and as instructed by the judiciary in cognizable cases. The remarks made by the stakeholders occupying institutional positions reflect these issues as well. For example, according to the NCRB figures, cases of crimes against women continue to present a major reporting gap and delay problem, signifying structural inefficiencies during the first stages of policing. Likewise, remarks made by top judiciary officials and their respective committees

emphasize the necessity of gender-specific police force, stressing that inadequate training leads to re-victimizing the survivors.

In terms of statistics, while the number of reported sexual offences is increasing each year partially due to greater awareness, the rate of withdrawal of cases, the occurrence of hostile witnesses, and the low rate of conviction suggest inefficiencies in the investigation process. The delays in documenting statements, poor collection of forensic evidence, and lack of witness protection measures negatively impact cases, thus forcing survivors to withdraw from trials. Examples can be cited from real-life scenarios, where victims have complained about the practice of victim-blaming questioning, moralization, and even pressure by police personnel to 'sort things out' privately, if possible, especially when the perpetrator is someone known to the victim. On occasions, refusing registration of FIRs and pressurizing the victim to modify the statement has brought into the public limelight the apathetic attitude of the police towards such issues.

Moreover, this problem is not an individual's wrong-doing or misconduct alone; rather, it represents a structural problem, arising due to inadequate staffing, absence of specialized training programs, patriarchal tendencies among police personnel, and a lack of strong disciplinary mechanism. Reforms like setting up of women help desks and special units to deal with crimes against women are also inadequate in certain aspects. As regards the results of the present study, it can be seen that there is distrust on part of the respondents regarding the reliability of police officials and the police system. This is mainly due to fear of insensitive behavior of police personnel and their tendency to harass the victim. Ultimately, while the legislation calls for a survivor-centered model, the reality on the ground shows that there is no synchronization between the two aspects. It is necessary to make not only legislative amendments but also to ensure that police forces become accountable and sensitive to gender issues.

Investigation Challenges

The investigation phase constitutes the foundation of any criminal case, and in the case of sexual assault crimes, its quality and effectiveness play a crucial role in determining the final results. Nevertheless, in reality, poor investigation stands out among the most significant organizational problems that undermine the case at its core, substantially contributing to the filing of complaints. First of all, the problem can be identified in the inadequate and untimely gathering of evidence, including forensic and medical evidence, which have a high degree of specificity. Due to poor cooperation between law enforcement agencies and medical organizations, mistakes can occur during documentation, evidence contamination, or adherence to standard procedures, which adversely impacts the evidentiary base of the case. These issues have been raised time and again by the courts. In *State of Karnataka v. Shivanna*, for instance, the Supreme Court laid emphasis on the need for prompt and proper investigation, especially timely medical examinations and gathering of evidence in cases of sexual offences. It made clear that any delay and/or negligence on the part of the investigating agency will be prejudicial to the case. Another major problem that needs to be pointed out here is the issue of inadequate training of investigating agencies. The investigating of sexual assault cases requires a different, sensitive approach altogether; however, there still are many investigating officers who take a mechanical or even insensitive approach towards these cases. Examples of actual situations in India have shown how errors during investigations can impede the cause of justice. In a number of incidents, victims have revealed that their statements were either not recorded properly or tampered with in some way, while relevant evidence was ignored or improperly handled. In certain cases involving well-known personalities, poor initial investigations have necessitated the involvement of courts or fresh investigations.

Moreover, the influence and pressure exerted by the accused on investigators, especially if he or she possesses social, political, and/or economic clout, can affect the fairness of an investigation and thereby discourage victims from continuing the proceedings against them. Another obstacle in conducting a thorough and fair investigation is the lack of witness protection measures during the investigation itself. Victims who do not receive proper support from the investigative agencies are prone to intimidation and social pressures. These issues were validated by the empirical observations recorded in the current study. There was a significant number of participants who cited the following reasons for withdrawal of complaints: poor investigations, apprehension regarding the misuse of evidence, and distrust of the processes involved in handling complaints. In general, there seems to be an assumption that despite filing a complaint, there may not be an assurance of effective investigation and justice. Fundamentally, the difficulties involved in investigation can be viewed as symptoms of institutional incapacity wherein procedural weaknesses, accountability problems, and insufficient training interact with each other. Capacity enhancement at this stage involves the training of investigators, rigorous adherence to forensic investigation, establishment of independent monitoring bodies, and a victim-centered perspective on the issue.

Court Delays & Trial Process

The inefficiency of the criminal justice process in tackling cases of sexual abuse can largely be attributed to delays in legal proceedings and complexities in the trial procedure. Even though the laws provide for a limited-time frame for prosecution and focus on the needs of the victim post amendment, the reality of the situation is far from that – delayed legal procedures, difficulties faced, and continuous adjournments lead to the loss of confidence in survivors and become a pivotal factor for withdrawing complaints. First of all, the process can take years to be finished due to various delays. As a result, the value of evidence becomes weakened, and the survivor

experiences ongoing psychological stress. Compulsory court visits and cross-examination add to this burden. However, such problems have already been acknowledged by the judiciary itself. Following the Delhi Gang Rape case in 2012, Justice J.S. Verma (while heading the Justice Verma committee) stated that "the issue is not merely the absence of laws, but the failure in their effective implementation". Despite the creation of fast track courts, there is still delay in cases owing to the backlog of cases, lack of judges, and infrastructural constraints. There are many pending cases regarding crimes against women and a low rate of convictions is another indicator of inefficiency in procedures with regards to evidence collection and trials. The rape case in Unnao district of Uttar Pradesh is a classic example. Though the incident was highly reprehensible and shocking, yet the girl had to face harassment and delays in her testimony. What made the case even more controversial and newsworthy were the issues that arose during the process of the trial, such as delays and the absence of sufficient security measures for the survivor. Such occurrences show how delays and procedural shortcomings increase the burden on the victim.

Moreover, the victims are subjected to rigorous cross-examination and even character assassination by lawyers. There is no sufficient witness protection or proper mental health support for the witnesses. The complicated procedures and difficulties make it all the more difficult for the victims to pursue the judicial process. Indeed, the findings from the empirical study conducted for this paper serve to further cement the truths outlined above. A significant percentage of the interviewees cited the issues of delay in the judicial process, the need for frequent appearances in court, and a fear of the courtroom atmosphere as some of the factors that motivated their decision to withdraw their complaints. Indeed, delay and other problems within the court process turn the act of seeking justice into an arduous and exhausting exercise. In order to solve these problems, measures need to be taken to strengthen judicial systems,

adhere strictly to time-bound processes, advocate for more survivor-friendly trials, and promote greater accountability. Failure to do so will turn the trial process into a hindrance to justice.

Lack of Support Mechanisms

A proper response to sexual assault through the criminal justice framework not only entails laws and investigations but a comprehensive support system for the survivor throughout the process. In India, the lack of an established support system for the victims becomes an important institutional weakness, which is often one of the causes of the dropping of complaints. The victims often go through the judicial process alone, without access to counseling facilities, legal assistance, safe housing, or rehabilitation programs. While systems like One Stop Centers, victim compensation programs, and legal service authorities have been implemented, their efficiency and availability vary from region to region. Many times, victims lack knowledge about these avenues, and even when aware, face difficulty in accessing these resources. The absence of measures for witness protection and continual psychological assistance makes matters even worse. The victims remain exposed to coercion, pressure from the community, and threats on the part of the accused. The failure of institutional support leaves victims to face a very difficult task of fighting back in terms of both psychology and society, making them reluctant to continue with their claims.

The comparative approach sheds light on how much this gap is. For example, in the United Kingdom, victims have their own independent sexual violence advisors, who assist them all through the investigative and trial period. Such advisors facilitate effective communication between the victims and the judicial system, helping them make sound decisions.

In the United States, rape crisis centers also assist victims with counseling, legal representation, and immediate help. Most victims have their personal advocates who accompany them all through their visits to

doctors' offices and courtroom hearings. On the other hand, even though India has implemented OSCs and helplines for such victims, there are many problems associated with their execution, and they are understaffed and ill-equipped. Moreover, there is no seamless coordination between the efforts of the police force, hospitals, and NGOs providing assistance to the victim.

As demonstrated by real-world examples in India, victims tend to turn towards non-institutional sources for assistance, including their families or NGO help centers, when they face violence. However, in the event that such a source of support is not available to them or is ineffective, victims are less likely to involve themselves in any institutional actions regarding the crime committed against them. As shown above through empirical evidence gathered during the course of the current study, lack of institutional support, specifically emotional or legal, is a major factor in encouraging the act of complaint withdrawal among many respondents. In other words, the absence of a comprehensive support system turns the whole idea of the judicial system into a burden for the victim rather than a supportive measure. The solution to this problem lies in reinforcing the already established systems, implementation of best practices from other countries, and effective inter-departmental cooperation. Moreover, it is important that the interests of the victim are kept in mind.

Witness Protection Issues

Witness protection plays an important role in the criminal justice process, especially in cases of sexual assault, where the survivor acts as a key witness in the proceedings. Nevertheless, in India, due to inefficient and unreliable measures for the protection of witnesses, there is a major institutional flaw which contributes to complaints being withdrawn and witnesses being hostile during the hearings. Despite the formulation of the Witness Protection Scheme, 2018, its implementation still falls short of its intentions. Survivors have faced numerous forms of threats, coercion, social pressure, and

intimidation by the perpetrator. Without receiving the appropriate protective measures at the required time, the survivors' lives are jeopardized, leading them to withdraw from the case. However, the judiciary recognizes the importance of the matter. In *Mahender Chawla v. Union of India*, the Supreme Court endorsed the Witness Protection Scheme while stating that the protection of the witnesses plays an important role for fair trials. An extreme case of such an experience in real life is the Unnao Rape Case, in which the victim and her family were reportedly subject to constant threats and intimidations. Things took a turn for the worse when the victim suffered a road accident under mysterious circumstances while the case was still pending in court. This illustrated that there is a gap in the system when it comes to providing immediate protection, especially in vulnerable cases like this. It should be noted that in several cases, the inability to give sufficient protection ends up producing hostile witnesses, wherein victims or witnesses withdraw their testimonies during trials. It is not necessarily because of fabricated testimonies but rather from the victim being under constant pressure, fear for their lives, and lack of support from any institutions.

Moreover, there seems to be an element of lack of knowledge and awareness about the availability of protective measures. Complications associated with procedural aspects, delay in protection measures, and lack of anonymity are all other reasons which work against survivors seeking protection. It is generally up to the survivors to ask for protection measures rather than the system providing these measures on its own. It should be noted that the results obtained through the current research show a strong correlation with this discussion. Quite a number of respondents have indicated that fear of threats, lack of safety, and lack of protective measures play a major role in the decision to withdraw complaints. All in all, problems related to witness protection reflect the fundamental disconnect between legislation and reality. To enhance this area, it is necessary to focus on practical application of the Witness

Protection Scheme, adequate risk assessments, and anonymity among other things. If witnesses do not feel safe, there will be no justice at all

LEGAL FRAMEWORK AND JUDICIAL APPROACH ON FEMALE GENITAL MUTILATION & CHILD MARRIAGE

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In India, historically, there have been several instances where child marriages were common practices due to their cultural significance, as they could also be a way to create alliances within families and deal with socio-economic difficulties. Nonetheless, due to increased sensitization regarding the rights of women and the negative consequences associated with these actions, there have been amendments in the Indian legal system that would discourage child marriages.⁹⁹⁰ Initially, the Child Marriage Restraint Act was passed in 1929, which sought to address child marriages within the Indian society.⁹⁹¹ Further amendments were also made in 1978, increasing the age of marriage from 15 to 18 years old for females. In like manner, FGM is another practice that has received little recognition in India due to the medical and human rights issues involved with it. It can be argued that the lack of any legislative prohibition against the practice of FGM points to a major deficiency in the laws of the nation. As per the provisions of the Indian Penal Code (IPC), there exists no law criminalizing the act of FGM. Due to its culturally-oriented nature, it becomes difficult for courts to reconcile between law and culture regarding the issue of FGM.

Through scholarly studies, it has been shown that any effective legal system is required to have both punitive and preventive components. The scholars have emphasized the need to alter the paradigm from focusing on criminalization alone to adopting a more comprehensive approach that involves both community involvement and education. This is a point made by women activists, who advocate the need to have social movements as part of the reforms, and such a movement will help alter society's attitude towards the practices, especially female genital mutilation (FGM), and early marriages. Another important consideration in terms of legal analysis regarding female genital mutilation and child marriages in India pertains to the process of interpretation by the judiciary and enforcing any applicable laws.⁹⁹² The judicial branch is an institution that significantly contributes to determining the standards within society. In this sense, despite the numerous judgments regarding various forms of sexual abuse and child rights, there have been no explicit decisions taken by the Supreme Court on the matters of FGM and child marriage.⁹⁹³ As a result, the silence on issues of such nature is likely to continue because of cultural considerations and unwillingness to interfere in issues pertaining to human rights violations. Also, the enforcement of the law is hindered due to some structural problems, where there is no professional knowledge among the law enforcement officers on gender violence. Reports show that incidents of child marriage have been turned down or resolved informally because law enforcement officers tend to be hesitant about engaging themselves with the intricacies of these practices. Moreover, judicial delays and inefficiencies make the population skeptical about taking legal recourse for their complaints, which makes it difficult to report any crimes⁹⁹⁴.

⁹⁹⁰ Ministry of Women and Child Development, India (2023), *Policies to Prevent Child Marriage*.

⁹⁹¹ Government of India, *Child Marriage Restraint Act, 1929* and Amendment Act, 1978.

⁹⁹² Seervai, H.M. (2018), *Constitutional Law and Judicial Interpretation in India*.

⁹⁹³ Supreme Court of India Records (2024), *Gender Justice and Child Rights Cases*.

⁹⁹⁴ National Judicial Data Grid (2024), *Judicial Delay and Access to Justice in India*.