

TOWARDS VICTIM FRIENDLY RESPONSES AND PROCEDURES FOR PROSECUTING RAPE

A STUDY OF PRE-TRIAL AND TRIAL STAGES OF RAPE PROSECUTIONS IN DELHI BY PARTNERS FOR LAW IN DEVELOPMENT

This study was conducted in Delhi against the backdrop of what can be termed as a paradigm shift in the law relating to sexual assault in 2013, with the passage of the Criminal Law Amendment Act 2013, the Ministry of Health and Family Welfare (MoHFW) guidelines and protocols for medico-legal care for victims of sexual violence in 2014, compensation schemes for victims and directions to dispose rape cases expeditiously through special courts.

It sought to examine the extent to which the procedural reform and victim friendly provisions were in fact being implemented, and in this regard, what were the challenges and good practices. It also sought to identify gaps in the existing responses to sexual assault, through ascertaining needs of victims and by drawing upon model responses from comparative jurisdictions.

The study was conducted by Partners for Law in Development with support of Department of Justice, Ministry of Law and Justice, Government of India and UNDP. The trial observation of 16 cases in four fast track courts in Delhi and the interviews with victims was undertaken with permission of the Delhi High Court. The cases were selected in consultation with the Presiding Officers of respective courts.

SCOPE AND AMBIT OF THE STUDY

The sample size of 16, though not representative, allowed a qualitative study, providing a layered understanding of the working of the law *vis-a-vis* the victims at the trial stage interwoven with perspectives of victims.

Prior to the legislative amendments of 2013, the Delhi High Court constituted a committee in 2010 to monitor proper implementation of several judicial guidelines for matters pertaining to sexual offences and child witnesses in Delhi, the work of which is not within the ambit of this study. This committee has since established the Vulnerable Witness Deposition Complexes in Delhi and conducted district-wise trainings for

judicial officers, police, legal aid lawyers and prosecutors, which were nascent at the time of the commencement of this study, and thus not within the scope of its inquiry.

OVERVIEW OF CASES AND VICTIMS

The victims spanned all age groups between 18 years to 50 years, with the majority being in the category of 20-30 years. Most victims come from relatively weak socio economic background, depend considerably on their families, as a result of which the families exercise a high degree of control over decisions pertaining to the victim and support her through the criminal proceedings. All 16 cases pertain



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to acquaintance rapes, a category in which most rape cases fall under in India and globally. Given that the assault reported is within relationships of proximity, the offence is often recurring, and the threat persistent, before the victim decides to complain.

FINDINGS OF THE STUDY

The findings of the study are classified into the following:

- The pre-trial stage,
- The trial stage, and
- The need for support services

THE PRE-TRIAL STAGE

The pre-trial stage includes the registration of FIR, the medical examination of the victim, the arrest and bail of the accused, the S.164 statement of the victim to the Magistrate, and cognizance of the offence. This is governed by internal Standard Operating Procedure for the Police. The medical examination is governed by the revised ICMR Guidelines, which are now oriented by the twin needs of ensuring sensitivity towards the victim as a patient and collecting evidence for the trial.

Findings listed below have been drawn from juxtaposing the official narrative of pre-trial processes against the personal narrative of the victims through extensive interviews:

- Pre-trial records suggest formal compliance with timeline and protocol, such as medical examination within 24 hours of registration of FIR. Some victims experienced obstacles and harassment from the Police in registering the FIR.
- A copy of the FIR is not immediately available, but is dispatched later to the victims. Often, victims have to keep following up to obtain a copy. Zero FIRs are not consistently registered.
- In most cases, the medical examination was not conducted in consonance with MoHWF Guidelines. Consent is not formally taken although signatures/thumb impression indicating consent is taken on the form; in some cases, medical staff displayed hostility towards the victim.
- The requirement for medical treatment and counseling is not being followed as a matter of practice. Where counseling was provided, it did not adhere to the required standards.

THE TRIAL STAGE

The scope of trial observation in the study was limited to the deposition of the prosecutrix in court. Guidelines governing the victim's deposition were laid down by the Supreme Court in the cases of *State of Punjab v. Gurmit Singh* and *Sakshi v. Union of India*. The 2013 Amendments also stipulate that the trial should be completed within a span of 2 months.

Observations regarding the conduct of proceedings as well as the court environment, within which the deposition is conducted, were supplemented by the personal account of the prosecutrix through interviews to arrive at the following findings and recommendations:

- While fast-track courts are oriented with gender-sensitive procedures, they are inconsistent in practice.
- The defence questions during cross examination are inevitably hostile, often sexually suggestive to insinuate consent. Routing questions through the Presiding Officer ("PO") to prevent harassment is not an established practice, and seems to be followed only when the cross examination gets unacceptably offensive.
- Lack of legal orientation of the victim on legal procedure and rights impedes availing remedies under the law, such as being able to ask for a support person in court, or availing interim compensation.
- None of the cases were concluded within a period of two months, which seems to be an unrealistic time limit that is likely to compromise the fair trial standards. Delays occur for multiple reasons, including receipt of the Forensic Science Laboratory (FSL) reports and systemic factors like increasing case-load.
- While the prosecutrix is shielded from the accused within court by way of in-camera trials, and a screen to shield her from intimidation by the accused during trial, there is a need for victim-witness protection outside court premises, where the accused and his relatives continue to have access to the victim, and within the court precincts in waiting areas, and outside the Court.
- Since there is no agency mandated to provide legal guidance to the victim, they often approach sources within and outside the system for guidance which is available for extraordinary sums of money.

AVAILABILITY OF SUPPORT SERVICES

The most pressing lacuna that emerges from the study is the absence of support services that enable the victim to access judicial remedies and enable restorative justice within and outside of the court processes.

- The right to compensation is an invaluable form of support available to victims of sexual assault under the law. This is available at two stages – at the start of the case as an interim relief, followed by a final compensation from the legal services or through a court order. Yet, the absence of any agency being mandated to inform and facilitate the victim's access to compensation, none of the victims in the study were aware of their right or availed of interim compensation. A letter intimating one victim of final compensation due to her was issued on conclusion in one case that ended with conviction.
- There is no pre-trial orientation of the victims, resulting

in uninformed participation of the victim in the legal process. The lack of knowledge of the legal procedure victims are required to participate in produces anxiety, which further makes victims and their families vulnerable. This results in random payments by victims to different personnel to gain elementary information, documents including FIRs, information about the legal process; and does not enable informed consent for medical examination.

- There is no instance of the POs being informed of threats by the accused, and taking action, including passing restraint orders against the accused.
- Most victims re-locate on account of societal stigma as well as internal pressures from the family. Our research

shows some evidence of increased domestic violence after reporting sexual assault. An incident of sexual assault triggers external and internal pressures rendering women more vulnerable within their families. In such circumstances, individual and family counseling, guarantee of safe shelter, and other support services must be available to help the victim recover. These are not available currently.

The findings underscore the need for continuing trial observation and more extensive studies, within and outside Delhi to map justice sector responses to sexual crimes across the country. This is an important aspect of tracking implementation of the law to ensure it serves the goals for which it was enacted.

RECOMMENDATIONS

JUDICIARY

1. Establishment of an independent specialized agency to provide comprehensive support services to the victim

An independent specialized agency that is accessible for support directly or through referral by police or hospital, and staffed by paralegals and counselors will be able to provide or facilitate the following comprehensive services:

- Assist the victim in:
 - Registering the FIR and procuring a copy of the FIR
 - Obtaining free medical treatment, counseling, and guidance on the relevance of medical examination
 - Obtaining compensation under the state victim compensation scheme
 - Obtaining information regarding the status of investigation, and status of bail of the accused from the Investigating Officer
 - Meeting the prosecuting agency to present her account of the incident, and orienting her to the deposition processes
 - Alerting the prosecution or the court directly, of threats or pressure from the accused, or from her own family, to compromise
- Provide the following information/ advice to the victim:
 - Legal advice and support, information on her rights, and orientation on the trial processes, including pre-trial visits to court
 - Progress of the trial and updates on each stage
- Institute the following support systems:
 - A companion of her choice during trial
 - Individual and family counseling to the victim to mitigate the psycho-social impact of the incident

- Facilitate through referrals or assist directly, other services necessary for her recovery and to empower her against re-victimisation. These may include medical treatment, re-location, safe shelter, school admissions, scholarship, vocational training, and employment.

2. Guidelines for Presiding Officers in conducting the trial

The Presiding Officer [“PO”] has the most important role in the proceedings. Their leadership ensures strict and consistent compliance with statutory and judicial guidelines. The following good practices must be uniformly complied with:

i. In camera trials:

POs should ensure that staff including *ahlmads* and *naibs*, who are not essential to the deposition, are also ushered out (as is the case in the Vulnerable Witness Deposition Complex). They often respond to queries of waiting lawyers and litigants, thereby creating additional traffic in the courtroom.

ii. Number of defence counsels and their positioning during cross-examination:

POs should only allow those defence counsels who are essential to the cross-examination to be present in the courtroom. The defence team should ideally not exceed two persons. Large teams often serve the strategic purpose of intimidating the victim.

Only one defence counsel who leads the cross examination, must be allowed to stand beside the prosecutrix. The assisting counsel may be seated in a designated space, rather than crowd the victim during the deposition.

iii. Routing cross-examination questions through Presiding Officers:

The pre-existing stipulation of routing questions through POs must be considered mandatory for victim’s

deposition. This reduces the aggression directed at the victim, and may also eliminate irrelevant questions.

iv. Clarify rights to compensation and companion:

Presiding Officers, at the beginning of the proceedings, should inform the prosecutrix of her right to avail compensation under the state victim compensation schemes, and of her right to have a companion present with her during deposition.

3. Comprehensive witness/victim protection

All cases examined in this study related to acquaintance rape. An acquaintance/ his associates often have easy access to the victim and her family, and are capable of pressurizing and manipulating them. The victim-witness protection measures therefore must extend beyond the courtroom. Witness protection must be strengthened and expanded, to include the following measures:

i. Prohibition orders:

Requests for prohibition orders may be routed through the specialized support agency. In the absence such an agency, access to the public prosecutor prior to and during the proceedings should be facilitated, to route such requests to the Court.

- ii. Protection should be extended to the victim/witness as long as there exists pressure from the accused to drop the proceedings, or threats of retaliation or retribution
- iii. Shelter and relocation of victim
- iv. Counseling for the individual and family of the victim
- v. Perjury proceedings should not be initiated against the victim if she changes her testimony. This is often the outcome of fear, compulsion, and pressures that the legal system does not adequately address

4. Duration of trial

The statutory stipulation of concluding trials within a period of two months is neither realistic nor conducive to fair trial rights of the accused.

- i. As far as possible, proceedings should be conducted on a day-to-day basis. Courts can consider blocking consecutive dates to complete the deposition of a witness, and then resuming after a few months when the next set of dates are available.

- ii. The prosecutrix testimony should be completed at the commencement of the trial, on a day to day basis.

5. Quality and periodic trainings of Presiding Officers, Public Prosecutors and legal aid lawyers

It must be mandatory for Presiding Officers, Public Prosecutors, legal aid lawyers as well as any specialized agency to undergo training programmes to refresh their knowledge and perspective, and reflect upon their practices. The trainings must comply with the following:

- i. Must be periodic to refresh knowledge and perspective
- ii. Must not be limited to lectures, but include peer learning through participatory exercises and group work.
- iii. Content must go beyond the law, to understand how law filters through understandings of gender, sexuality, caste, disability, poverty to impact access to justice.
- iv. Independent qualitative monitoring of trainings, and the agency that conducts them.

OTHER AGENCIES WITHIN THE LEGAL SYSTEM

1. Medical examination to comply with MOHFW Guidelines

- It is vital that the medical personnel be trained to understand the reformed procedures stipulated under the MoHFW guidelines and protocols for survivors/victims of sexual violence.

Only those garments that were connected with the crime must be taken for purposes of forensic investigation. They should not be taken routinely regardless of their relevance.

2. Set up more Forensic Science Laboratories (FSL)

- Currently, there are only 2 forensic science laboratories in Delhi, which prepare evidentiary FSL Reports for criminal trials across all districts. They are overburdened and under-staffed, which has lead to a significant backlog and delay. It is imperative that additional well-equipped FSLs be set up across Delhi.

3. Quality and periodic trainings for all agencies involved

- Trainings are often tokenistic without attention to quality or monitoring impact of trainings on attitudes and practices of these agencies. Emphasis must be on curriculum, methodology, duration and the quality of trainers. For guidelines for trainings, please refer to Point No. 5 above.