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# TOWARDS VICTIM FRIENDLY RESPONSES AND PROCEDURES FOR PROSECUTING RAPE

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A STUDY OF PRE-TRIAL AND TRIAL STAGES OF RAPE  
PROSECUTIONS IN DELHI (JAN 2014-MARCH 2015)

(Revised report May 1, 2017)

**CONDUCTED WITH SUPPORT OF:**

DEPARTMENT OF JUSTICE,  
MINISTRY OF LAW AND JUSTICE  
GOVERNMENT OF INDIA

AND

UNITED NATIONS DEVELOPMENT PROGRAMME



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## ACKNOWLEDGMENTS

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This study was conceptualized and executed by Partners for Law in Development, but would not have been possible without the support and engagement of different agencies and individuals, who we express our deep appreciation for. Our gratitude is due to the Delhi High Court for approving this study, enabling us to undertake the trial observation and victim interviews, which were a fundamental part of the research methods for this study. We specifically thank the former acting Chief Justice of the Delhi High Court, Justice B.D. Ahmed, during whose tenure the study was approved, and subsequently, Justice G. Rohini under whose tenure the study was carried out. We acknowledge with gratitude the brainstorming meeting called by Justice Ravindra Bhat of Delhi High Court, with the Presiding Officer of the Fast Track Courts, to finalise the conditions of the study, the sample size and selection of courts for trial observation. The inputs and support extended to us at this meeting helped clarify research methods and ethics of study. We further thank the Presiding Officers of the four fast track courts where the trial observation was conducted, for extending cooperation and responding to our requests in a timely manner without delaying the study. Similarly, we acknowledge the help of the court staff, in particular the *ahlmads* with whose support we were able to study case records, gain valuable insights into the proceedings, and keep abreast of dates.

Equally, we also extend our gratitude to the Department of Justice, Ministry of Law and Justice without whose approval and faith in our capability, this study would not have been actualised. In particular, thanks are due to D.K. Sikri, former Secretary (Justice), who initiated several meetings to finalise and sanction the study; to Kusumjit Kaur Sidhu, former Secretary (Justice), who accepted an earlier draft of the study, seeking action points for implementing the achievable recommendations; and finally, Snehalata Srivastava, current Secretary (Justice) to whom this revised report incorporating inputs of the Delhi High Court was submitted. We mention with gratitude the engagement and support from former Joint Secretaries, Atul Kaushik and Praveen Garg, during whose tenures the study was approved and conducted; as well as the current Joint Secretary, S.C. Barmma, who keenly engaged with realisation of key findings of the revised report.

Mention must be made of the passionate engagement and contribution by PLD's research team. The trial observation in the four fast track courts, as well as preliminary interviews with victims were carried out by Amartya Kanjilal, Ishani Cordeiro, Deeksha Gulati and Radhika Chitkara; the detailed interviews with victims were subsequently carried out by Deeksha Gulati and Radhika Chitkara.

Mention must be made of our interns, Manimanjari Sengupta and Akshi Rastogi for undertaking comparative law research and thanks are also due to the experts from respective jurisdictions, all of whom are mentioned in the report, for reviewing the findings in relation to their respective countries. Thanks are due to Radhika Chitkara for collating all the pieces from the researchers and preparing the draft report, and to Madhu Mehra for overall guidance, reflections on the findings and for finalising and editing the report.

Our immense gratitude to the resource pool of experts - Farah Naqvi, Mrinal Satish, Pratiksha Baxi and Rebecca John, who reviewed the progress of the research and findings of the study as they emerged on a quarterly basis; providing guidance and course correction that have qualitatively enriched the report. We also extend our appreciation to the legal experts in other jurisdictions for vetting our research on comparative law, to document good practices in rape trials. These include Vrinda Narain, professor at faculty of law and the Institute for Gender, Sexuality and Feminist Studies (IGSF), McGill University, and her research assistant, Charlotte Harman, for vetting our research on Canadian rape law procedures; to Pritarani Jha, Peace and Equality Cell, for reviewing our research on England and Wales; to Lesley Ann, Masimanyane Womans Support Center, South Africa for reviewing our research on rape law procedures in South Africa; and to Janet Loughman, Women's Legal Services, New South Wales, for reviewing our research on New South Wales.

Our heartfelt thanks to the victims and their families who reposed trust and faith in us and in this study, to share personal experiences, some very painful, that has provided the critical lens for assessing the justice sector responses to victims, and for understanding the gaps in the system.

Last but not the least, we also hold enormous appreciation for the United Nations Development Programme in India that is committed to advancing policy oriented research, for reposing faith in us and extending financial support to this research. Mention must be made of Assistant Country Director, Sumeeta Banerji; former Programme Officer (Access to Justice) Kanta Singh; and the former Access to Justice team, led by Navaz Kotwal, for their invaluable support, timely extension, coordination with the Department of Justice and astute advice from time to time. While this study is entirely an outcome of collective engagement, collaboration and effort, the responsibility for limitations and lapses lie with PLD alone.

## EXECUTIVE SUMMARY

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This study was conducted against the backdrop of what can be termed as a paradigm shift in the law relating to sexual assault. Even as the debates and activism seeking comprehensive law reform go back to the late 1970s, the law reform processes in 1983 and onwards was piecemeal. The period following 2013 became watershed in many ways, with the passage of the Criminal Law Amendment Act 2013, the ICMR guidelines regulating medical procedures in 2014, compensation schemes for victims and directions to dispose rape cases expeditiously through special courts – concretizing significant judicial pronouncements in statute. In Delhi, 6 fast track courts were constituted in this period.

In many ways, Delhi occupies a distinctive position in the journey of rape law reform. The city's streets witnessed outrage led by youth as well as a cross section of society post-December 2012, creating the momentum for passage of the law reforms of 2013. Even prior to these legislative amendments, the Delhi High Court had constituted a 'Committee to monitor proper implementation of several guidelines laid down by Hon'ble Supreme Court as well as Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses' in 2010. Under its aegis, the country's first Vulnerable Witness Deposition Complex in Karkardooma courts in 2012 was established, designed to spatially separate and shield the prosecutrix from the accused during deposition; followed by district-wise trainings for judicial officers, police, legal aid lawyers/prosecutors aimed towards enhancing responsiveness of the system to victims of sexual offences. As these changes were nascent at the time of commencement of this study, they were not within its ambit of inquiry.

The ambit of this study was limited to examining compliance with legislative, judicial and executive guidelines set out in Annexure 1 of the report. The letter of the Delhi High Court dated 28.3.2013 granting permission to PLD, set out the terms and methodology of the study, indicating that "a total number of 16 cases pending" in four Special Fast Track Courts be selected, and further, that the "concerned Court and the District Judge shall be involved in the identification of the cases". The letter granting permission is attached as Annexure 5. Although not a representative sample size, the 16 cases were selected to draw qualitative findings within the constraints of time and resources. It was deemed sufficient for qualitative understanding of the extent to which victim centric provisions were incorporated into practice, to feed into ongoing processes that seek to strengthen the responsiveness towards victims of sexual assault. The study and its findings therefore do not pertain to the noteworthy developments that were instituted over time by the aforesaid Committee.

### SCOPE AND QUALIFICATIONS OF THE STUDY

Accordingly, the study 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. Further, it 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.

In line with the approval from the Delhi High Court, the study involved:

- Monitoring 16 cases of rape in four of the six fast-track courts in Delhi from February 2014 to March 2015;
- The monitoring was carried out through examination of pre-trial records, observation of the examination and cross examination of the victims;
- On completion of the deposition and cross-examination of the victim, interviews were conducted with the consent of the victims to understand their experience of the legal process and the impact of pursuing legal redress on their lives.
- This was supplemented by desk research on good practices in rape trials adopted by other jurisdictions.

The sample size is not representative so its findings cannot be generalized to comment on all rape trials conducted in Delhi. Further, the findings cannot be inferred to pertain to the developments initiated by the 'Committee to monitor proper implementation of several guidelines laid down by Hon'ble Supreme Court as well as Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses' as these were at the incipient stages when the study was conducted, and in fact, were not the subject of this study.

The findings of the study together with the recommendations are classified into three stages:

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

### **OVERVIEW OF CASES AND VICTIMS**

An overview of the nature of cases and victims in the study provides the backdrop against which to read their journey through the criminal justice system. The victims spanned all age groups between 18 years to 50 years, with the most number of victims in the category of 20-30 years. While information on the education and income levels and on the marital status is not available for all victims, most of them live in networks of dependence within their families. These networks are sources of support for the victim through the criminal proceedings, but they also exercise a high degree of control on decisions pertaining to the victim. Several experience increased vulnerabilities to violence within the family in the aftermath of the incident as well.

All 16 cases were those of acquaintance rapes, reflecting NCRB data over successive years that in a preponderant percentage of reported rapes the accused is known to the victim. Owing to these relationships of proximity, the offence is often recurring, and the threat persistent, before the victim decides to complain. The decision to report is also not autonomous, but mediated by the family. The accused have access to the victims in their daily lives, since they know their identities and address, which often compels the victims to relocate.

### **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, which directs the

Police to take the victim for the medical examination within 24 hours from registering the FIR, for the S.164 statement to the Magistrate as soon as possible thereafter, and to arrest the accused. 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, while dispensing with stereotypes that are prejudicial towards rape victims.

To study the pre-trial stage, the study placed reliance on the FIR, the medico-legal certificate (MLC) of the victim, final report form, arrest memo, chargesheet and court orders. The official narrative of the pre-trial processes was read in juxtaposition of the personal narrative of the victims through extensive interviews.

The findings from our research data show:

- **Pre-trial records suggest formal compliance with timeline and protocol:** Within 24 hours after the FIR is registered, the victim is taken for her medical examination, and in a few days, for her S.164, CrPC statement to the Magistrate. The accused are also arrested, and within the span of 2-3 months, the case is taken cognizance of by the Magistrate.
- **Some victims experience obstacles and harassment during registration:** Despite an apparent compliance with protocol in pre-trial records, some victim interviews suggest resistance and harassment in registering an FIR, including efforts to dissuade the woman from registering a complaint based on opinions on the veracity of the complaint, or by invoking family values. While there is evidence on successful registration of zero FIR, there is also an instance of refusal of the same. Copies of FIR are not immediately available. The accounts of victims show inconsistency in implementing the law.
- **Medico-forensic procedures not conducted as per ICMR Guidelines:** The medico-forensic procedures, despite the new ICMR guidelines, show little evidence of any transformation. a) the examination is still not conducted with the informed consent of the victim; b) internal examination of the victims continue, although the victims are not informed of their purpose. While they are a part of medical treatment afforded to the victim, they are also used to make insinuations of her sexual history by making notings on old tears in the hymen; c) express notings about the absence of injuries on the body of the victim also persist, to suggest a lack of resistance to the assault; d) hostility, disbelief and advise to not pursue the case by medical staff reported by at least one victim.
- **Medical examination neglects treatment and counseling:** The medical procedures emphasise only those processes that are relevant for the collection of evidence to feed into the trial, and neglect granting continued medical attention to the victim for treatment of injuries incurred during the assault, and counseling. There is no evidence of counseling to victims except in two of the sixteen cases, although required under the guidelines. The counseling provided also does not adhere to the required standards, as it just involves asking the victim what her expectations of the legal proceedings are.
- **Victims/ complainants need legal guidance and support services:** Beginning from the point of registering the complaint, the victims/ complainants experience confusion and uncertainty about what to do, what to expect and the logic behind each of the steps in the pre-

trial as well as the trial stages. The lack of legal orientation, guidance creates enormous anxiety, leading to undue financial exploitation for gaining elementary legal information, including just obtaining a copy of the FIR. It also compromises the rights of the complainant, as we see later in trial stages, as they don't avail of a companion during deposition or compensation or indeed, medical treatment. This is a vital gap in the system.

The recommendations for reform of pre-trial procedures, corresponding to the above findings are as follows:

- a) **Hospitals/ Medical Guidelines:** There appears to be little or no training of the hospital staff on the revised ICMR guidelines basis of this data. It is absolutely pressing that trainings are conducted in all hospitals to not just to be acquainted with new procedures, and be alerted to those that are discontinued. Emphasis must be placed on understanding why certain procedures are prohibited and the more importantly, what the current procedures signify. Only then can the revised ICMR guidelines be adopted in letter and spirit, and translate into attitudinal change and practice.
- b) **Quality of trainings of all agencies involved in pre-trial stage:** Much greater attention needs to be placed on the quality, curriculum, substance, duration and periodicity of trainings. These must go beyond the symbolic and perfunctory exercises that frequently pass off as trainings. There is a need for monitoring and evaluation of trainings so that the intended impact is tracked or trainings revised as relevant.
- c) **Legal orientation/ support services and monitoring of the case:** There is a need for a specialized agency such as a one stop crisis centre (providing support services discussed in later), whose role begins from the time of reporting, and includes orienting the victim on her rights. Besides being a necessary response to help victims of sexual assault, a specialized agency enables the victim to navigate the legal procedure, rendering her less vulnerable. It will additionally act as a monitoring body, troubleshooting as and when problems become apparent in a case.

## **THE TRIAL STAGE**

In the trial stage, the study was limited to observing the deposition of the prosecutrix in court, since this is the site which most clearly suggests the hostility or sensitivity of the judicial process towards the victim. It is also in respect of the depositions of the victim that the Supreme Court has laid down guidelines in the cases of *State of Punjab v. Gurmit Singh* and *Sakshiv. Union of India*, to shield the prosecutrix from the accused as well as the general public, and to place her at ease during her testimony by routing questions through the Presiding Officer, and offering her a chair, water and breaks as and when required. The 2013 Amendments also stipulate that the trial should be completed within a span of 2 months.

This stage was monitored by the researchers through observation of the deposition of the prosecutrix in court. Observations regarding the conduct of proceedings as well as the court environment within which the deposition is conducted were documented. These observations were further supplemented by the personal account of the prosecutrix through interviews.

The findings and recommendations in relation to this part include:



- **Fast-track courts oriented with procedures, but inconsistent in practice:** The fast-track courts are overall well-oriented with gender sensitive procedures for conducting rape trials, but court practices vary, showing a degree of inconsistency in the application. One out of the four fast track courts where the cases were monitored demonstrated an exemplary understanding of these procedures, with consistent application, showing that it is entirely possible to implement legislative and judicial guidelines in letter and spirit to make the trial less arduous for victims.
- **Prosecutrix shielded from accused within court, but need for victim-witness protection outside court premises remains:** Pursuant to the guidelines in *State of Punjab v. Gurmit Singh* and *Sakshi v. Union of India*, our observation reveals that all trials were conducted *in camera* and the testimony of the victim was taken from behind a screen- both important measures to shield the victim from anxiety and intimidation generated by being in physical proximity of the accused. The Vulnerable Witness Deposition Complex achieves this more fully, by designating different physical spaces for the accused and the victim. Yet, these appeared to be insufficient, since we found the accused and his relatives continue to have access to the victim, even within the court precincts in the waiting areas. The access of the accused and his associates to the victim, is one of the complex reasons for compromises or the victims turning hostile. As all the cases that were part of this study related to acquaintance rapes, the accused and his relatives/associates also had access to the victim outside the court premises, pointing to a need for shielding and protection to the victim/witness beyond deposition during the trial.
- **Questions in cross-examination must be routed through the Presiding Officer:** The defence questions are inevitably hostile, often sexually explicit, intended to insinuate lack of resistance to imply consent. This practice continues. To counter this, one of the guidelines in *Sakshi v. Union of India* requires questions in the cross-examination to be routed to the prosecutrix through the Presiding Officer, to prevent harassment and intimidation by the Defence Counsel. This is not an established practice. The practice seems to be followed only when the cross examination gets unacceptably offensive, after the distress of the prosecutrix becomes apparent according to our observation. However, at least one of the four courts that were part of this study, showed more vigilance in this respect. Mandatorily routing cross examination questions through the Presiding Officer would go a long way in minimizing the stress and harassment faced by the prosecutrix during the trial.
- **Lack of legal orientation on procedure and rights impedes availing remedies under the law:** The roles of Presiding Officer and Public Prosecutor are distinct, and even the best practice evidenced in this study indicates that no one is mandated to specially look out for the rights and well being of the prosecutrix. None of the prosecutrices seemed to know about their right to be accompanied by a support person or companion during deposition. Many certainly appeared to need one. The Presiding Officer allowed companions on an ad hoc basis when and if they remembered. The Public Prosecutor only meets the prosecutrix in court, and while she is familiar with the records, she is unaware of the pressures for compromise, the compulsion to re-locate, domestic violence, all of which often occur. Only in the case of one of the prosecutrices did the court refer her case to the Delhi Legal Services Authority for compensation, and she was apparently confused about how to avail of it. A need for a

specialized agency to orient, guide the prosecutrix through the legal process, in addition to providing other support services cannot be emphasized enough.

- **Timeline of the trial:** Contrary to the stipulation in S.309(2), CrPC of completing rape trials in a period of two months, it was found:
  - The deposition of the prosecutrix alone was not completed within this time period.
  - Delays occur for multiple reasons, including receipt of the FSL reports and systemic factors like increasing case-load, which make delay unavoidable.
  - The minimum time taken to complete just the deposition of the prosecutrix in our data was 77 days (2 months 16 days), with the average time period being 37 weeks (8.5 months).
  - In some cases, the deposition of the prosecutrix continued even after the 15 month period of the study.

The need for reform of all agencies that feed into the trial must be emphasized, as well as a stricter approach to adjournments. Yet, it is unlikely that an entire trial can be completed in two months. Setting a mandatory outer limit will neither be realistic, nor will it fully accommodate the demands of fair trial. The best option recommended is therefore, to conduct day-to-day hearings, and complete the deposition of the victim at the commencement of the trial so as to leave little room for influence and coercion.

#### **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 outside of the court processes as well. While there is no provision for such support services currently, interviews with victims were most instructive about the nature of support services that were a necessary part of state response to sexual assault. Apart from being essential to restorative justice, such services are vital to enabling victim participation in the legal process and in safeguarding her rights.

- **Compensation available but inaccessible:** Currently, the only form of support available to victims of sexual assault from the state is victim compensation, which includes costs incurred by the victim for medical treatment, judicial remedies and other disruptions caused by the assault. Owing to the absence of any actor who is mandated to inform and facilitate the victim's access to these rights/ procedures, none of the victims were aware of their right to avail compensation. The case of only one victim in the entire study was directed by the court to the Delhi Legal Services Authority for compensation and she was unable to proceed owing to lack of guidance.
- **No pre-trial orientation of the victims:** Victims get catapulted in the legal maze upon the occurrence and reporting of an assault. There is no pre-trial orientation of the victims. They walk blindfolded as it were, through the legal maze without knowledge of the objective of any of the steps taken or their role. This undermines 'access to justice' as well as informed participation. The Investigation Officer and the Public Prosecutor play distinct roles at different stage, with victim orientation not being part of anyone's brief. This situation produces anxiety, which further makes victims and their families vulnerable to all influences and coercion, often making compromises seem as a more viable choice (as was evident in some cases in this study).

- **Uninformed participation leads to further exploitation:** The noticeable outcomes of uninformed participation that were evident in this study include – random payments by victims to different personnel to gain elementary information about the legal process, lack of informed consent for medical examination, and most importantly, not applying for compensation available to victims under the law.
- **Support services for witness protection:** Although compromises are often known to be in the offing, including by the court staff, there is no instance of the Presiding Officers being informed and taking action, including passing restraint orders against the accused. In such cases too, a specialized support group could be the via media for taking appropriate action to stymie pressures and influences.
- **Shelter and counseling to combat stigma and further vulnerability to violence:** Victims also experience re-location on account of societal stigma as well as on account of internal pressures from the family. There was evidence of increased control by the family upon the victim after reporting sexual assault. 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, exposing them often to further victimization. In such circumstances, individual and family counseling, guarantee of safe shelter, and other support services must be available to help the victim recover. These however are not available currently.

Comparative law research underscores the value of comprehensive support services that dovetail with the criminal justice system. These are essential to what constitutes model responses to victims of sexual assault, and to prosecution of cases. Notably, in the jurisdictions that place importance on victim's needs and rights, there are specialized centres with trained personnel and expertise that respond to victims of sexual assault, irrespective of her decision to register a case. They offer a range of services and referrals to women and if victims opt for legal redress, they are supported and guided through the legal process.

The findings underscore the need for more extensive studies, as Delhi is not representative of justice sector responses to sexual crimes across the country. Similar studies across different parts of the country need to be carried out by independent agencies in collaboration with the judiciary, to examine the extent to which the compliance with domestic benchmarks on gender sensitivity exists across diverse contexts. It underscores the value of sustained trial observations in Delhi on a continuing basis, interviews with victims, monitoring the functioning of the multiple agencies involved in the justice delivery process to continuously track and address challenges as they appear.

## CHAPTER 1: INTRODUCTION AND METHODOLOGY

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The year 2013 witnessed a substantial shift in the legal framework to redress sexual assault in India that was more comprehensive than what had been introduced in the earlier reform initiatives. While previous decades had seen piecemeal changes in laws relating to rape, it was only in 2013 that a gradation of sexual offences was finally recognized. The Criminal Law (Amendment) Act, 2013 [2013 Amendment], introduced new sexual and gender based offences against women, along with crucial procedural changes and new remedies to make the system responsive and accountable to victims. The procedural changes particularly, have sought to make the legal procedure more sensitive and less hostile for victims, to enable them to access the legal redress.

In addition to legislative amendments, there have been judicial pronouncements calling for restorative justice to the victim, that were put into operation through state compensation schemes for victims, revision of ICMR Guidelines on medical procedures in a case of rape and Standard Operating Procedures for the police. In Delhi, six fast-track courts were established exclusively to try cases of rape in an expeditious manner. In Karkardooma district courts, two Vulnerable Witness Deposition Complex that ensured physical separation of the victim and the accused in the court premises.

These changes take on board long-standing critiques of the hostile nature of procedures in redressal of rape in the police stations, hospitals, and also courtrooms, which have been as much a worldwide phenomenon as a domestic one. As the Supreme Court had laid down in the landmark cases of *State of Punjab v. Gurmit Singh*<sup>1</sup> and *Sakshiv. Union of India*,<sup>2</sup> rape trials are now to be conducted *in camera*, with a screen between the victim and the accused during her deposition, by routing questions in the cross-examination through the Presiding Officer, permitting breaks to the victim during her deposition etc. The 2013 Amendment itself vests new rights in a rape victim relating to her FIR, medical examination etc. that would make the process of legal redress easier. All these stipulations are provided as **Annexure 1** to the Report.

Against this backdrop, the study sought to examine the extent to which (legislative, judicial and executive) victim friendly guidelines set out in Annexure 1, were being implemented, recording as well the challenges and good practices in this regard. Further, it 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. Although by 2013, the Delhi High Court had constituted a 'Committee to monitor proper implementation of several guidelines laid down by the Hon'ble Supreme Court as well as the Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses', which in turn set out guidelines and the Vulnerable Witness Deposition Complexes, its work was nascent at the time of the study, and therefore beyond the scope of the present study.

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<sup>1</sup>AIR 1996 SC 1393

<sup>2</sup>AIR 2004 SC 3566

The study commenced in January 2014, and draws upon cases that were prosecuted for rape in 4 of the 6 Fast Track Courts in Delhi constituted in early 2013, evaluating procedural compliance at the pre-trial and trial stages, based on observation, case records, and the experience and needs of the victims. Trial observation is limited to the completion of the examination-in-chief, cross examination and re-examination of the victim in court. The pre-trial procedural compliance has been evaluated through case records and through interviews with victims, where possible. Comparative analysis of good practices followed in other jurisdictions is also undertaken to study model responses to sexual assault redressal, tailored to their contexts.

## **1.1. METHODOLOGY**

This study covers different stages of procedure relating to rape trials, to examine their compliance with the legal norms designed to facilitate gender justice. The three stages pertain to: the pre-trial stage, the trial stage, and the need for as well as the availability of support services. These three stages were examined through close observation of 16 cases selected across four special courts in Delhi, through a combination of methods. These include an inspection of case records, trial observation, victims' interview, and comparative law research. Each of these methods will be discussed to describe the methodology by which the study was carried out.

A Resource Pool of four experts from multidisciplinary fields was also constituted to review the findings periodically.<sup>3</sup> Templates or questionnaires were developed to document procedural compliance for all processes and stages of the study, which were vetted by the resource pool. On a quarterly basis, meetings were also held with them to review the progress of the study and the interim findings.

### **1.1.1. SELECTION OF COURTS AND CASES**

As per a Delhi High Court notification of 2 January 2013, six fast-track courts were set up in Delhi to exclusively try sexual offences, one each in Dwarka, Karkardooma, Rohini, Saket and two in Tis Hazari.<sup>4</sup> By a letter dated 28.10.2013, attached as **Annexure 5**, the Delhi High Court granted permission for studying 16 pending cases from the following four Special Fast Track Courts - two were in Tis Hazari, and one respectively in Saket and Karkardooma courts. The letter granting permission further noted that "the concerned Court and the District Judge shall be involved in the identification of cases" for this study. Accordingly, the selection of cases was undertaken in consultation with the Delhi High Court and the Presiding Officers of the fast track courts, as these are called. The four courts selected have been randomly coded as FTC A, FTC B, FTC C and FTC D, for purposes of this study, so as to focus attention on the findings in respect of each court, without identifying the court in question.

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<sup>3</sup>Farah Naqvi, writer and activist, Mrinal Satish, Associate Professor (Law), National Law University, Delhi, Pratiksha Baxi, Associate Professor, Centre for the Study of Law and Governance, Jawaharlal National University, Rebecca Mammen John, Senior Advocate

<sup>4</sup>01/DHC/Gaz./G-1/VI.E.2(a)/2013

There are 16 cases on which this study is based. This sample size is not a representative and the findings of this study therefore cannot be generalized for all rape cases. The sample size was kept to 16 cases, keeping in mind the constraints and purpose of the study. With a limited resources and a time period of 13 months, it was felt that a qualitative approach would best served the objectives of the study. Even so, 17 cases were selected, to keep an extra case in FTC A as a buffer. Despite this buffer, more cases had to be selected subsequently as the victims did not appear for even a single hearing in one case each in FTC A, FTC B and FTC C, respectively. In all courts, with the exception of FTC C, we were permitted to replace the cases where the victim did not appear with fresh cases. In FTC C however, we had to continue with the old case, which remains a part of this study, in which the victim never appeared.

The cases identified for trial observation were registered after the enactment of 2013 amendment, focusing only on the depositions of the victim. As a result, only those cases were selected where the victim's deposition was yet to commence. Although the idea was to capture socio-economic diversity as widely as possible, this was somewhat limited for two reasons – the first, that cases for observation had to be where the examination of the victim had not yet commenced, and the second, that in some instances, shortlisting the cases for the study was undertaken by the Court.

The Presiding Officer in FTC C identified all the cases herself, while the Presiding Officers in FTC A and FTC D left the selection of the cases to us in consultation with the *ahlmad*. The Presiding Officer in FTC B allowed us to select the cases, which we did using diversity as a criteria. The cases selected reflect diversity in age, economic status, social group/ communities of the victims, as well as different types of assault, such as aggravated or non-aggravated, recurring or one-time assault.

### **1.1.2. INSPECTION OF CASE RECORDS**

Official case records of the 17 shortlisted cases were perused for information on the pre-trial processes of the FIR, medical examination, arrest of the accused, S.164, CrPC statement of the victim to the Magistrate, date of cognizance and framing of charges. Reliance was placed on the FIR, medico-legal certificate (MLC) of the victim, final report form, arrest memo, chargesheet and court orders. Information from these documents was gathered as per the template created by us for documenting the information, attached as **Annexure 2**.

### **1.1.3. TRIAL OBSERVATION**

This involved observing the examination-in-chief and the cross examination of the victim in court in the cases identified and also the court environment. The role of the researchers was to observe and record the proceedings as they saw it, noting architectural aspects, number of persons present during the *in camera* proceedings, roles of all present in the court, including the Presiding Officer, the defence lawyers, the public prosecutor, the victim – and all others present. The researchers would note the activity outside the courtroom before the proceedings of the shortlisted case would commence in court, and sit in the benches in the courtroom to observe the progress of proceedings. In one case, they were asked to sit with the victim to provide support to her during her examination-in-chief. The observations of what transpired during trial were recorded in the

template created for the purpose, (see **Annexure 2**). The details of the 16 cases, classified under their respective courtrooms, are attached as **Annexure 3** for reference.

#### **1.1.4. VICTIM'S INTERVIEW**

This involved speaking to the victim about her experience of the legal system, and the overall impact of the incident and the trial on her life. The personal narratives of the victims were necessary to infuse the findings on pre-trial procedures and our observations of the trial stage with the victim's perspective. The interviews were conducted as per the pre-decided template (see **Annexure 2**). These interviews were conducted only in cases where:

- The deposition of the victims had concluded;
- The victim had consented to the interview and;
- On an assurance of confidentiality and non-disclosure of the identity of the victims.

The interview was conducted in two stages, and consent was taken at both these stages. The preliminary interview was conducted in court immediately after the deposition of the victim concluded and she was discharged. This interview focused on basic questions about the case and the victim's experience with different actors through the pre-trial and trial processes, lasting approximately 20 minutes. The second, detailed interview was conducted at a later stage depending on the convenience of the victim. Here, the interview chronicled the overall impact of the incident on her life, and understand what she expected from the criminal prosecution.

In most cases, consent for the interview with the victim and access to her was mediated through her family, since the families wielded considerable influence on her in the context of the case. In *toto*, out of the 9 cases in which the deposition of the victim had been completed, 8 preliminary interviews were conducted, and in 1, consent was refused. Only two of the preliminary interviews were conducted alone with the victim, and with the rest, there would always be a family member present. This would often be the husband of the victim, but in some cases, would also be the mother or sister or uncle.

Of the 8 victims with whom preliminary interviews were conducted, detailed interviews could be conducted with only 4; the remaining 4 could not be interviewed as 2 were untraceable as they had re-located, and in the remaining 2, the family did not permit access. Of the 4 with whom detailed interviews were conducted, two were conducted with the victim alone, one was conducted in the presence of the mother of the victim, and one was conducted in the presence of the husband of the victim, as reflected in the Table 1.1 at the end of this chapter.

#### **1.1.5. COMPARATIVE LAW RESEARCH**

This involved comparing international standards and good practices in state and justice sector responses to sexual assault. The research was vetted by experts in the respective jurisdictions. The selection of jurisdictions was based on the significant attention paid to making law and ancillary support systems in these countries respond to the needs of victims of sexual assault and the particularity of rape cases. The selection also combines developed and developing countries, to map model norms and systems in relation to responses to sexual assault, to evaluate the extent to which

the reform in India meets the global standards of gender-sensitivity. Based on this, the jurisdictions of the province of Ottawa in Canada, South Africa, United Kingdom and Wales, and the province of New South Wales in Australia were shortlisted.

#### **1.1.6. TERMINOLOGY**

To ensure consistency throughout the report, standard terminology has been employed, as specified below:

1. Reflective of their status at different stages in the proceedings, the rape victim has been referred to as 'complainant' in the chapter on the pre-trial stage, as 'prosecutrix' in the chapter on the trial stage, and as 'victim' in the chapter on the availability of support services. While the word 'survivor' has come to be preferred over 'victim', we believe that 'survivor' masks the victimhood that women do experience consequent to rape, which may be due to stigma, further vulnerability to violence, and the limitations of institutions and networks of care.
2. All the different actors involved throughout the process, the Presiding Officer, the Public Prosecutor and others have been uniformly referred to in the female pronoun, except the accused, who can only be male as per law.
3. The *ahlmadis* a member of the court staff who is incharge of the case records and files, and who ensures that the documentation in the files is up to date with the progress of the case.
4. The *naib* is a uniformed police officer deputed to the courtroom, who ensures the production of the accused and the witnesses, with the coordination of the jail authorities and investigating agencies.
5. Judges of the Fast Track Courts have been referred to as the 'Presiding Officer', in keeping with their overarching judicial and administrative functions within the courtroom.
6. The Investigating Officer is a police inspector, and is in-charge of investigating the case, and maintains contact with the victim on the case.
7. The fast track courts have been randomly codified and referred to as FTC A, B, C and D.

#### **1.1.7. CONFIDENTIALITY**

As far as possible, confidentiality regarding the case and the identity of the victim has been maintained throughout the report, referred to by the case number, as Case 1, 2, 3, and so on. The case summaries annexed to this report identified the victim through pseudonyms. The confidentiality of the Courts and cases too have been maintained, as they have been referred only through randomly assigned codes and generic terms. The cases have been described in detail in **Annexure 3** of the report, which refers to victims through pseudonyms, cases and court rooms through codes, to ensure that none of these can be identified. Prior to the interview, victims were also assured of strict confidentiality.

To ensure confidentiality at every level, including in internal records and documentation within PLD, all the data and information, including in transcripts of interviews of victims, have been codified. The names and other markers of identity of the victims prepared initially for codification were erased after completion of codification.



### **1.1.8. STRUCTURE OF THE REPORT**

The Report is divided into seven chapters:

- The first chapter introduces the context, need and parameters of the study, along with a detailed explanation of the methodology followed in conducting research.
- The second chapter presents an overview of the cases and describes the socio-economic status of the victims.
- The third chapter relates the observations pertaining to the pre-trial stage in the criminal process, drawn from the case records and the victims' interviews.
- The fourth chapter provides an analysis of the trial stage, drawn from court observations by the researchers and also the victims' interviews.
- The fifth chapter comments on the need for and availability of support services to the victims to navigate the criminal process. Support services here refer to legal guidance, in addition to multiple support services to address the pressures that inevitably impact the lives of victims.
- The sixth chapter undertakes a comparative look at good practices in rape trials followed in the four jurisdictions of Ottawa (Canada), the United Kingdom, South Africa, and New South Wales (Australia).
- The report concludes with recommendations in the seventh chapter, based on the findings through the study and a comparison of practices in other jurisdictions.

### **1.1.9. STATUS OF CASES AS ON MARCH 31, 2015**

At the time of completion of the study, on March 31, 2015, the status of the 16 cases under observation stood as represented in the table below:

**STATUS OF CASES AS ON MARCH 31, 2015**

CASE	STATUS	
	INSPECTION OF CASE RECORDS	DEPOSITION OF VICTIM
1	Completed	Pending
2	Completed	Pending
3	Completed	Completed
4	Completed	Pending
5	Completed	Completed
6	Completed	Pending
7	Completed	Pending
8	Completed	Pending
9	Completed	Completed
10	Completed	Completed

11	Completed	Completed
12	Completed	Prosecutrix left town
13	Completed	Completed
14	Completed	Completed
15	Completed	Completed
16	Completed	Completed

**(TABLE 1.1)**

As the Table 1.1 illustrates, case records were successfully studied in all 16 cases. In nine cases, the deposition of the victims has been concluded, while in 6 cases it was pending at the time of conclusion of this study. In one case, since the victim did not attend the trial proceedings at all, her deposition was not taken and the accused was acquitted on completion of trial.

Interviews with victims could only be conducted at the conclusion of their deposition, with their consent, and with the assurance of confidentiality. Interviews were conducted in two stages: preliminary interview soon after the conclusion of their deposition, and final interview at a later date as per the convenience of the victim. The status of interviews at the conclusion of the study on March 31, 2015 stood as depicted in the Table below:

**STATUS OF INTERVIEWS AS ON MARCH 31, 2015**

CASE	PRELIMINARY INTERVIEW	FINAL INTERVIEW
1	Deposition pending	
2	Deposition pending	
3	Conducted in the presence of victim's mother	Conducted in the presence of victim's mother
4	Deposition pending	
5	Conducted alone with the victim	Not conducted, victim's family did not permit access to her
6	Deposition pending	
7	Deposition pending	
8	Deposition pending	
9	Conducted alone with the victim	Conducted alone with the victim
10	Conducted in the presence of victim's sister	Not conducted, victim's family did not permit access to her
11	Conducted alone with the victim	Not conducted since victim had relocated
12	Not conducted, victim was untraceable	Not conducted, victim was untraceable
13	Conducted alone with the victim	Not conducted since victim had relocated
14	Not conducted, victim's husband	Not conducted, victim's husband

	did not permit access to her	did not permit access to her
15	Conducted in the presence of victim's husband	Conducted alone with the victim
16	Conducted in the presence of victim's husband	Conducted in the presence of victim's husband

**(TABLE 1.2)**

Out of the nine cases where the deposition of the victim has been completed, preliminary interviews were conducted with 8, and consent for the interview was refused in one. Out of the eight victims who participated in preliminary interviews, detailed interviews could be conducted with four victims only, as two refused consent, and two had relocated.

## CHAPTER 2: OVERVIEW OF CASES AND VICTIMS

There are 16 cases on which this study is based. Although these are all rape cases, this section will disaggregate them according to sub-classifications to look at the diversity they cover, proceeding thereafter to look at the socio-economic profiles of the victims in the study. Situating the victim within her social and economic context enables an understanding of the factors that bear upon their decision-making and options, and the extent of support services that become necessary for victims to participate in the legal proceedings.

While a lot of these facts were evident through the case files and trial observation, more details about the conditions of the victims could only be discerned through personal interviews. Accordingly, the information in this section has been collated through the observation of the deposition of the victim through her responses to the questions posed by the lawyers, and their interviews. For those victims for whom the deposition has not started, or has started but these questions have not been asked, and with whom the interviews were not conducted through the course of the study, the data has been filled as ‘no information’.

### 2.1. RELATIONSHIP WITH ACCUSED

In all the 16 cases, the accused was previously known to the victim.

No.	RELATIONSHIP
Case 1	Accused knew the victim beforehand and had taken her to show her a <i>jhuggi</i> for her to relocate
Case 2	Accused was the neighbour of the victim, and her younger brother’s friend
Case 3	Accused was the neighbour and confidant of the victim
Case 4	Accused was a bank manager and the victim was his client
Case 5	Accused was the neighbour of the victim and had propositioned her earlier to which she had refused
Case 6	One of the accused was the neighbour of the victim and the other two were his friends
Case 7	The accused was an agent who provided jobs to women as domestic workers, and had earlier brokered a job for the victim
Case 8	The accused was the father of a friend of the victim
Case 9	The accused lived in the <i>jhuggi</i> settlement where the victim owned two <i>jhuggis</i> and would frequent to meet her relatives and collect rent. He had raped her once before as well.
Case 10	The accused was the brother of the victim’s husband, and had offered to shelter her to save her from the excessive violence of the husband. They co-habited and were in a

	relationship.
Case 11	The accused was the long-time partner of the victim
Case 12	The accused was the employer of the victim
Case 13	The accused had previously been convicted of raping the victim and sentenced to 7 years RI. While on bail, he raped her again.
Case 14	The accused was an ICICI agent who had befriended the victim
Case 15	The accused had borrowed Rs.50,000 from the victim and was her debtor
Case 16	The accused is the father-in-law of the victim

**(TABLE 2.1)**

All the accused were known to the victims from before. They were either in positions of authority over the victim, as in Case 10 (cohabitee and partner), Case 12 (employer) and Case 16 (father-in-law). In other instances, the accused lived in proximity to the victim or had business dealings with her. This includes neighbours, job agents and debtors. On account of being acquaintances, all accused had easy access to the victims prior to and during the trial.

The profile of these cases goes to confirm the data of the NCRB, and as long-argued by feminists as well, that acquaintance rapes (rapes by persons known to the victim) are preponderant, and stranger rapes (rapes by persons unknown to the victim) the exception. This aspect significantly impacts the nature of support services necessary for the victim. Several victims relocated to new neighbourhoods, and started residing with other family members after the incident. These include Case 3, Case 5, Case 10, Case 11, Case 12, Case 13 and Case 16.

This fact is also extremely significant for purposes of formulating witness/victim protection measures that go beyond the precincts of the court room (in cases of sexual assault), as has been discussed later. Witness protection measures during deposition has a limited impact if the accused continues to have easy access to the victim and her family outside court.

## 2.2. RECURRENCE OF SEXUAL OFFENCE

CASE	RECURRING SEXUAL OFFENCE
Case 1	✓
Case 2	✓
Case 3	✗
Case 4	No information
Case 5	✗
Case 6	✗
Case 7	✗
Case 8	✓

Case 9	✓
Case 10	✓
Case 11	✓
Case 12	✗
Case 13	✓
Case 14	✓
Case 15	✓
Case 16	✗

**(TABLE 2.2)**

This Table charts the number of cases with allegations of recurrence of sexual offences by the same accused upon the same victim, that is, cases where the incident of rape complained of was not the first or only instance of sexual offence. These include FIRs/ cases where the accused had previously raped or committed another sexual offence upon the victim on at least one other occasion before she filed the FIR, and also includes cases where the offences were persistent and continuing repeatedly over a long period of time.

Out of the 16 cases, 9 of them make references to recurring offences; 6 of them refer to instances of one-time offences, and in one case, there was no information. In Case 1, Case 2 and Case 15, the mention that the accused had committed rape or other sexual crimes against the same victim earlier, continuing to threaten and blackmail her through the entire duration. It was under such intimidation and blackmail that the accused were able to then rape the victim on several occasions later. Facts in the FIR indicate that in Case 1, the victim spoke out and complained of the offence after 6 months, in Case 2 after having endured the violence for 4 years, and in Case 15, after 4 months.

FIRs in Case 9 and Case 13, mention that the accused had raped the victim once before. When, after a long time, their paths crossed, the accused raped the victim again. In both these cases, the victims complained of the rape immediately after the second instance of rape.

Case records in Case 8 and Case 14, mention that the victims were abducted by the accused for a few days, during which they were raped. In Case 8, the victim complained of the rape immediately on being released from custody, and in Case 14, the FIR was registered 3 weeks after the victim was released.

According to the allegations in Case 10, the victim faced sexual abuse over a period of 9 months from the accused, who had given her shelter from her abusive husband. In Case 11, the victim states that she had been in a relationship with the accused for 6 years, during which time the accused engaged in sexual relations with the victim on the promise of marrying her.

### **2.3. AGGRAVATED FORMS OF RAPE**

The IPC treats 'aggravated rape' more seriously under Ss.376(2), 376A, 376C and 376D, listing the types of rapes that fall under this category. Rape becomes aggravated based on relationships of power and authority that the accused exercised over the victim, or in certain other defined contexts. These include the age, capacity of the victim to consent, gang rape etc.

From the facts stated in the FIR and case records, our data has 9 out of 16 cases of recurring sexual assault. This is one type of aggravated rape, covered under S.376(2)(n). Another type of aggravated rape in our data pertains to gang rape.

This section specifies the number of cases where the charges framed against the accused were under the different categories of ‘aggravated’ rape.

Yet, in 13 cases, charges under s. 376(1) pertaining to non-aggravated or rape simplicitor were applied. The remaining 3 cases, that are Case 4, Case 6 and Case 15, the accused were charged with aggravated forms of rape under s. 376(2). In Case 4, the accused was charged under S.376(2)(n), for committing rape on the same woman repeatedly. In Case 6, the accused were charged under S.376D, for gang rape. In Case 15, the accused was charged broadly under S.376(2), which pertains to aggravated forms of rape, without specifying the specific sub-section.

***All 16 cases under observation were those of acquaintance rape, that is, where the accused is known to the prosecutrix. This reflects the data reported by the National Crime Records Bureau (NCRB) as well, that a preponderant number of rape cases are acquaintance rapes, which constituted 94.3% of reported rape cases in 2013. In situations of proximity, as this data shows, the sexual assault may be ongoing for a long period of time before the victim makes a formal complaint. The complex web of association if not relationship with the family, makes it harder to report. As the accused is known to the victim, he has easy access to her and her family outside court. This is crucial to understanding the environment within which victims (and their families) pursue legal remedies.***

## 2.4. PROFILE OF VICTIMS

This section details the socio-economic profiles of the victims. While victims of sexual violence cannot be stereotyped or profiled within any class or age or other category, we disaggregate our data to profile the complainants only for the purposes of locating the social context within which we can understand their access and ability to navigate the legal process. And additionally, to understand at a later stage, the support required to facilitate their access and effective participation in the legal process.

### 2.4.1. AGE

18-20	20-30	30-40	40-50	No Information
1	7	4	2	2

(TABLE 2.3)

The victims in our data span a large age group. While the youngest in the set was 19 years old at the time of the incident, the oldest 2 are more than 40 years old (they do not know their exact age).

### 2.4.2. INCOME AND EDUCATION PROFILE

Illiterate	Up to Class VIII	Up to Class XII	Graduate	No Information

4	2	3	Nil	7
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**(TABLE 2.4)**

The victims in our data are not highly educated. While some of the victims in our data are entirely illiterate, others have obtained schooling until middle school, or high school, and only one of them has actually completed her school-level education. None of them went to university or obtained graduation or higher education. This finding is relevant for purposes of understanding the social standing and opportunities available to the victims, without intending to profile a typical rape victim, or those beyond what this data represents.

Reflective of the low education levels of the victims, several of them are also not gainfully employed. Those who are in employment have minimal income levels that keep them in relationships of economic dependence on either their husbands or their families and relatives. For instance, the victim in Case 1 used to be engaged in minor stitching work earlier, then as domestic help earning Rs.1000/- per month, but is now unemployed. She depends on the income of her husband, who she does not live with, for everyday expenses. The victim in Case 7 also works as a domestic help in Delhi.

Similarly, the victim in Case 3, who is educated till class XI, is undertaking the course of a beauty parlour assistant currently, after which she hopes to find a job for the same position. After having been abandoned by her husband, she lives with her maternal family, which includes her parents. Her father, who has a government job, supports her and is funding this course.

The victim in Case 15 has been prohibited to step out of the house by her husband, and is also not provided any money by him for daily expenses for her and their 2 children. Her parents are also poor and live in the village with her brother and sister-in-law, who are not in a position to support her. Accordingly, only recently she has started undertaking packaging of small toys which earns her Rs.70/- a day. The victims in Case 10 and Case 11 also have jobs that earn them small monthly incomes but nevertheless keeps them dependent on their family. All the other victims are housewives who do not have any independent stream of income.

### **2.4.3. MARITAL STATUS**

Married	Never married	Divorced/Separated	No Information
7	2	3	4

**(TABLE 2.5)**

The victims in Case 1, Case6, Case 8, Case 9, Case 14, Case 15 and Case 16 are married; and continue to reside with their husbands, except the victim in Case 1, who was not separated but residing away from her husband for years on account of their jobs. The victims in Case 5 and Case 11 were single, and live with their parental families.

The victim in Case 13 had been divorced by her husband after she was raped the first time, and now lives alone with her children. The victims in Case 3 and Case 10 were not divorced but separated from their husbands. By separation, we mean the refusal to co-habit on behalf of either party on account of marital breakdown. While the husband of the victim in Case 3 is in a relationship with



the younger sister of the victim, leaving her to live with her parents, the victim in Case 10 left her husband on account of sustained violence.

No information was available regarding the marital status of victims in Case 2, Case 4, Case 7 and Case 12.

## 2.5. IMPACT OF INCIDENT ON VICTIMS

Relocation	Marital Discord	Domestic Violence
5	4	2
* The same victim may be impacted by the crime in multiple ways.		

(TABLE 2.6)

The incident impacted the lives of the victims in several ways, which enhanced their vulnerabilities to further violence. While some victims had to relocate from their earlier residence for various reasons, some also faced increased violence within the family.

Most victims in the study live with their families in the city. In Case 3, Case 5 and Case 11, the victims live with their parents, while in Case 10, the victim for a while lived with her uncle and now lives with her sister. The husbands of the victims in Case 3 and Case 13 abandoned them after the incident. Victim in Case 13 now lives alone with her children. The victim in Case 1 continues to live in a *jhuggi*, separated from her husband as before on account of their jobs. The victims in Case 6, Case 9, Case 14, Case 15 and Case 16 live with their husbands.

Pertinently, the victim in Case 5 was sent back to the father's family in the native village in Bihar after the incident, so she could be married soon. The victim in Case 12 also returned to her native home outside of Delhi before the trial, and has been untraceable since. Even the victims in Case 10 and Case 13 had to relocate in the aftermath of the incident.

In fact, in Case 13, the victim had been raped by the accused on one occasion earlier as well, after which her husband had divorced her.

The victim in Case 15 has been facing severe domestic violence after the rape. She reported severe physical, sexual and emotional abuse by her husband, who continually taunts her and insults, while also depriving her of financial support. He has also alienated her from her friends and families, because he blames her for the rape.

## 2.6. NETWORKS OF SUPPORT

Most cases reveal that the victims live in complex networks of dependence and support, and of isolation and stigma. The family networks are responsible for a large part for the reason that they filed the criminal complaint against the accused in the first place. For instance, in Case 3, the victim filed the complaint under pressure from her husband, and in Case 10 as per the advice of her uncle and elder sister, who she continues to live with. Similarly, in Case 11, which is a case of breach of promise to marry, the victim was encouraged to file the complaint on advice of her parents and other relatives, as well as the Investigating Officer to whom they were referred in the police station. The victims in Case 15 and Case 16 also filed the rape complaints with the encouragement and support of their husbands.

It is largely these same actors who continue to support her through the criminal proceedings, even as she might have to negotiate her living conditions with them at home. The victim's husband in Case 15, while supportive of the criminal proceedings, holds her responsible for the rape and is extremely abusive and violent of her at home. The victim in Case 11 also sought to later withdraw the proceedings based on collective decision-making of her family members and relatives, and those of the accused.

These complex family networks influence not only the decisions the victims are likely to take regarding the proceedings, and other major decisions in their lives. The victim's parents in Case 3, after her separation with her husband, are opposed to her desire to seek custody of her daughter from the husband. She is thus in a position where she must heed her parents' advice as she is now fully dependent on them, including for shelter.

Our access to the victims was also mediated through these complex networks of support, control and decision making. Of the 8 preliminary interviews conducted, only 2 of those were alone with the victim, and with the rest, there would always be a family member present. This would often be the husband of the victim, but in some cases, would also be the mother or sister or uncle. Detailed interviews could only be conducted with 4 of the 8 victims. Of the remaining 4, 2 were untraceable and the family did not permit further interviews with 2 others. Of the 4 with whom detailed interviews were conducted, 2 were conducted with the victim alone, one was conducted in the presence of the mother of the victim, and one was conducted in the presence of the husband of the victim.

***An overview of the profiles of the victims and the cases provides the context within which to read the journey of the victim through the criminal process. The victims in this study differed in age, spanning 18 years to 50 years, with the most number of victims in the age group of 20-30 years. While information on the education levels was not available for all victims, but out of the remaining, half are illiterate, 3 dropped out of school and only 2 finished school. Low education levels lead to lower levels of income, and a high level of dependence on families. 7 victims were married, 2 were divorced/separated from their husbands, and 2 were not married. This profile does not describe rape victims generally, who can be of any age, marital status and income level, but is limited to the victims in this study, in order to understand the conditions under which they have accessed legal remedies.***

***In the aftermath of the incident, victims are often more vulnerable to greater control as well as violence and rejection within their networks of dependence. The families provide not only support to the victim, but also exercise a high degree of control over decisions relating to her. The fact that a preponderant number of rapes are where the accused are acquaintances of the victim, accused are able to easily establish contact with the victim outside court to discourage them, through different ways, from pursuing criminal remedies. Often, this compels victims to relocate from their surroundings and seek shelter elsewhere, which disrupts their day-to-day existence as well.***

## CHAPTER 3: THE PRE-TRIAL STAGE

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The pre-trial processes account for procedures undertaken after the FIR is filed, and before the case enters court upon cognizance. For the purpose of this study, this period is demarcated between the date of filing FIR, and the date of taking cognizance. Procedures in this period include the registration of FIR, medical examination of the complainant and the accused, arrest and S.164 statements of various persons made to the Magistrate. Since the report studies the gender-sensitivity of the procedures from the perspective of the complainant, this chapter analyses her experience in the police station to file the FIR, in the hospital for her medical examination, with the Magistrate for her statement, and the arrest of the accused. The rape victim through this chapter will be addressed as the 'complainant'.

### 3.1. FIR

Registering an FIR is the first step in the process of setting the criminal justice machinery into motion officially. Without an FIR, criminal redress cannot be obtained. This is done under S.154, CrPC, as amended by the 2013 Amendment. It is mandatory for a police officer to file the FIR, failing which he may be punished with imprisonment for a period of 2 years. In case the complainant approaches a police station within whose jurisdiction the offence does not fall, the police station can still not refuse to register the FIR. As per Advisory No. 15011/35/2013-SC/ST-W, issued by the Ministry of Home Affairs, they must take down the complaint as a 'Zero FIR', and then forward it to the relevant police station. The complainant is also entitled to a free copy of the FIR.

#### 3.1.1. REGISTERING THE FIR

FIR registration is the first encounter of the survivor with the criminal justice machinery, and is one of the basic elements that establish faith in the legal process that follows. A smooth process affirms the complainant's right to access criminal remedies, building confidence in her pursuit of legal redress.

The case studies do not reflect a consistent experience in the registration of an FIR. A few complainants experienced no difficulty in registration. Some of the complainants report, that FIRs were registered within reasonable time when they approached the police. Yet, others experienced obstacles in registering their complaint. Some complainants (Case 9, Case 10, Case 11, Case 15 and Case 16<sup>5</sup>), report having to wait for 12-16 hours, even entire nights, at the police station, being persuaded to compromise or not report, and even having to recount their stories to many different personnel before the complaint was finally registered. In Case 16, where the husband's younger

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<sup>5</sup>In this case, the complainant had registered an FIR against her husband's younger brother, a minor, alleging rape. While giving her S.164, CrPC statement to the Magistrate under that case, she revealed that her father-in-law had also raped her two years ago, which she suppressed due to societal pressure. Criminal proceedings were then initiated against the father-in-law, the accused in the present case under observation for this study, based on this S. 164 statement. The account detailed here, of complications in registering an FIR were faced in the case pertaining to the brother-in-law, against whom the original FIR was registered and not the father-in-law. There was no formal complaint made by the complainant against the father-in-law

brother, a minor, had raped the complainant, the police discouraged her from filing the FIR, since it was a 'family matter', and she might be shamed and embarrassed in her neighbourhood if she proceeded. They suspected that she might even retract her complaint later, and so were unwilling to proceed. The complainant had to convince the police that she would not retract and it was only then that the police agreed to register the complaint.

For Case 10 and Case 11, in fact, the police refused to file the Zero FIR and told them to go to the relevant police station themselves. In Case 13, however, the Zero FIR was first lodged, and transferred to the appropriate police station the next day itself.

For Case 9, the registration of FIR was a particularly distressing experience. Initially, the police refused to file the complaint, recommending instead that she compromise the case. It was only on her persistence and refusal to compromise, that the police eventually conceded to register the FIR. In this case, the complainant had, on an earlier occasion, been raped by the accused, so she was determined to not let him get away the second time. She reports having been asked to pay a large sum to the Investigating Officer to secure co-operation, which she did with difficulty. She further reports, that once the payment was made, the Investigating Officer extended full cooperation to her throughout the case.

In Case 11, which was a case of a breach of promise to marry, the complainant first approached the police station closest to her place of residence to file the FIR, which technically lacked jurisdiction under the law. The police should have registered a Zero FIR, and forwarded it subsequently to the relevant police station. However, this was refused. Her local police station told her instead to go to the correct police station to register the complaint, which she then did. She reports spending an entire day at the relevant police station, where she was blamed for her own situation. She also states that the facts in her FIR were drafted under instructions from the police. They suggested that she add additional details to her story, such as the fact that the accused administered some intoxicating substance to her drink, under the influence of which the intercourse occurred. In Case 13 as well, the complainant explains that the facts noted in the FIR was not entirely faithful to the account she gave to the police.

In Case 15, the complainant went to the police station with her husband at 11:00 am, and returned at 2:00 am. She was asked to wait indefinitely, had to narrate her story to different people in the police station, making her recount the episode several times over. The complainant was not sure when the FIR was eventually registered, as she was engrossed in narrating the incident repeatedly. The accused was also present in the police station at the same time, openly pressurizing her to settle the case in full view and knowledge of the police. The police however, did not intervene to stop this.

### **3.1.2. COPY OF FIR**

Not in all cases was the complainant given a copy of the FIR, which she is entitled to under law. In the case of Case 13, she was not given a copy of the FIR at all. In Case 9, she was mailed a copy by courier after some time. In Case 15, while the FIR was registered, a copy of it was not immediately given. It was only after the complainant's husband appealed to higher authorities that they received the copy after a delay of 6-7 weeks.

***Most FIRs were registered with the police without any hurdles. However, in some other cases, the police refused to register the FIR, blamed the victim for her condition, or encouraged her to reconsider or compromise the case. While a zero FIR was recorded in one case, it was refused in another. There is also one case where the some facts of the FIR were prompted by the police. Victims also did not consistently receive a copy of the FIR, which is their statutory right. Experience of victims suggest that the practice of registering FIRs on receiving a complaint, giving copies to the complainant, informing them of the procedure or their rights is not consistently followed.***

### **3.2. MEDICAL EXAMINATION**

The medical examination follows the registration of the FIR. The purpose of the examination under the amended law is to provide first aid to the victim, psychological counseling to cope with trauma associated with the assault, in addition to, documenting bodily injuries and condition for evidentiary purposes. Like all medical procedures, this examination can only be conducted with the express consent of the patient, more so, since it involves invasive procedures.

Procedurally, the Investigating Officer takes the complainant for her medical examination immediately after the registration of FIR, within 24 hours; in some cases however, the medical examination might precede the FIR. It is important that the examination is conducted at the earliest after the crime, so that the significant evidence (such as semen, scratches, hair etc) from the body of the complainant is not lost. While it is desirable that the complainant does not bathe, clean, change her clothes, urinate or defecate until after the examination is complete, this is not always the case as the trauma of the assault and the stigma of disclosure silences women until such time they find the courage and support to complain. In such cases, evidence may be lost, which is not damaging to the case, so long as the medical report states the delay, and records the intervening activities which explain the loss of evidence. The protocol remains, that whenever rape is reported, the medical examination must follow at the earliest.

In most cases under observation, the examination was conducted according to protocol, within 24 hours. In 7 cases, however, the medical examination preceded the FIR. In Case 8, for instance, the complainant was taken for her medical examination by an NGO representative. She was referred to the NGO representative by the police, when she went to file the FIR but was unable to narrate the incident. In Case 16, the complainant had undergone a medical examination 4 days earlier on account of the FIR of rape against the husband's younger brother, and the same MLC formed a part of the court record in the case under observation as well.

In none of the cases (where we interviewed the complainants) was any information provided to the complainants about the purpose of the medical examination, or about the precautions that must be observed until it is complete. They were merely informed about being taken for "their medical". This information is significant for two reasons. First, full information is necessary for the complainant to give "informed consent" to the medical examinations; second, for her to know the value of the medical report as evidence, and the precautions necessary for preserving evidence, and to alert the doctor to marks or injuries on her body that might otherwise be overlooked.

### **3.2.1. CONSENT**

The old proforma did not have a separate column to note the complainant's consent for the medical examination. The new proforma not only seeks the express written consent of the complainant, but also lists the procedures involved in the medical examination.

Consent is taken either through a signature, or, as in Case 5, Case 7 and Case 11, through the thumb impressions of the complainants. In Case 11, the complainant informed us that she was merely asked to attest a form, without being informed about its contents. In Case 12 and Case 14 the MLCs do not either mention consent or record whether consent was taken. In several cases, the MLCs record that the complainant refused consent to some procedures expressly. In Case 1, for instance, the complainant did not give consent to an internal examination, which was accordingly not undertaken. In Case 2, she refused consent for the seizure of her clothes, in Case 4, for internal and external examinations.

In Case 15, the complainant was taken for her medical examination promptly. Since the last instance of the offence had occurred a few days earlier, and in the intervening period she had cohabited with her husband, the medical personnel informed her that the test would be futile. Based on this opinion, they did not conduct the examination, yet the MLC notes that this was on account of the lack of consent on part of the complainant and her husband.

### **3.2.2. SEIZURE OF CLOTHES**

Clothes of the victim are seized during the medical examination, and forwarded for a forensic analysis to ascertain traces of DNA to identify the accused. This procedure is undertaken if the complainant is wearing the same clothes that she was wearing at the time when the assault took place, and they have not been washed since. This is usually the case when the medical examination is conducted shortly after the incident of assault. Since the purpose of seizing the clothes is to harvest evidence, it is futile to seize the clothes of the survivor if they were not the ones she wore at the time of the incident. In Case 3, for instance, the FIR was filed close to 2 weeks after the incident, but the hospital seized the clothes of the complainant nevertheless. In fact, the Presiding Officer chastised the hospital staff during the trial for non-application of mind on this account.

### **3.2.3. INTERNAL EXAMINATION OF THE COMPLAINANTS**

The 2-finger test has now been outlawed by a Supreme Court decision,<sup>6</sup> and is accordingly not mentioned in the new proforma. The test lends itself to inferences about the sexual history of the complainant by commenting on the condition and tears to the hymen. This is irrelevant and inadmissible in rape trials by law. Recordings of this nature function as evidence in court to question the character of the complainant, overshadowing the issue of consent. However, this should not be conflated with an internal examination of the complainant's vaginato test for injuries and infection, and is a part of medical treatment extended to her.

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<sup>6</sup>Lillu @ Rajesh & Anr. vs State Of Haryana [Criminal Appeal No. 1226 OF 2011]

None of the MLCs record conducting a 2-finger test on the victim. Internal examination appear to have been carried out as 8 out of the 16 MLCs include express notings stating that the hymen of the complainant was torn, sometimes specifying that the tears were old. In Case 2, for instance, the MLC states that the complainant has an old tear in the hymen, and simultaneously remarks that the patient is unmarried and unengaged. In Case 5 the MLC states that the hymen was not intact, but the tears could not be seen since the patient was menstruating. The reason for outlawing the 2 finger test was mainly on account of notings of the elasticity of the vagina, leading to inferences about her sexual history. Although there is no mention in the MLC of 2 finger test or notings on elasticity of vagina, yet, notings on old hymen tears demonstrates that insinuations about sexual history remain. In Case 2 for example, to mention old hymen tears alongwith the fact that she is unmarried, invokes the victim's 'character' which is not the purpose of the MLC, and was at the heart of the banning of the 2-finger test.

While an internal examination is permissible as a component of medical treatment, or collection of evidence, notings that contribute to the sexual history and character of the victim are not. Yet, such notings are in evidence through comments on the condition of the hymen. Further, these tests are conducted without informing the complainant of the process involved and their purpose.

#### **3.2.4. INJURIES ON BODY**

The ICMR Guidelines stipulate that *if there are any injuries* on the body of the survivor, these must be noted. This enables the judge to ascertain the severity of violence and the extent of force involved in the incident. Injuries are entirely unrelated to the question of consent, since the Supreme Court recognizes that mere submission, and the absence of resistance, cannot be equated to consent to sexual intercourse. This understanding is now incorporated into the definition of consent in Explanation 2 to S.376, IPC by the 2013 Amendment.<sup>7</sup>

Therefore, while noting the presence of injuries contributes to evidence in court, making an express noting of the absence of injuries is irrelevant to the trial, and can serve to prejudice the trial.

Out of 16 cases, 14 MLCs make express notings regarding the *absence* of injuries on the body of the complainant. In Case 5, the MLC expressly records the absence of 'bite or injury marks' on the body of the complainant. In Case 7, the MLC also notes the absence of external injuries and 'resistance marks', and also states that all the clothes of the patient were intact.

#### **3.2.5. COUNSELING**

Recognising the impact of rape on the psychological and emotional state of the complainant, the ICMR Guidelines prescribe that the medical examination must also include psychological counseling to help her cope with in the aftermath of the assault, including in relation to the social and cultural notions of stigma and shame, within her family or community.

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<sup>7</sup>Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

While there is evidence of notings in a few MLCs about the complainant's mental condition, whether she is oriented or not, only two MLCs (those of Case 5 and Case 6) record that she was provided with counseling during her medical examination. The MLC of Case 5 notes that the counselor asked the victim about the legal outcome she desired. There is no information about the approaches and content of counseling, an area that will certainly benefit from greater attention and detailing.

### **3.2.6. SENSITIVITY OF PERSONNEL**

The ICMR Guidelines expressly require medical personnel to treat the survivor with sensitivity, care and respect. Yet, in Case 10, we learnt that the nurses refused to believe the complainant, on the assumption that no one would want to rape a middle-aged woman; instead, they advised her to tell the police that she was lying.

***Although complainants are taken for their medical examination within 24 hours of registering the FIR in compliance with the formal protocol, yet there appears to be little or no application of the revised ICMR Guidelines. Medical examination is conducted without informing complainants of the procedures to be followed, their purpose, and without the informed consent of the complainant. While notings on injury where present are necessary, the MLCs also appear to note the 'absence' of visible marks of resistance on her body. There are no notings on 2- finger tests, or observations about the complainant being 'habitual to sex' as was the case in the past. Yet, notings on old hymen tears are present, which insinuate previous sexual history despite being prohibited. The staff is not always sensitive, and in one instance dissuaded the complainant from proceeding with her complaint. While the noting on mental condition and orientation are evident in MLCs, there is no evidence of counseling except in two out of 16 MLCs. In these two cases, the counseling did not conform to minimum requirements, as it only entailed asking the complainant of her expectations from the legal process.***

### **3.3. S. 164 STATEMENT TO THE MAGISTRATE**

The object of S. 164, CPC (S. 164 statement), is to provide a method of securing a reliable record of statements during the course of investigation. As per the 2013 Amendment, this statement must be recorded as soon as possible after the FIR in cases of sexual violence. The Magistrate should ensure that the person making the statement under S. 164 is making the statement voluntarily without any duress with full knowledge that the statement would be used as evidence in the later stage in the trial.

In the cases under observation, statements were taken with some expediency, within the same week of filing the FIR. In fact, in the case of Case 7, Case 8 and Case 15, it was recorded on the same day as the FIR. In Case 14, it took the longest period, of 9 days. In all the remaining cases, the statement was taken within 7 days.

Magistrates asked some preliminary questions to test the fitness of the complainant to give the statement, and whether she was under any kind of coercion or duress. Such questions include, 'Do you believe in God?', 'Is truth better than lie?', etc.

The study reveals that this was normally undertaken without any obstacles. Only in one instance,



the case of Case 16 did the complainant complain of insensitivity, mentioning to us that while the Magistrate undertook the procedure as per law, her body language suggested that she did not believe in the story of the complainant.

***The S.164 statement to the Magistrate proceeds as per protocol. Within a short period after the FIR is registered, the victims are taken to the Magistrate for their statement. After asking preliminary questions to test the fitness of the victim to give the statement, and to check whether she is under coercion, her statement is duly recorded.***

### 3.4. ARREST AND BAIL

Since all the trials observed pertained to cases of acquaintance rapes, the identity of the accused was known and provided in the FIR, along with the address in some cases. Arrests were prompt in almost all cases. In Case 4, Case 5, Case 8, Case 9, Case 10, Case 14, and Case 15, the accused were arrested on the same day. In Case 1, Case 3, Case 7 and Case 12 the accused were arrested after a day of registration of the FIR. In Case 13, the police took 3 days to arrest the accused. In the case of Case 6 involving 3 accused, 1 accused was arrested on the same day and the other 2 were arrested within 2 weeks.

In 2 cases, there was delay in arresting the accused. In Case 16, the arrest took place after 16 days, even though the accused was the father-in-law of the complainant. The greatest delay, however, was in Case 11, where the arrest took place after about 6 weeks. In this time, the accused had managed to procure an anticipatory bail. When the arrest took place, he was promptly released.

Courts also exercise discretion in granting bail to the accused. In Case 2 and Case 11, the accused were granted anticipatory bail. In the case of Case 4, bail was granted after cognizance but before charges were framed, after the accused had spent slightly less than 3 months under custody. In Case 7, the accused was released on bail 1 month after charges were framed, after spending 4 months in custody. In Case 10, the accused was released on bail pursuant to a High Court order before cognizance, after spending slightly less than 2 months in jail. In Case 16, the accused was granted bail after a mere 15 days of arrest, prior to cognizance; whereas in Case 5, Case 6, Case 9, Case 12, Case 13, and Case 15, the bail applications of the accused were refused. The overview of the time taken for arresting accused and for bail for each case is tabulated below. The time is calculated from the date of filing of the FIR.

	SAME DAY	ONE DAY	MORE THAN ONE DAY
ARREST*	08	04	06 <sup>8</sup>
* Case 6 had three accused, out of which one was arrested on the same day, and two were arrested after			

<sup>8</sup>The arrest in:  
Case 2 took 13 days  
Case 6 took 9 days and 11 days respectively  
Case 11 took 43 days  
Case 13 took 3 days  
Case 16 took 16 days

more than one day.

(TABLE 3.1)

In 8 of the 16 cases, the accused was arrested immediately, on the date the FIR is registered. In 4 of the 16 cases, the arrest took a day. In 6 cases,<sup>9</sup> however, it took more than a day to arrest the accused. In Case 11, in fact, it took 43 days to arrest the accused. No reason has been given for the delay in arrest.

BAIL	ANTICIPATORY BAIL		BAIL AFTER ARREST	
	ALLOWED	REFUSED	ALLOWED	REFUSED
	02	06	04	06

(TABLE 3.2)

Of the 16 cases, anticipatory bail was applied for in 8 cases, in 2 of which anticipatory bail was granted. On arrest, bail was applied for in 10 cases and allowed in 4 of those cases.

*Since all cases were of acquaintance rape, the victim provided the identity and address of the accused in the FIR itself. The arrests were conducted promptly, as per protocol. In half the cases, the accused was arrested on the same day as the FIR, and in four cases, on the next day. In a few cases, arrests took more than a week.*

### 3.5. TIME TAKEN UNTIL COGNIZANCE

The study de-limits the pre-trial processes from the time of registration of the FIR to the time when cognizance of the offence is taken. Pre-trial procedures progress largely on schedule, and different processes are undertaken in quick succession. Within 24 hours of the FIR, the complainant is taken for her medical examination, and the accused is arrested promptly thereafter within a few days. The S.164 statement to the Magistrate is also recorded within a few days of the FIR. The maximum time in recording of the S.164 statement, in the 16 cases under observation by us, was in Case 14, where recording was undertaken after 9 days from the date of the FIR.

The most notable time lag occurs after the recording of the S.164 statement, from this point until the cognizance is taken. The time taken between these two events is about 2-3 months on average. The Table below provides details of the time taken in the pre-trial processes in each of the 16 cases.

Case	Date of FIR	Date of cognizance	Time between FIR and cognizance (weeks completed)
Case 1	30.08.2013	22.11.2013	12
Case 2	13.02.2013	21.06.2013	18
Case 3	04.02.2014	24.02.2014	2

<sup>9</sup> Including two out of three accused in Case 6.

Case 4	07.02.2014	10.02.2014	0.5
Case 5	08.11.2013	06.12.2013	4
Case 6	21.11.2013	31.01.2014	10
Case 7	13.12.2013	12.03.2014	12
Case 8	30.05.2014	02.07.2014	4
Case 9	27.10.2013	16.01.2014	11
Case 10	25.08.2013	07.11.2013	10
Case 11	28.10.2013	29.01.2014	13
Case 12	20.09.2013	07.12.2013	11
Case 13	13.08.2013	16.01.2014	22
Case 14	21.07.2013	24.01.2014	26
Case 15	28.02.2014	20.03.2014	2
Case 16	18.12.2013	13.02.2014	8

(TABLE 3.3)

*The pre-trial processes proceed mostly on schedule as per protocol: the medical examination of the victim, arrest of the accused, and the S.164 statement of the victim to the Magistrate are all conducted shortly after the FIR. It is only at the stage of cognizance that the process appears to slow down. The medical examination stands out for being the only procedure in the pre-trial process that is the most inconsistent with the reformed ICMR guidelines.*

### 3.6. FINDINGS

#### 1. **Records suggest formal compliance with timeline and protocol:**

The different processes in the pre-trial stage after the registration of the FIR, including the medical examination, arrest, S.164 statement to the Magistrate and cognizance, all proceed promptly as per protocol one after the other. It was also observed that in most cases, the accused are arrested without substantial delay, enabled by the fact that the victim provides their identity and address to the police in the FIR. The S.164 statement to the Magistrate is also conducted as per the relevant procedures and within time.

#### 2. **Some victims face obstacles and harassment in registering FIR:**

While most FIRs were registered without hindrance, evidence suggests this is not a consistent practice. Evidence suggests that in some cases, the police sought to discourage the complainant from filing the FIR, and also suggesting a compromise. Complainants also do not consistently receive a copy of the FIR, which is their statutory right. In one instance, the police also refused to register the zero FIR.

#### 3. **Medico-forensic procedures do not comply with ICMR Guidelines:**

The medical examination emerges as the most problematic aspect of the pre-trial stage, which does not conform to the new ICMR Guidelines. Complainants are not explained the processes involved in the examination, or the purpose behind the tests. This impacts their capacity to give informed consent, even as consent is formally recorded. As a pitfall, it prevents the complainants from

bringing attention to injuries and other facts, which feeds into the trial as evidence. Procedures also continue to be driven by stereotypes of a rape victim, reflected in meticulous notings of old tears in the hymen, insinuating previous sexual history, and the absence of injuries, indicating a lack of resistance against the assault. Medical officials also demonstrated a lack of sensitivity in one case, suggesting that a middle-aged woman cannot be raped, and that the complainant should tell the police that the case is false.

4. **Medical procedures neglect treatment and counseling to the complainant:**

An important dimension of the medical procedures is to provide continued treatment for injuries the complainant might have suffered in the assault, and providing counseling in order to cope with trauma. The medical procedures, however, prioritise evidence-collection over these aspects of holistic and reparative justice. Counseling was provided in only 2 out of the 16 cases. In even those instances, they were not of minimum quality standards, since the complainant was only asked the outcome she desired out of the legal process.

5. **Complainants require legal guidance and support services:**

Throughout the process, complainants experience the need for legal guidance and support, absent which, they go through the distinct processes without information, and with uncertainty and confusion. They are not explained the relevance of the different processes involved, which inhibits their full, informed participation. Without an agency for support, they encounter obstacles in the most basic processes, such as registering the FIR, or obtaining a copy of it. This lack of information impacts their right to avail of victim compensation, and also their rights through trial, as the succeeding chapters reveal.

## CHAPTER 4: THE TRIAL STAGE

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After the first encounter of the complainant with the criminal justice system in what is known as the pre-trial stage, the case enters the court for presentation of evidence, witnesses and arguments for a judicial determination of the facts, and whether the offence of rape is made out. This is the trial stage of the legal process. The complainant, now a 'prosecutrix' in law, is positioned as a witness along with other witnesses in the trial, to be examined for ascertaining whether the evidence is sufficient enough to establish guilt of the accused beyond reasonable doubt. She is examined and cross examined as part of the trial, as is/are the accused, and other witnesses. A substantial number of legislative and judicial guidelines have evolved to regulate the examination of the prosecutrix in the trial stage, in recognition of the dual status of the prosecutrix, as a victim and a witness. These reforms, particularly in making sexual history irrelevant (much like the two finger test), addressed aspects that were humiliating to the victim, besides being logically and scientifically untenable for the determination of rape. Thus the guidelines for conducting trials aim to eliminate some of the well recognized ways by which the prosecutrix risks re-victimisation and humiliation at this stage. As the trial is conducted within a courtroom presided by a judge, the Presiding Officer, there is an expectation that the Presiding Officer will bear the responsibility of ensuring compliance with the guidelines.

This part of the study is based on observation of the deposition of the prosecutrix in 12 of the selected 16 cases, since in 4 cases, her deposition had not started. The deposition of the prosecutrix refers to her examination-in-chief, cross examination and re-examination (where that occurs). The study did not include observation of the deposition of other witnesses, primarily because its focus was on gender sensitivity in conducting the deposition of the prosecutrix, by observing amongst others, the compliance with existing guidelines seeking to do so. It also involved identifying challenges, gaps and good practices that demonstrate ways by which rape trials can be gender sensitive. This section will present the observations made with respect to the each of the four courts where trial observation was conducted as part of the study, Fast Track Court A (FTC A), Fast Track Court B (FTC B), Fast Track Court C (FTC C) and Fast Track Court D (FTC D). The observations relating to each of these courts are discussed with reference to five broad indicators of gender sensitivity for trial of rape cases. Each indicator encompasses more than one guideline or established norm relating to gender sensitivity, as explained below:

1. **Separation of prosecutrix from the public and the accused** – This section describes the physical layout of court room as well as the court complexes. The structure of a court is an important factor that shapes the nature of encounter of the prosecutrices with the law during trial. The nature of interaction and her deposition; the encounter with the accused, his companions and even the general public has a bearing on her comfort levels, sense of security and confidence during deposition. The discussion with reference to this indicator includes the description of the architecture of the court, the nature and effectiveness of shielding secured to the prosecutrix from public scrutiny (*in camera*) as well as from confrontation with the accused.

2. **Depositions** – This section focuses on the interaction of the prosecutrix with the Presiding Officer, Public Prosecutor and Defence Counsel, related to her deposition. In all four courts, the depositions progressed differently, as becomes evident in the court wise accounts that follow in this chapter. The role of the Presiding Officers emerges as the most vital in setting the tone for the proceedings in courtroom, responsible as they are for not only for ensuring compliance with the procedural rules by which evidence is appraised, but also routine conduct of affairs in the courtroom. Their demonstration of sensitivity towards the prosecutrix and authority towards other entities in court sets the tone for how all the characters within the courtroom conduct themselves, and significantly influences the experience of prosecutrix through her deposition. The onus of complying with the guidelines in *Gurmit Singh* is upon the Presiding Officer. Similarly, the Presiding Officer is the only person with the authority to restrain any action or word that is hostile, intimidating or disrespectful to the prosecutrix. The Public Prosecutor is the other court officer who represents the state during the trial, and hence presents the account of the prosecutrix before the court. She conducts the examination-in-chief of the prosecutrix, and is also responsible for ensuring that the Defence Counsel does not ask objectionable questions to make the experience hostile for the prosecutrix.
3. **Legal support and services** – This section describes whether the prosecutrices had access to any legal advice or support beyond the Public Prosecutor, and whether they had access to support services of any other kind to ease them into the legal processes.
4. **Time taken from cognizance until completion of prosecutrix testimony** - The trial phase has been demarcated from the time of filing the chargesheet, until the delivery of judgment. As per the 2013 amendment to S.309(1), CrPC, proceedings in a rape trial must be undertaken on a day-to-day basis, and completed within a period of 2 months from the date of filing the chargesheet. Although the study does not track the whole trial, but is limited to the completion of the prosecutrix's testimony, it nonetheless reveals whether compliance with the two month time period is possible or not. The time taken for each of the cases that are part of the study have been tracked – to bring out overall time taken as well as track differences between courtrooms if any.

The chapter will present the observations of each of the courts as findings relating to compliance with guidelines designed to advance gender sensitivity at the trial stage. The discussion in relation to each will highlight common strands as well as distinctions in relation to each of the four courts.

#### **4.1. SEPARATION OF PROSECUTRIX FROM PUBLIC AND ACCUSED**

The fast track courts under observation in this study include three traditional style courtrooms, in FTC B, FTC C and FTC D, and FTC A, which is also traditional style, but the depositions of the prosecutrices are taken in a separate part of the court premises in the Vulnerable Witness Deposition Complex (VWDC). The traditional style courtrooms are one of many other courtrooms located on the same floor, sharing a common lobby that acts as a waiting area for litigants from other courtrooms. While other proceedings are ongoing, the prosecutrix and her companions, other witnesses, the accused (if on bail) and his associates, and the Defence Counsel, all wait in the

common waiting area for their case to be called. In FTC A, FTC B and FTC C, the *ahlmad* has a separate room adjacent to the court room where all the files and records of the cases are kept. They are therefore not present in court during deposition. In FTC D, the desk and the records of the *ahlmad* are inside the courtroom.

The VWDC is a progressive innovation in the layout of court complexes to realise a vital aspect of the principle of victim/witness protection. Its layout is such as to ensure complete physical separation and minimise the space for any encounter or interaction between the accused and his associates, and the prosecutrix. This special courtroom is largely sequestered from other courtrooms within the court complex, with a separate passage for the entry/exit of the prosecutrix to prevent her from sharing the same physical space with the accused or his companions. The prosecutrix also has a different waiting room from where she is ushered into the courtroom for her deposition.

It is well established that in rape case, given the nature of information sought from the prosecutrix, her deposition needs to be shielded from the public, as in other lawyers and litigants, so as to create the necessary privacy and solemnity for her to recount the facts. It is equally well established that the impact of the presence of the accused (and his associates) on the prosecutrix is likely to generate anxiety, intimidation and in some cases, trauma of re-visiting the incident, which not only makes the legal process a hostile experience for her but also impacts the quality of her testimony. In keeping with this sensibility, the procedural reforms require the deposition to be held *in camera* and also require a physical shielding of the prosecutrix from the accused during deposition. This shielding has been extended in the case of the newly introduced VWDC to provide a complete separation of the prosecutrix in the court complex itself, with a separate entrance, waiting area and deposition room.

Under this section therefore, we look the extent of privacy afforded to the prosecutrix in an *in camera* proceeding, and the nature of shielding from the accused (and his associates) available during deposition.

#### **4.1.1. IN CAMERA PROCEEDINGS**

The depositions of the prosecutrices were uniformly conducted *in camera* in all the four courts, three of them being traditional style and one being the VWDC. In the traditional style courtroom, *in camera* is achieved by asking the general public, litigants and other lawyers to leave the courtroom, and no one but the court staff, the Defence Counsel, the accused, the empanelled advocate under the Delhi Commission for Women scheme (whenever present), and only in some cases, a family member of the prosecutrix, are allowed inside the courtroom. In FTC B, the court staff comprises 2 stenographers, 1 reader and 2 *naibs*. With a male Presiding Officer and male Public Prosecutor, the entire staff in court during *in camera* proceedings is male. In FTC C, the court staff consists of 2 stenographers, 1 reader, 2-3 court peons and 2 *naibs*. FTC D consists of 2 stenographers, 1 reader, 2 *naibs*, 1 call boy (who calls out cases). Since the *ahlmad's* room is also inside the courtroom, 2 *ahlmads* also form part of the court staff. This results in a constant flow of people coming in to inquire with the *ahlmad*.

Usually the *naib* would lock the door of the courtroom or put a sign outside the door stating '*in camera*'. In FTC D, a person sits on the desk right behind the door to not let any other person enter during the *in camera* proceedings. Sometimes, when this seat is unoccupied, people have walked in to make inquiries of the *ahlmad* since he sits inside the court room, unlike other courts.

While the traditional courtroom in FTC A is staffed by 2 stenographers, 1 reader and 2 *naibs*, only 1 stenographer and 1 *naib* is present in the VWDC. The VWDC is not open to the general public. At the time of her deposition, the prosecutrix is taken from the waiting room into the deposition room. Despite this, through the deposition of the prosecutrix in Case 3, the door to the deposition room remained open for a significant period of time, during which persons sitting outside peeked in and overheard the proceedings. No one from the court staff took note of this or sought to close the door either.

***The deposition of the prosecutrix is routinely conducted in camera, but occasionally the spirit behind the guideline is overlooked, as members of the public are temporarily allowed access to courtroom where the deposition takes place. There is a difference in practice in traditional-style courtrooms and the VWDC in FTC A. In the former, the general public is ushered out, while the latter is not open to access by the general public. Unlike the VWDC, in most court rooms there is some non-essential staff present during the in camera proceedings, but the exact number of may vary depending on the number of naibs per courtroom or the work-station of alhmad being inside the courtroom.***

#### **4.1.2. SHIELDING THE PROSECUTRIX**

For the sake of clarity, the observations in relation to shielding during deposition have been categorised under: shielding available in the traditional style courtroom; shielding available in the VWDC.

***Traditional style courtroom:*** In all cases, efforts were made to shield the prosecutrix from the accused, to prevent her from confronting the accused during her deposition. In FTC B, though a screen was used in all cases observed, on some occasions it was used to shield the accused rather than the prosecutrix to achieve the same outcome. The practice in FTC B is novel in some ways, since the prosecutrices are offered a chair to sit on during their deposition. In FTC C, the noteworthy practice was that the Presiding Officer, consistently, in all cases, made sure that the prosecutrix was covered completely by the screen before the accused would enter the court. In FTC D, the prosecutrix stands next to the Public Prosecutor, and the accused stands at the back of the room, separated by the screen and the rows of chairs. However, in one case in FTC D, screen was removed after the examination, while all the parties were still in court in their own positions. However, it did not appear to be possible source of intimidation for the prosecutrix in this context, because her position ensures that she always has her back to the accused thereby avoiding confrontation. In rest of the cases in FTC D, it was observed that the screen was not pulled properly and ended up covering the Public Prosecutor and not the prosecutrix. Notably, in Case 13, towards the end of the cross examination, the Defence Counsel questioned the need for the screen at all, declaring that the prosecutrix is more likely to speak the truth if she can see the accused in the eye.



In traditional style courtrooms, while the prosecutrix is uniformly sought to be shielded from the gaze of the accused during her deposition, there are no attempts to prevent contact between them at any other time, either in the court premises or outside. For instance, in Case 9, Case 10, Case 11 and Case 14, we observed clearly that the accused and his companions were in the same waiting area as the prosecutrix and her family, in close proximity with each other. In Case 6 where the prosecutrix had turned hostile, we saw the Defence Counsel, the family of the accused, and the prosecutrix and her husband talking to each other in the waiting area after the hearing. On another occasion in FTC B, while waiting in the common area, the *naib* approached us and pointing at a large group of people talking, mentioned that a compromise discussion was ongoing. That contact between the accused and his associates, and the prosecutrix outside the court premises is evidenced by Case 11, in which it was the Defence Counsel who informed the Presiding Officer that the prosecutrix will not be coming to court for her deposition on that day of hearing.

**Vulnerable Witness Deposition Complex:** The VWDC aims to shield the prosecutrix from the accused not only during the deposition, but also from his associates in the other common areas in court. In the deposition room, the prosecutrix is given the option of deposing either in the main room, or through video link in an adjoining room. The accused sits in an ante-chamber with a glass window with one way visibility, such that he can view and listen to the deposition without the prosecutrix seeing him. Outside the deposition room, there is a special waiting room designated only for the prosecutrix and her companions, the door of which is sometimes locked and sometimes unlocked and open.

On one occasion in Case 3, we found the Defence Counsel was present with the prosecutrix in this designated waiting room. Initially, we assumed she was a DCW lawyer, but later during the examination-in-chief when the Presiding Officer inquired who she was (as she was verbally sympathising with the prosecutrix), she introduced herself as one of the two Defence Counsels. It then became clear to us that despite her being the counsel for the accused, she was present in the waiting room prior to the examination-in-chief; we also observed that she shared an easy camaraderie with the prosecutrix. In fact, when the deposition of the prosecutrix had just started, the *naib* asked one of us to step out of the courtroom briefly, to confirm with us that the prosecutrix was going to turn hostile. We disclaimed knowledge of this, so she moved on to asking the Investigating Officer, who was then sitting with the mother of the prosecutrix. She asked her, “*kiski taraf se bolegi?*”, and the Investigating Officer and the mother confirmed that the prosecutrix was going to turn hostile in court.

On another occasion, we once witnessed a loud and animated discussion between a large group of men and 1 woman in the VWDC lobby, over compromise. This discussion lasted for a while, undisturbed by the court staff. This matter was not one of the 16 selected for this study. However, that this discussion was held within the premises of the VWDC, where only persons related to cases on rape and child sexual abuse are present, leads to the inference that it pertained to a rape case.

Our observations did indicate that while the VWDC qualitatively transforms the space within which the prosecutrix deposes, it remains challenging to shield the prosecutrix despite the architectural separation (of passages and waiting room for the prosecutrix) in practice. The concern is therefore more of aligning court practice with the architectural design more strictly and uniformly over a period of time.

*In traditional-style courtrooms, prosecutrices routinely depose from behind a screen to prevent confrontation with the accused, though complete shielding during deposition is not always achieved in practice. However, there are no attempts to shield the prosecutrix (and her companions) from the accused (and his associates) either within the court premises or outside. The prosecutrices and the accused (or his companions) routinely share the same space in the waiting area, where on more than one occasion discussions on compromises were witnessed. In the VWDC, the accused sits in a different room with a window with one-way visibility, and the prosecutrix also has the option of deposing via CCTV. The layout seeks to minimize contact between the prosecutrix (and her companions) and the accused (and his associates) within the court premises, but here too, on one occasion, the Defence Counsel was found to be in the waiting room designated for the prosecutrix, with her.*

## **4.2. DEPOSITION**

This section describes the manner in which the depositions of the prosecutrices were taken. It refers to the oral process of question-answer by which the account of the prosecutrix is recorded to be weighed as evidence alongside other evidence later, for ascertaining the guilt of accused. Testing compliance with gender-sensitive examination is vital since this is when the prosecutrix is in the spotlight, and is in direct conversation with the Presiding Officer, the Public Prosecutor and the Defence Counsel. This section mainly describes observations pertaining to the Presiding Officer and the Public Prosecutor, and their role and interventions during the examination in chief and the cross examination. It narrates instances demonstrating the vigilance of the Presiding Officer during the deposition, including efforts to disallow objectionable questions by the Defence Counsel, and also her sensitivity, in putting the prosecutrix at ease, helping her understand questions, and give breaks and reassurances to her when needed. It also narrates instances demonstrating the relationship between the Public Prosecutor and the prosecutrix, her preparedness in conducting the deposition and quality of interventions in the cross examination.

### **4.2.1. ROLE OF PRESIDING OFFICER**

**a) Introducing the prosecutrix to the various actors, their roles, the trial and reassuring her about the oversight by the Presiding Officer** – Only in FTC C, did the Presiding Officer set the tone for the examination and cross examination at the start of the proceedings. She explained to the prosecutrix what the trial would comprise of, the role of the prosecutrix in answering the questions and her oversight as the Presiding Officer for reassurance. While in other courtrooms we observed that the Presiding Officers intervened effectively to break down questions, restrain hostile questions during the cross examination, yet the practice of orienting the prosecutrix at the start of the trial is both necessary (given that the prosecutrix is unaware of this, for lack of any provision for such orientation), and reassuring. It also signals to the other actors in the courtroom, of the need to be sensitive to the prosecutrix. There was no evidence however, of the Presiding Officers in any of the courts, asking if the prosecutrix needed a companion present with her during her deposition, or whether she was aware of the availability of compensation upon request. The prosecutrix is entitled to have a companion stay with her during deposition during the *in camera*

proceedings. However, companions of the prosecutrices are routinely ushered out of the courtroom along with the general public before proceedings begin, as no information is provided to the prosecutrix on her right to have someone known to her stay on with her during deposition. Only in FTC C did the Presiding Officer always ask the prosecutrix whether she wants the relative accompanying her to be present during deposition. In FTC B, the companion is called only when the prosecutrix appears distraught, such as in one instance in Case 5. During her examination-in-chief, the prosecutrix started crying. Unsure of what to do, the Presiding Officer asked us, as persons working with an NGO, to sit with the prosecutrix and reassure her. Soon after that, however, the Presiding Officer called the mother of the prosecutrix inside to comfort her.

The introduction by the Presiding Officer ideally must cover these aspects as well, particularly in the absence of any other agency tasked with this role, to at the minimum inform the prosecutrix of her rights under the law.

***Prosecutrices lack basic orientation about the trial process, including the crucial deposition phase, and the role of different actors. They are also not aware of their own role in the proceedings, their right to have a companion during deposition, and their right to avail compensation. Currently, there is no specialized agency to undertake this task of orientation, In the absence of this, only the Presiding Officer in FTC C would routinely introduce the prosecutrix to the deposition process and to different actors, and to her right to have a companion.***

***b) Communication with the prosecutrix to facilitate her participation*** - In all the cases observed, depositions were conducted in Hindi, which the Presiding Officer would translate and record in English for the case records. Yet, there is more to communicating than just the medium of communication. It's the explanations in colloquial terms, tone of voice, that a discerning Presiding Officer will rely upon to reassure the prosecutrix and ensure her informed participation. In FTC A, the Presiding Officer would make a conscious attempt to repeat and clarify questions for the benefit of the prosecutrix, and ask follow-up questions herself to elicit further details and clarify the circumstances in which the incident took place. For instance, in Case 1, the Presiding Officer was not satisfied with the euphemistic terminology offered by the prosecutrix that the accused had done '*galat kaam*' with her, since that describes a range of acts. The Presiding Officer made sure that the meaning was clarified before proceeding further. Yet, there were occasions where the tone was one of impatience and irritation, at having to repeat questions to clarify the genuine confusion of the prosecutrix. In FTC B, while the Presiding Officer spoke gently, he let the Defence Counsel persist with questions that sought to insinuate the prosecutrix's lack of resistance to imply consent, and only belatedly took over the role of presenting the questions to secure the visibly upset prosecutrix's response. In FTC C, the Presiding Officer was uniformly attentive and sensitive to the prosecutrix, explaining to her at the outset what the examination and cross examination was about, assuring the prosecutrix of her protective oversight to reassure the prosecutrix. Her breaking down of questions to help the prosecutrix understand was just one way of facilitating the communication. In FTC D, the Presiding Officer helped break down questions for the prosecutrix, but with consistent sternness. Her efforts to rein in the Defence Counsel were inconsistent, especially

when they asked problematic questions that served little purpose other than to disturb the prosecutrix.

***The quality of communication of the Presiding Officer with the prosecutrix varies from court to court. All depositions are conducted in Hindi and transcribed in English, and all the Presiding Officers proactively help the prosecutrix in understanding questions. The Presiding Officers in FTC A and FTC D are sometimes impatient and stern with the prosecutrix. The one in FTC C demonstrates exemplary sensitivity in her tone, language and manner of communication. While all FTC are aware of the guidelines on providing breaks, water and chair to the prosecutrix, it is followed consistently only in FTC B and FTC C.***

**c) Ensuring cross examination is not hostile to the prosecutrix** - There are broadly two aspects that were observed in relation to what broadly constitutes a hostile cross examination, and the role of the Presiding Officer in eliminating these.

- The first, when the Defence Counsel's intentionally seek to disturb the emotional and psychological equilibrium of the prosecutrix through asking explicit sexual questions, insinuating lack of resistance or sexual consent, or through the presence of two or more associate lawyers in courtroom, sometimes positioned in close physical proximity to the prosecutrix during cross examination.
- The second way of eliminating hostility is by verbal and non-verbal reassurances to the prosecutrix. This includes intervening at relevant moments, periodic reassurances based on the response of the prosecutrix, and through making available chair and water.

**In FTC A**, there is a marked difference between the way the Presiding Officer conducts the trial within the main courtroom and in the VWDC. While in the main courtroom, the Presiding Officer permits recording of evidence in different cases simultaneously, in the VWDC, the Presiding Officer concentrates her attention on cases individually. This ensures that the process is more comfortable for the prosecutrix than it would be in the main courtroom. The Presiding Officer was very attentive to the cases at hand in the VWDC.

The Presiding Officer showed particular attention in Case 3, once the prosecutrix had turned hostile early on in her examination-in-chief. While the Public Prosecutor then began to undertake formalities of the cross examination, as is practice when a prosecution witness turns hostile, it was the Presiding Officer who kept asking questions to ensure that the prosecutrix had not back-tracked on her statement under pressure from the accused. The Presiding Officer sought to understand from the prosecutrix the reason for filing the complaint, the circumstances under which the S. 164 statement had been given to the Magistrate etc. In this case, the prosecutrix had filed the FIR against the accused, her neighbour, under pressure from her husband. The Presiding Officer relented with her questions only once the full context and story of the prosecutrix with her husband was clear, and she was told of the pending divorce and domestic violence proceedings against him. Only after ascertaining this fact, did the Presiding Officer record the following statement in the deposition on behalf of the prosecutrix: *"It is wrong to suggest that I am deposing falsely as I have been won over by the accused."*

What was perhaps most revealing weakness in the system was that the Defence Counsel had access to the prosecutrix within the exclusive chamber for the prosecutrix within the VWDC. As this is not within the courtroom it is likely to go undetected by the Presiding Officer.

**In FTC B,** the Presiding Officer at the time the study began was transferred half way through the study and a new Presiding Officer was appointed to the court. The first Presiding Officer would speak in a soft, mild tone with the prosecutrices, addressing them as *beta* [child], while the second would address the prosecutrix by her name, as is the standard practice. The first Presiding Officer, as in Case 8, was more proactive in restraining the Defence Counsel from asking hostile questions, allowing her time as well to compose herself. In the case of the second Presiding Officer, as in Case 5, time was given to the prosecutrix to recover, but without restraining the hostile cross examination sufficiently in advance.

During a particularly difficult cross examination in Case 5, the prosecutrix had been discharged on a previous date, but was later recalled on request of the Defence Counsel, who claimed she was inexperienced and required to conduct cross examination again. On the next date, the accused came with a team of 3 Defence Counsels. On objection from the Public Prosecutor, the Presiding Officer told one of them to leave the courtroom (as they were all standing on the podium); after which two continued to stand on the podium close to the prosecutrix. The lead Defence Counsel conducted the cross examination with aggression, which visibly put the prosecutrix at discomfort. She would speak in a soft tone, and progressively in response to the aggressive tone of questioning spoke less and less. The Defence Counsel asked the prosecutrix if '*aapne shor machaane ki koshish ki* [did you try to raise an alarm]?' when she was being apprehended by the accused. She also asked whether the prosecutrix screamed during the rape, and whether she scratched the accused with her nails. The Presiding Officer, instead of preventing such questions, only referred the Defence Counsel back to the examination-in-chief, where such details had been clarified. The Defence Counsel persisted with questions in the same vein – asking whether tears fell from her eyes at the time of rape. The Defence Counsel persisted undisturbed with a stream of questions intended to upset the prosecutrix by insinuating lack of resistance to imply consensual participation (which is irrelevant to the law following the 2013 amendment). The Public Prosecutor persistently objected to this line of questioning, and while the Presiding Officer appeared aghast, she did not restrain the defence. Finally, the distraught prosecutrix stormed out of the courtroom, refusing to depose further. The Presiding Officer noted the demeanour of the prosecutrix, and asked her mother to convince her to bring her back to resume. It became apparent why the Presiding Officer did not restrain the defence, when while expressing sympathy to the prosecutrix, she explained that the Defence Counsel was merely doing her job, saying that "*chhoti-chhoti baat pe naraz na ho*" [not to get offended on small-little things]. She made some amends, by asking the Defence Counsel to route her questions to the prosecutrix through the bench. The Defence Counsel again asked the prosecutrix (through the Presiding Officer), this time in English, "At the time of penetration, did you cry with your eyes?" The Presiding Officer disallowed the question, but the Defence Counsel insisted on her right to ask this. She sought an explanation to why the prosecutrix did not raise an alarm, whether she was bound/gagged. The prosecutrix maintained her silence through all this, while the Public Prosecutor objected continuously to the questions. This continued for some time before the Presiding Officer eventually disallowed these questions. She also disallowed the next question, where the Defence Counsel sought to elicit the duration for which the sexual intercourse continued;

and again, when she asked whether the accused undressed the prosecutrix or she did so herself. The Public Prosecutor objected to these 'obscene questions', to which the Defence Counsel agreed and did not wait for an answer.

**In FTC C,** the Presiding Officer was firmly in charge of proceedings in the court, aware of who entered and who left the court room. She showed dedicated concentration when listening to the matters at hand. She also approached the cases with sensitivity. Her attitude towards the prosecutrix seemed to set the tone for the rest of the Court staff, as they seemed to be uniformly attentive and sensitive in the cases that were observed. In all the examinations, she reassured the prosecutrix at the very start, and asked her to not worry and be calm, especially during the cross examination. She would also actively help the prosecutrix to understand the questions put to her by the Public Prosecutor and the Defence Counsel.

She would also actively rein in the Defence Counsel from asking objectionable questions. In Case 9, when the Defence Counsel asked a specific question pertaining to a document, the Presiding Officer asked her to change the question as the prosecutrix was illiterate. When the Defence Counsel was asking irrelevant questions, not pertaining to the alleged offence, and was just lengthening the cross examination, the Presiding Officer tried to persuade her to skip to the relevant questions. In Case 10, she prevented the Defence Counsel from asking a question which hinted at her character- "*aap kitne raat tak accused ke sath rehte the*" (Till what time in the night did you stay with accused?), or how many times the prosecutrix had had sex with the accused. In Case 11, she permitted only the Defence Counsel in whose name the *vakalatnama* was signed to stand next to the prosecutrix, and asked the remaining lawyers (her juniors) to sit back.

The Presiding Officer also demonstrated considerable sensitivity towards the prosecutrix. In Case 10, on the first date of her examination-in-chief, the prosecutrix was visibly agitated and started crying, so the Presiding Officer offered her a chair and water, and advised her not to be afraid or distressed. When the Defence Counsel said that she wanted to conclude the cross examination on another date as she did not have all the documents, the Presiding Officer asked her to bear the costs as the prosecutrix was pregnant and couldn't afford to keep coming to the court.

In Case 11, during the first day of the examination-in-chief of the prosecutrix, her mother who was waiting outside wasn't feeling well, so the Presiding Officer agreed to defer proceedings, and later adjourned the hearing as the prosecutrix was worried about her mother. On the next date, the Presiding Officer asked the prosecutrix if she wanted her mother to be with her in the court. The prosecutrix however declined the offer.

**In FTC D,** the Presiding Officer sits over the depositions with authority and sternness. She was mostly attentive to the proceedings at hand and very involved in recording the testimony of the prosecutrix. She would also explain or repeat the questions of the Defence Counsel to the prosecutrix for her comprehension. The oft-used phrase in rape trials, '*galat kaam*' was again used during the deposition in Case 15, and the Presiding Officer was quick to insist on clarifying its meaning.

However, she was not consistent in reining the Defence Counsel from intimidating or harassing the prosecutrix. In Case 13, the accused had come with 4 Defence Counsels, all of whom stood circling the prosecutrix very closely, and one of them was even sniggering in her face. In the same case, the

Defence Counsel also asked her questions about her sexual history with the accused repeatedly in several different ways. Both passed without intervention from the Presiding Officer. But in Case 14, she reprimanded the Defence Counsel for asking why the prosecutrix continued to meet the accused if she was not interested in friendship, but nevertheless recorded the question in the testimony. In the same case, the cross-examination lasted for 6 different dates, and the Presiding Officer continuously pulled up the Defence Counsel for this. On one date, she imposed costs on the Defence Counsel. On another date, she refused an adjournment when the Defence Counsel did not appear despite being present in court premises. On the fifth date as well, she reminded the Defence Counsel that the cross examination had gone on for far too long and needs to be wound up. This was casting hardship upon the prosecutrix as well, since she would be accompanied by her husband to court on every date, and he would need to forgo his day's wages to do so.

She conducted proceedings with equal sternness with the prosecutrix as well. While interpreting questions for her benefit, she would be stern. In Case 13, when the prosecutrix broke down during her examination, she was offered water, a chair and a break for 10 minutes. On resuming, the Defence Counsel commanded the prosecutrix to stand up and reply to her questions, without any restraint from the Presiding Officer. But in Case 16, when the Defence Counsel alleged that the prosecutrix had filed a false complaint, and she started to cry, the Presiding Officer only made a note regarding demeanour of witness instead of offering her any reassurance.

***A hostile cross-examination can be restrained by regulating the number of Defence Counsel conducting the cross-examination, by preventing scandalous and objectionable questions, and by routing all questions through the Presiding Officer. The approaches of the Presiding Officers to these two aspects vary considerably. Barring FTC C, the Presiding Officers in other courts do not immediately disallow a large team of Defence Counsel. The Presiding Officers in FTC C and FTC D are more vigilant in disallowing objectionable questions, whereas the one in FTC B permitted a hostile cross-examination to continue largely unchecked until the prosecutrix refused to depose further. Questions are not normally routed through the Presiding Officer, until after the hostility of the Defence Counsel has already damaged the morale and balance of the prosecutrix.***

#### **4.2.2. ROLE OF PUBLIC PROSECUTOR**

The role of the Public Prosecutor ideally pertains to the following, although our observations showed that the last two aspects related to support person and compensation were not in evidence at all (on account of the ambiguity in the law that at present does not pin this responsibility on any of the actors within the criminal justice system).

- Meeting of the Public Prosecutor with the prosecutrix prior to the date of hearing or even just prior to meeting in the court room, to orient the prosecutrix to the requirements of the trial and to understand her version beyond the written word of the record;
- The knowledge and grasp of the facts and evidence in the case records;
- Seeking the court's intervention in restraining the defence when they ask questions beyond the scope of the law, or those that intentionally seek to disturb the prosecutrix.

- Explaining to the prosecutrix in advance of the court hearing that she is entitled to a support person or a companion (who is not a witness in this case) to enable the the prosecutrix to be accompanied to court by such a person.
- Explaining to the prosecutrix that she is entitled to apply for a compensation in advance of the trial or at its outset, so she may realise the rights available to her under the law.

**In FTC A**, the Public Prosecutor conducts the examinations in chief efficiently. She has access to the court file, containing the FIR and the S.164 statement to the Magistrate, on the basis of which she records the testimony of the prosecutrix. She maintains a cool distance from the prosecutrix as witness. She does not meet them beforehand to prepare them for their crucial testimony in court. However, she does introduce herself and the Defence Counsel to the prosecutrix within the courtroom right before the deposition. She politely explains her role and that of the Defence Counsel to the prosecutrix to familiarise her with the process. This was done in both Case 1 and Case 3.

**In FTC B**, the Public Prosecutor is very proactive and sensitive in her interactions with the prosecutrix. Though she does not meet the prosecutrix beforehand, she makes herself available to address their queries and concerns afterwards. She also explains the procedure to her and acquaints her with the different actors before commencing the chief-in-examination. She persistently raises objections to questions by the Defence Counsel that are scandalous and obscene, meant to question the character and sexual history of the prosecutrix and those intended to harass her.

Her conduct through the cross-examination in Case 5 demonstrates this best. She first brought the attention of the Presiding Officer to the 3 Defence Counsel of the accused crowding over the prosecutrix. Thereafter, she persistently raised objections to all the questions of the Defence Counsel which sought to harass, shame or intimidate the prosecutrix, or question her character, or question her conduct in failing to resist the rape. She expressly brought the attention of the court to the definition of consent in the law, and argued that the issue of resistance is irrelevant.

**In FTC C**, the Public Prosecutor would introduce herself and her role to the prosecutrices before the proceedings began and attempt to establish a rapport to put them at ease during the deposition. She appeared to be well versed with the facts of the case, and was able to comfortably communicate with the prosecutrix, instilling in her a sense of ease. Along with the Presiding Officer, she would help the prosecutrix understand questions that were complicated during her cross examination.

**In FTC D**, the Public Prosecutor would also help interpreting and communicating the questions to the prosecutrix, and would act as a shield from a harsh Defence Counsel. She had never met the prosecutrices before. Even at the commencement of the depositions, the Public Prosecutor would not make an effort to explain the procedures to the prosecutrix.

***Public Prosecutors across the FTCs are familiar with the brief, but their source of information is the official records alone. There is no established practice of Public Prosecutors meeting the prosecutrices beforehand to understand her version of the incident, assess inconsistencies with the official version if any, explain the process and answer their queries. There is no knowledge of adverse impact of registering a case or challenges the prosecutrix is facing to help her***



***address those. Some Public Prosecutors introduce themselves to the prosecutrices just before the proceedings, or answer their queries, of their own volition. While all of them are proactive in their interventions in the cross-examination, the Public Prosecutor in FTC B demonstrates the most sensitivity in this respect. None however informed or assisted the prosecutrices with their right to a companion during deposition or the compensation claims.***

### **4.3. LEGAL ORIENTATION AND SUPPORT**

Under law, prosecutrices are not entitled to any legal representation since they are mere witnesses in a trial, which is prosecuted by the Public Prosecutor representing the state. Prosecutors are appointed to different courtrooms, and are responsible for prosecuting every case within that court. They are not accountable to the prosecutrix, and do not interact with them. Nevertheless, the rights and security of the prosecutrix are at stake during the trial, as she is the one who has set the criminal justice motion in process for redress.

The prosecutrix typically feels the need for orientation on the law, legal process, the next steps and her role from the point of registering the case. This is not the role of the Public Prosecutor, who appears once the trial commences. Some prosecutrices feel assured that the State is prosecuting their case through the Public Prosecutor, and do not hire any private legal counsel. In some other cases, it is the Investigating Officer on whom the prosecutrix relies for information on the progress of the case and guidance on the procedure. Yet in some cases, the prosecutrices did hire private legal representation and support. It was found that private counsel were often not trustworthy, resulting in high costs to the victim without the clarity or support they sought.

The victim in Case 9 was cheated by her lawyer. She reports having paid a high fee to a lawyer, who later vanished. Subsequently, she hired a second lawyer, who also charged her a large amount in fee upfront, and Rs.3,000/ per hearing thereafter. While she expended her life savings for the trial process, she was simultaneously hesitant about asking her lawyer for details on every court hearing, since that would entail additional expenses.

In Case 3, where the prosecutrix had filed the case under pressure from her husband, she had advice first from the lawyer hired by her husband. After her husband deserted her, she did not have access to this lawyer's services. Instead, it was the Defence Counsel who helped her and prepared her for her deposition in court, where she told the Presiding Officer that she was pressurised by her husband into filing the FIR.

In Case 10, though the prosecutrix had hired a private counsel, it was the Public Prosecutor who was conducting the examination-in-chief, and even during the cross examination it was the Public Prosecutor who was proactive.

In some cases, the victims reach out to the Investigating Officer, who is their first point of contact in the criminal justice process. Though the role of the Investigating Officer is not one of a support person, interviews with victims in Case 3 and Case 13 reveal that a helpful and compassionate Investigating Officer can be greatly empowering for them. Not all victims had the same experience with their Investigating Officers, but these two victims felt greatly at ease with the process due to the involvement of the Investigating Officers.

Investigating Officers are the only officials who stay in touch with the victim and their family throughout the process. They exchange contact details, and are available for queries, concerns and information on the trial. They might even extend extra-legal support and counseling to the victim and their family. In Case 3, for instance, the comfort shared between the victim and the Investigating Officer was evident since the victim would call her “*didi* [elder sister]”.

### **Delhi Commission for Women Scheme for Rape Victims**

Recognising the need for legal counseling and support, the Delhi Commission of Women (DCW) has a scheme that provides women lawyers to guide prosecutrix through their rape cases. However, we did not find any DCW lawyer present in any of the hearings under observation in FTC A. In Case 3, the prosecutrix stated that she had been given some “*sarkari wakil, jo kisi NGO ki taraf se thi* [government lawyer, from some NGO]”. It is not entirely clear what kind of legal assistance she had been provided, whether appointed by the court, or through some NGO, or through some other entity altogether. While it is possible she is referring to a DCW appointee, the unfamiliarity between the lawyer and the prosecutrix is evident from this itself. The lawyer presumably did not introduce herself to the prosecutrix or explained her role and the services she has been deputed to provide. In this case, the DCW lawyer did not guide her through the process. The prosecutrix says she had the assistance of only the Defence Counsel, that is, the counsel hired by the accused, who told her what kind of questions she would be asked in court and familiarised her with other court processes.

In FTC B, though a DCW lawyer has been appointed in all the cases observed, she was seen only once in Case 6 for a short span of 10 minutes. She walked into the courtroom, observed the trial and walked out.

In FTC C, in all the cases observed there was a Delhi Commission for Women (DCW) lawyer present during the deposition of the prosecutrix. However, her role was limited to being a mere observer, and we did not see her intervene during the proceedings even once.

Similarly, in FTC D, a Delhi Commission for Women (DCW) lawyer was appointed for all cases. In Case 13, 2 different DCW lawyers appeared on 2 different dates, and only 1 of them introduced herself to the prosecutrix and stayed till the end of the proceedings. In Case 14 also, the DCW lawyer came for only 1 date, and in Case 15, the prosecutrix stated that she did not find the DCW lawyer of much help.

In Case 16, the husband of the prosecutrix, who felt the need for legal representation in the 2 rape cases pending against his father and brother, hired the DCW lawyer as his private counsel and paid her legal fee. It was his understanding that she was meant to represent them in these 2 cases, as well as in a maintenance petition pending in the civil court filed by the prosecutrix’s father-in-law against her husband. However, as per the husband of the prosecutrix, the DCW lawyer took the money but did not appear for a single hearing in any of the cases thereafter. Despite his repeated phone calls and attempts to get in touch, the lawyer was incommunicado. On the one occasion when we saw the DCW lawyer present in court, the husband and the prosecutrix were requesting her to be present with them during her deposition. She excused herself on the pretext that their case was not going to be called soon, and then disappeared. Their case was called for deposition immediately afterwards.

*In the absence of a specialized agency to provide legal guidance and support to the prosecutrices, some rely on the Investigating Officer for this purpose, while some others were driven to hire private legal counsel. Hiring private counsel was not ridden with high costs for the prosecutrices, but was often exploitative, since prosecutrices still did not achieve the guidance and support they required. The scheme of the Delhi Commission of Women to provide the services of empanelled advocates to rape victims, also lacks a specific role, motivation or direction. It is not monitored and is not working as intended.*

#### 4.4. TIME TAKEN FROM COGNIZANCE UNTIL COMPLETION OF PROSECUTRIX TESTIMONY

S.309(2), CrPC stipulates that the trial needs to be completed within a period of 2 months from the date of filing of chargesheet. Since the study was limited to observing the deposition of the prosecutrix in the trial stage, this section describes the time taken to complete the prosecutrix's testimony from the date of cognizance to ascertain the extent to which the timeline of the trial complies with the statutory stipulation. It also explains the most common causes for delay in the process.

##### 4.4.1. TIME TAKEN FROM COGNIZANCE UNTIL COMPLETION OF PROSECUTRIX'S TESTIMONY

Case	Date of filing chargesheet	Date of completing prosecutrix testimony	Time Taken (in weeks )
Case 1	22.11.2013	Not concluded until 31.03.2015	20 weeks*
Case 2	21.06.2013	Not concluded until 31.03.2015	94 weeks*
Case 3	24.02.2014	04.12.2014	40 weeks
Case 4	10.02.2014	Not concluded until 31.03.2015	60 weeks*
Case 5	06.12.2013	24.03.2015	67 weeks
Case 6	31.01.2014	Not completed until 31.03.2015	60 weeks*
Case 7	12.03.2014	Not completed until 31.03.2015	55 weeks*

Case 8	02.07.2014	Not completed until 31.03.2015	43 weeks*
Case 9	16.01.2014	04.06.2014	18 weeks
Case 10	7.11.2013	10.03.2014	16 weeks
Case 11	29.01.2014	14.03.2014	6 weeks#
Case 12	07.12.2013	30.04.2014	19 weeks
Case 13	16.01.2014	21.05.2014	18 weeks
Case 14	24.01.2014	16.02.2015	55 weeks
Case 15	20.03.2014	04.06.2014	11 weeks
Case 16	13.02.2014	15.05.2014	13 weeks
* Still ongoing at the completion of the study on 31.03.2015			
# Prosecutrix deposed upfront that she did not want to pursue the case			

**(TABLE 4.1)**

Compared to the pre-trial stage, the table above demonstrates that the real delay starts once the case enters court. As compared to the pre-trial phase, which gets completed within a maximum period of 2-3 months, trials last significantly longer despite the statutory direction to complete them within a 2 month period.

Time taken for trial varies from court to court. Proceedings in **FTC C** were the first to conclude among all the four FTC under observation, and came closest to abiding by the statutory limit of 2 months. In Case 9 and Case 10, the deposition took between 4-5 months. In Case 9, the proceedings got delayed because on 3 dates the prosecutrix did not appear since she was unwell, and on one date the Public Prosecutor was unavailable. In Case 10, on one date the Defence Counsel was not present so the prosecutrix could not be examined in chief. Instead, the doctor and the Metropolitan Magistrate's testimony were taken on record. The deposition in Case 11 concluded swiftly in 6 weeks, since the prosecutrix informed the court upfront she did not want to pursue the case. In Case 12, the prosecutrix abandoned the proceedings and the summons were returned unserved repeatedly. To comply with the principles of natural justice, the proceedings nevertheless lasted for 19 weeks (less than 5 months), at the end of which the accused was acquitted in *ex-parte* proceedings. The gaps between adjacent dates in FTC C were also the shortest, extending not longer than one month.

Similarly, proceedings in **FTC D** also moved more expeditiously as compared to other courts. The only outlier in this is Case 14, where the deposition of the prosecutrix took more than a year to complete. In the other 3 cases, this stage was completed in an average of 14 weeks, or about 3-4 months. The Presiding Officer gave shorter dates for hearings. Case 14 extended for this long a

period for a multitude of reasons. The examination-in-chief was completed in one date, and the cross examination was deferred. On 2 dates, the prosecutrix was not present in court, and so bailable warrants were issued against her. On one date, the Defence Counsel was not present, and on another date, the Public Prosecutor was not available. On one of the dates, the case was called very late in the day, and very little progress could be made. Once the cross examination started, it took 5 dates for it to be completed. When the Presiding Officer insisted that the Defence Counsel complete the cross examination without prolonging it, she insisted that she was only asking relevant questions and this time was necessary. On two such dates, the cross examination was deferred since the Defence Counsel sought to confront her with documents, which were in her possession, but not available in court. This caused major hardship to the prosecutrix, since she would always be accompanied by her husband to court, who would have to wait indefinitely for the case to be called, losing his day's wages on that account.

On the other hand, **FTCA** does not reflect a good record of completing its trials on time. In only one case the evidence of the prosecutrix has been completed (Case 3) in 40 weeks (less than 10 months). In all the others, they have been pending. Contrary to the statutory direction, trials are not conducted on a day-to-day basis, but are interrupted by long dates in the middle. The observation has been that the gap between two consecutive dates has consistently grown with time. Based on informal interactions with court staff, the reason attributed to such delay is that FTC A already has a caseload of more than 300 cases in its docket.

In Case 1, in the earlier stages of the trial, the next dates of hearing would be about 1 month apart, this progressively expanded to 3 months. The deposition in this case is underway. As stated earlier, the deposition of the prosecutrix has been completed in Case 3 but was delayed to an extent due to non availability of the Forensic Science Laboratory Report (FSL Report), and on one occasion because the Public Prosecutor was not available.

In Case 2 and Case 4 the deposition has not even started. There are several factors responsible for the immense delay in Case 2. On two dates, the Presiding Officer was on leave so the testimony could not be taken, and one other date was wasted because the judge had been transferred and the bench was empty. At least three other dates were rendered ineffective since the FSL Report has not been received. Case 4 has been held up since the prosecutrix has missed several dates, and on one date, an adjournment was granted on request of the Defence Counsel.

Proceedings in **FTCB** were more prolonged in all cases, with deposition of prosecutrix lasting more than a year. Until now, the deposition of the prosecutrix has completed only in Case 5. There are a multitude of reasons for this delay.

In Case 5 also the examination of the prosecutrix was held up on two dates on account of the FSL report, but other witnesses were examined instead. On one date, the Presiding Officer was on leave. In Case 6, the prosecutrix was partly examined, and then deferred on account of the FSL report. Since then, more than a year has passed and her examination has not resumed. This is also because she was pregnant and later, nursing her child. Here, one date was rendered ineffective in the intervening period between the transfer of the earlier Presiding Officer and the appointment of the new one. The next date is at a gap of more than 5 months.

In Case 7 also, 3 dates passed without conducting any business because of the FSL Report. On one date, the Defence Counsel was not present, another date, the Public Prosecutor was not present, and yet another date, the accused was not brought from jail. Accordingly, the examination of the prosecutrix has not even begun. Intervals between dates in this case have also now increased to 4 months. In Case 8, the prosecutrix has only been partly examined by the Public Prosecutor so far, deferred because the FSL Report had not been received. Since then, 2 other dates were ineffective as the FSL reports had not arrived, and one date lapsed on account of a lawyers' strike. The next date was given with a gap of 5 months, which took it beyond the duration of the study.

Similar to FTC A, in FTC B also gap between dates have consistently increased.

#### **4.4.2. COMMON CAUSES FOR DELAY OBSERVED IN PROCEEDINGS**

The real delay in cases start once the case enters court. As compared to the pre-trial phase, which gets completed within a maximum period of 2-3 months, trials last significantly longer, and are not being completed within two months as stipulated by law.

The most common causes of delay were identified during the course of trial observation, are enumerated below.

- a. **FSL Report**: Trial of at least 5 cases was held up because the court had not received the FSL Report. In Case 2, so far 10 months had been spent waiting for the FSL Report to be received. In Case 3, 1 date, and in Case 5, 3 months passed for this reason. In Case 7 and Case 8 both, 3 dates passed on account of the FSL Report. In these circumstances, courts either do not proceed with the trial at all until the FSL Report is received, or they continue with the examination of other witnesses apart from the prosecutrix until it is received. Both are problematic since they introduce a huge time lapse between the actual incident and the most important piece of evidence - the testimony of the prosecutrix. This has an impact on the quality of the testimony that is also recorded due to the vagaries of memory.

One of the causes behind the significant delay in releasing FSL Reports is the fact that FSL labs in Delhi are over-burdened and under-staffed. There are two labs in Delhi- one in Rohini and one on Lodhi Road, that are responsible for releasing reports for all serious criminal offences across all the courts in Delhi, including those in rape, grievous hurt, rape etc. Another reason for delay that is evident is the tendency in hospitals to compulsorily seize clothes of the victim and send them for forensic examination, regardless of its relevance. In The lengthy delay in the FSL process clearly goes to show that abbreviating the time period for the criminal trial in court is of little consequence if the processes feeding into the trial are left untouched.

- b. **Adjournments on account of the defence**: The second most important factor for delays in the trial is adjournments sought on behalf of the defence. At least five cases were impacted by this factor: Case 4, Case 7, Case 13, Case 14 and Case 15. Defence Counsels do present a variety of reasons for granting adjournments. In such cases, it is up to the Presiding Officer to exercise strict vigilance to decide to grant the adjournment or not, and on what terms, in order to deter parties from wasting the time of the court and prolonging the duration of the trial. This is exactly what the Presiding Officer did in Case 14. She imposed costs on the

Defence for taking an adjournment. On the next date also, the Defence Counsel was not appearing, so the Presiding Officer refused to proceed until she was called, and insisted that the accused ensure her presence within the next hour. Once she appeared in court, the Presiding Officer insisted that she pay the pending costs from the last date, and then resume the cross examination.

In Case 5, the cross examination of the prosecutrix was completed on 07.11.2014. However, on the next date, the Defence Counsel requested that she be recalled for cross examination, since the Defence Counsel claimed that she was not fully experienced, and had therefore not conducted the cross-examination properly. The court allowed this request.

- c. **Adjournments on account of Court Officers:** Cases are also adjourned on account of the Presiding Officer and the Public Prosecutor. This may be for several reasons as well. Two cases were impacted because the Presiding Officer had been transferred to another court and the replacement had not yet assumed office (Case 2 and Case 8). Five cases were impacted because the Presiding Officer had been on leave (Case 2, Case 5, Case 7 and Case 9). On some occasions, the Public Prosecutor had sought adjournments because of other engagements (Case 3, Case 7 and Case 14). Most disturbing, however, are lawyers' strikes, which almost bring the entire court machinery to a standstill because no business is permitted to be transacted in courts during the strike.
- d. **Adjournments on account of the prosecutrix:** Dates are also adjourned for reasons related to the prosecutrix herself. In some cases, she might ask for an adjournment for personal reasons, as in Case 1, Case 6, Case 9 and Case 11. In Case 1, for instance, dates were adjourned since the father of the prosecutrix had passed away; or as in Case 4, Case 5, Case 14 and Case 15 because the prosecutrix could not come to court. On a few occasions, this also happened as the summons to the prosecutrix were returned unserved, meaning thereby that the prosecutrix did not receive intimation of the court date, and was unaware that she was required to be present on that day.
- e. **Court docket:** Contrary to the statutory direction, trials are not conducted on a day-to-day basis, but are interrupted by long dates in the middle. In some courts, consecutive dates in cases have a shorter gap, such as in FTC C and D. In FTC B, however, the gap between two dates is immensely long, ranging up to five months with the progress of time. One reason for this, based on informal interactions with court staff, is that FTC B carries the case load of two districts instead of one, and already has close to 360 cases in its docket. While day-to-day trials are not conducted, FTC B follows a novel practice of often blocking 2-3 consecutive days at one stretch for evidence, and then resume after a few months.

Delays in the trial add to the mental anguish of not only the prosecutrix and her family, but also the accused. Longer proceedings leave prosecutrices in a state of uncertainty, and they are more susceptible to pressures from the accused to drop the proceedings. However, the 2 month period to complete trial as stipulated by law is not only unrealistic on account of the different stages involved in trial and the interaction with different institutions, but also threatens the fair trial rights of the accused. A practice that Presiding Officers can adopt to overcome this, is to conclude the deposition of the prosecutrix at the beginning of the trial, by conducting it on a day-to-day basis. It is also

necessary to exercise greater vigilance in granting adjournments, by the refusing adjournments and the imposition of costs.

*Even though the law requires the trial to be concluded within a period of 2 months, the depositions of the prosecutrices alone take substantially longer. FTC C concluded the depositions within 3-4 months, followed by FTC D. In FTC A and FTC B, depositions have extended to 10 months or longer. One reason is the increased case docket in these courts, which compels long gaps between consecutive dates in the trial. Even when the gap between adjacent dates was longest in FTC B, it was the only court that strove towards the good practice of blocking 2-3 dates at one go to conduct day-to-day proceedings. Furthermore, institutional processes feeding into the trial, such as the FSL Report, delay the trial indefinitely, since they are also overburdened. Other common causes for delay are adjournments and strikes by lawyers. Even as there is a need to complete trials within a reasonable period of time, the statutory limit of 2 months is not only unrealistic but also harms the rights of the accused to a fair trial.*

#### 4.5. FINDINGS

1. **Courts are acquainted with procedures and guidelines, but inconsistent in practice:**

All four fast-track courts were familiar with guidelines for conducting proceedings in a gender-sensitive manner, such as *in camera* proceedings, use of screen etc. However, they showed inconsistency in their application in practice compromising the spirit behind the procedures. At least one of the courts, FTC C, was exemplary in practice by consistently upholding the guidelines in letter and in spirit.

2. **Lack of specialised agency mandated to provide orientation to prosecutrix about trial processes or avail of companion and compensation:**

Prosecutrices typically navigate the trial blindly, without information pertaining to the legal processes involved and the role of different actors. They are unaware of their rights to compensation and to have a companion present with them during their deposition, and also have their concerns and queries about the process unaddressed. Currently, there is no specialized agency to fulfil this role, nor is it within the mandate of the existing actors. The Public Prosecutor, Presiding Officer or the Investigating Officer sometimes provide a limited introduction to some aspects of the trial on an *ad hoc* basis. The lack of information and exclusion from the process sometimes drives prosecutrices into expensive, risky and exploitative arrangements with private counsel. The Delhi Commission of Women Scheme to provide rape victims the assistance of empanelled advocates are not sensitised, lack direction and motivation. This results in the prosecutrices not being able to avail of a companion during deposition or apply for compensation, as entitled to in law.

3. **No shielding available to prosecutrix from accused in waiting areas of court premises and outside court:**



While prosecutrices are shielded from the accused during their deposition with instruments that vary between traditional style courtrooms and the VWDC, prosecutrices (and their companions) remain accessible to the accused (and their companions) in waiting and other areas of courts, and also outside the court premises. The VWDC attempts to minimise contact between the two in court premises as well, but observations reveal that this is not ensured in practice. Discussions relating to compromises and settlements were observed within the court premises in the traditional style courtrooms as well as the VWDC. In one case, the Defence Counsel informed the court that the prosecutrix will not be appearing on that date, proving contact between the parties outside court. Absent witness protection measures that prevent such contact between the parties, prosecutrices continue to be susceptible to pressures to drop the proceedings.

#### 4. **Public Prosecutors familiar with brief, but not with prosecutrix:**

While all the Public Prosecutors in the four courts under observation were familiar with the brief, they relied only on the official records. None of the prosecutrices met with the prosecutrix beforehand to know their account of the incident, and their circumstances thereafter. Not all of them introduce themselves to the prosecutrix before the proceedings to put her at ease to recount the incident in court. Only the Public Prosecutor in FTC C would meet the prosecutrices outside courtroom to reassure them. Prosecutrices and families often have concerns and queries pertaining to the process and their legal rights, and this is not within the mandate of the Public Prosecutor to address. Conventionally, any interaction between the Public Prosecutor and prosecutrix is disapprovingly viewed as ‘tutoring’ the witness. However, the lack of this interaction and orientation leaves prosecutrices in a state of ignorance, uncertainty and vulnerability within the process. There is a need to distinguish between acts by which Public Prosecutors coach the prosecutrices to distort their testimony, and those by which the prosecutrix is oriented to the process to depose confidently and easily.

#### 5. **Questions in cross-examination not routed through the Presiding Officer:**

The defence questions are inevitably hostile, often sexually explicit, intended to insinuate lack of resistance to imply consent. This practice continues. To counter this, one of the guidelines in *Sakshi v. Union of India* requires questions in the cross-examination to be routed to the prosecutrix through the Presiding Officer, to prevent harassment and intimidation by the Defence Counsel. This is not an established practice. The practice seems to be followed only when the cross examination gets unacceptably offensive, after the distress of the prosecutrix becomes apparent according to our observation. However, at least one of the four courts that were part of this study, showed more vigilance in this respect. Mandatorily routing cross examination questions through the Presiding Officer would go a long way in minimizing the stress and harassment faced by the prosecutrix during the trial.

#### 6. **Timeline of the trial:**

The statutory stipulation of completing the trial within a period of 2 months is not being complied with. The study found that the deposition of the prosecutrix, which is a capsule from the trial, takes longer than 2 months, and on average, takes 8.5 months. In some cases, these are underway after a year since the commencement of the trial. FTC C was the first to conclude proceedings in all 4 cases,

in a span of 4-5 months, with the shortest proceedings in Case 11, which was a breach of promise to marry case, and the prosecutrix deposed upfront she did not want to proceed, and the longest being 19 weeks, in Case 12, to fulfil the principles of natural justice and give the prosecutrix opportunities to appear and be heard. Proceedings in FTC B progressed the slowest, with deposition underway in 3 out of the 4 cases at the conclusion of the study, and the gaps between adjacent dates extending to 4-5 months. While day-to-day proceedings are not conducted in any of the four courts, only FTC B follows the good practice of blocking 2-3 days at a stretch to conduct depositions on a day-to-day basis, before adjourning for the next date.

One of the most common causes is the delay in the FSL Report, which holds up the deposition of the prosecutrix. The analysis by FSL Laboratories feeds into the judicial process as evidence, but the laboratories are overloaded and understaffed. Other causes include adjournments and the increase in the case docket, with FTC A and FTC B managing more than 300 cases. While there is a need to complete trials within a reasonable period to ease pressures upon the prosecutrix, the period of 2 months as prescribed by S.309(2), CrPC is not only unrealistic but also inimical to the fair trial rights of the accused.

## **CHAPTER 5: THE NEED FOR SUPPORT SERVICES**

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A gender-sensitive process also involves mitigating the psychological and social impact of rape on the victim, as well as the material consequences that follow. The cases that are part of this study, involve women who actively needed support services of one or more kind, particularly, orientation and guidance to navigate the justice system, psychological and family counseling, shelter and protection from the accused. These services are the weakest link in the justice chain.

From the trial observation as well as the victim interviewed as part of this study, a common thread that emerged was the complete unfamiliarity of the criminal justice system and lack of awareness of the different actors and their roles, procedures and processes involved. There is no orientation on what to expect or what step follows, or indeed, why certain procedures are in place.

The victim interviews reveal that apart from the confusion about the legal process, the victims often confront enormous challenges in their inter-personal and social relationships as a result of rape. There is the compulsion to re-locate in some cases, to get away from community scrutiny or proximity to the accused; in some cases the rape resulted in breakdown of her marital relationship or even other primary family ties. There are cases where victimhood unleashes a continuum of violations, such that rape ceases to be the only devastating episode in the life of the victim. For instance, the rape unleashed domestic violence or desertion by the husband, as the story of Case 15 and Case 3 reveal.

The previous chapter highlighted the need for support services in the form of legal orientation and support, and of a companion with the victim during her deposition. This section narrates the support services apart from the two previously described, that must be made available to the victim before, during and after the trial, to aid recovery and healing, as much as facilitate her full participation in the criminal prosecution.

### **5.1. NGO ASSISTANCE**

Outside of the official state framework, victims can avail assistance and counseling from NGOs working with women survivors of violence. Service providers here often undertake paralegal work and are familiar with court processes. They also provide counseling, help reconstructing the morale of the victims after they have suffered violence. This is in recognition of the fact that even as court processes focus on prosecuting the accused, the victim needs support to help her tide through other difficulties, including emotional breakdown and the backlash she might face from her family, neighbours etc. Equally, there is need for family counseling as families are impacted along with the victim, even as the victim herself might become more vulnerable within her family after occurrence of rape.

In the cases at hand, the victim in Case 8 was referred to an NGO by the police officials, as she was too disturbed to even register the FIR. On meeting the NGO person, who escorted her for medical examination, she gained enough composure to narrate the incident for registering the complaint.

In Case 10, the victim had the assistance of an NGO prior to filing the complaint. This is because the case pertained to sustained abuse by her partner.

Similarly, in Case 13, for instance, the husband of the victim initiated divorce proceedings against her on account of the rape, while in Case 16, the husband has been under pressure from all corners to do so as well, since the accused is his brother. They have been isolated from their family, friends and neighbours, and are currently struggling without any support. Support services in such cases are urgently called for.

Even though the husband of the victim in Case 15 accompanies her to court hearings regularly, privately he blames her for the rape, and inflicts severe physical, emotional, and sexual cruelty on her routinely, withholding financial support completely.

***Assistance from NGOs enables victims to navigate the trial process and reconstruct their morale after the violence. Victims also face increased vulnerability in their families after the incident, which necessitates counseling for both, the families as well as the victim. However, such NGOs are not sufficient in number and neither do most victims have access to this support, pointing to the need for the creation of a dedicated network.***

## **5.2. SHELTER**

The disclosure and reporting of rape brings with it exposure, scrutiny, judgment calls and reactions which can take a heavy toll on the victim. In our study, of the victims relocated from their homes. We did not have an opportunity to understand the reasons for relocation in each case, but our interviews suggest that it becomes necessary to escape neighbourhood scrutiny. Often it is necessary to get away beyond reach of the accused.

In some cases we learnt that domestic violence or marital tensions might increase, despite an overt support by the husband in pursuing the case. One such example is that of Case 15, where the severity of the abuse increased so much that the victim has been actively seeking shelter elsewhere after the incident. She even asked the researchers for help on two occasions in identifying a shelter to get away from the husband. Currently such facilities are not provided by the State as part of holistic support to rape survivors. Shelter as well as re-location assistance, are important since a lot of survivors interviewed (and those we were unable to reach) have relocated from their original accommodation in the aftermath of the incident.

***Some victims may face increased vulnerability to violence within their homes and their surroundings in the aftermath of the rape. Several victims re-located from their original accommodation to escape stigma and contact by the accused, while a few remained caught in an environment of violence at home. This necessitates access to shelter and alternative accommodation for the victims.***

## **5.3. COMPENSATION**

Compensation by the state is vital acknowledgement of the injury caused, and contribution towards the recovery of and healing of the survivor. There are state-wise compensation schemes for rape victims, including one in Delhi are stipulated under S. 357A, CrPC. The victim may apply herself, or

alternatively, the Presiding Officer can also order a compensation award to the victim at the end of the trial.

In the cases under observation, *none* of the victims interviewed were aware of their right to avail compensation from the Delhi Legal Services Authority under the state compensation scheme. This is because no entity, including the Presiding Officer, the Investigating Officer or the police person, at any point informed them of their right to avail compensation immediately after registering the FIR.

It was only in Case 15 that the Presiding Officer recommended compensation to the victim in the judgment while convicting the accused of the crime. She referred the case to the Delhi Legal Services Authority at the court complex. On receiving the judgment, DLSA sent a letter in English to the victim, asking her to come to the DLSA centre on a certain date. The victim told us that while she is literate, she could not read or understand the letter. Instead, she asked us what the letter was about: “*yehmuawzekeliyehai*[is this for compensation?]”

When she went to the DLSA office on the fixed date and made inquiries about the content of the letter, no one was willing to explain it to her. Instead, she was asked to sit in a corner and wait for her turn. After waiting several hours, when she got up to make further inquiries, and found out that the officials had forgotten about her. The police person from the relevant station had come and gone back, and no one had informed her about this. Instead she was asked to return on another date.

***None of the victims interviewed were aware of their right to avail compensation under the state victim compensation scheme, since there is no actor who is responsible for apprising her of her rights. In the one case where the Presiding Officer recommended compensation by the Delhi Legal Services Authority, the victim herself was not properly informed, and she faced difficulty in availing of it.***

#### **5.4. VICTIM PROTECTION**

Victim protection is a wider concept than what shielding through in camera trials and screens, or indeed the VWDC offers. The majority of the cases that are part of this study involve allegations of rape by an acquaintance. Victims are known and accessible to pressure and intimidation from the side of the accused, compelling them to abandon or compromise the case. Several victims reported that the accused and his family would constantly attempt to contact her.

In Case 10, which involves the rape of the victim by her husband’s brother, she and her husband are facing severe threats and intimidation from the family of the husband. The accused even threatened to throw acid on the victim’s sister’s face. The mother-in-law took the victim to the High Court, and pressured her into signing an affidavit which stated that she had filed a false complaint against her brother in law.

Similarly, in Case 13, the sons of the accused had been constantly threatening the victim to not pursue the case. In the case of Case 9, the father of the accused and the children of the accused have contacted her on several occasions to ask her to withdraw the complaint. For a long time, the victim remained firm in her resolve to punish him, since this was the second instance at which he had

raped her. Several months later, when the three children of the accused approached her, she was moved by the condition of the two elder daughters, whose marriage prospects would be in jeopardy, and the disabled younger son. Even as she forgave the accused conscientiously, she decided to not go back on her testimony. She said she did not care any longer what the outcome of the case was, and wanted to move on in life and let the family of the accused also move on.

In Case 15, the victim was often visited by the family of the accused, requesting her to withdraw the case in exchange for some money. She would sometimes refuse outrightly, and sometimes tell them to speak to her husband. Owing to the severe violence she had been facing at home for more than a year, at one point, she even considered taking the money from the family of the accused and running away with her children to start life afresh. However, she did not pursue that action, because she did not want him to “use” any more girls and women and then pay them off.

***Since the cases under observation were all acquaintance rapes, the accused and his family had easy access to the victim outside court. They would attempt to persuade, pressurize or threaten the victim into dropping the proceedings. Despite provisions to shield the victim from the accused in court, easy access outside the court premises elucidates the need for efficient victim witness protection regimes. This is not just a need of the victim or her family, but fundamental to enabling the witnesses to participate in the legal process, and for justice delivery system to function to respond to crimes..***

## **5.5. FINDINGS**

### **1. Lack of specialized agency to provide support and guidance to the victim before, during and after trial:**

The most pressing lacuna in the justice chain to emerge from this study is the absence of holistic support services for victims of rape, which would enable them to navigate and participate in the justice system with full information, orientation and with access to rights, and also to address the impact of the incident in their personal lives. It is important to establish specialized agencies which provide comprehensive support services to victims under one roof, to cut down on the number of different institutions the victim must visit in the aftermath of the incident to receive basic support. The agency co-ordinates single window support services, responding to the needs and circumstances of each case. Such specialized agencies should be staffed by personnel who are sensitive to the needs and conditions of women victims of violence, and provide the following services:

- a. Assistance in registering the FIR and procuring a copy of the FIR
- b. Assistance through the medical examination, in obtaining information on the processes and their relevance, accessing free medical treatment and counseling
- c. Applying for and availing compensation under the state victim compensation scheme
- d. Liaising with the Investigating Officer to track the status of investigation, and status of bail of the accused
- e. Legal advice and support, information on her rights, and orientation on the trial processes

- f. Liaising with the prosecuting agency to arrange meetings with the victim, to present her account of the incident, orient her to the deposition processes, and also inform of pressures from the accused and his companions, or her own family, to compromise
- g. Monitoring the progress of the trial and update the victim on each stage
- h. Providing counseling to the victim and also her family in the aftermath of the incident to mitigate impact of the assault, and respond to any specific need on a case to case basis.
- i. Providing access to shelter/alternative accommodation

2. **Absence of mechanisms for victim/witness protection:**

It is equally important, that victim/witness protection be envisaged in terms broader than what currently exists, to shield the victim and her family from coercion or inducement by the accused and his associates. Findings of this study emphasise the need for a larger study, to examine context-specific measures in situations of not only sexual violence, but also communal violence and conflict, which enable victims and witnesses to access justice through courts. In the context of sexual violence, victims/witnesses face coercion and intimidation from the accused and his associates, forced re-location, and stigma in their communities as well as in institutions. Currently, the framework for witness protection in the form of shielding the victim from the accused in court, while useful, is scarce. There is a need for shelter/alternative accommodation which places the victim outside the reach of the accused, but without greatly disrupting her affairs either. Restraint orders are also useful in preventing contact between the victim and accused, but as the study demonstrates, it is the associates of the accused who also contact the associates of the victim. In that case, it is necessary to consider who will be restrained from accessing whom. While these questions require a deeper examination, as a minimum measure, it can be ensured that the deposition of the victim is concluded upfront, as soon as possible, to place her beyond the ambit of coercion to change her testimony.

## CHAPTER 6: COMPARATIVE LAW RESEARCH

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This section looks at norms and systems in model comparative jurisdictions to evaluate the extent to which the reform in India meets globally recognized standards in responding to rape cases. The jurisdictions were selected on the basis of widely recognized efforts at the law reform to respond to the particular needs of rape victims and cases. Since many of the countries selected allow substantial autonomy to its federated units, we have selected states within countries – as for example, Ottawa in Canada and New South Wales in Australia. Amongst developing nations, South Africa has been selected for its efforts to respond sensitively to rape cases. We have also included England and Wales amongst the selected nations.

To be able to compare across jurisdictions, the information is detailed under the uniform categories of reporting and investigation, medico-forensic procedures, trial, support structures and help lines. To facilitate a quick comparison across categories and jurisdictions, a tabulated information sheet is attached as **Annexure 4**.

### 6.1. OTTAWA (CANADA<sup>10</sup>)

#### 6.1.1. REPORTING AND INVESTIGATION<sup>11</sup>

**Initial Statement:** If the victim reports to the police, the police will first take her a hospital to have the Sexual Assault Evidence Kit administered. The Sexual Assault and Partner Abuse Care Program at the Ottawa hospital administers Sexual Assault Evidence Kits to victims of rape.

Then, the police will take the victim to the police station, where the victim will be asked to make a sworn statement about the incident, describing it in detail. This statement will be used to support any testimony made in court. The victim may also choose to fill out a victim impact statement during the investigation.

#### 6.1.2. MEDICO-FORENSIC PROCEDURES

The Ottawa Sexual Assault and Partner Abuse Care Program-SAPACP at the Ottawa Hospital provides six options to be considered for medical attention and reporting procedures:

- Not reporting the assault/not getting the medical attention.
- Report the assault within 72 hours and undergo the sexual assault evidence (SAE) kit.
- Receive medical attention without reporting
- Receive medical attention without the SAE kit and report the assault at a later date.

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<sup>10</sup> We thank Prof. Vrinda Narain, Faculty of Law and the Institute for Gender, Sexuality and Feminist Studies (IGSF), McGill University for reviewing our research on rape law procedures in Canada.

<sup>11</sup> This information has been processed from the Ottawa Rape Crisis Centre online resource, available at: <http://www.orcc.net/resources/reporting>



- Undergo the SAE and have it stored for up to 6 months: The victim may, at any time during the 6 months, decide to report the assault and release the kit to the police or have the kit destroyed.
- Have a third party report submitted to the police: The report is documented and police may use the information in investigation. However, the information cannot be used in trying the perpetrator for another assault crime.

If the consent is declined, the victim is still entitled to medical care. If consented to the exam, a second consent is also obtained before the kit is released to the police officials. The SAPACP RN will also ensure the patient has a safe place to return to. If not, an appropriate accommodation will also be arranged for.

### **6.1.3. TRIAL**

When a victim contacts the police, the police take statements from relevant witnesses and suspects also, and collect evidence. They then write a Report to Crown Counsel (RCC) recommending charges, provided there is enough evidence to do so.

The Crown counsel will assess the evidence to see if it meets the Attorney General's charging standard of a) if it is in the public interest to proceed with the case, and b) if there is a substantial likelihood of conviction if the case is tried in court.

Through the preliminary trial and trial, the crown attorney, investigating officers and someone from the Victim Witness Assistance Program (if provided by the state/province) will assist with preparing a victim and other witnesses for court. The Victim Witness Assistance Program (VWAP) provides information, assistance and support to victims and witnesses of crime to increase their understanding of, and participation in, the criminal court process.

The crown attorney will request that the victim complete a Victim Impact Statement. This is a form that provides the opportunity for the victim to specifically outline how the sexual assault impacted on her life. This is a matter of choice for the survivor and the completion of the form is not a requisite for sentencing the accused.

The Criminal Code requires the court to consider a victim impact statement, if there is one, at the time of sentencing an offender. The forms and procedures for victim impact statements are determined by each province and territory.

In addition to these general rules, there are special rules which are put in place by the Criminal Code for protecting the victims, they include:

- Publication Bans: The Criminal Code provides that a judge **shall** order a publication ban to protect the identity of all victims of sexual offences and witnesses of sexual offences who are less than 18 years old or if it is found necessary to do so for proper administration of justice. A request for a publication ban can also be made.
- Publications of proceedings to determine the admissibility of evidence regarding a sexual assault victim's sexual history are restricted.

- Applications to access personal records of the victim in sexual cases can be made by the defence. If the defence makes an application, the victim will receive a notice of the application. Victims are entitled to have a lawyer represent them if the defence makes an application. Legal Aid will appoint and pay for a lawyer to represent the victim in such cases, regardless of the victim's income. Even, if the application is successful, the court gets the records and reviews them to see if the records are relevant to the case. Only if relevance is shown can the defence access the records and cross examine the victim on the contents. The judge cannot order to produce or refuse the production of the documents without giving reasons.
- Likewise, the defence must make an application to the court to cross-examine the victim on prior sexual acts and has to show that it is relevant before the questions are allowed. The judge has to consider certain factors while deciding what evidence is admissible, which includes potential prejudice to the complainant's personal dignity and right to privacy.
- There are also various testimonial aids that minimize the trauma/stress of the trial etc., they include,
  - *Support Persons*, of the witness' choice are permitted to be present and to be close to the witness while the witness testifies unless it's not in the interest of justice.
  - Witness is allowed to testify from behind a *screen*, or *from outside of the courtroom* in certain circumstances.
  - A judge is authorized to prohibit the accused from personally conducting a cross-examination of witnesses under the age of 18.
- In each case involving a sexual offence, a mandatory or discretionary firearms prohibition order might be applicable as per the conditions set in the Code.

The victim can receive on-going information about the offender by registering with the Correctional Service of Canada or the Parole Board of Canada.

#### **6.1.4. SUPPORT STRUCTURES**

1. **Ottawa Rape Crisis Centre (ORCC):** The centre offers crisis intervention and counseling services for victims of sexual assault.
2. **The Victim Witness Assistance Program<sup>12</sup>:** The mandate of the Victim/Witness Assistance Program (V/WAP) provides crisis intervention, emotional support, case specific information, court preparation and orientation, needs assessment and referrals to community services.
3. **The Ottawa Sexual Assault and Partner Abuse Care Program (SAPACP) Services for Adults<sup>13</sup>:** This is a protocol community organization run by the Ottawa Hospital. The SAPACP

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<sup>12</sup> The V/WAP is a program run by the Ontario Victim Services Secretariat. More information available at the Ministry of the Attorney General website- [http://www.attorneygeneral.jus.gov.on.ca/english/service\\_standards/service\\_standards\\_victim\\_services.asp](http://www.attorneygeneral.jus.gov.on.ca/english/service_standards/service_standards_victim_services.asp)

refer to community resources for professional psychological support, assist the victim/survivor in decision making, assist in safety planning, provide evidence to the judicial system if/when requested, they also involve the Ottawa Police Service as directed by the victim/survivor. The SAPACP also makes sure the victim has a safe place to return to. If not, then alternative accommodation will be provided for.

### **6.1.5. REGISTRATION/HELPLINE**

There is a government run **victim support helpline** for the province of Ontario which is toll free.

## **6.2. ENGLAND AND WALES<sup>14</sup>**

While some practices mentioned in this section are common to all of England and Wales, this section mentions specifically the practices in the London Metropolitan area.

### **6.2.1. REPORTING AND INVESTIGATION**

In London, the investigation of rape and serious sexual assault is carried out by a unit of specialist officers called Sapphire which is a part of the Metropolitan's Specialist Crime and Operations (SC&O) Directorate based at New Scotland Yard. Apart from investigating rapes and other sexual offences, their role is to provide victim support and care.

The survivor can choose to report the crime either at the police station, or call an officer to her residence for her statement. At the police station, there are specially designed 'comfort suites' where survivors can speak about the sexual assault in privacy and comfort.

The procedures recognize that there may be delays in reporting cases of sexual assault for a variety of reasons. If the offence is relatively recent, then the police captures evidence using an Early Evidence Kit (EEK) to maximize the chance to retrieve essential forensic material before it is lost. In order for the collection of evidence to be done quickly and effectively, police will advise the victim, if possible, not to go to the toilet, not to eat or drink anything and not to smoke until afterwards. The purpose of an EEK is to maximise the opportunity to retrieve forensic material. This process is known as the First Response to an allegation of rape. After this initial response, a specially trained Sexual Offences Investigative Techniques (SOIT) officer will take the victim through the investigative and judicial processes.

The SOIT officer (distinct from the investigating officer) remains the point person for the victim through the investigation and judicial process. After the initial meeting with the uniformed police officer, the SOIT officer contacts the survivor and meets them to take a more detailed account of the incident. The SOIT officer is also responsible for informing the victim about the status of the

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<sup>13</sup> This information has been processed from The Ottawa Sexual Assault Protocol, published by the Sexual Assault Network, available at

<http://www.sanottawa.com/SAN/Media/Content/files/SAN%20ProtocolReport%20Dec2012%20ENG2.pdf>

<sup>14</sup> We thank Ms. Pritaraniha, Peace and Equality Cell for reviewing our research on rape law procedures in England and Wales.

investigation at least every 28 days, or whenever there are any new updates. The SOIT officer is different from the investigating officer, who is the Officer-in-the-Case (OIC).

### **6.2.2. MEDICO-FORENSIC PROCEDURES**

The EEK is the First Response to an allegation of rape, in order to immediately capture important forensic evidence. The Kit consists of a sealed cardboard box containing a plastic pot for a urine sample; a toilet paper sample; a single mouth swab and a mouth rinse, which may be checked for the presence of semen. The consent of the survivor to provide these samples is sought through a form, which also explains the use of these samples.

The survivor is asked to urinate into the pot and where necessary, this will be checked for drugs and alcohol. There is no need for a police officer to be present physically with the victim while she is administering the EEK, though it is the police that will collect the evidence through the EEK. Another urine sample is taken one hour after the first.

The victim is then taken for a thorough medical examination to a sexual assault referral centre. In London, The Havens are specialist centres which operate 24\*7 to recover forensic evidence, provide medical treatment and emotional support services to survivors. The Havens are jointly commissioned and funded by the Kings College Hospital NHS Foundation Trust and the Metropolitan Police Service, and are located to three major hospitals in London. The survivor can also access the services at the Haven even if they do not wish to formally complain to the police.

It is the responsibility of the SOIT officer to arrange an appointment at one of the Havens and escort the victim there, where they are attended to by a female doctor and a crisis worker. The crisis worker has to provide counseling and support to the survivor, as well as assist the doctor during the examination. Police chaperones are not present during the forensic examination. All the Haven doctors are women.

The forensic examination is carried out with the consent of the victim by the doctor and the crisis worker. The examination takes place in a private room in the Haven, while the SOIT officer remains outside the room. After the conclusion of the examination, the SOIT officer either takes the victim home or to another place of safety.

### **6.2.3. SUPPORT STRUCTURES**

The primary institutional support structure in the Metropolitan police service for a victim of rape is the SOIT officer. The SOIT officer remains the victim's single point of contact throughout the whole investigation. Their role does not involve professional counseling and emotional support, but they are responsible for keeping the victim up to date regarding the status of the investigation and the trial.

The Havens, apart from conducting forensic examinations and medical care, also provide counseling and emotional support to victims of rape. They also provide follow up medical care, such as tests for STIs and pregnancy. The services provided in the Havens are confidential, and it is the victim's discretion whether or not they want to report the matter to the police, in case they have not already.

In Sexual Assault Referral Centres throughout England and Wales, there are Independent Sexual Violence Advisors (ISVAs)<sup>15</sup> who provided professional support to victims of rape whether they report the offence or not. The ISVA are members of Community Organizations or Sexual Assault Referral Centres, and are funded by the Government. The ISVA's role is to provide emotional support as well as to educate and give information. They work with the Crown Prosecution Service (CPS). They also familiarize the victim with the court procedures and can support the victim through the interviews and court hearings. They can also arrange pre trial visits to orient the victim with the workings of the court.

#### **6.2.4. TRIAL<sup>16</sup>**

All criminal trials in England and Wales are conducted by the Crown Prosecution Service. Victims of rape and sexual offences may be treated as vulnerable witnesses, entitled to special measures while giving evidence in court. These special measures include:

1. Pre recording the testimony of the victim and playing it for the court. The victim will still have to be present to answer questions during her cross examination
2. The victim can give evidence behind a screen.
3. The victim can give evidence away from the court in a live television link. The victim will not be able to see the accused over the link but the accused would be able to see the victim.
4. Intermediaries are also available for victims of rape. An intermediary is a court approved person whose responsibility is to work with the victim to make sure they are understood and they understand the questions put to them.

It is for the court to decide whether or not to grant applications for special measures in courts. Victims of rape are automatically presumed to be eligible for special measures unless the court is informed that such measures are not needed.

Before the deposition, the CPS arranges for a meeting with the survivor to help build confidence and trust, after obtaining the victim's consent to do so.

#### **6.2.5. COMPENSATION**

The Criminal Injuries Compensation Authority (CICA) considers claims for compensation for injuries arising from crime of violence. The Criminal Injuries Compensation Scheme (CICS) of 2012 sets the criteria for compensation, which have to be adhered to by the CICA. In terms of the CICS, sexual assault without consent is a crime of violence, making the victim liable for compensation. Compensation is not conditional on the outcome of the criminal trial, and may be awarded even in cases of acquittal. The decision of the CICA is based on a balance of probabilities.

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<sup>15</sup>. More information about them is available at the Crown Prosecution Service Website at <http://www.cps.gov.uk/>

<sup>16</sup> The CPS Policy for Prosecuting Cases of Rape delineates the role of the CPS in rape trials. The policy document can be accessed online at [http://www.cps.gov.uk/publications/docs/rape\\_policy\\_2012.pdf](http://www.cps.gov.uk/publications/docs/rape_policy_2012.pdf)

A victim of rape has to apply to the CICA for compensation within two years of the date of the offence. They can apply to the CICA either by telephone, or by writing a letter or e-mail.

### **6.3. SOUTH AFRICA<sup>17</sup>**

#### **6.3.1. REPORTING AND INVESTIGATION<sup>18</sup>**

If the victim reports the case, then a docket has to be opened by the police officer after obtaining sufficient particulars from the victim. The police officer then prepares an affidavit specifying the details of the offence. An affidavit must be made specifying the details of the offence. Even if the victim is not coherent, a skeleton docket is opened so as to record the offence allowing the complete statement to be taken afterwards. The victim is then informed about the case number and the contact details of the investigating officer.

The importance of having a medical examination is then explained to the victim, if needed, and it is made clear that the examination will be conducted at state expense.

The investigating officer then takes the victim to the health care facility with trained examiners if the victim consents for a medical examination, costs of which are borne by the state. A same gender support person can be allowed to be present. However medical examination will only occur after a case docket has been registered and the required standard forms filled by the police. The investigating officer fills the form regarding a brief history of the incident and then releases a standard evidence collection kit and the form to the health professional. He also records what samples are required and ensures its collection. These samples have to be forwarded to the Forensic Laboratory within 7 days.

#### **6.3.2. MEDICO-FORENSIC PROCEDURES**

The medical examination in cases of sexual assault is governed by the guidelines laid down in the National Management Guidelines for Sexual Assault Care <sup>19</sup>. The examination is conducted on state expense if the victim reports the offence to the police. Written consent is obtained before the exam starts, and at every stage an informed verbal consent is to be obtained from the victim. In case the victim does not want to report the case to the police yet, a medical examination can be conducted and the evidence preserved for a minimum of 6 weeks. However, there is no statutory obligation for an adult victim to report the sexual offence.

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<sup>17</sup> We thank Ms. Lesley Ann, MasimanyaneWomans Support Center, South Africa for reviewing our research on rape law procedures in South Africa.

<sup>18</sup> The practice and protocol regarding reporting and investigation of sexual offences is governed by the National Instructions on Sexual Offences, a framework created under Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007. The instructions can be accessed online at: [http://www.saps.gov.za/resource\\_centre/acts/downloads/sexual\\_offences/ni/ni0308e.pdf](http://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/ni/ni0308e.pdf)

<sup>19</sup> The National Management Guidelines for Sexual Assault Care provides the framework for medical procedures in cases of sexual assault. The guidelines were drafted by the Department of Health in collaboration with other actors. The guidelines can be accessed online at: <http://www.tlac.org.za/wp-content/uploads/2012/01/national-guidelines-sexual-assault-care-dept-of-health.pdf>

Treatment is provided irrespective of the refusal/consent to examination. Information regarding HIV, pregnancy and other related issues are provided to the victim during consultation in pre-test counseling. Physical treatment and treatment for Sexually Transmitted Infections is provided if required. Post-test Counseling can also be provided after results for HIV/STI tests have been obtained and referrals also can be provided accordingly. Psychological and emotional support is provided to the victims all along the process.

A forensic medical examination is conducted using a Sexual Assault Examination Kit (SAEK) There are specially made boxes for keeping all the forensic evidence in a clean, uncontaminated package that can be transported to the forensic laboratory for analysis. The SAEK provides instruction for what evidence to be collected and how. A general examination is done documenting injuries, emotional state, and inspection of clothing etc., followed by genital examination. The National Management Guidelines specify that absence of genital trauma does not indicate lack of consent. A digital vaginal inspection is termed as 'inappropriate' as per the guidelines in cases of virgins and victims under the age of 14.

The victim's clothes are collected by the doctor for forensic and evidentiary purposes. However, if it is not possible to replace the clothes, the National Management Guidelines specify that the clothes are not to be taken.

If a victim has been exposed to the risk of being infected with HIV as a result of a sexual offence having been committed against him or her, he or she may receive Post Exposure Prophylaxis (PEP) for HIV infection at a public health establishment at state expense and will also be given free medical advice surrounding the administration of PEP. The National Management Guidelines do not stipulate reporting as a condition for receiving PEP.

### **6.3.3. TRIAL**

Based on the victim's information, evidence and testimony, the perpetrator(s), will be arrested. The victim must then identify them in a line-up behind one-way glass or from photos. An identification parade is conducted as per the National Instructions. The victim will be asked to come into the police station to do this, but will not be expected to face the perpetrator(s) in person.

The National Instructions on Sexual Offences provides the framework for assisting victims during the trial proceedings. The Investigating Officer (I.O) has a big responsibility to provide the victim with help and support during the trial. The I.O has to keep the victim updated about the developments in the investigation of the case, and explain the court process to him/her. The I.O has to elicit a Victim Impact Statement from the victim before he/she testifies in court, the purpose of which is to bring the impact of the offence on the life of the victim to the notice of the prosecutor.

The I.O has the responsibility to give the victim an orientation before the trial by bringing the victim to the court the day before the trial. The I.O has to arrange for pre-trial consultation between the victim, the prosecutor and himself/herself.

Either on the day of the trial, or earlier, the I.O has to hand the victim copies of his/her statements to read through again. The possibility of postponements must also be explained to the victims, and it is the I.O's duty to encourage the victim to press ahead with the case, inspite of delays.

Whether or not the victim or the prosecutor decide to pursue a case, the victim can still get a restraining order against the accused. He will not be allowed to make contact with the victim and be arrested if he does.

Section 153 of the Criminal Procedure Act of 1977 specifies that in cases of sexual assault, the proceedings shall not take place in open court. The victim may ask that a rape counselor or family/friends be with them in court, but if they are also testifying, they will not be allowed in the court until it is their turn to testify. The victim may ask to give testimony from an adjacent room via Closed Circuit Television (CCTV).

Under the Criminal Procedure Code, evidence of prior sexual history, other than evidence relating to sexual conduct in respect of the offence which is being tried, may not be led or raised in cross-examination except with leave of the court, or unless prior sexual history evidence has been introduced by the prosecution.

#### **6.3.4. SUPPORT STRUCTURES**

The National Prosecuting Authority of South Africa's Sexual Offences and Community Affairs Unit (SOCA) run the Thutuzela Crisis Centres, which are one stop centres for victims of rapes and sexual offences. The centres operate out of local hospitals and are also linked to sexual offences courts<sup>20</sup> which deal with only sexual offences.

At the centre, the victim is ushered to a private space by a site-coordinator. A doctor is summoned to conduct a medical examination. The medical examination is conducted only with the informed consent of the victim. The victim is then introduced to a police investigator and prosecutor who put together the report and begin the investigation.

#### **6.3.5. COMPENSATION**

Social Relief of Distress Grant (SRDG), and secondly, court witness stipends (CWS), that are provided to witnesses for transportation, lost earnings and other ancillary costs incurred to attend court. Both of these compensatory sources can be accessed by victims of sexual violence. However there is no specific victim compensation in place except the compensation awarded by the courts

### **6.4. NEW SOUTH WALES (AUSTRALIA)<sup>21</sup>**

#### **6.4.1. REPORTING AND INVESTIGATION**

New South Wales has a 'Commissioner's Instructions and the Interagency Guidelines for responding to Adult Victims of Sexual Assault,' along with its NSW Police Service 1994 policy is also followed which applies to all victims of crime.

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<sup>20</sup> At present, there are only a few pilot sexual offence courts in South Africa. Most cases of sexual offences go through regular criminal courts.

<sup>21</sup> We thank Ms. Janet Loughman, Women's Legal Services, New South Wales, for reviewing our research on rape law procedures in New South Wales.



When the initial report is made within 72 hours of the offence, the victim is interviewed at the police station briefly, and a female officer conducts the interview if the victim is female, before being taken to a Sexual Assault Centre (SAC) for help, support and forensic examination. If the report is made after 72 hours, the victim is still referred to SAC. The entire process happens with the consent of the victim.

The police officer also has to ensure that consent has been obtained by the medical officer before the examination is conducted and that signed consent is obtained before the sexual assault evidence kit is released to the police and that the victim has decided to proceed with the complaint.

In addition to the general trial procedure followed throughout Australia, there are certain additions which include the 1992 Rape Trauma Kit which aims to raise the awareness of DPP staff that have contact with victims of sexual assault. An attachment to this memorandum relates specifically to the Crown Prosecutors.

For victims ready to take immediate action, the police can take statements at the SAC itself/ or in a police station, in a private room with a support person or counselor present if required and have to be considerate of the time and situation and also about the language used and questions asked. A copy of this statement has to be handed to the victim.<sup>22</sup>

The option of SARO (Sexual Assault Reporting Option) for victims that decide not to **formally** report the assault to police is there. Victims can choose to provide personal details or report anonymously. It is not a formal complaint to police to initiate a criminal investigation and only meant to gather information.

#### **6.4.2. MEDICO-FORENSIC PROCEDURES**

The NSW Department of Health, is responsible for the network of Sexual Assault Services (SAS) throughout NSW, has produced its guidelines for both medical and counseling services in the Sexual Assault Services: Standards (Policy and Procedure) Manual.

The victims (or clients- as the guideline refers them) are allowed to choose their own course of action, the victims can choose to report, not report or make a report without taking any further legal action.

Forensic medical services for victims are provided through either medical officers or nurses who have undertaken specialist training. For nurses, model is the Sexual Assault Nurse Examiner (SANE). This is regulated by "Clinical Practices - Adult Sexual Assault Forensic Examinations Conducted by Nurse Examiners Manual."<sup>23</sup>

The examination should commence within two hours of request, however immediate medical treatment will take precedence if required. A valid examination can be carried only after obtaining a written consent and, each medical procedure conducted, and the significance of each test carried out, should be explained to the victim. A witness to this examination is required. In most instances this will be a nurse or the counselor. A support person can be allowed.

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<sup>22</sup><http://www.bocsar.nsw.gov.au/agdbasev7wr/bocsar/documents/pdf/r39.pdf>.

<sup>23</sup>[http://www0.health.nsw.gov.au/policies/pd/2005/pdf/PD2005\\_614.pdf](http://www0.health.nsw.gov.au/policies/pd/2005/pdf/PD2005_614.pdf).

An assessment will include a physical examination, in addition to a history regarding the sexual assault. A test for STD's will also be done along with the sage of a Sexual Assault Evidence kit. The sexual assault evidence kit cannot be released to the police without written consent of the victim.<sup>24</sup>

### **6.4.3. TRIAL**

The Office of the Director of Public Prosecution (ODPP) provides a Witness Assistance Service which gives priority to victims of sexual assault. The Witness Assistance Service provides a range of measures for victims of sexual assault during trials.

Some of the measures are:

1. The court room can be closed to members of the public when the evidence of a victim of sexual assault is being taken.
2. A screen can be allowed to be placed in front of the accused person when the victim is deposing or being cross examined.
3. A victim of sexual assault is allowed to have at least one support person with them when they are giving evidence. The Judge decides who the support person is. The support person provides both emotional support during the trial, as well as information about the trial
4. Victims of sexual assault can give evidence through Close Circuit Television (CCTV) facility. If the victim is deposing through CCTV, then they are seated in a separate room with a court officer and support person if there is one. The victim cannot see the accused, and only has to interact with the Judge, the prosecutor and the defence counsel.

### **6.4.4. SUPPORT STRUCTURES**

**Sexual Assault Services** provide comprehensive care to a sexual assault victim, ranging from putting the victim in touch with the police, getting them medical help, providing a counselor to assist them through processes and assisting the victims throughout the judicial process for instance court assistance, help regarding victim impact statements etc.

They also provide counseling services along with follow up services. All these services are provided 24/7 and all procedures are made completely confidential if the client so wishes. The procedure is regulated by, Sexual Assault Services: Standards (Policy and Procedure) Manual.

**Victim Services (NSW):** Victim Services which is a part of the NSW Department of Justice, provides a link between victims and the support service they want. They put victims in contact with police, medical officers, counselors etc. They also provide facilities for guidance through judicial process.

### **6.4.5. COMPENSATION**

**Victims Support and Rehabilitation Act, 2013 (NSW):** The role of determining claims has been given to the newly-appointed Commissioner of Victims' Rights. A victim of an *act of violence* can file for compensation which can be financial assistance for immediate needs, financial assistance for economic loss, for approved counseling or for a recognition payment. A primary victim, secondary

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<sup>24</sup>[http://www0.health.nsw.gov.au/policies/pd/2005/pdf/PD2005\\_607.pdf](http://www0.health.nsw.gov.au/policies/pd/2005/pdf/PD2005_607.pdf).

and family victims are protected to differing extents. Applications for financial assistance and most applications for recognition payments must be made within 2 years of the act of violence (except for a child victim who must apply within 2 years of turning 18). To claim compensation the act has to be reported to the police or a government agency (SAS, health services etc.). The act also prescribes caps for each kind of claim for different claimants, however no legal costs are generally provided.<sup>25</sup> There is also a **Victims Support and Rehabilitation Regulation, 2013 (NSW)**.

#### **6.4.6. HELPLINE**

Victim Services provides a **Victim Access Line** which is a single entry point for victims of crime in NSW to assist them in accessing service during business hours.

There is a government facilitated **NSW Rape Crisis Helpline, Youthline, Lifeline** as well as online counseling services available for the victims (24 hours). Apart from this, the local Sexual Assault Services also can be contacted for any help.

### **6.5. FINDINGS ON MODEL GOOD PRACTICES**

The most striking findings in terms of new and progressive elements found in the jurisdictions examined above are briefly highlighted below –

1. **Independent specialized agencies for victim support:** Independent specialized machinery that is well trained to provide support services to victims of sexual assault and provide assistance, counseling and support. These in some countries can be accessed through helplines. In addition to criminal justice agencies, each of the jurisdictions have specialized centres that offer multiple forms of support to victims, that also help them navigate the legal process – as for example, the rape crisis centres in Ottawa, sexual assault referral centres constituted throughout London and Wales, Sexual Assault and Community Affairs unit in South Africa and Sexual Assault Services in New South Wales.
2. **Comprehensive support services, that include orientation on the law and legal processes at the pre-trial and trial stage:** There are specialized centres for providing comprehensive support services to the victims. They provide orientation and guidance on the purpose of the legal process, her role, the procedures she will participate in, information on the progress of the case and knowledge of her rights, combined with assistance to assert her rights. They also coordinate and arrange meetings with the prosecuting agency to orient the victim for the deposition.
3. **Medical examination and option of delayed reporting:** In Ottawa, the most remarkable feature is the victim can undergo the Sexual Assault Evidence and have the evidence stored for up to 6 months, even if the victim does not wish to report it. They may, at any time during the 6 months, decide to report the assault and release the kit to the police or have the kit destroyed. Their ethical standards and operational processes pay emphasis on informed consent at several stages of the medical examination and evidence collection,

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<sup>25</sup><http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+253+2013+cd+0+N>.

which is predicated on adequately orienting the victim to enable decision making. South Africa also provides victims an option to undergo the medical examination and preserve evidence for a period of 6 weeks before choosing to report or not report the offence.

4. **Availability of Medical treatment and support services regardless of decision to report and prosecute:** In all the 4 jurisdictions surveyed, victims are entitled to receive free medical treatment and support services regardless of their decision to report or prosecute the offence.
5. **Providing financial assistance or compensation to the victim:** The Criminal Injuries Compensation Authority (CICA) in England and Wales assesses compensation on the basis of preponderance of probabilities and is not linked to the outcome of the criminal trial. Under the Victims Support and Rehabilitation Act, 2013 in New South Wales, the victim can seek compensation to meet immediate needs, financial assistance for economic loss, for approved counseling or for a recognition payment. In both cases, a victim may apply within two years from the date of assault.
6. **Safe homes:** Option of returning home or to a safe place after reporting the assault, is available in Ottawa as well as in England and Wales.
7. **Restraint order against the accused:** The availability of a restraint order to victims, to restrain the accused from being in contact with her regardless of the victim registering and pursuing a criminal complaint in New South Wales is noteworthy. No penal consequences arise against the accused unless the accused breaches the restraint placed on him.

## CHAPTER 7: CONCLUDING OBSERVATIONS

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The study involved trial observation of 16 rape cases in four special courts of Delhi, interviews with 8 victims, to examine the extent to which the advances in procedural law related to rape cases were being implemented, and how the victims experienced their encounter with the criminal justice system. The Delhi High Court's approval letter (Annexure 5) determined the sample size of 16 cases, with the cases selected by or in consultation with the Presiding Officers of the respective courts. The sample size 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. The study, through observation and interviews, sought to understand the extent to which victim centric guidelines established by the Supreme Court and the 2013 amendments, outlined in Annexure 1, were reflected in the processes relating to the 16 cases covered by this study. The ambit of the study did not include the guidelines and structural innovations introduced between 2012-2016 in Delhi by the Committee constituted by the Delhi High Court 'to monitor proper implementation of several guidelines laid down by Hon'ble Supreme Court as well as Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses'. The study also involved comparative law research to map global advances in relation to victims and cases of sexual assault. The comparative law component contributed to assessing the extent to which the domestic legal framework conforms to globally accepted model responses to rape, and for identifying gaps, which if incorporated, would exponentially strengthen the domestic response to sexual violence in India.

While each chapter highlights its respective findings, this chapter presents a broad overview of the findings, in two parts: the first, identifying issues related to operationalization of existing domestic standards, and the second part, recommendations that correspond to the findings while simultaneously drawing benchmarks from comparative jurisdictions that elevate the bar of gender justice in domestic responses to victims of sexual assault. This study was conducted in the fast track courts designated for sexual assault cases in Delhi, where significant changes were put into practice even before the enactment of the Criminal Law Amendment 2013. This probably makes Delhi a model state as far as handling of rape cases in the country go, and even as the findings are relevant for Delhi, there is a need for a wider study to examine practices and gaps in responses in state capitals and districts beyond Delhi.

### **7.1. FINDINGS OF THE STUDY**

#### **7.1.1. PROFILE OF VICTIMS AND THE IMPACT OF THE OFFENCE ON THEM**

The victims in the study varied across age groups, between 18 years to 50 years, but the maximum number of victims populated the category of 20-30 years. Most victims in our data are not highly educated, are either housewives or have low levels of income, which keeps them dependent on their families. In the aftermath of the incident, the families support the victims through the legal

proceedings, but also exercise a high degree of control over decisions relating to the victim. It is also in the same networks that victims become vulnerable to more violence.

All 16 cases were also those of acquaintance rapes, reflecting the official NCRB data. Since the accused are known to the victims, the threat of assault is persistent, and the offence often recurring, before the victim complains. The decision to report is also not independent and mediated by the family. After reporting, accused have access to the prosecutrix outside court since they are acquaintances, and the pressure to compromise persists. Victims are also often compelled to re-locate as a result.

### **7.1.2. THE PRE-TRIAL STAGE**

The chapter on the pre-trial stage records compliance with procedures in the criminal justice machinery after the registration of the FIR and before the case enters court in the trial stage. This encompasses the process of registration of the FIR, the medical examination, the arrest/bail of the accused and the S.164 statement of the victim before the Magistrate.

#### **1. Records suggest formal compliance with timeline and protocol:**

The different processes in the pre-trial stage after the registration of the FIR, including the medical examination, arrest, S.164 statement to the Magistrate and cognizance, all proceed promptly as per protocol one after the other. It was also observed that in most cases, the accused are arrested without substantial delay, enabled by the fact that the victim provides their identity and address to the police in the FIR. The S.164 statement to the Magistrate is also conducted as per the relevant procedures and within time.

#### **2. Some victims face obstacles and harassment in registering FIR:**

While most FIRs were registered without hindrance, evidence suggests this is not a consistent practice. Evidence suggests that in some cases, the police sought to discourage the complainant from filing the FIR, and also suggesting a compromise. Complainants also do not consistently receive a copy of the FIR, which is their statutory right. In one instance, the police also refused to register the zero FIR.

#### **3. Medical procedures do not comply with ICMR Guidelines:**

The medical examination emerges as the most problematic aspect of the pre-trial stage, which does not conform to the new ICMR Guidelines. Complainants are not explained the processes involved in the examination, or the purpose behind the tests. This impacts their capacity to give informed consent, even as consent is formally recorded. As a pitfall, it prevents the complainants from bringing attention to injuries and other facts, which feeds into the trial as evidence. While the MLCs do not report conducting 2-finger tests or notings about the victim being 'habitual to sex', insinuations about sexual history remain. Some MLCs reflect notings of old tears in the hymen and the absence of injuries, insinuating sexual history and lack of resistance, respectively. Medical officials also demonstrated a lack of sensitivity in one case, suggesting that a middle-aged woman cannot be raped, and that the complainant should tell the police that the case is false.

#### **4. Medical procedures neglect treatment and counseling to the complainant:**

An important dimension of the medical procedures is to provide continued treatment for injuries the complainant might have suffered in the assault, and providing counseling in order to cope with trauma. The medical procedures, however, prioritise evidence-collection over these aspects of holistic and reparative justice. Counseling was provided in only 2 out of the 16 cases. In even those instances, they were not of minimum quality standards, since the complainant was only asked the outcome she desired out of the legal process.

#### 5. **Complainants require legal guidance and support services:**

Throughout the process, complainants experience the need for legal guidance and support, absent which, they go through the distinct processes without information, and with uncertainty and confusion. They are not explained the relevance of the different processes involved, which inhibits their full, informed participation. Without an agency for support, they encounter obstacles in the most basic processes, such as registering the FIR, or obtaining a copy of it. This lack of information impacts their right to avail of victim compensation, and also their rights through trial.

#### 7.1.3. **THE TRIAL STAGE**

The observations relating to the trial stage in this study are limited to the deposition of the prosecutrix in court. This includes the examination-in-chief, the cross-examination and the re-examination (wherever necessary) of the prosecutrix. This is the most crucial part of the trial, since on the basis of this testimony alone, the accused may be convicted or acquitted. This is also the stage that has been the subject of most critique (and reform) for leading to a re-victimization of the prosecutrix on account of humiliating and traumatizing cross-examination practices.

#### 1. **Courts are acquainted with procedures and guidelines, but inconsistent in practice:**

All four fast-track courts were familiar with guidelines for conducting proceedings in a gender-sensitive manner, such as *in camera* proceedings, use of screen etc. However, they showed inconsistency in their application in practice compromising the spirit behind the procedures. At least one of the courts, FTC C, was exemplary in practice by consistently upholding the guidelines in letter and in spirit.

#### 2. **Lack of specialized agency mandated to provide orientation to prosecutrix about trial processes or avail of companion and compensation:**

Prosecutrices typically navigate the trial blindly, without information pertaining to the legal processes involved and the role of different actors. They are unaware of their rights to compensation and to have a companion present with them during their deposition, and also have their concerns and queries about the process unaddressed. Currently, there is no specialized agency to fulfil this role, nor is it within the mandate of the existing actors. The Public Prosecutor, Presiding Officer or the Investigating Officer sometimes provide a limited introduction to some aspects of the trial on an *ad hoc* basis. The lack of information and exclusion from the process sometimes drives prosecutrices into expensive, risky and exploitative arrangements with private counsel. Evidence suggests that the Delhi Commission of Women Scheme to provide rape victims the assistance of empanelled advocates is apathetic, lacking direction, monitoring and unreliable.

**3. No shielding available to prosecutrix from accused in waiting areas of court premises and outside court:**

While prosecutrices are shielded from the accused during their deposition with instruments that vary between traditional style courtrooms and the VWDC, prosecutrices (and their companions) remain accessible to the accused (and their companions) in waiting and other areas of courts, and also outside the court premises. The VWDC attempts to minimise contact between the two in court premises as well, but observations reveal that this is not ensured in practice. Discussions relating to compromises and settlements were observed within the court premises in the traditional style courtrooms as well as the VWDC. In one case, the Defence Counsel informed the court that the prosecutrix will not be appearing on that date, proving contact between the parties outside court. Absent witness protection measures that prevent such contact between the parties, prosecutrices continue to be susceptible to pressures to drop the proceedings.

**4. Public Prosecutors familiar with brief, but not with prosecutrix:**

While all the Public Prosecutors in the four courts under observation were familiar with the brief, they relied only on the official records. None of the prosecutrices met with the prosecutrix beforehand to know their account of the incident, and their circumstances thereafter. Not all of them introduce themselves to the prosecutrix before the proceedings to put her at ease to recount the incident in court. Only the Public Prosecutor in FTC C would meet the prosecutrices outside courtroom to reassure them. Prosecutrices and families often have concerns and queries pertaining to the process and their legal rights, and this is not within the mandate of the Public Prosecutor to address. Conventionally, any interaction between the Public Prosecutor and prosecutrix is disapprovingly viewed as ‘tutoring’ the witness. However, the lack of this interaction and orientation leaves prosecutrices in a state of ignorance, uncertainty and vulnerability within the process. There is a need to distinguish between acts by which Public Prosecutors coach the prosecutrices to distort their testimony, and those by which the prosecutrix is oriented to the process to depose confidently and easily.

**5. Questions in cross-examination not routed through the Presiding Officer:**

The defence questions are inevitably hostile, often sexually explicit, intended to insinuate lack of resistance to imply consent. This practice continues. To counter this, one of the guidelines in *Sakshi v. Union of India* requires questions in the cross-examination to be routed to the prosecutrix through the Presiding Officer, to prevent harassment and intimidation by the Defence Counsel. This is not an established practice. The practice seems to be followed only when the cross examination gets unacceptably offensive, after the distress of the prosecutrix becomes apparent according to our observation. However, at least one of the four courts that were part of this study, showed more vigilance in this respect. Mandatorily routing cross examination questions through the Presiding Officer would go a long way in minimizing the stress and harassment faced by the prosecutrix during the trial.

**6. Timeline of the trial:**



The statutory stipulation of completing the trial within a period of 2 months is not being complied with. The study found that the deposition of the prosecutrix, which is a capsule from the trial, takes longer than 2 months, and on average, takes 8.5 months. In some cases, these are underway after a year since the commencement of the trial. One of the most common causes is the delay in the FSL Report, which holds up the deposition of the prosecutrix. The analysis by FSL Laboratories feeds into the judicial process as evidence, but the laboratories are overloaded and understaffed. Other causes include adjournments and the increase in the case docket, with FTC A and FTC B managing more than 300 cases. While there is a need to complete trials within a reasonable period to ease pressures upon the prosecutrix, the period of 2 months as prescribed by S.309(2), CrPC is not only unrealistic but also inimical to the fair trial rights of the accused.

#### **7.1.4. AVAILABILITY OF SUPPORT SERVICES**

This chapter addresses the need for support services for the victim to enable her to navigate the criminal justice machinery and actively participate in it. Apart from support services relating to a companion in court and legal counsel, which have been addressed previously, this chapter addresses services that can deliver holistic justice to a victim of rape before, during and after the trial.

##### **1. Lack of specialized agency to provide support and guidance to the victim before, during and after trial:**

The most pressing lacuna in the justice chain to emerge from this study is the absence of holistic support services for victims of rape, which would enable them to navigate and participate in the justice system with full information, orientation and with access to rights, and also to address the impact of the incident in their personal lives. It is important to establish specialized agencies which provide comprehensive support services to victims under one roof, to cut down on the number of different institutions the victim must visit in the aftermath of the incident to receive basic support. The agency co-ordinates support services and makes them available at one location. Such one-window specialized agencies should be staffed by personnel who are sensitive to the needs and conditions of women victims of violence, and provide the following services:

- a. Assistance in registering the FIR and procuring a copy of the FIR
- b. Assistance through the medical examination, in obtaining information on the processes and their relevance, accessing free medical treatment and counseling
- c. Applying for and availing compensation under the state victim compensation scheme
- d. Liaising with the Investigating Officer to track the status of investigation, and status of bail of the accused
- e. Legal advice and support, information on her rights, and orientation on the trial processes
- f. Liaising with the prosecuting agency to arrange meetings with the victim, to present her account of the incident, orient her to the deposition processes, and also inform of pressures from the accused and his companions, or her own family, to compromise
- g. Monitoring the progress of the trial and update the victim on each stage

- h. Providing counseling to the victim and also her family in the aftermath of the incident to mitigate the psycho social impact of the incident, and the on the victim
- i. To offer support to victim against violence and other pressures, based on her circumstances and needs on a case to case basis
- j. Providing access to shelter/alternative accommodation

## **2. Absence of mechanisms for victim/witness protection:**

It is equally important, that victim/witness protection be envisaged in terms broader than what currently exists, to shield the victim and her family from coercion or inducement by the accused and his associates. Findings of this study emphasise the need for a larger study, with a bigger sample size, to examine context-specific measures in situations of not only sexual violence, but also communal violence and conflict, which enable victims and witnesses to access justice through courts. In the context of sexual violence, victims/witnesses face coercion and intimidation from the accused and his associates, forced re-location, and stigma in their communities as well as in institutions. Currently, the framework for witness protection in the form of shielding the victim from the accused in court, while useful, is scarce. There is a need for shelter/alternative accommodation which places the victim outside the reach of the accused, but without greatly disrupting her affairs either. Restraint orders are also useful in preventing contact between the victim and accused, but as the study demonstrates, it is the associates of the accused who also contact the associates of the victim. In that case, it is necessary to consider who will be restrained from accessing whom. While these questions require a deeper examination, as a minimum measure, it can be ensured that the deposition of the victim is concluded upfront, as soon as possible, to place her beyond the ambit of coercion to change her testimony.

## **7.2. RECOMMENDATIONS**

The recommendations correspond to the findings of the study, and also draw upon the comparative law research for improving and strengthening the gaps within the existing responses to rape in India.

### **1. Attention on curriculum, methodology and faculty in training programmes that are independently monitored and evaluated**

Findings suggest that the trial court judges and the police are formally familiar with the new guidelines and gender-sensitive procedures. These agencies have also been exposed to training and sensitization programmes over a substantial period. Yet lapses occur. The need for evaluating and reviewing the approach to trainings is called for. Emphasis needs to shift from sensitization programmes which often comprise of a series of short lecture based sessions conducted by experts – to training programmes that pay attention to curriculum, methodology and duration more seriously. There is a need for continued capacity-development of all agencies involved. Specifically, it is important to qualitatively monitor the trainings that are conducted with the agencies, including the duration for which they are conducted, the curriculum that is set, and the agency that conducts these trainings as well. The methodology must include peer learning through participatory exercises and group work, instead of following the lecture method. Even as the content may be on

sexual violence, the module must include how gender, sexuality, caste, disability, poverty disadvantages and impacts access to justice. The content of the law must be understood in its social context, to grasp its purpose, relevance and spirit.

The specific agencies that require such capacity development include:

- i. Police officials and Investigating Officers
- ii. Hospital staff and medical personnel- There is a need for special focus on hospital staff and medical personnel, since this is the only area to have surfaced in the study which is not even formally in compliance with the new ICMR Guidelines
- iii. Presiding Officers
- iv. Public Prosecutors

## **2. Compelling need for establishing specialized agencies to provide single window, comprehensive support services to victims**

There is an urgent need to introduce a specialized agency to provide single window comprehensive guidance and support services to the victims from the time of registration of FIR until the completion of the trial, and thereafter if required. This is necessary to facilitate the victim's full participation in the criminal justice machinery, and address vulnerabilities in other aspects of their life, and contribute to reparative justice. The agency must have the expertise and training in sexual and gender based violence, to ensure it delivers. The services of the specialized agency must include the following clearly identified needs:

- i. Assistance in registering the FIR and procuring a copy of the FIR
- ii. Assistance through the medical examination, in obtaining information on the processes and their relevance, accessing free medical treatment and counseling
- iii. Applying for and availing compensation under the state victim compensation scheme
- iv. Liaising with the Investigating Officer to track the status of investigation, and status of bail of the accused
- v. Legal advice and support, information on her rights, and orientation on the trial processes
- vi. Liaising with the prosecuting agency to arrange meetings with the victim, to present her account of the incident, orient her to the deposition processes, and also inform of pressures from the accused and his companions, or her own family, to compromise. Seek a restraint order against the accused and his associates if necessary.
- vii. Monitoring the progress of the trial and update the victim on each stage
- viii. Providing counseling to the victim and also her family in the aftermath of the incident to mitigate increased violence at home
- ix. Providing access to shelter/alternative accommodation, and responding to the particular needs of a victim on a case by case basis.

## **3. Complaint not to be pre-condition for medical care:**

One of the model practices from the comparative research shows the need to provide medical care, crisis support including counseling without insisting that the victim registers a police complaint. In Ottawa, hospitals do not make legal complaint a pre-condition for providing care and medical aid.

Most importantly, they offer to keep the medico-forensic evidence of the victim in safekeeping for 6 months, during which time she may decide whether or not to proceed with the legal option. In South Africa as well, the victim can receive medical care without first reporting the incident. She can also have a medical examination conducted, and the evidence is preserved for a minimum of 6 weeks.

4. **No mandatory time limit but emphasis on day to day deposition of the prosecutrix to be completed at the commencement of the trial**

The current statutory stipulation of completing the trial within a period of 2 months is unrealistic given the organic lifetime of the trial, co-ordination with other agencies linking to the trial (such as FSL laboratories) and the increasing case docket in at least two courts under observation. Hastily concluding trials within an unrealistic timeline is inimical to the fair trial rights of the accused. It is important, therefore, to not delineate a mandatory time limit to complete the trial, but instead, strive to complete it within a reasonable time frame, by undertaking the following measures:

- i) Completing the deposition of the prosecutrix on a day-to-day basis at the commencement of the trial. This ensures that the quality of her testimony is superior, since there is not a significant time lapse between the incident and her testimony. More importantly, this mitigates the pressure upon her from the accused through the course of the trial to change her testimony and compromise the case.
- ii) Addressing bottlenecks in backend institutional processes, particularly the FSL laboratories. Trials are held up in several cases on account of delay in the delivery of the FSL Report, which is an important piece of forensic evidence in a rape trial. Currently, there are 2 FSL Laboratories across all districts of Delhi, which carry the caseload of all cases that require forensic evidence, including murders etc. They are not only severely under-staffed, but existing personnel also lack requisite minimum qualifications to undertake sensitive analysis of this kind. They are overloaded with work, exacerbated by the perfunctory seizure of clothes during the medical examination, even if the clothes are not those that the victim wore at the time of the incident.
- iii) Presiding Officers need to exercise greater vigilance in granting adjournments, including by way of imposition of costs upon the defence counsel. Frequent strikes by lawyers in trial courts also bring the judicial machinery to a halt.
- iv) Improving all agencies that feed into the trial.

5. **Mandatorily routing questions through the Presiding Officer during cross examination**

One of the best practices to have emerged from the case of *Sakshi v. Union of India*, is to route the questions in the cross-examination through the Presiding Officer. Cross-examinations are known to be the most hostile stage of the entire trial process towards the victim, where Defence Counsel routinely ask scandalous and humiliating questions, which are sexually explicit, and seek to insinuate consent through a lack of resistance, when the law is firmly settled that such questions are irrelevant. By mandatorily routing cross-examination questions through the Presiding Officer, it can be ensured that questions targeted towards unsettling the victim are not asked, or are tempered in their tone, to limit questions to those that are relevant and admissible.

#### **6. Witness protection to extend beyond shielding the victim in court, with the aid of support persons**

The current guidelines to ensure victim/witness protection in court through use of screen, *in camera* trials, preserving anonymity of the identity of the complainant are important. The recently introduced VWDC in two of the district courts of Delhi, which are structured architecturally to create a separate space for victims to depose, eliminating any contact during deposition is a significant development worthy of replication/ adaptation across the country. While recognizing the significance of these developments, the study shows that interaction between the victim and the accused/ or his family and lawyers nonetheless cannot be avoided in the waiting area, where parties wait to mark their presence and for the case to be heard. The study also points to a need for protection measures that go well beyond the precincts of the court room and the court complex. Statistics show, a fact reinforced in this study, that most rapes are by acquaintances, who might live in close proximity to the victim or at any rate have access to the victim. They are known to exert pressure on the victim, or more likely the family members of the victim. Victim and witness protection measures therefore must go beyond the court complex, to ensure that victims recover, and are able to participate in the proceedings. Section 195A, IPC stipulates imprisonment for a person who attempts to threaten or intimidate a witness into giving false evidence. It is incumbent upon the Investigating Officer, the PP and indeed, those who extend support services to help the victim file a complaint against such harassment. It is equally vital to mitigate pressures upon the victim by recording her testimony at an early stage of the trial, without prolonging it for months.

In conclusion, it is necessary to remind ourselves, that this study was centred on four FTCs in Delhi, to examine victim centric guidelines, some of which were formulated earlier, and some just prior to the period of the study. The establishment of the FTCs in Delhi, symbolizes the pace with which reforms were implemented in the wake of post December 2012 protests. More significantly, the reform processes in the city continued under the aegis of the '*Committee to monitor proper implementation of several guidelines laid down by Hon'ble Supreme Court as well as Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses*', which were only nascent at the time of this study. Although not part of this study, these evolving initiatives grew to address many of the findings raised in this report. Such perseverance in reform only underscores the need for continuing studies that examine the compliance with the domestic benchmarks on gender sensitivity, not only in Delhi but also across courts in the country. These complementary processes would help grasp the wider reality of justice delivery for sexual crimes in India. Equally important, this study underscores the value of trial observation combined with interviews with victims, to appreciate how one of the most vulnerable users of the justice deliver system experience their encounter with the law. If reform is a process of dynamic engagement, in which legislative changes must be accompanied by trainings, monitoring, analysis and dialogue between stakeholders, then such studies necessarily contribute towards processes of transformatory justice.

## ANNEXURE 1: LEGISLATIVE, JUDICIAL & EXECUTIVE GUIDELINES

The procedure for conducting trials can be found in the Code of Criminal Procedure. Through legislative and judicial interventions, some exceptions have been carved to the general provisions contained therein for trials of rape and child sexual abuse. These exceptions seek to address the specific vulnerabilities of rape victims while simultaneously balancing the fair trial rights of the accused.

While statutes and case law provide overarching principles, matters of actual practice are determined to a great extent by executive orders, which are directions to concerned bodies on the specifics of a process, and also day-to-day administration within the courtroom by the court staff.

This section discusses legislative, judicial and executive guidelines in force in Delhi during the course of the study that determine the manner in which the entire criminal justice machinery, from the time of filing an FIR, to the conclusion of the trial, responds to rape cases.

### LEGISLATIONS

#### CODE OF CRIMINAL PROCEDURE (CRPC) AND INDIAN PENAL CODE (IPC)

The CrPC is the most important legislation governing the criminal process. It lays down the manner in which the state receives information pertaining to crimes, conducts investigation, holds the trial and delivers the judgment. The IPC is the core legislation on criminal offences. It creates certain criminal offences that have a direct bearing on the rights of the victims before and during the trial, thereby also influencing the manner in which procedures are conducted.

In cases of rape, these two Codes provide the following:

**RELEVANT PROVISIONS FROM THE CrPC AND IPC  
(TABLE A)**

S.NO.	PROVISION	PARTICULARS	
1.	S.154, CrPCr.w. S.166A, IPC	S.154, CrPC amended in 2013. S.166A, IPC inserted in 2013.	A complainant is entitled to file a first information report and to a free copy of the FIR. In cases of rape, the information should be recorded by a woman officer. If the police officer refuses to file an FIR, he can be punished with six months to two years of rigorous imprisonment and fine.
2.	Ss.164A and S.357C, CrPCr.w. S.166B, IPC	S.164A, CrPC inserted in 2005. Ss.357C, CrPC	The medical examination of a rape victim must be conducted by a registered medical practitioner, with the consent of the victim, within 24 hours of the complaint. Hospitals have to provide immediate

		and 166B, IPC inserted in 2013.	first aid and medical treatment free of cost. If the hospital fails to treat the victim, the hospital in-charge can be punished with an imprisonment term of up to 1 year and/or fine.
3.	S.164, CrPC	Amended in 2013	After the complaint has been filed in rape cases, as soon as possible, the victim's statement has to be recorded by a Magistrate.
4.	S.195A, CrPCr.w. S.195A, IPC	S.195A, CrPC inserted in 2009. S.195A, IPC inserted in 2006.	If a person threatens anyone to give false evidence in court, he/she can be punished with imprisonment of up to 7 years and/or fine.
5.	Ss.357A and 357B, CrPC	S.357A inserted in 2009. S.357B inserted in 2013	States to devise compensation schemes for the rehabilitation of rape victims and their dependants/family members
6.	S.228A, IPC	Inserted in 1983	The identity of a rape victim must be kept anonymous.
7.	S.327(2), CrPC	Inserted in 1983. Amended in 2009.	Rape cases must be conducted <i>in camera</i> (the general public and press are not allowed in the courtroom), as far as possible, by female judges.
8.	S.53A, CrPC	Inserted in 2005.	Accused in rape cases can be compelled to undergo a medical examination, to be conducted by any registered medical practitioner.
9.	S.26, CrPC	Amended in 2009 and 2013.	As far as possible, cases of rape have to be tried in courts presided by women judges.
10.	S.157, CrPC	Amended in 2009.	Statement of a rape victim has to be recorded at her residence/place of her choice, by a woman officer.

### **INDIAN EVIDENCE ACT (IEA)**

The IEA lays down rules of evidence, decides the kind of evidence permitted in a trial, and the manner of taking depositions. The relevant provisions for rape trials are as follows:

#### **RELEVANT PROVISIONS FROM THE IEA (TABLE B)**

S.NO.	PROVISION	WHEN	PARTICULARS
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		INTRODUCED	
1.	S.53A,IEA	Inserted in 2013	Evidence regarding character or previous sexual history of the victim is inadmissible for proving consent.
2.	S.114A, IEA	Inserted in 1963. Amended in 2013.	If a rape victim in her evidence denies consenting to sexual intercourse, the burden of proving the presence of consent shifts to the accused.
3.	S.146, IEA	Inserted in 2003. Amended in 2013.	The victim cannot be asked questions on her previous sexual history or character in her cross-examination.
4.	S.152, IEA	Inserted in 1872.	No questions which are intended to insult or annoy the victim/witness can be asked.

## JUDICIAL DECISIONS

From time to time, the judiciary has taken note of the specific context in which cases of rape and child sexual abuse arise. This makes the general rules of procedure for conducting trial insensitive to the experiences of the victims, and the courtroom environment hostile. As rules of procedure, therefore, they are defeated in their purpose of eliciting accurate testimonies from witnesses and thereby undermining the discovery of truth. Courts have responded by framing special guidelines on conducting trials of rape and child sexual abuse. These Guidelines are detailed below:

### **STATE OF PUNJAB V. GURMIT SINGH<sup>26</sup>**

In this case, the Supreme Court acknowledged that trial processes often 're-victimize' rape victims. The experience of rape may be one of great trauma for them, which is relived in court while recounting the incident. Defence Counsel insist on scrutinizing the minutiae of the incident repeatedly to embarrass the witness, twist their meanings and create inconsistencies. Since there is normally great stigma and embarrassment also attached with any discussion on sex and sexual violence, deposing about rape in front of a large public in court might not elicit a frank deposition from the witness.

Accordingly, the Supreme Court directed as follows:

1. Trial courts must follow the mandate of S.327, CrPC, and conduct rape trials *in camera* as a rule, and a public trial only as an exception.
2. Presiding Officers must be more actively engaged in taking the evidence of the prosecutrix, and not give Defence Counsel unrestrained liberty to intimidate and humiliate her, while ensuring that the fair trial rights of the accused are also protected.
3. As far as possible, ensure that rape trials are presided over by women judges.

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<sup>26</sup>AIR 1996 SC 1393.



### SAKSHI V. UNION OF INDIA<sup>27</sup>

This was a Public Interest Litigation filed before the Supreme Court, seeking an expansive reading of the phrase 'sexual intercourse' in the definition of rape to include all forms of penetration so that child sexual abuse could be adequately addressed. While the Supreme Court dismissed this plea, it nevertheless delivered an important pronouncement on the manner in which trials of rape and child sexual abuse should be conducted in order to overcome the 'system induced trauma' of rape trials. It directed trial courts as follows:

1. Arrange for a screen or a suitable alternative to shield the victim or other vulnerable witnesses from the accused
2. Questions to be put to the victim/witness during cross-examination should be submitted to the Presiding Officer in writing, who will then ask the questions in a language that is clear and not embarrassing to the witness
3. Victims of rape and child sexual abuse should be given adequate breaks during their testimonies to put them at ease

### LILLU V. STATE OF HARYANA<sup>28</sup>

In this case, the Supreme Court of India held the practice of conducting the 2-finger test during the medical examination of a rape victim as unconstitutional and violative of her privacy and dignity. The test, despite its unscientific nature, has always been used to test the elasticity of a woman's vagina and the presence/absence of tears in the hymen to determine whether she is habituated to intercourse or not. This is then used by the Defence Counsel to cast aspersions on the character of the witness, and by labeling her as a 'loose woman', discredit her testimony. The practice continued for a long time, despite a catena of judgments and an amendment to the Indian Evidence Act holding the character of the victim irrelevant in rape cases.

### DELHI COMMISSION FOR WOMEN V. LALIT PANDEY

In this case, the High Court of New Delhi issued the following guidelines to enable the authorities to effectively tackle sexual offences:

**Police:** A woman officer should be called after a complaint of rape is received and the Rape Crisis Cell should be notified. After the preliminary inquiry, the victim should be sent for a medical examination along with a woman officer. The Additional Commissioner of Police should personally supervise all investigation. Statement of the victim will be recorded in private, or in the presence of family members if she so desires.

The accused should not be brought in the presence of the victim except for the purposes of identification. No victim of sexual offence shall be called or made to stay in the police station during night hours, except when reports are made during the night. The Social Welfare Department of Delhi will ensure that Foster House for Women provides shelter till other arrangements are made.

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<sup>27</sup>AIR 2004 SC 3566.

<sup>28</sup>AIR 2013 SC 1784.

Training to deal with rape cases should be provided to the police officers and other officials and training modules should be prepared. Information regarding arrest, bail application, investigation report etc. should be provided to the Rape Crisis Cell by the Police and they should also keep the permanent address of the victim along with the present address and keep track of any future changes. If threats are received by the victims then the Deputy Commissioner of Police should consider the matter and register a fresh FIR. Investigation should be completed at the earliest so that the default bail provision may not be misused.

**Hospitals/Doctors:** Special private rooms in government hospitals to question and examine victims to be set up. Sexual Assault Forensic Evidence (SAFE) kits should be used for collecting medical evidence and should be available at every Government Hospital. A detailed description of abuse history and the case must be recorded by the doctor. Clothing should be provided in case her clothes are seized as evidence. Hospitals should preserve the samples till the police are able to collect it.

**Courts:** Victim will be provided with a counsel from Rape Crisis Cell or she can retain a private lawyer if any. Examination-in-chief and cross examination of the victim must be conducted on the same day. A panel of psychiatrists, psychologists and experts in sign language etc., will be maintained to assist in recording the statement of witnesses in the Sessions Courts. If threats to the victim or family about a compromise are brought to the notice of the court, the judge shall immediately direct the Additional Commissioner of Police to look into the matter and provide an Action Taken Report before the court within 2 days. Protection to the victim and her family must be ensured. If the witness is sent back unexamined it will be ensured that at least traveling expenses for coming to and from for attending the Court are paid.

**Support Services:** 24-hour helplines should be set up, and also Rape Crisis Cells, which have accredited services for shelter, counselling, medical or legal assistance etc. and to provide a list of these services to Prosecution Branch, the Commissioner of Police and the Registrar of the Delhi HC.

**Compensation:** The Court directed the State Government to consider the draft scheme submitted by the Commission for Women with regards to compensation payable to rape victims and file a status report within 2 months.

### **DELHI DOMESTIC WORKERS UNION V. UNION OF INDIA<sup>29</sup>**

Here, the Supreme Court recognized the trauma inflicted on rape victims by the legal system, pointing defects in the system ranging from humiliation, rough handling of complaint and evidence, psychological stress and financial trauma.

It acknowledged the need to provide a more sensitized system for rape victims and issued broad parameters in assisting the victims of rape including the following:

1. Victims of sexual assault cases should be provided with continuous legal representation and also be guided on other support services, legal assistance should be provided starting from the police station, and the police should the inform the victim of right to the same. The

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<sup>29</sup>1995 SCC (1) 14.

advocate has to be appointed by the court on application by the Court. However, they could act at the police station (during questioning etc.) before being so appointed.

2. In all rape trials anonymity of the victim must be maintained, as far as necessary.
3. Criminal Injuries Compensation Board should be set up to compensate the financial loss suffered by the victims even though the offender might not have been convicted.

It also directed the National Commission for Women to evolve a support scheme keeping in mind the above provisions for rape victims within six months of the judgment to be examined and implemented by the Union of India.

## EXECUTIVE ORDERS

Following the general principles in legislations and judicial decisions, there are several executive directions that lay down the Standard Operating Procedure in relation to crimes of rape. These govern the manner in which the police register and investigate a complaint of rape, and the manner in which the medical examination of the survivor is conducted. Both provide crucial evidence in a rape trial.

The most material SOP in respect of this study is the Instruction Manual for Forensic Medical Examination Report of Sexual Assault.

### INSTRUCTION MANUAL FOR FORENSIC MEDICAL EXAMINATION REPORT OF SEXUAL ASSAULT

According to the Guidelines and Protocols for Medico-Legal care for victims of sexual violence:

**Health Consequences and Role of Health Professionals:**Victims are to be provided with comprehensive health care dealing with both short and long term impacts and a rapport with them must be established.

While performing a forensic examination a medical opinion has to be formed on whether a sexual act was attempted or completed, whether it was recent and any harm has been caused to the victim's body. Absence of signs of struggle does not signify consent. In cases of adolescents, age also needs to be verified. Whether drug/alcohol was administered has to be tested.

**Operational Issues:**Any registered medical practitioner can conduct an examination to collect evidence using the Sexual Assault Forensic Evidence (SAFE) Kit; if victim is female then female doctors are to be preferred. For a transgender, the choice should be given to the victim. Police is not allowed in the examination room, however a relative can be present if the victim so requests. Medical treatment is the first priority. A special room must be made available to maintain privacy. The hospital should not insist on admission until there is requirement of observation/treatment. All services to victims should be free of cost, medicines prescribed must be available in the hospital, or the victim must be compensated. A copy of all documentation must be provided free of cost.

**Medical examination and reporting for sexual violence:** The first step is to obtain informed consent/refusal from the victim for every step and provide first aid.

If the victim comes to the hospital on their own without filing a report, it is the duty of the doctors to inform the police and provide medical treatment. In case a police case/FIR is refused by the person, a medico-legal case (MLC) must be made out.

Doctors have to inform the victim about the nature and purpose of the examination. Any part of the examination can be refused. Consent form must be signed by the victim, a witness and the examining doctor. Refusal to undergo an examination cannot be used to deny treatment and medical aid.

This is followed by a general physical examination and an examination for injuries. Any sign for intoxication or drugs is also recorded. A per-vaginum test or the 2- finger test should not be carried out and the status of hymen is irrelevant to the factum of sexual act.

If it is requested by the police evidence can also be collected and recorded for age estimation. A urine pregnancy test has to be performed and blood has to be collected for HIV status and other tests etc. The type of evidence would change depending upon: nature of sexual violence, time lapsed between the incident and the medical examination, whether the victim has bathed/washed herself.

The drafting of provisional opinion should be done immediately after examination of the victim on the basis of history and the clinical examination. It must neither confirm nor deny forceful sexual intercourse. A final opinion with regard to sexual assault is to be formed after testing. Testing should be done for sexually transmitted infections. Emergency contraception may also be given.

Victims should be informed of follow-up services and all follow-ups should be documented. Psycho-social care must be ensured and first line support be offered.

The medical examiner has to pack, seal and sign over the evidence to the police. One copy of all the documents has to be given to the victim. The hospital must ensure a designated staff to maintain the chain of custody and a log of the same has to be maintained.

If the victim reports with pregnancy resulting from an assault she is to be given the option of abortion and protocols of MTP are to be followed.

**Psycho-social care:** Guidelines in this regard are based on the Clinical Guidelines for responding to IPV and sexual assault of WHO, 2013.

An enabling atmosphere should be created and trust be established and the victim should be informed of all available resources, referrals, legal rights.

Stages of the examination should be explained. Rationale for referrals, (made after ensuring privacy and confidentiality) also has to be communicated.

To address the victim's emotional wellbeing crisis counselling must be encouraged. Suicidal tendencies must be assessed. Friends and family should be involved in the healing process of a victim. Reactions and the range of feelings which are common after a traumatic experience must be explained.

Safety assessment must be done, and if the survivor is unsafe alternate arrangements to stay must be offered. If not, a safety plan must be made.

Health professionals should engage with family and friends to discuss ways of promoting survivor's well-being.

**Guidelines for interface of health systems with other agencies:**

**Police:** The victim must be taken by the Police to the nearest health facility for medical examination and treatment unless they have been already examined and the documents are available. No police presence is allowed while the examination is being conducted. Police cannot be asked to sign as witness in the medico-legal form.

**Public Prosecutor:** The doctors should inform the prosecutors of any difference in the histories of the victim given to the police, doctors and the Magistrate. If any additional information is given to the doctor, then that must be revealed.

**Judiciary:** As expert witnesses, doctors have to prepare a reasoned medical opinion. Absence of injuries has to be interpreted using medical knowledge and the history as told by the victim. The doctors must ensure to clarify that normal examination finding cannot refute/confirm sexual offences. No comments on the past sexual history or the hymen should be made by the doctors.

**Proforma for Medico-Legal Examination of victims:** The proforma along with the relevant format of the report of the examination provides for one-page instructions for the doctors which include getting informed consent/refusal from the patient and documenting the same, not conducting the '2-finger test', making no comments on the previous sexual history, documenting the injuries like as specified in the format and guidelines. The doctors also have to determine the nature of evidence to be collected as per the guideline. No conclusion regarding rape should be given on the basis of medical reports and only findings should be listed.

**POLICE GUIDELINES: STANDING ORDER ON GUIDELINES TO BE FOLLOWED WHILE INVESTIGATING CASES OF RAPE (DELHI)**

The Guidelines largely adopt the stipulations in the two Supreme Court decisions of *Lalit Pandey* and *Delhi Domestic Workers' Union*, described above.

They also provide that trainings towards sensitization of police personnel and investigative procedure in cases of rape should be provided. A periodic check of quality of rape investigations should also be ensured.

## ANNEXURE 2: TEMPLATES FOR CONDUCTING RESEARCH

### TEMPLATE FOR OBSERVING COURT RECORDS

The first template is an examination of the police and court records of the particular case. This includes all documented records relevant to the case, starting from the registration of the FIR, recording the statements and confessions, medical reports, to sending report to the Magistrate. It is crucial to note that though these are all procedural aspects encoded within the CrPC, many of these require a special or separate procedure meant specifically for rape cases, introduced by various amendments and guidelines.

#### **DETAILS IN FIR, 164 STATEMENT ETC.**

1. Date, time, location of commission of offence.
2. Date, time and location of filing FIR. Whether Zero FIR was lodged?
3. Provisions under which FIR was registered.
4. Whether information was recorded by woman officer in the event that victim herself complained. ( Proviso to Sec 154 of CrPC)
5. Whether information was videographed (Proviso (b) to Sec 154)
6. Whether accused's identity and location was provided in the information.
7. Whether accused was arrested
8. Date of arrest
9. In case there is more than one accused (gang rape), have they all been arrested?
10. In case victim was temporarily or permanently physically or mentally disabled, where was the information recorded, was there compliance with Sec 154 (1)(a) in terms of the place where her statement was recorded.
11. If the victim was temporarily or permanently physically or mentally disabled, was there an interpreter or a special educator called during the time of recording the statement ? What was the nature of the disability?
12. Recording of statement by magistrate under Sec 164
  - Date and Time of recording the statement.
  - Manner of recording of statement.
  - Any other relevant information about the statement
  - In case victim was physically or mentally disabled, permanently or temporarily;
13. Whether interpreter or special educator's assistance was taken?
14. Whether statement was videographed?

#### **DETAILS OF MEDICAL EXAMINATION AND FIRST AID**

1. Medical Report of accused
  - Date, Time of medical examination.
  - Whether potency test was done.
  - Whether there any marks of injury on the body of the accused.
  - Any other material particulars.

## 2. Medical Report of the victim

- In case victim sought first aid-
  - Whether free first aid was provided to victim vide Sec 357 C of CrPC?
  - Did she go to a public or private health facility? Where?
  - Whether Police was informed as per Sec 357 C, CrPC
- Medical Examination of victim
  - Date, time and Location of medical examination.
  - Whether explicit consent of victim/person competent to give consent was taken.
  - Whether 2 finger test was conducted on the victim. What were the tests conducted upon the victim?
  - Whether there were marks of injury on the person of the victim.
  - Mental condition of the victim; whether victim received any psychiatric counselling.
  - Date and time of forwarding of report to investigating officer.
  - Other material particulars, especially those which might be used to reach conclusions about the sexual conduct/character of the victim.

### **DETAILS OF CHARGE SHEET**

1. Date on which magistrate took cognizance of report.
2. Has the accused been taken in custody?
3. Was the accused in custody or was he on bail during investigation?
4. If he was on bail, was he released on statutory bail because of the failure of the police to finish investigation Date on which investigation began (FIR)in 90 days, under Sec 167(2) of CrPC?
5. Provisions under which offences were framed in charge sheet.
6. Other material particulars from charge sheet.

### **TEMPLATE FOR OBSERVING THE TRIAL**

The second template concerns the documentation of the trial itself. Through this template, we document only the examination-in-chief, cross examination and re-examination of the prosecutrix, and look at standards of appreciation of evidence and witness testimonies. We will also look at other relevant procedural requirements in the trial, like the use of audio-video recording of the evidence of witnesses, and also the architecture and internal structure of the trial room.

### **PERTINENT PARTICULARS IN THE TRIAL ROOM**

1. Whether screen to shield prosecutrix from accused was made available. Was the screen effective in shielding the victim from the accused?
2. Was the prosecutrix alone, was any family, friend or social worker allowed to be with her in the trial room? How many?
3. In case of gang rape, how many accused were present in court? How many people/ lawyers from the side of the accused were present?
4. What was the proximity between the accused and the prosecutrix?
5. What was the demeanour of the P.O.? Was there dedicated concentration?
6. What was the nature of the court intervention?

7. Did the P.O. make an effort to reassure the prosecutrix?
8. Was there any attempt by the P.O. to rein in the he defence?
9. How prepared was the PP with the facts of the case? Was the prosecutrix comfortable talking to the PP?
10. Was the prosecutrix comfortable with the language in which she was spoken to?
11. Any discrepancy between what the prosecutrix said and what was recorded?
12. Misc. Observations

## **TEMPLATE FOR DOCUMENTING VICTIM'S PERSPECTIVE**

This template is used for the documentation of the victim's perspective on her encounter with the criminal justice system. Amongst other things, this section assesses factors and events that trigger fear and intimidation, from within the system and outside of it (by the accused, neighbours, etc) to draw conclusions about the scope of witness protection that is ideally required for rape survivors in the Indian context. It will document biographical information of the victim as well, while keeping her identity confidential.

### **HER EXPERIENCE OF THE POLICE STATION AND MEDICO LEGAL PROCEDURES**

1. Does the victim belong to SC/ST/OBC? If yes then specify.
2. What religion does the victim belong to?
3. Age?
4. Married/Unmarried?
5. If married, how old is her husband?
6. If unmarried, who does she live with? How old are her parents?
7. Does she have children? What are their ages?
8. What is her level of education?
9. What is her financial situation? Is she financially independent? What income group?
10. Employed/Unemployed?
11. Where is she living (in terms of location)?
12. What influenced her to take legal recourse?
13. Who advised her, opposed her and/or assisted her at various stages of filing a complaint and trial?
14. Does she know the accused? How?
15. Was there ever a time during the trial when she wanted a private counsel?
16. Was legal aid provided to her?
17. How, in her opinion, was the behaviour of the Public prosecutor?
18. Has she sought shelter?
19. How long did she think the entire trial would take?
20. Does she understand the law and the procedure? Did anyone explain the entire procedure and the rights she has under the law?
21. Did she, at any point during the entire procedure, think of pursuing other options?
22. What according to her would be justice?
23. Where there any counter cases filed against her?



24. In case she went to the police first;
- How much time did it take to register her complaint?
  - Was her complaint dictated by her, or read out to her for approval
  - How many police officers – male and female, were present while her complaint was being recorded? What was/ were their role/s?
  - Was she given a copy of the FIR?
  - Did she feel satisfied with the co operation of the police?
  - Did she give her statement to a lady police officer?
  - Was she taken for medical check up?
  - Which hospital was she taken to?
  - Who was she accompanied by? (Police, Family, Social worker?)
  - Was any first aid treatment needed, and was it done?
  - Was her consent taken by the medical staff before any tests were conducted?
  - Who conducted the medical tests? (Lady doctor, nurse, other staff?)
  - What medical tests were conducted on her?
  - Her overall experience of the medical procedure- positives and negatives.
25. In case she went to a medical establishment first;
- Did they only provide first aid or did they perform some tests?
  - Was she was provided with free and immediate first aid treatment?
  - Did the medical establishment themselves contact the police?
  - Did they make her treatment conditional on filing a complaint with the police?
26. Her experience of giving statement under sec 164
- Who took her for the statement? Was there any legal aid/ngo representative?
  - Was the process and its relevance explained to her? Who explained?
  - Was her statement taken by the MM? If yes, then was there anyone else in the room at the time? If not, then who took the statement?
  - Was she asked a few questions about herself, whether she was under any pressure or coercion or not?

### **HER EXPERIENCE OF THE INVESTIGATION AND THE TRIAL**

27. What was her experience of the investigation? Was she satisfied with the IO?
28. Was she required to visit the police station during the course of the investigation? How many times?
29. What was her experience of being inside the trial room? Was she comfortable or intimidated?
30. Did she feel that the trial was proceeding at a suitable pace? How often does she have to come to the court?
31. -Would she have preferred a screen shielding her from the accused? Was it offered to her?
32. Did she apply for compensation in the court? Did the court make any recommendation for compensation? How much?
33. In case she comes to the trial alone, would she have liked a friend/family/social worker to accompany her? Was she informed by the Public Prosecutor or the P.O. that she could move an application to have someone she knows accompany her to court?

34. What other changes (substantive, procedural, attitudinal etc) would she like to see in the entire process, starting from the FIR to investigation, medical checkup, and trial?
35. What were the definite positives and negatives that she experienced in the entire process?
36. Was she satisfied with the way her family, friends and community have supported her through the process?

#### **HER EXPERIENCE OF EXTRA LEGAL PRESSURE, SUPPORT AND HER EXPECTATIONS**

37. Has the accused, his family members, friends or associates been in touch with her/ her family
38. Is there any other pressure on her/ her family
39. What kinds of pressures or harassment, embarrassment, shaming, intimidation has she faced from anybody – neighbours, school, employment, accused etc
40. Has she reported this harassment and intimidation to the police/ court/ or to anybody else.
41. Does she feel fear? What does she most fear?
42. Has she received any counselling etc?
43. Did she visit a One Stop Crisis Centre? Which one, who took her, how many times, what did she get from there?

**ANNEXURE 3:  
CASE STUDIES**

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In the interest of confidentiality of the victim’s testimonies and given that these cases are sub  
judice the case studies are not available for public circulation.

**ANNEXURE 4:  
COMPARATIVE TABLE OF GOOD PRACTICES FROM OTHER  
JURISDICTIONS**

	India	U.K.	New South Wales, Australia	Ottawa, Canada	South Africa
<b>Reporting and Investigation</b>					
Option to report the offence at victim's residence or place of choice	✓	✓			✓
Option to report at specialized agency		✓	✓	✓	
Option to report without proceeding with legal action			✓		
Option to videograph complaint	✓	✓		✓	
Regular updates on status of investigation		✓			✓
Access to crisis worker		✓	✓	✓	✓
Access to special educators or translators for persons with disability	✓		✓		✓
<b>Medical Treatment and Examination</b>					
Free Medical Treatment	✓	✓	✓	✓	✓
Medical treatment not contingent on police complaint		✓	✓	✓	✓
Informed Consent for medical examination	✓	✓	✓	✓	✓
Option to preserve medical evidence for legal action at a later date (up to 6 months)				✓	✓
Standard Sexual Assault Kit for examination	✓	✓	✓	✓	✓
Post-trauma Counseling	✓	✓	✓		✓
Copy of report of medical examination given to the victim	✓				
<b>Trial</b>					
Specialized agencies for support through trial		✓	✓	✓	✓
Pre-Trial and Trial Orientation by Investigating Officer or Prosecuting Agency*		✓		✓	✓
Pre-trial meeting with prosecuting agency		✓			✓
Non-disclosure of Identity of the Victim**	✓	✓	✓	✓	
Restriction on Publication of Proceedings	✓			✓	
<i>In-Camera</i> Trial	✓	✓	✓	✓	✓
Giving Testimony behind the screen/different room**	✓	✓	✓	✓	✓
Allowing support persons to accompany the victim	✓		✓	✓	✓
Allowing court appointed intermediaries for aid in deposition		✓			
Pre-recording testimonies for deposition		✓			

Conduct proceedings in language of the victim	✓	✓			
Restrictions on admissibility of evidence related to the sexual history/character of the victim	✓	✓	✓	✓	✓
<b>Support Structures</b>					
Helpline	✓		✓	✓	
Specialized Support Agencies		✓	✓	✓	✓
Shelter/Alternative Accommodation **		✓	✓	✓	
Counseling Services		✓	✓	✓	✓
Legal Support/Aid	✓	✓		✓	
Pre-trial and Trial Orientation by specialized agencies*		✓	✓	✓	✓
Updates about the Trial		✓			
<b>Compensation</b>					
Compensation awarded by courts to rape victims	✓	✓			✓
Rape victims entitled to state compensation	✓	✓	✓		
Compensation payable immediately after complaint	✓	✓	✓		
Not conditional on outcome of the Trial	✓	✓			
Includes costs of prosecuting offence					✓
<b>Witness Protection</b>					
Receive information on the location and bail of the accused through the trial				✓	✓
Restraint Order to prevent accused from approaching the victim		✓	✓	✓	✓
Safe homes/shelter**		✓	✓	✓	
Shielding victim from the accused during deposition**	✓	✓	✓	✓	✓
Non-disclosure of Identity of the Victim**	✓			✓	
<p>* In some jurisdictions, orientation is provided by both, specialized agencies as well as prosecuting agency/investigating officer. In most jurisdictions, there is at least one entity to fulfill this role.</p> <p>** These features serve more than one purpose, as support services before, during or after trial, as well as the function of protecting the victim/witness from pressures from the accused.</p>					

MOST IMMEDIATE

No. \_\_\_\_\_/DHC/Gaz/2013

New Delhi, dated, the \_\_\_\_\_ October, 2013

Dear

Please refer to your D.O. letter No.A2J/UNDP-req/01/12 dated 25.09.2013, on the subject, and to say that Hon'ble the Chief Justice and Hon'ble Judges of this Court have been pleased to grant permission to the NGO namely Partners in Law and Development (PLD) to conduct research studies of trials in rape cases in the Special Fast Track Courts functioning at Saket, Karakardooma and Tis Hazari Court Complexes, within the following parameters:-

1. The NGO, shall identify a total number of 16 cases pending in the said Courts which they intend to monitor. The records of these 16 cases would be made available to the NGO by the concerned court, which may be approached in advance. The concerned Court and the District Judge shall be involved in the identification of the cases.
2. The NGO would be permitted to observe the proceedings of these cases, even when the proceedings are held in camera, on a request to be made by them to the concerned Court, subject to the following :-
  - i) The NGO shall maintain absolute confidentiality about the identity of the victim and/or accused and other persons involve in it.
  - ii) The research study/report of the NGO will be published with the prior approval of Hon'ble the Chief Justice.
  - iii) Any interview or any interaction with the victim shall be only with her consent and after her deposition has been recorded.

Yours sincerely

(R.Kiran Nath)  
Registrar(Vigilance)

Smt.Anita Kaul,  
Secretary(Justice),  
Government of India,  
Ministry of Law & Justice (Department of Justice),  
26, Manshing Road, Jaisalmer House,  
New Delhi - 110001.

Endst. No. 82524 DHC/Gaz/2013  
Copy forwarded for information and necessary action to :-

Dated : 28.10.13

1. The District & Sessions Judge(HQs), Tis Hazari Courts, Delhi.
2. The District & Sessions Judge, East District, Karkardooma, Delhi.
3. The District & Sessions Judge, South District, Saket, New Delhi.
4. The District & Sessions Judge, West District, Tis Hazari Courts, Delhi.
5. Ms.Madhu Mehra, Director, Partners for Law in Development(NGO),  
F-18, Jangpura Ext., First Floor, New Delhi.

(O.P.Narang)  
Deputy Registrar(Gaz.)