LEGAL AID SOCIETY

GAP ANALYSIS OF INVESTIGATION AND PROSECUTION OF RAPE AND SODOMY CASES IN ISLAMABAD CAPITAL TERRITORY

A Mixed-Methods Gap Analysis of Rape and Sodomy Acquittals in the Islamabad Capital Territory of Pakistan between 2017 and 2020

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LIST OF ACRONYMS AND ABBREVIATIONS

CI	Confidence Interval
CJS	Criminal Justice System
Cr.P.C.	Code of Criminal Procedure
DNA	Deoxyribonucleic Acid
FGDs	Focus Group Discussions
FIR	First Information Report
GBV	Gender-based Violence
IO	Investigating Officer
KIIs	Key Informant Interviews
LAS	Legal Aid Society
PPC	Pakistan Penal Code
SAST	Strategic Assumptions Surfacing and Testing
Ti	Investigative Delay
Tj	Prosecution/Judicial Delay
To	Summation of Total Delay in Reporting and Procedure of Trial
Tp	Procedural Delay
Tr	Reporting Delay
(W)MLO	(Woman) Medico-Legal Officer

FOREWORD

The introduction of amendments to the anti-rape legislative landscape; particularly the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 and the recently passed Federal Anti-Rape (Investigation and Trial) Act 2021 (ARITA 2021) and Criminal Law (Amendment) Act 2021; have been paramount in establishing a 'victim-centric' approach within the precipice of the Criminal Justice System's processing of cases of sexual and gender-based violence. The emphasis remains on a speedy and efficient trial ensuring due process and the highest standards for a scheme for victim protection. However, the existing fissures between legal doctrine and ground realities remain the same: protracted trials with abysmally low conviction rates; alluding towards acute procedural gaps in the proceedings of sexual and gender-based violence cases; all the while forcing out more and more victims from within the folds of the formal justice system.

The Gap Analysis of Investigation and Prosecution of Rape and Sodomy Cases in ICT is sequent on a similar study conducted by the Legal Aid Society in Sindh in 2021 with the aim of investigating the procedural gaps and lacunas that exist in such protracted trials of rape and sodomy cases in the Islamabad Capital Territory. It is a thorough and assiduously drafted document that can prove to be critical in providing direction to policy makers and implementers in the justice system.

I wish to extend my deepest appreciation to Barrister Maleeka Ali Bokhari, Federal Parliamentary Secretary for Law and Justice, for her support and guidance. I would also like to extend my gratitude to Justice (R) Khilji Arif Hussain for his continued counsel and mentoring of the research and legal teams at the LAS. In particular I would like to acknowledge the hard work and support of Ms. Maliha Zia Lari, Ms. Maleeha Azhar, Mr. Shahzeb Naeem, Mr. Adil Ashraf, Ms. Arica Rehman, Ms. Fatima Durrani, Ms. Fatima Amir, Mr. Shanil Khowaja and Dr. Moiz Awan at the Legal Aid Society for producing the Gap Analysis report in its current form. It is owing to their collaborative efforts that Gap Analysis of Investigation and Prosecution of Rape and Sodomy Cases in ICT has been compiled and disseminated.

I believe this is an important step towards ensuring safe and efficient access to justice for women in our society.

Justice Nasir Aslam Zahid

Chairperson Legal Aid Society

EXECUTIVE SUMMARY

Gender-based Violence is a menace that plagues societies across the world while disproportionately affecting women and children. In Pakistan, there is a prevailing acceptance of Gender-based Violence at a socio-cultural level that exacerbates and perpetuates a cycle of violence which makes it difficult for survivors to report such behaviour. Even when such incidents are reported, the victim's experience of Criminal Justice Institutions represents a grim picture which is further dampened by procedural and investigative gaps within these institutions.

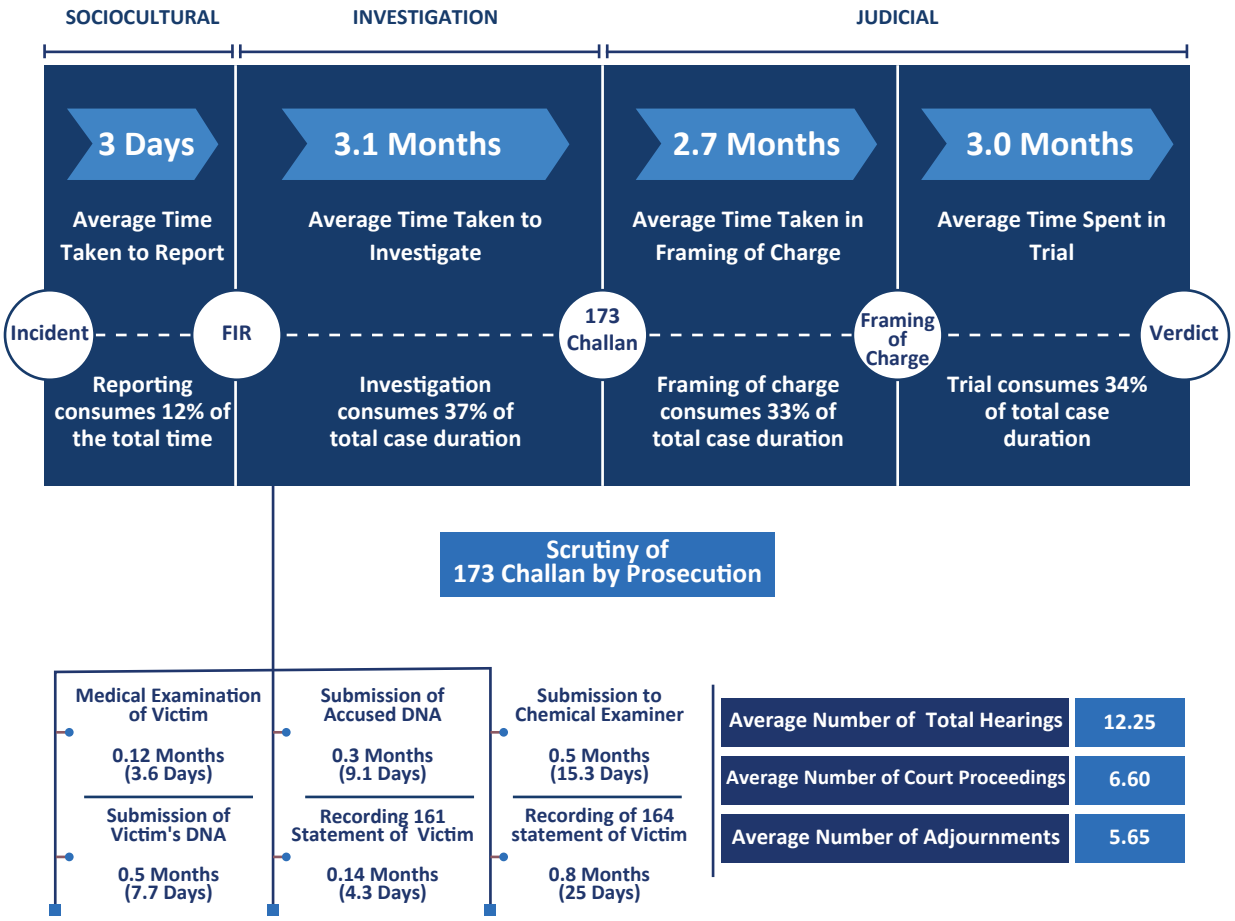
Globally, Pakistan consistently ranks in the bottom quartile on leading assessments on gender based violence and gender equality. The Gap Analysis of Investigation and Prosecution of Rape and Sodomy Cases in Sindh published by LAS in 2021 revealed the various gaps that exist within Criminal Justice Institutions in Sindh which prevent effective disposal of justice to victims.

In lieu of this and assuming a similar situation exists across Pakistan with regards to gaps within the Criminal Justice Institutions, LAS through funding received by the British High Commission as part of the Strengthening the Response of Criminal Justice Institutions in ICT and Sindh program, underwent a similar process of identifying and analysing what investigative and procedural gaps and lacunas exist in protracted trials of rape and sodomy cases in Islamabad Capital Territory. The findings of our report are based on a rigorous quantitative and qualitative analysis of 54 cases files which have been divided into three distinct categories: normal, abnormal and extremely abnormal. We believe that this report adds to the growing research and literature on the state's response to Sexual and Gender-based Violence in Pakistan as well as providing recommendations that can be adopted by Criminal Justice Institutions.

Additionally, the report may also be utilized as an evidence based, data driven advocacy tool to be presented to important stakeholders present within Criminal Justice Institutions in Pakistan as well as policymakers, civil society, academics and donor organizations, with the aim of strengthening the State's response to cases of Sexual and Gender-based Violence.

FINDINGS AND RECOMMENDATIONS

TIMELINE OF RAPE AND SODOMY CASES



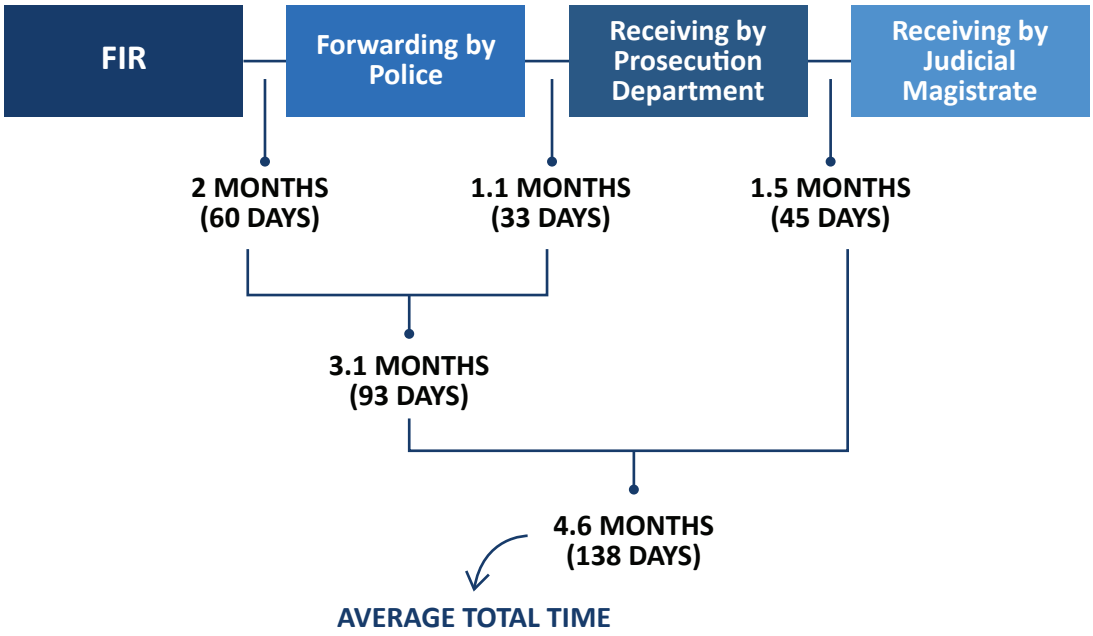
A Case Takes 8.8 Months* on Average Till the Conclusion of Trial

***This excludes 5 outlier cases**

A brief summary of our findings indicates that, on average, it takes 8.8 months for a typical rape and sodomy case to be investigated and prosecuted in ICT. This duration is quite high in terms of what an average rape case should ideally take from reporting to investigation to trial and then verdict. In terms of percentages this denotes that 37% of the time is taken up by investigation; 33% of this time is taken during the pre-trial phase i.e. framing of the charge by the judicial magistrate, and 34% of the time is that of trial.

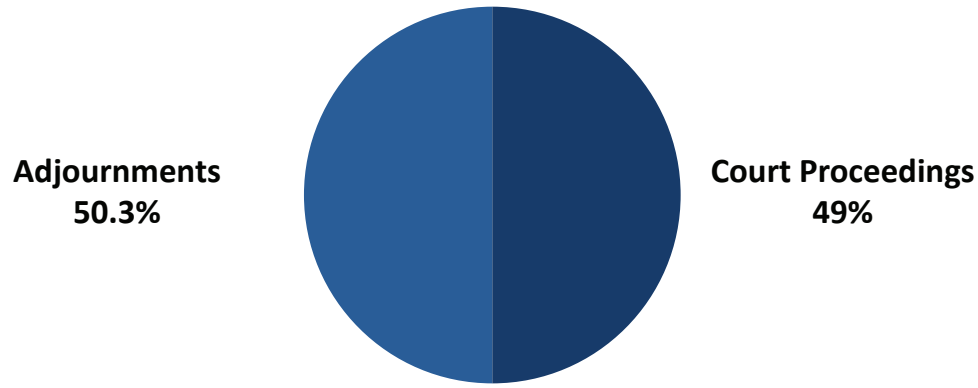
In between them, it takes the police approximately 3.1 months to investigate even though the official stipulated time is within 14 days. Our analysis indicates that considerable delays take place in submission of any medical or forensic evidence as well as recording of the 164 statement of the victim. In order to curb these gaps in investigation, LAS recommends development and implementation of officially endorsed Standard Operating Protocols (SOPs) for Police Officers for Investigation of Rape and Sodomy cases, SOPs for Collection of DNA or evidence in Rape and Sodomy cases by the Police, as well as a wider appeal to establish Gender Protection Units across the country that can specifically work on cases related to Gender-based Violence.

Average Durations in 173 Challan Transmission

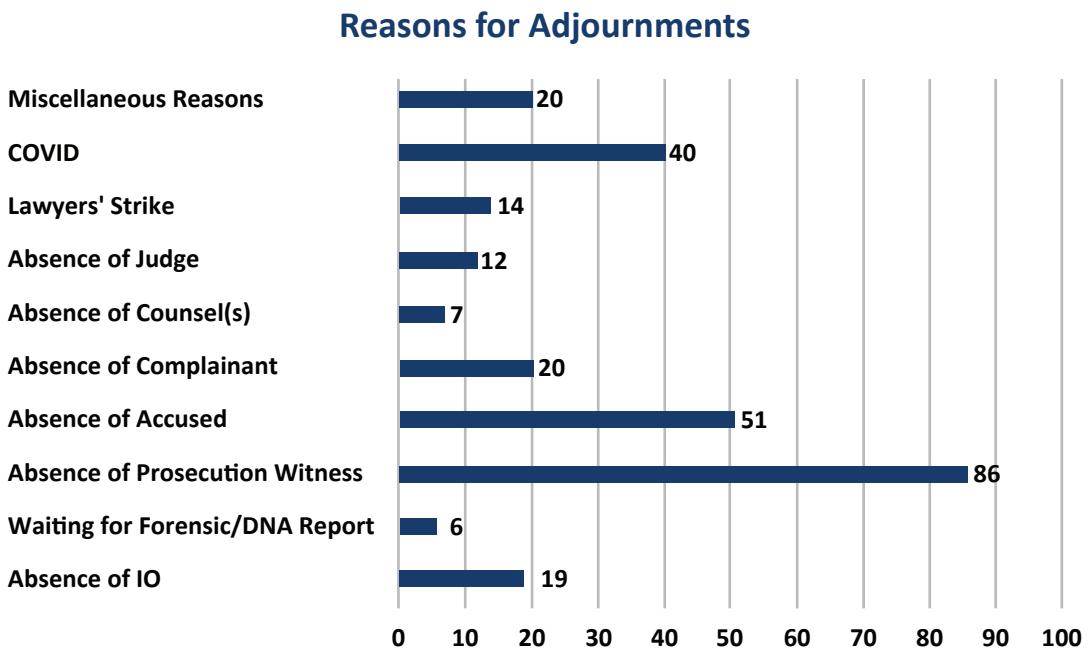


Our analysis also indicates that it takes an average of 1.5 months from the receipt of the 173 challan by the prosecution to its receipt by the judicial magistrate. This is a significant and perhaps unnecessary addition to an already extended timeline for cases of GBV.

Breakdown of Hearings



HEARINGS	AVERAGE # BY CASE
Court Proceedings	6.60
Adjournments	5.65
Total Hearings	12.25



Furthermore, the absence of key personnel in the trial (prosecution witness, complainant, accused, Investigation Officer) are the main reasons for adjournments. This requires a more in-depth qualitative study to understand what the exact reasons for this issue are, and what recommendations for procedural or policy change can be made.

Additionally from sections 4 – 8, our report highlights certain institutional and procedural gaps which have led to a delay in the effective disposal of justice for the victim.

In this regard, Section 4 examines the lapse in police investigation of rape and sodomy cases and focuses on the following aspects:

- Numerous cases indicate an accusation of falsified FIRs which leads to the complainant turning hostile i.e they testify that they did not make statements recorded in the FIR which calls for better diligence on the Police's part.
- The importance of recording 161 statement of the Victim and Complainant to address contradictions in such cases, importance of preserving forensic evidence as well as conducting medical inquiry of the victim. Delays in submission of medical and forensic evidence account for massive investigation delays according to our analysis.
- Realizing the importance of chain of custody of evidence and how its violation can lead to a substantial piece of evidence to be declared inconclusive and inadmissible which calls for the Police to be trained in the technical and procedural facets of DNA collection, preservation, and submission.

- Focus on DNA evidence instead of circumstantial evidence which leads to a massive delay in submission of 173 report (challan), largely due to wider bureaucratic mechanisms, influences the trial greatly as judgements seem to rely heavily on DNA evidence.

Section 5 seeks to address the gaps identified within the existing medico-legal practices as well as forensic reporting and evidence which are briefly summarized:

- Insufficient medico-legal reports, use of reductive language in assessment of victim's examination as well as an absence of summary of MLOs forensic interview and evaluation of victim post sexual assault negatively impacts the trial.
- According to our analysis in terms of delays in forensic reporting, significant delays exist between the reporting of the crime (date of FIR), the collection of DNA samples and swabs, and their submission to the forensic agency.
- The most troubling delay is that of the massive time it takes for the forensic report to come back from the forensic agency. This entails that the trial proceedings are prolonged since the over-reliance on DNA results means that the prosecution's entire case often rests on the report.

Section 6 shifts the conversation in understanding what limitations exist in prosecuting cases of Rape and Sodomy based on our analysis of cases in ICT in which we elaborate upon in the following key findings:

- There is limited scrutiny of 173 challan by prosecution with flaws and lapses in police investigation not identified by prosecution.
- Lack of pre-trial preparation or coordination with prosecution witnesses.
- Limited intervention in cases of compromise or hostile prosecution witnesses, 76% of cases resulted in an out-of-court compromise as well as the victim or prosecution witness resiling.

After highlighting these gaps, our report then refers to 'areas of concern' in conducting trials on rape and sodomy in Section 7 such as:

- Lack of use of special protection mechanisms during trial cases, such as screens, video-link testimony services as well as lack of a victim-friendly space which shows a lack of implementation of legislation based in this regard.
- There exists a widespread culture of compromise in rape and sodomy that is explored through avenues such as plea bargaining or out-of-court resolutions.
- Preference is given to affidavits of settlement over collected evidence that has been gathered over the course of the trial. Courts are seen to establish rape as a personal or communal matter rather than be perceived as an offence against the State which attributes to society seeing rape cases as a 'crime of honour'.
- Use of external means of justice in rape cases reinvigorate and enforce gender, societal and familial hierarchies in patriarchal societies. The institution of marriage is also utilized and used as a means to compromise and legalize rape. In ICT, 76% of all cases resulted in confirmed or presumed compromise or out-of-court settlements.
- High degree of coded misogyny in judgements, language used to perpetuate stereotypes, power to silence alternative narratives and suppression of other stories. Such barriers to justice disproportionately impact women and children and anyone who is a survivor of sexual violence.
- Over-reliance on the victim's resiled statements leads judges to use linguistics that discredit and blame the prosecution. Furthermore, the victim's inability to fight back or produce evidence contribute to the judges' attitude of sympathising with the accused. Lastly, prejudice in judgement showed character assassination of the victim by focusing on the past relationship of the victim with the accused.

After illustrating, examining and analysing the existing challenges and gaps in ICT in responding to cases of rape and sodomy, the final section of the report provides a set of recommendations that can help in improving the overall response of Criminal Justice Institutions in handling such cases as well as improving the victim's experience with these trials. The recommendations attempt to holistically address different angles of Criminal Justice Institutions and are targeted towards policy development and legal reforms such as deployment of SOPs for investigation, guidelines for collection of DNA and forensic evidence, and guidelines for GBV courts and prosecution. The report also emphasizes on training and knowledge building of key stakeholders by calling for mandatory gender sensitization training for institutes such as prosecution on strategic planning and litigation for rape and sodomy cases. Furthermore, the report recommends making improvements in specific processes such as recording faster 164 statements as well as enhancing collaborative efforts between the police and prosecution. Lastly, the report refers to 'required resources' that need to be utilized during investigation and prosecution of every case of rape and sodomy, which include using special protection measures that have been installed as well as deployment of rape kits, transport kits and sample collection kits.

Ultimately, gap analysis of rape and sodomy cases in ICT seeks to outline the outstanding and persistent gaps that pervade Criminal Justice Institutions in Pakistan and calls for a coordinated effort between key stakeholders in order to improve the quality of investigation and reduce the procedural gaps that currently exist within the system with regards to cases of Gender-based Violence. The report also emphasizes on how currently a culture of compromise exists within institutions and society at large which reinforces patriarchal gender, societal and familial hierarchies. While acknowledging the complexities and constraints affecting key stakeholders, we are confident that the findings illustrated in this report will be used for evidence-based, advocacy measures in order to strengthen the State's response to cases of Gender-based Violence while pushing civil society and policymakers to collaborate with Criminal Justice Institutions allowing for evidence-based targeted troubleshooting and reform, resulting in measurable and demonstrable positive results and impact.

INTRODUCTION

Pakistan's experience of curbing crimes of Sexual and Gender-Based Violence (SGBV) and increasing deterrence to them has not yielded much success. Pakistan has recently plummeted on gender parity, according to the 'Global Gender Gap Report 2021', published by the World Economic Forum, slipping two spots since last year to rank 153rd out of 156 countries on the index[1]. After over 70 years since its conception, Pakistan finds itself in the throes of cultural conservatism where societal stigma still stands as a major barrier to effective investigation and prosecution of sexual violence.

While accurate figures and statistics relating to the State's response to SGBV cases remain unavailable due to administrative inefficiency and societal stigma causing victims to underreport such heinous crimes, it is estimated that up to 11 rape cases are reported daily to the police[2]. The number of 'reported' incidents tells less than half the story, as most acts of sexual violence continue to go unreported because of the social stigma and practice, which perpetuates a culture of silence.

This culture is particularly oppressive,

> **"in patrilinear cultures where restrictive beliefs about women's roles and rights in society dominate. Women are seen as vulnerable and incapable of protecting themselves or exercising agency. This is a regressive view because it portrays women as weak and passive in absolute terms, and men as strong and active, thus fortifying deep-rooted social inequities around gender. This also hardens hierarchical norms wherein women must comply with their invulnerable saviours. As a result, paternalistic and controlling attitudes deepen."[3]**

[1] https://www.dawn.com/news/1615651

[2] https://www.thenews.com.pk/latest/743328-about-11-rape-cases-reported-in-pakistan-every-day-official-statistics-reveal

[3] https://www.dawn.com/news/1619667

This perspective is tied closely with the notion that women hold the honour and dignity of their men, societies, and communities. Any 'violation' of the woman's bodily sanctity, no matter whether with or without her consent, is attached to notions of shame and dishonour directed at her and extending to her entire family. Sexual violence against boys and men, on the other hand, contradicts notions of 'masculinity', an essential attribute for men in such societies, resulting in pushing for silence.

Another major factor contributing to the low numbers of cases reported is the culture of informal dispute resolution mechanisms, including through illegal parallel judicial systems such as jirgas and panchayats. This also evidences and is indicative of the public's general lack of confidence in the Criminal Justice System (CJS) and its actors to deliver justice, and dissatisfaction with their experience with the CJS. A User Satisfaction Survey (USS)[4] conducted by Legal Aid Society (LAS) in September and October 2020 in 2 districts of Sindh found that secondary victimization within the CJS, lack of safety and witness protection measures, long delays in cases resulting in increased pressure among victims and families, and long waiting times in proximity of the accused are all factors that contribute towards a negative user experience among victims of rape and sodomy, in turn impacting their confidence with the CJS.

Updated, regular data on rape cases and their conclusions is scarce, making it challenging to analyse or provide an evidence-based response to the issue. The existing limited data however reveals a concerning and challenging scenario. At the provincial levels, the Prosecution Department of Khyber Pakhtunkhwa reported registration of 809 cases of assault on women, and 498 cases of rape between 2014 and 2016 in KP[5]; Prosecution data from 2016-2017 in Punjab reveals a 96% acquittal rate with only 3.7% convictions[6]; 87% of acquittal cases being primarily due to lack of evidence and retracting of witnesses. According to our previous research material which sourced baseline data from the office of the Inspector General of Police, Sindh, and the Deputy Inspector General (HQ), Islamabad, there are concerning trends in the reporting and disposal of GBV cases across Sindh and ICT. Police data from Sindh reports 330 rape cases being registered in 2020, wherein a large portion of the year was spent in lockdown conditions with courts being suspended for weeks due to the Covid 19 pandemic[7].

[4] User Satisfaction Survey 2020 Sindh, Legal Aid Society

[5] KP Prosecution Service, "Khyber Pakhtunkhwa Prosecution Services Annual Report 2016", 2017, KP Prosecution Service.

[6] Centre for Human Rights, 2018, "Accountability for Rape: A Case Study of Lodhran", Centre for Human Rights, University College Lahore

[7] Legal Aid Society, "Reporting and Disposal of SGBV Cases Across Sindh & ICT", 2020.

While an overwhelming majority of these cases were registered before Courts in Karachi and Hyderabad, the province experienced a sharp reduction in *both* conviction and acquittal rates from 2017 to 2020 (from 9.7% to 3.5%). At the same time, the proportion of cases pending before the courts in Sindh increased substantially (from 67% in 2017 to 92% in 2020). In Islamabad Capital Territory (ICT), police data reports that 71 rape cases were registered in 2020. Although fewer cases were registered before courts in ICT, it experienced an exponential decline in conviction and acquittal rates from 2017 to 2020 (from 6.7% to 0% and 40% to 9.4%, respectively). Moreover, the pendency rate between 2017 and 2020 increased from 53.3% to 90.6%[8]. There is no similar data available from other provinces, to our knowledge, however, given the similarity of issues in the Criminal Justice System and its response to rape and sodomy, it would not be a stretch to assume similar results and reports. The net result is victims remain devoid of justice outcomes and attrition rates increase i.e., more cases fall off the grid of the formal justice system.

The legal and Criminal Justice System has sought to respond to the increased incidence of sexual violence through a variety of different measures at both policy and practical levels with varying degrees of success. The legal framework relating to rape and sodomy has undergone significant modifications between 2006 - 2021, with the most recent being the Federal Anti-Rape (Investigation and Trial) Act 2021 (ARITA 2021) and Criminal Law (Amendment) Act 2021. These amendments, particularly the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 and the newly passed 2021 laws aim to improve the response to sexual violence, by widening the definition of 'rape' to gender neutrality, incorporating a victim-centric approach into the system, increasing protection mechanisms for victims of SV, reducing trial times and creating special procedures such as special courts for SV and specialised processes. While it is unfortunate that there was unsatisfactory implementation of the 2016 amendments, the implementation of the 2021 laws must be monitored to assess its success on the ground.

In November 2019, the National Judicial Policy Making Committee with its Chairperson the Chief Justice of Pakistan, directed all High Courts across the country to establish Gender Based Violence (GBV) courts. These courts are meant to serve the purpose of not only expediting the trial stage of the case but are also charged with the responsibility of providing special

[8] Ibid.

protection measures to the victims. Through reduced trial time and providing a safe space and environment for victims of SGBV, and adopting a victim-centric approach, these courts are working towards improving the victims'/complainants' experience with the CJS. Ultimately, all these interventions are aimed to assist in increasing conviction rates by encouraging full participation of victims in investigation and prosecution of the crime. The ARITA 2021 also mandates the establishment of special courts for SGBV and states that the trial is to be completed within four months, which could provide legal cover to these GBV Courts. The courts are functional across Pakistan with Guidelines for their functioning having been notified in Punjab and ICT. However, few know about these courts and their intended objectives, and little is known of their success rate. The USS conducted by LAS of GBV Courts in 2 districts of Sindh in 2021 evidenced a 14 percent satisfaction increase amongst those accessing GBV Courts as opposed to the normal criminal courts.

The police across the country have also attempted to incorporate different methodologies with the objective of improving response to SGBV. This includes the appointment of trained 288 GBV police Investigation Officers in Sindh; the creation of Women Protection Cells in every district in Sindh; and the establishment and effective operation of a Gender Protection Unit in ICT.[9] [10]

However, despite all these measures, data and qualitative assessment of victim experiences of the CJS depict a grim picture. A detailed diagnosis of the CJS process in Sindh was conducted by LAS in 2020 through examination of cases between 2016 (from the time of the legal amendment) - 2020. The Gap Analysis of Investigation and Prosecution of Rape and Sodomy Cases in Sindh (hereafter referred to as the "Gap Analysis") conducted by LAS[11] reveals that the total procedural time (investigation + prosecution/ trial) spans over an average of 15.5 months, of which investigation takes an average of 1.6 months as opposed to the legal mandate of 15 days. Framing of charge by the Judicial Magistrate takes an average of 4.3 months, whereas a further 9.6 months on average were taken for the conclusion of trials as opposed to the legal requirement (preference) of 3-months, as per the Criminal Law Amendment Act of 2016[12]. A 2017 report from one district of Punjab reports similar delays for cases registered post-2016

[9] Legal Aid Society (https://twitter.com/las_pakistan/status/1443531490944593923)

[10] The News, "Police launches gender protection unit" https://www.thenews.com.pk/print/838167-police-launches-gender-protection-unit, 2021

[11] https://www.las.org.pk/wp-content/uploads/2021/04/Gap-Analysis-on-Investigation-and-Prosecution-of-Rape-and-Sodomy-Cases-R.pdf

Act: 250 days for a case to be decided after registration of FIRs; average delay of 32 days in medical examination etc[13]. The evidence demonstrates the protracted nature of the investigation and trial of rape and sodomy cases, which in itself is an injustice to the complainants/victim.

Adding to this are the problematic aspects of the quality of the services and processes of the CJS, which result in the re-traumatization of the victim, and also for an accused, whose right to a fair trial is resultantly affected. The police contributes heavily to the culture of silence and distrust of the system, particularly as the first point of response to any such incidents. Lack of sensitivity shown by the police; assumptions of false allegations; attempts to negotiate a settlement; allowing powerful perpetrators access to information to intimidate complainant at the first point of contact; consistent victim-blaming; extortion, all contribute to victim's hesitation in coming forward to report their cases. The lack of integrated victim support and protection services propounds the impact of such exclusionary practice at the first point of contact. The risk of attrition aggravates in the investigation phase where the time lapse between the incident, reporting, and trial; compromise on forensic evidence; personal biases, and/or non-reliance on evidence other than confessions or medical evidence become major contributors.

In the handful of SGBV cases that make it to the trial phase, the courts make it no easier on the victim in a system designed for the defendant by resorting to incriminatory practices. The existence of demeaning, violating practices i.e., the Two-Finger Test to test for virginity, which has been made illegal by a Lahore High Court judgment and the Anti-Rape (Investigation and Trial) Ordinance 2020 (as it was then), but was still seen to be used; emphasis on physical health at the exclusion of psychological state of the victim; and insensitive, irrelevant questions on the sexual history of the victim during prosecution are among the several frequently exerted tactics that add to repeat victimization of the survivor of SGBV. Apart from the traumatisation, a victim suffers through the evidence stage where she/he has to re-live the horrors of the offence, face the accused and have to prove they are not lying, the protracted trials also lead to a lack of closure and a sense of injustice. It is also a common trend to compromise

[12] Criminal Law (Amendment) (Offenses Relating to Rape) Act 2016 https://na.gov.pk/uploads/documents/1475761256_380.pdf

[13] Centre for Human Rights, 2018, "Accountability for Rape: A Case Study of Lodhran", Centre for Human Rights, University College Lahore

or withdraw the case. Several reasons are attributed to this trend: investigative delays in investigation/court process/trial, minimal communication between the victim, witnesses, and the prosecution, external social pressures, etc.

Thus, it becomes clear that there is a lack of sensitization and capacity within the investigative, prosecuting and judicial agencies of the country, which results in disguised reporting of cases, diversion to informal dispute resolution mechanism, compromise of cases, and high levels of attrition.

It is within this context that this report takes shape, and aims to contribute towards answering the following question by taking an evidence-driven approach pertaining to cases of sexual violence in ICT:

What are the investigative and procedural gaps resulting in protracted trials in rape and sodomy cases in Islamabad Capital Territory?

The primary objective is to identify specific areas which have gaps and lacunas and raise concerns which may include timelines, skills or attitudinal gaps of CJS actors and institutions. The study does not focus on merely the concept of increasing conviction, but also on improving the experience of the user of the CJS. It is intended that this diagnostic study will provide policy makers, CJS institutions, the governments, developmental practitioners, and CJS reformers a detailed and comprehensive perspective, allowing for evidence-based, targeted troubleshooting and reform, resulting in measurable and demonstrable positive results and impact.

2 RESEARCH METHODOLOGY, ASSUMPTIONS AND LIMITATIONS

2.1 DESCRIPTION OF THE ANALYTICAL METHODOLOGY USED FOR ANALYSES OF CASE FILES

Our research methodology was designed around one central question:

What are the investigative and procedural gaps resulting in protracted trials in rape and sodomy cases in Islamabad Capital Territory?

Specifically, we wanted to identify the points of delay during the investigation and trial stage of such cases and then describe these delays, both quantitatively and qualitatively, from a procedural perspective. Additionally, we analysed the judicial processes and language used in the case and court documentation through a gender-justice framework.

Our research methodology is a further evolution of our existing mixed-methods socio-legal inquiry approach[14], and a previous iteration of this study conducted in Sindh has established that our methods are both robust and valid. The data for our study is sourced from detailed case files of all cases of rape, sexual abuse, and sodomy that resulted in an acquittal in the Gender-based Violence court(s) of ICT. To further position our study within a rational time period, we only chose to analyse cases that originate from 2017 onwards - after the promulgation of the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016.

In what follows, we describe the methodological flow of our study and elaborate upon how we used both quantitative and qualitative data analyses to reach our findings.

[14] Creswell, J. W., & Creswell, J. D. (2017). Research design: Qualitative, quantitative, and mixed methods approaches. Sage publications, pp. 264

STEP 1

DATA ENTRY AND ORGANISING

Upon sourcing a total of **71** acquittal case files of cases of rape, gang rape, and sodomy from ICT, the research team read through the entire file including the initial reporting of the alleged crime, the investigative details from the police files, and the details of all hearings resulting in a final verdict as evidenced by the judgment authored by the presiding judge. Case files that consisted of cases registered in or before 2016 (prior to the 2016 amendment to the law) and those with incomplete data were excluded from the final analysis, resulting in a final sample size of **54** case files.

Data from the case files were sourced and tabulated in Microsoft Excel 365. These data included all important dates including dates of the incident, the lodging of the FIR, the submission of interim and final challan to the court, and the verdict.

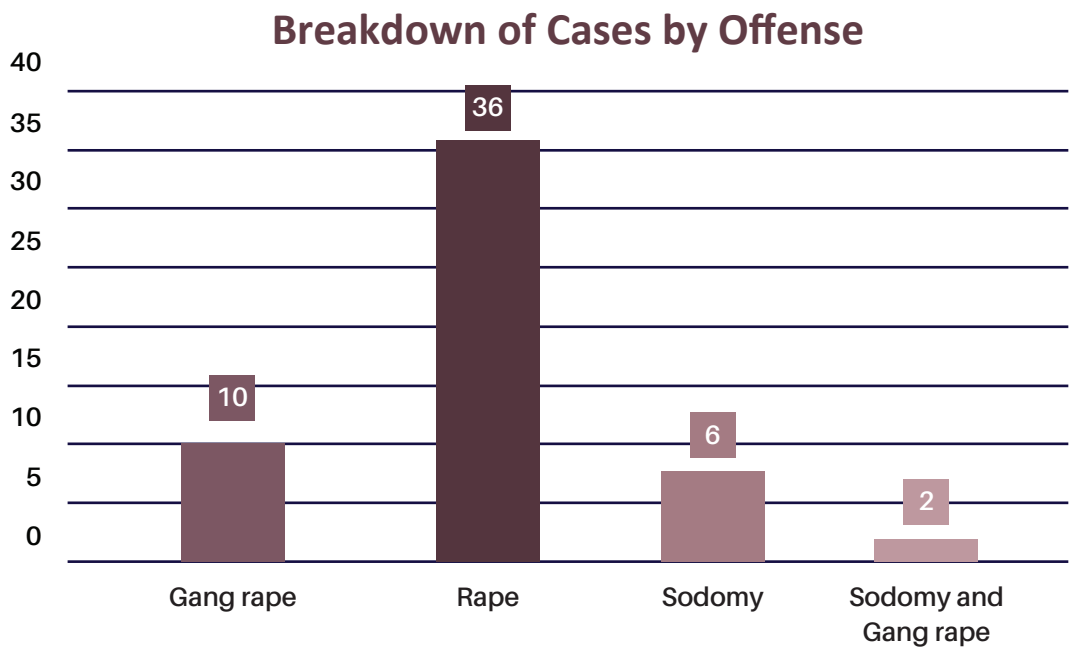


FIGURE 1: BREAKDOWN OF CASE FILES BY OFFENSE

Of the total **54** cases, there were two cases where the female adult victim was gang raped as well as sodomized. Thus, the sum of the three categories comes to **54**.

The case files shared with us depict a binary categorization of female and male. Of the total 54 case files considered for this research, not a single case of transgender was shared with us. This calls for further qualitative analysis as to whether a rape of a transgender is documented as a 'transgender' or put into the category of 'rape' or 'sodomy'.

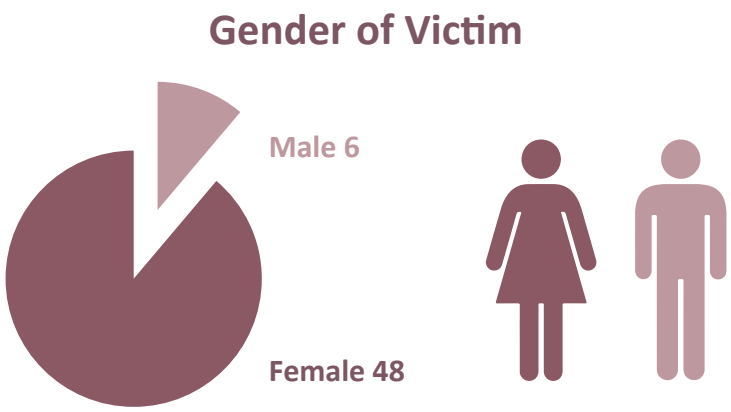
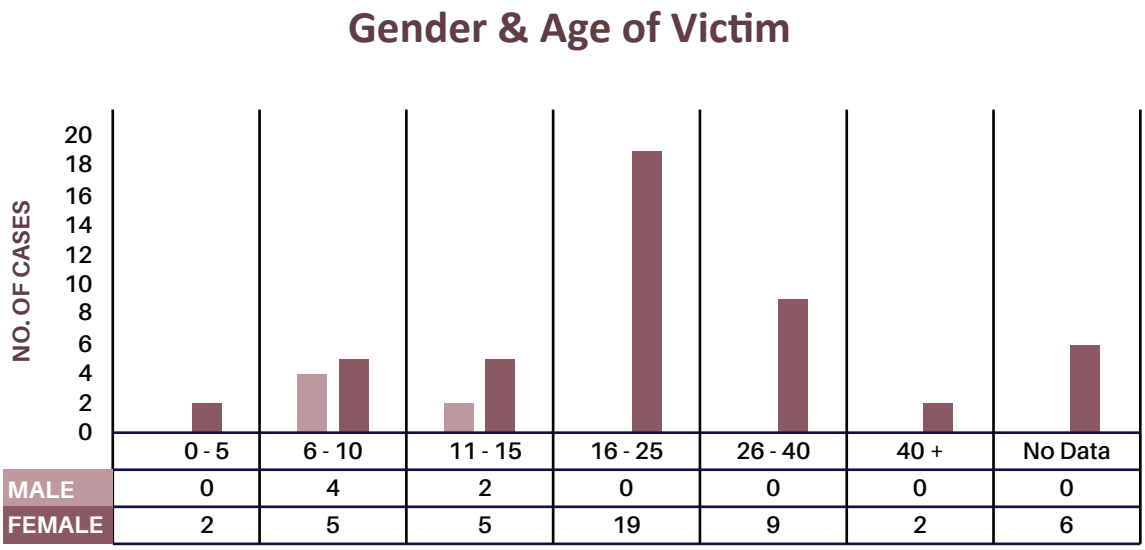


FIGURE 2: BREAKDOWN OF CASES BY GENDER

The majority of female victims were between the ages of 16 – 25, while the majority of male victims were between the ages of 6 – 10.



	0 - 5	6 - 10	11 - 15	16 - 25	26 - 40	40 +	No Data
MALE	0	4	2	0	0	0	0
FEMALE	2	5	5	19	9	2	6

FIGURE 3: BREAKDOWN OF CASES BY GENDER AND AGE OF VICTIMS

STEP 2

CALCULATING TIME DELAYS FOR CASCADE ANALYSIS

The research team used simple arithmetic to calculate the time between all important dates. Specifically, the research team computed five critical time periods, as a continuation of our methodology from the first iteration of this study in Sindh:

1 Tr - Time taken to report the crime

this is the time in days between the occurrence of the alleged sexual crime and the reporting of the crime at a local police station i.e., the First Information Report (FIR)

2 Ti - Time taken to investigate the crime

this is the time in days between the lodging of the FIR and the submission of an interim or final challan to a court

3 Tc - Time taken to file a criminal charge

this is the time in days between the submission of a challan to the court and the court filing a criminal charge against the accused

4 Td - Time taken by the trial

this is the time in days between the filing of a criminal charge and the conclusion of the trial by the announcement of a final verdict

5 To - Total time taken

this is the time in days between the alleged incident and the final judicial verdict

The cascade of these time periods can be elaborated using the simple formulation below.

$$To = Tr + Ti + Tc + Td$$

After computing the critical time periods, the research time further analysed the data through the following sub-steps:

A

Sorting the data across Tr, Ti, Tc, Td, and To from smallest to highest value. This created multiple five sorted lists showing the range of time taken in days across all steps of the case journey as well the total time taken by each case.

B

Calculating the proportion of time taken by Tr, Ti, Tc, and Td in the total time spent in the case by dividing each value by To and then multiplying with 100% e.g., to estimate the proportion of time police spent in investigating one case we use the formula:

Proportion of time spent by police in investigating a case = (Ti/To) * 100%

C

Sorting the data across all four proportions from smallest to the highest value. This created four sorted lists showing the range of proportional time taken by each of the four stages of each case.

STEP 3

DESCRIPTIVE STATISTICAL ANALYSIS OF TIME DELAYS

Once the data were analysed using simple arithmetic and sorting, the research team proceeded to analyse them further using descriptive statistics. This included calculating the mean, the median, and the standard deviation (SD) for each of the five time-values as well as the four time-proportions respectively. The research team identified that the data were heavily skewed towards the right and therefore concluded that the mean or average values were unreliable given the heavy skew of the dataset. In skewed datasets, it is practical to analyse the data using the median and the Inter-Quartile Range (IQR) instead of relying on the mean and the SD. To this end, the team proceeded to analyse the dataset using median values for each of the time-values and time-proportions. Each time-value and time-proportion was treated as a new variable and median values were computed for each.

STEP 4

CATEGORIZATION OF CASES BASED ON TIME DELAYS

The team visually analysed the Box-and-Whisker Plots[15] for the median values of the datasets for the said variables. Based on the visual analyses, the research team identified outliers for each time-value and time-proportion. The case files against outlier time-values and -proportions were identified and retabulated as a separate dataset. The team continued this process iteratively up until saturation was achieved i.e., the mean values and median values were brought closer to each other, and no visible outliers could be seen in the Box-and-Whisker Plots.

At the conclusion of this statistical data sorting exercise, the team achieved three categories. The descriptive statistics of the time-values and -proportions showed minimal skew and a bell-shaped or Gaussian spread of the data. Through this, the research team deduced that the emergent three categories of cases, just based on the statistical findings, represent succinct "populations" or "groups". In summary, from a pile of acquittal cases, the research team was able to tease out three "hidden" categories among which all acquittal cases can be divided using descriptive statistics.

[15] "A boxplot, also called a box and whisker plot, is a way to show the spread and centers of a data set. Measures of spread include the interquartile range and the mean of the data set. Measures of center include the mean or average and median (the middle of a data set)."
https://www.statisticshowto.com/probability-and-statistics/descriptive-statistics/box-plot/

These three categories, or typology, of the acquittal cases derived through the quantitative analysis are:

Normal Cases:

Normal Cases are those that define the benchmark values for all comparisons. It can be said that if a rape or sodomy case was to pass normally through its natural journey in ICT, the average and median values for this category should closely relate to the case's time-values.

Abnormal Cases:

Abnormal Cases are those where it takes longer than usual to frame a charge after the conclusion of the police investigation, and a longer than usual trial time.

Extremely Abnormal Cases:

Extremely Abnormal Cases are those that have widespread inconsistencies in the times taken at any stage of the case.

Division of Case Files (from 2017 to 2020) into 3 Categories		
Category	**Number of Cases**	**% of Cases**
Normal	23	42.6
Abnormal	26	48.1
Extremely Abnormal (Outliers)	5	9.3

TABLE 1: DISTRIBUTION OF CASE FILES BY CATEGORIES

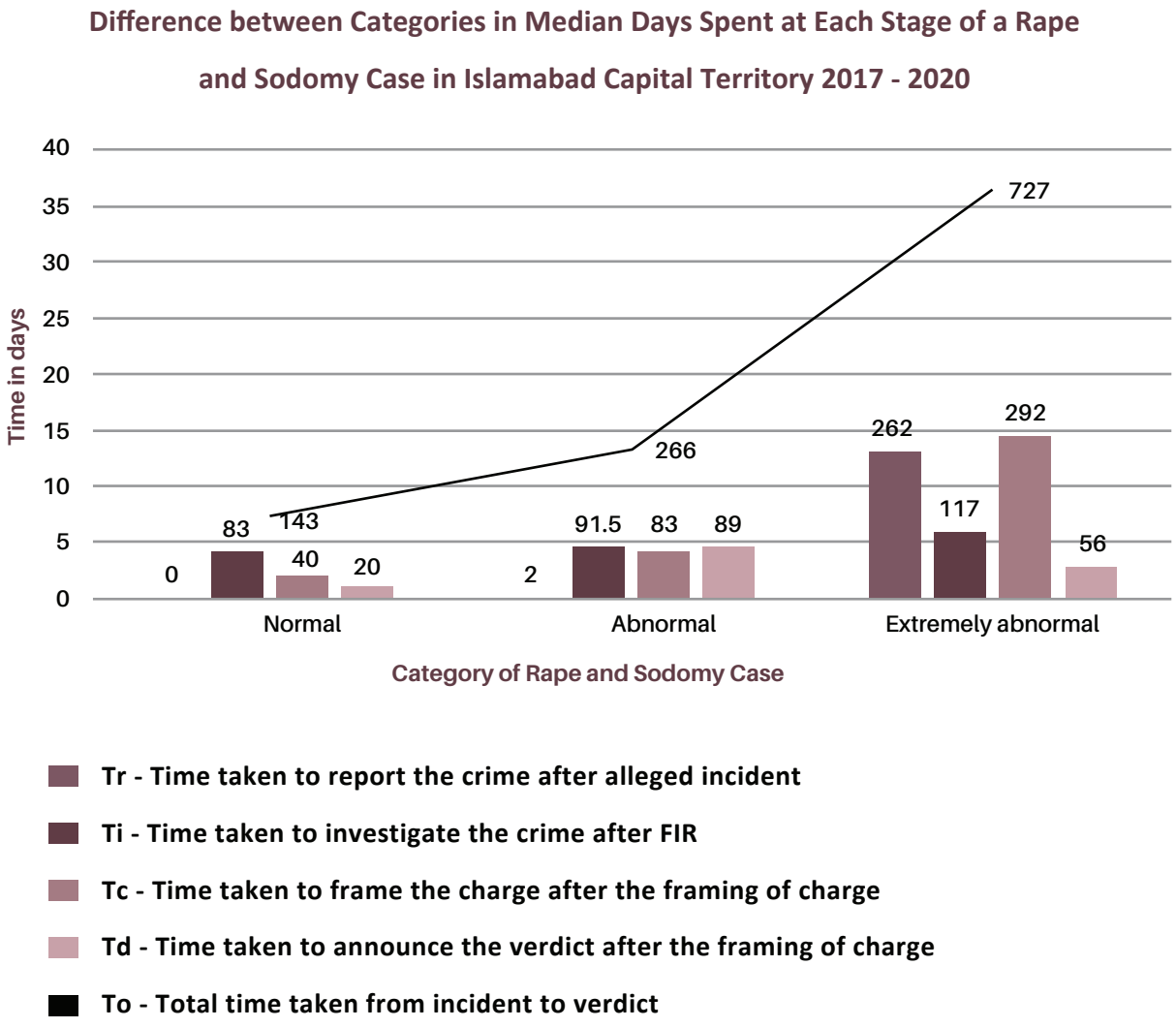


FIGURE 4: THE DISTRIBUTION OF DIFFERENCES IN MEDIAN VALUES OF TIME TAKEN IN DAYS AT EACH STAGE OF A RAPE AND SODOMY TRIAL

STEP 5

RANDOM SAMPLING FOR QUALITATIVE ANALYSIS OF CASES, BY CATEGORY

Although the statistical findings from each category were felt to be robust enough to substantiate the research team's assertion that each category represents a "unique type" of cases, it was believed to be pertinent to study each category qualitatively to confirm and qualify the research team's assertion. That is, the research team needed to qualitatively analyse the details of cases within each category and compare them with cases from the other categories to ascertain if there are qualitative differences that give each category a unique signature.

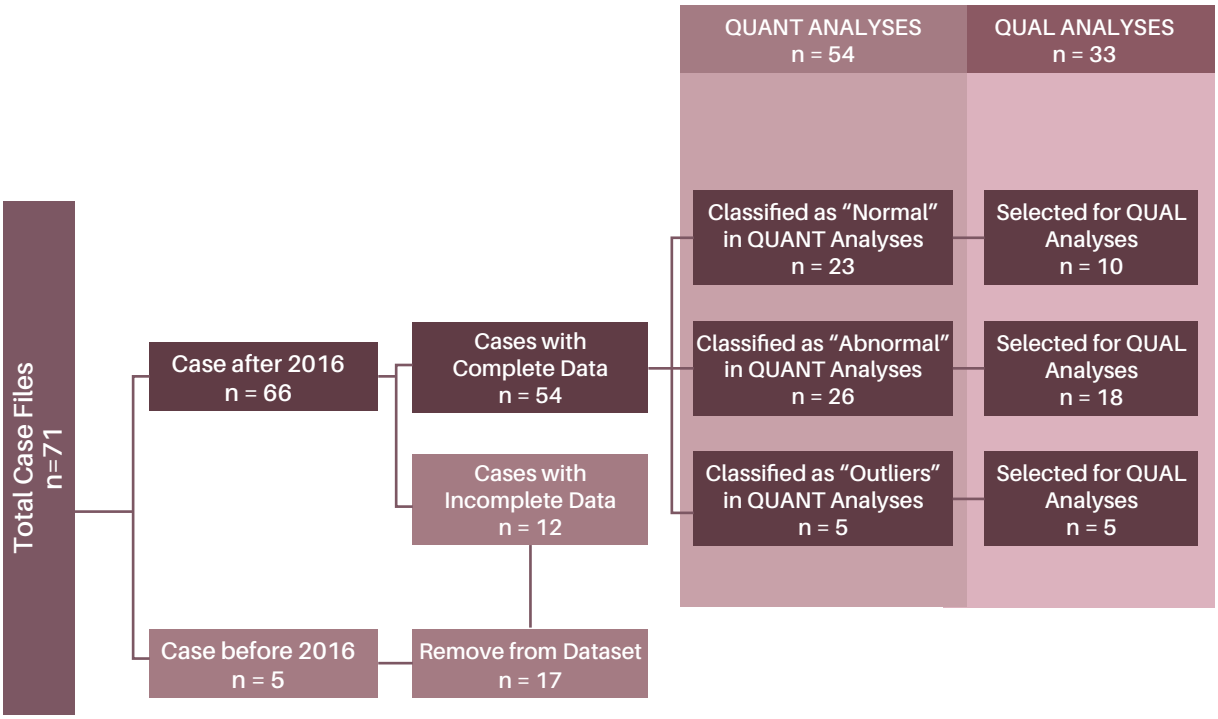


FIGURE 5: DATA FLOW OF CASE FILES ON RAPE AND SODOMY ACQUITTALS FROM ISLAMABAD CAPITAL TERRITORY FOR THE MIXED-METHODS GAP ANALYSIS – 2021

Starting from **71** case files, **5** were eliminated since they were from before the 2016 Rape Law Amendment. From the **66** remaining case files, **12** more files were eliminated since they had incomplete data. Thus, we were left with **54** case files for the analysis.

To do this, the research team defined the following methodological questions to guide the qualitative analyses of the acquittal cases:

- What is it that is different about each category?
- Is the nature of cases in each category consistent?
- How do cases within each category vary from one another?
- How do cases within each category vary from cases from the other two categories?

Firstly, the research team randomly sampled cases from the Normal and Abnormal categories for a detailed qualitative examination. This randomization of the sample set follows the principle that "if" each category is a distinct category, then a random sample obtained from the complete dataset will be representative of the entire category. All cases from the "**Extremely Abnormal**" category were chosen for qualitative analysis as the research team identified that all cases in that category were unusual and hence representative of unusual externalities in rape and sodomy cases.

For each of the cases sampled for qualitative analyses, the research team designed a QUAL data summary sheet. Thus, for each of the sampled cases, the researchers summarized the alleged incident, the FIR, the investigation, the trial, and the verdict. Additionally, researchers remarked upon any distinct observations within each case.

Eventually, all summary sheets prepared were uploaded into MAXQDA for computerized QUAL analyses. The research team used open codes to code their data and mutually informed each other's processes in co-working meetings. The team, finally, sorted the codes into qualitative categories and subcategories, and identified larger themes emerging from the categories. The qualitative categories and their parent themes are elaborated in Figure 5.

STEP 6

DESCRIPTION OF EACH CATEGORY BY TRIANGULATING QUANTITATIVE AND QUALITATIVE FINDINGS

After both QUANT and QUAL analyses, the team triangulated their findings to answer the following questions:

What are the descriptive characteristics of Normal, Abnormal, and Extremely Abnormal acquittal cases?

What are the various reasons for delays in reporting cases, investigation, and judicial processes respectively?

How do all delays interact with one another to create a dysfunctional system?

What macroscopic socio-legal realities do we observe that influence or manifest within rape and sodomy acquittals in the Islamabad Capital Territory?

In what follows, we will first explain the emergence of the three categories and all that they entail, both qualitatively and quantitatively. It will be followed by a detailed thematic description of all themes identified during the QUAL analyses.

2.2 ASSUMPTIONS

There is a bias within the study emerging from certain assumptions. These assumptions are borne out of the researchers' experiences with prior litigation and research on sexual violence, access to justice in Pakistan, and the CJS's response. These assumptions are also widely held within the contemporary CJS and borne out of a shared belief of what is wrong and can be improved.

For full transparency, we have listed down our presumptive assumptions as follows:

- The limited statistics evidence the low convictions in sexual violence cases.
- The survivor/victim's experience in and with the justice sector has been challenging and negative.
- There are many gaps in police investigation of rape and sodomy cases which result in the low conviction rate.
- The court system, including the courtrooms and processes, is not gender-friendly.
- Gender-based Violence courts established in November 2019 have not yet become fully operational and do not function in the manner that was intended.
- Court processes are often delayed which increases pressure on the survivor/victim and survivors/victim's family.
- There are social pressures on victims/survivors to avoid accessing the formal justice sector for redressal of cases of sexual violence and accessing informal 'justice' systems.
- There are social pressures on victims/survivors and their families to compromise the case out-of-court.
- Often victims/survivors, particularly women and girls going through sexual violence trials, feel re-victimised because of the court and trial processes.
- The judicial system has an implicit gender bias impacting its treatment of women and children by either the presumption of rape myths or adopting a paternalistic/protectionist approach.

2.3 LIMITATIONS

The following are some limitations of this study:

- LAS did not have access to all case files and was unable to participate in the selection of case files used for this study.
- The selection of the sample case files was done by the office of the District and Session Judge, East, Islamabad Capital Territory based on a framework provided by LAS.
- Case files are often incomplete with missing documents, resulting in the researchers relying on testimonies or orders for relevant data or being unable to analyse certain aspects of different cases.
- 161 Statements were not present in most of the files, resulting in the authors not being able to cross-analyse the differences between statements to police, Magistrate, and at trial, understand where contradictions emerged, and comment on the handling of these by the police and prosecution.
- Sitting judges were not interviewed for this study due to purposes of confidentiality and to ensure their impartiality and independence.
- Translation of statements made to the police or medico-legal and testimony in court from Urdu or other local languages to English for official record has lost value during translation as the actual words and terms used by these individuals were not recorded.
- Judges may not be fluent in English which may lead to incorrect usage of language in judicial orders, impacting the analysis.

3 TIMELINES OF RAPE AND SODOMY CASES IN ISLAMABAD

The scope and objective of this study required at the onset a detailed quantitative analysis of the 54 case files to be able to provide a baseline and framework for a more in-depth qualitative analysis. The analysis of timelines is based on the procedural requirements of a criminal case as defined under the Cr.P.C. These key procedural points are identified in the figure below to provide a visual overview upon which the following analysis is based.

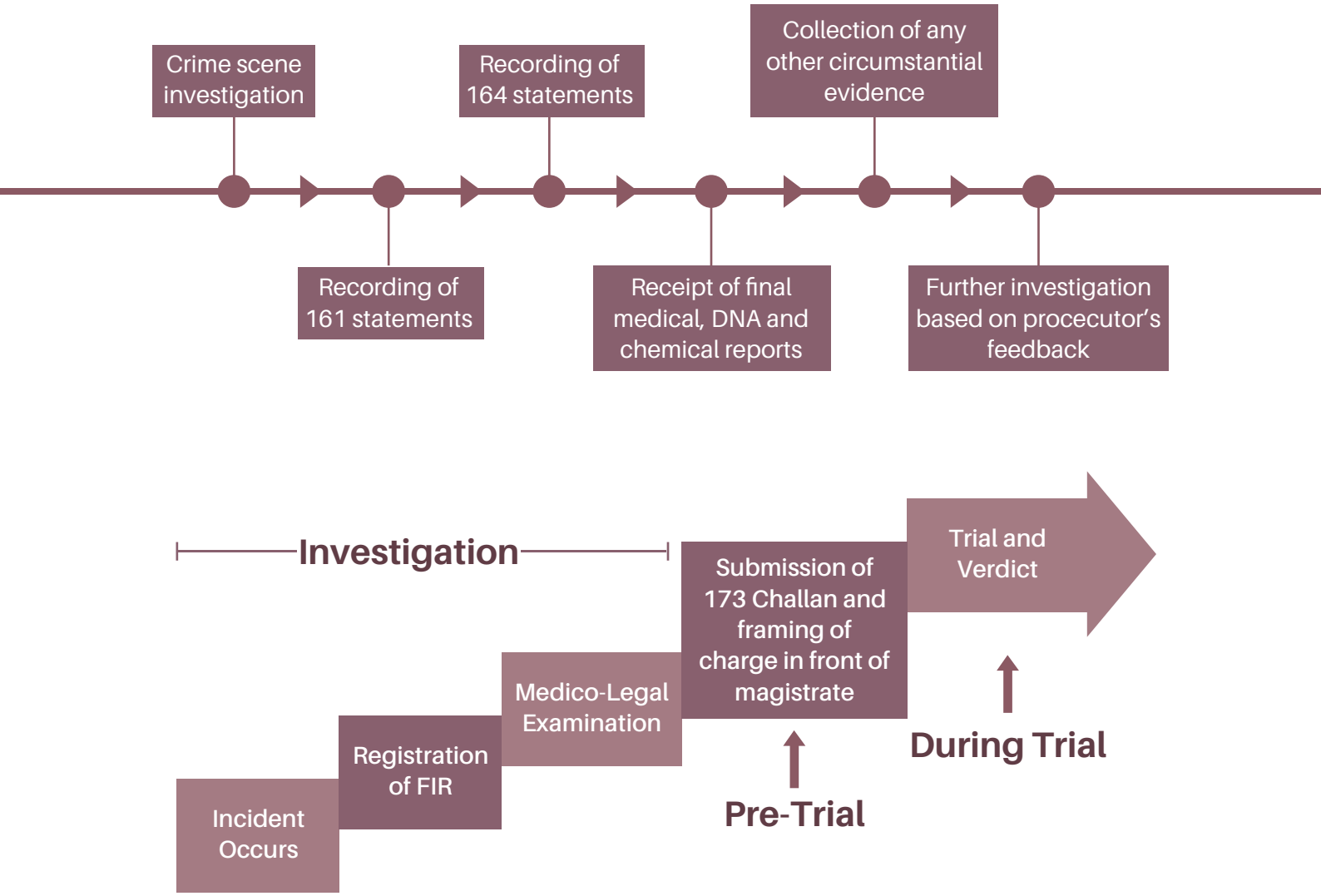


FIGURE 6: PROCEDURAL FRAMEWORK OF CRIMINAL CASES

The succinct analysis presented below provides a snapshot of the timelines calculated for this study with 3 levels of analysis:

- The overall timeline of rape and sodomy cases from registration of the FIR to the conclusion of trial with the verdict;
- The overall timeline of the investigation phase (from registration of the FIR until submission of the charge sheet under Section 173 CrPC). This includes a breakdown of average timelines of critical steps in the entire process of investigation and prosecution of rape and sodomy cases.
- The overall timelines of the pre-trial (from submission of challan to framing of the charge) and trial process (from framing of the charge to conclusion of trial/verdict)

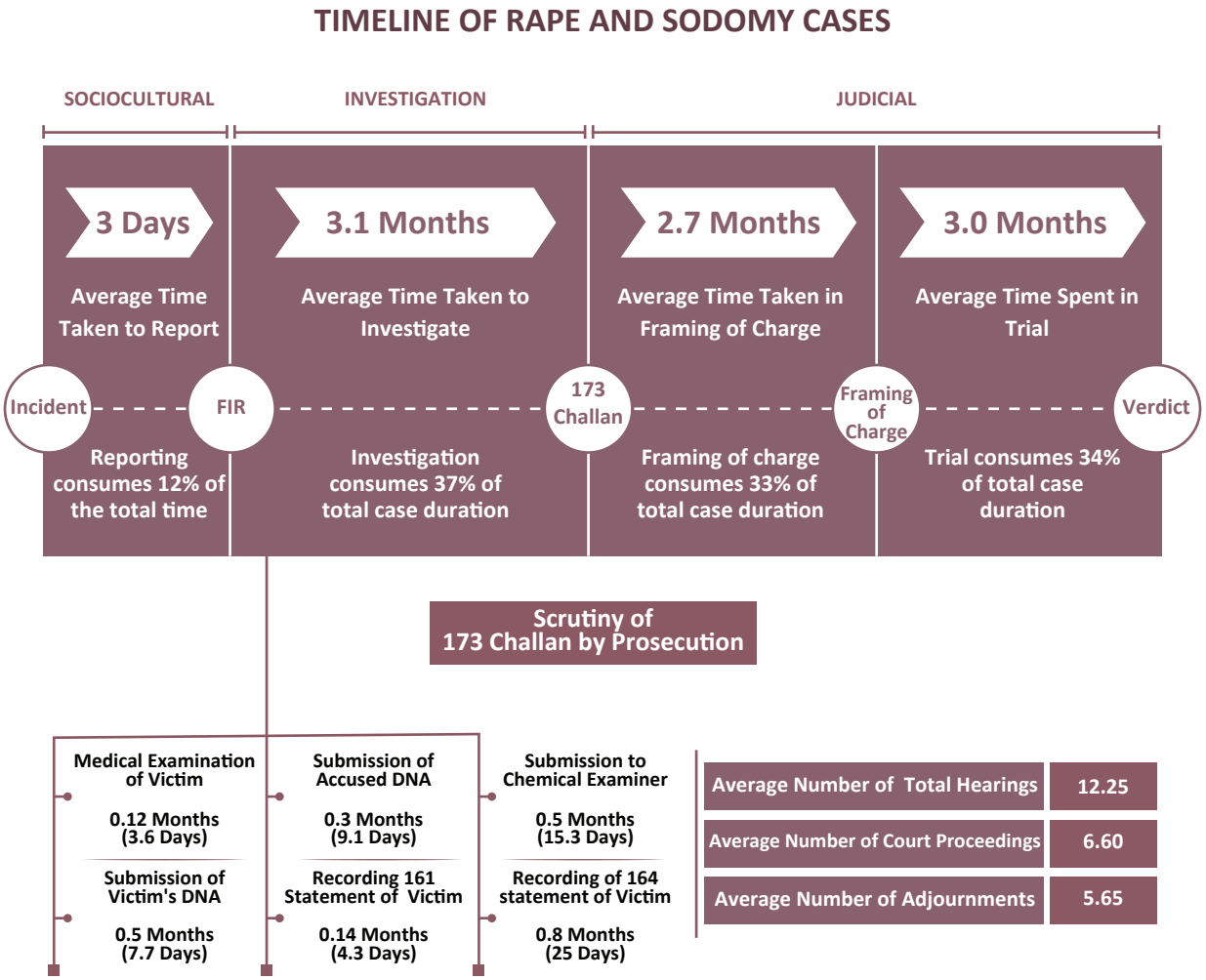


FIGURE 7: TIMELINE OF CASES OF RAPE AND SODOMY

The timeline evidenced through this cascade framework identified target areas for further investigation and unpackaging for this study. This cascade framework provides average timeline for each step of the cases analysed for this study, with the exclusion of the 5 extremely abnormal acquittal cases. However, these can be indicative of the timelines of all rape and sodomy cases in the Criminal Justice System. This framework also confirms the underlying assumptions of delays in these cases that go well beyond the legal limits as prescribed under the law that support the rationale for the study.

3.1 TIMELINES OF RAPE AND SODOMY CASES 2017 – 2020, ISLAMABAD

The total procedural time (investigation + prosecution/pre-trial/trial) is revealed to be an average of **8.6** months for our sample (exluding outlier cases). It is defined as the total time taken in a case, right from the date of the FIR to the date of the final order.

The figure above provides a breakdown of the proportion of procedural time taken by investigation and trial. It is observed that **37%** of this time is taken up by investigation; **33%** of this time is taken during the pre-trial phase i.e. framing of the charge by the judicial magistrate, and **34%** of the time is that of trial.

However, a case's journey through the Criminal Justice System is highly sensitive to the time between the alleged incident and the registration of an FIR. Even a mere delay of 2 days between the incident and the FIR has such latent effects on all following stages and outcomes. This leads to the examination of the cases in at least 3 categories (i.e., Normal, Abnormal & Extremely Abnormal), that are easily distinguishable for two reasons: (1) cases within each category take a certain amount of time to proceed across the investigative-judicial process. Such times are smallest for Normal cases and increase respectively within Abnormal and Extremely Abnormal cases; (2) the consistency of the "nature" of cases within each category reduces as they move from Normal to Abnormal and then to Extremely Abnormal cases: the latter show more unusual externalities. The significant difference in the Tr time category, is indicative of the sensitivity of a case's outcome (at least in terms of time spent on the case) to the time between incident and report.

TIME CATEGORY	MEDIAN TIME IN DAYS – BY CASE CATEGORY		
	NORMAL (42.6%)	ABNORMAL (48.1%)	EXTREMELY ABNORMAL (9.3%)
Tr – Time taken to report the crime after alleged incident	0	2	262
Ti – Time taken to investigate the crime after FIR	83	91.5	117
Tc – Time taken to frame the charge after submission of challan	40	83	292
Td – Time taken till the verdict after the framing of charge	20	89	56
To – Total time taken from incident to verdict	143	266	727

TABLE 2: A TABULATION OF TIME SPENT IN DAYS DURING EACH STAGE OF A RAPE AND SODOMY TRIAL, BY CATEGORY

1 NORMAL CASES

75% of Normal cases are concluded in **213** days (7 months), with the median value at **185** days (6.16 months).

- These cases are reported on the same day as the alleged crime and hence have the fastest investigations among all three categories.
- These cases are concluded within a maximum of three months once the trial stage commences.
- Delays in investigation are often observed as a direct result of lapses within the police procedures and/or misapplication of law during investigations. Thus, fastest does not necessarily mean most effective.

TIME CATEGORY	MEDIAN TIME IN DAYS		
	LOWER LIMIT	MEDIAN	UPPER LIMIT
Tr – Time taken to report the crime after alleged incident	0	0	0
Ti – Time taken to investigate the crime after FIR	0	83	188
Tc – Time taken to frame the charge after submission of challan	11	40	95
Td – Time taken to announce the verdict after the framing of charge	11	20	95

TABLE 3: DESCRIPTIVE STATISTICS OF THE TIME SPENT IN DAYS OF "NORMAL" RAPE AND SODOMY CASES – THE LOWER AND UPPER LIMITS DENOTE THE 1ST AND 99TH PERCENTILES

2 ABNORMAL CASES

Abnormal cases, the largest category, have the longest median trial time of all three categories at **89** days (3 months). **75%** of abnormal cases are concluded between a minimum of **236** days (7.86 months) and a maximum of **463** days (15.43 months), with the median value at **266** days (8.86 months).

- These cases are reported within 2 to 60 days of the incident. The delay in reporting cascades into a challenging investigation and prosecution as the subjective assumption of the case's eventual failure in getting a guilty verdict affects both the investigation and the prosecution of the case.
- The trial stage in these cases is replete with the misapplication of law while dealing with the loss of forensic evidence such as DNA samples and medico-legal examinations due to the delay in reporting.

TIME CATEGORY	MEDIAN TIME IN DAYS		
	LOWER LIMIT	MEDIAN	UPPER LIMIT
Tr – Time taken to report the crime after alleged incident	0	2	60
Ti – Time taken to investigate the crime after FIR	0	91.5	253
Tc – Time taken to frame the charge after submission of challan	17	83	215
Td – Time taken to announce the verdict after the framing of charge	17	89	215

TABLE 4: DESCRIPTIVE STATISTICS OF THE TIME SPENT IN DAYS OF "ABNORMAL" RAPE AND SODOMY CASES – THE LOWER AND UPPER LIMITS DENOTE THE 1ST AND 99TH PERCENTILES

3 EXTREMELY ABNORMAL CASES

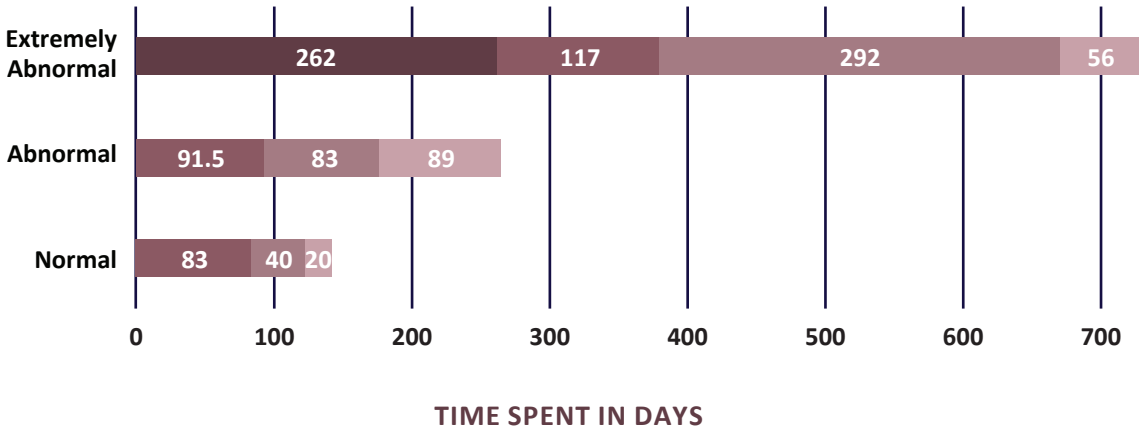
All Extremely Abnormal cases are concluded between a minimum of **526** days (17.5 months) and a maximum of **1827** days (over 5 years), with the median value at **727** days (2 years).

- As the name of the category suggests, these are highly unusual cases with varying features.
- In 4 of the 5 cases, the report of the alleged incident is made many months or years after the occurrence.
- The police investigation did not follow due process. In particular, this was noted in 2 of the 5 extremely abnormal cases where the accused party belongs to the police force itself.

TIME CATEGORY	MEDIAN TIME IN DAYS		
	LOWER LIMIT	MEDIAN	UPPER LIMIT
Tr – Time taken to report the crime after alleged incident	0	262	779
Ti – Time taken to investigate the crime after FIR	0	117	1083
Tc – Time taken to frame the charge after submission of challan	14	292	552
Td – Time taken to announce the verdict after the framing of charge	14	56	552

TABLE 5: DESCRIPTIVE STATISTICS OF THE TIME SPENT IN DAYS OF "EXTREMELY ABNORMAL" RAPE AND SODOMY CASES - THE LOWER AND UPPER LIMITS DENOTE THE 1ST AND 99TH PERCENTILES

Time in Days During Each Stage of Rape and Sodomy Case in ICT 2017 - 2021



Tr - Time taken to report the crime after alleged incident

Ti - Time taken to investigate the crime after FIR

Tc - Time taken to frame the charge after the framing of charge

Td - Time taken to announce the verdict after the framing of charge

FIGURE 8: A VISUAL DEPICTION OF THE DIFFERENCES IN TIME SPENT IN DAYS DURING EACH STAGE OF A RAPE AND SODOMY CASE ACROSS CATEGORIES

3.2 TIMELINE OF INVESTIGATION OF RAPE AND SODOMY CASES

The Code of Criminal Procedure (CrPC) 1898 provides a definitive timeline for the investigation of all criminal cases. As per Section 173 CrPC, an interim or final challan must be submitted to the court. Special permission must be sought to continue investigation beyond the mandated 14 days. Additional permission has to be sought every 14 days thereafter for further investigation.

On average, it takes the police **3.1** months to conclude their investigation and submit an interim or final challan which is then carried forward by the prosecutor in framing the charge. This means the police, on average, has to apply for special permission for continued investigation at least 4 times during the course of the entire investigation. As noted above, the timelines show how the length of the investigation varies between the 3 categories of cases.

Provided below is a summary of investigative timelines which are most pertinent to the outcome of the trial. All figures in the number of days are calculated from the date of registration of the FIR.

FIGURE 9: BREAKDOWN OF TIME TAKEN IN EACH INVESTIGATION PROCESS

Significant delays are noted with regards to what should be procedural steps which could be presumed to have a major impact on the quality of investigation.

3.2.1 Recording of Statements of Victim by Police and Magistrate

The recording of statements of the victim by the police (an average of **4.3** days from registration of FIR) is the most critical information, as it should inform and guide the police on the first and priority steps to be taken in the investigation. Delay in recording of statements of the victim by the police allows for the victim to remain vulnerable to external pressures, particularly from the accused. Firstly, 161 statement must be recorded immediately, with a supplementary statement which may be recorded at a later date to capture any further recall on the part of the victim.

The 164 statement of the victim before the Magistrate is one of the most crucial pieces of evidence which may be presented in court. Practice, particularly in rape and sodomy cases, dictates that it is essential to record this statement at the earliest due to vulnerability to external pressure, particularly from the accused and out-of-court settlements and compromise. There is little justification for this being recorded **25** days after registration of the FIR, which is double the amount of legally prescribed investigation time of 14 days in the Code for Criminal Procedure. In the seminal judgment of the Supreme Court in the Salman Akram Raja case, the magistrates are obliged to record the 164 statement as soon as the victim is composed. Whether delays lie on the side of the police in moving the application, or upon the Magistrate for not recording the statement in a timely manner, needs to be explored further.

[16] Salman Akram Raja v Government of Punjab. 2013 SCMR 203

3.2.2 Timeline of Forensic and Medical Evidence Submission and Receipt

Medical and forensic evidence particularly in rape and sodomy cases is time-sensitive. Approximately 72 hours or less is generally considered the optimal time period to collect medical evidence[17]. An average time of **3.6** days (86.4 hours), as noted in Figure 9, for medical examination after registration of FIR, raises great concern due to the unnecessary potential loss of medical and forensic evidence. This also counters the obligations identified in the Salman Akram Raja judgement in 2013[18] , which requires DNA and other medical and forensic evidence collection and data to be conducted at the earliest time possible.

The average timeline of collection of the victim's DNA (average of **7.7** days) through anal and vaginal swabs and blood samples as well as the submission of forensic evidence (average of **15.3** days) also raises questions relating to chain of custody delays, and conditions in which such evidence is maintained. If the chain of custody cannot be demonstrated appropriately – which gets more difficult with more time – the evidence becomes meaningless. Further, if it cannot be proved that forensic and medical evidence was kept in optimal conditions, their evidentiary value becomes nullified, resulting in the whole exercise becoming meaningless and insufficient for providing justice.[19]

The timeline of submission of the accused's DNA falls within the 14-day time period, thus is not so much of a concern, however, the question remains of time between when the sample was taken and submitted, and the conditions in which it was kept in the interim period.

[17] Department of Justice, "Understanding DNA Evidence: A Guide for Victim Service Providers", https://www.ojp.gov/pdffiles1/nij/bc000657.pdf
[18] Salman Akram Raja v Government of Punjab. 2013 SCMR 203
[19] Department of Justice, "Understanding DNA Evidence: A Guide for Victim Service Providers", https://www.ojp.gov/pdffiles1/nij/bc000657.pdf

Forensic - Specific Timelines

	Submission of Victim's DNA	Submission of Accused's DNA	Submission for Forensic Analysis	Return of Forensic Report
Maximum (# of days)	68	68	78	408
Minimum (# of days)	0	1	2	6
Average (# of days)	7.7	9.1	15.3	121.4
Not Conducted	20	22	22	22
Denied by Person	2	2	2	2

TABLE 6: BREAKDOWN OF FORENSIC SPECIFIC PROCEDURAL DELAYS

The major concern highlighted by the above table is the delay in return of the forensic report i.e., an average of **121.4** days, which is more than the required 14 days time limit imposed by the CrPC for the investigation by the police, requiring a request for extension up to additional **9** times. This is a major reason attributed towards delays in the framing of the charge at the magistrate level (of **2.7** months i.e., **33%** of the entire length of the case from FIR to the conclusion of the trial). Further inquiry and discussion needs to be held on what the exact challenges are regarding this time lag and how this can be reduced. Previous research conducted by LAS in Sindh also demonstrates a similar lag in the return of forensic reports, contributing to delays in the framing of the charge and the trial itself. It would seem that this is an issue common across different provincial jurisdictions.

3.2.3 Scrutiny of the 173 challan and its Submission to Court by the Prosecution

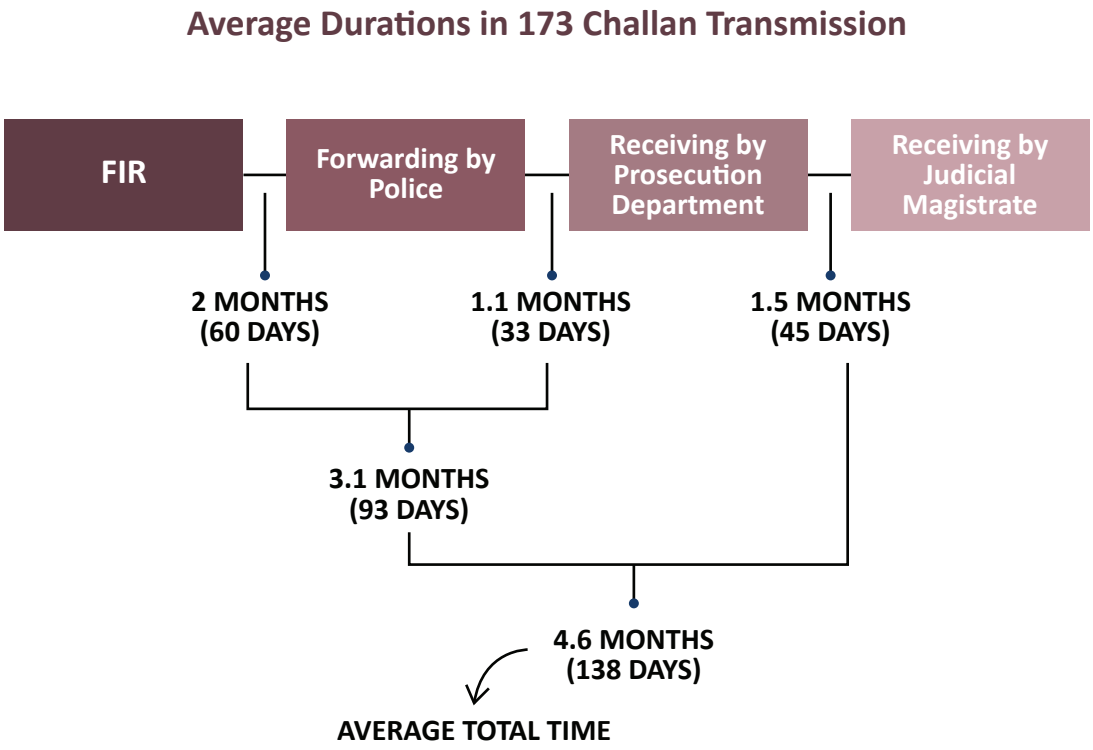


FIGURE 10: BREAKDOWN OF PROCEDURAL DELAYS IN SUBMISSION OF 173 CHALLAN

Upon completion of the investigation by the police, a report under Section 173 CrPC (identified as the 173 challan) is forwarded by the police to be submitted to the prosecution department. On average, the police takes **2** months to prepare the 173 challan. It is then passed through multiple levels of the police hierarchy, until finally submitted to the prosecution department, which takes approximately another **1.1** months. Cumulatively, the investigation duration is the sum of these two steps which comes to **3.1** months as noted in the cascade analysis (Figure 7).

Upon receiving the 173 challan, the prosecution department then scrutinizes the challan and either returns it to the police for further investigation/correction, or submits it to the court of the magistrate for framing of the charge. It takes an average of **1.5** months from the receipt of the 173 challan by the prosecution to its receipt by the judicial magistrate from the prosecution. This is a significant and perhaps unnecessary addition to an already extended timeline for the case. This may be due to the lack of an independent Prosecutor General in ICT and an independent department. However, further inquiry must be made to diagnose the reasons for delays and solutions at this stage.

3.3 TIMELINES OF PRE-TRIAL AND TRIAL OF RAPE AND SODOMY CASES, ISLAMABAD

Once the case is submitted into court, three different processes are initiated:

Framing of the Charge by the Judicial Magistrate	Trial	Bail
▪ Pre-Trial Phase ▪ Judicial Magistrate assesses the evidence and if the case is deemed admissible for trial, frames the charge and forwards it to the relevant trial court, which is currently the GBV court (242 & 265-D Cr.P.C).	▪ The trial initiates after the framing of the charge ▪ The District and Session Court (the notified GBV Court) oversees the case, hears all evidence and gives a final verdict and punishment, if accused found guilty (265 A-K Cr.P.C).	There are two types of bail: ▪ Bail before Arrest and Bail after arrest (497 & 498 Cr.P.C). ▪ Bail hearings run concurrently with the investigation, pre-trial and trial processes. ▪ Bail hearings and matters have not been analysed in this study.

FIGURE 11: PROCEDURES AFTER SUBMISSION OF 173 CHALLAN

3.3.1 Time Limitations for Trial

Under Section 344A of the 2016 Criminal Law (Amendment) (Offenses Relating to Rape) Act, "the Court shall, upon taking cognizance of a case under section 354A, 376, 377 and 377B of the Pakistan Penal Code, 1860 (Act XLV 1860), decide the case within three months failing which the matter shall be brought by the Court to the notice of the Chief Justice of the High Court concerned for appropriate directions". This time duration is relevant for our case analysis since our cases fell in the period after the 2016 Act and before the 2020 Ordinance. It was only recently that the time duration for the trial was changed from 3 to 4 months under the recently passed Anti Rape (Investigation and Trial) Act 2021.

There is no time period allotted for framing of the charge. This timeline is currently unaccounted for by the law or practice. The timeline of the trial of rape, sodomy, and sexual abuse is calculated from after framing of the charge.

3.3.2 Analysis of Timelines of Pre-Trial and Trial

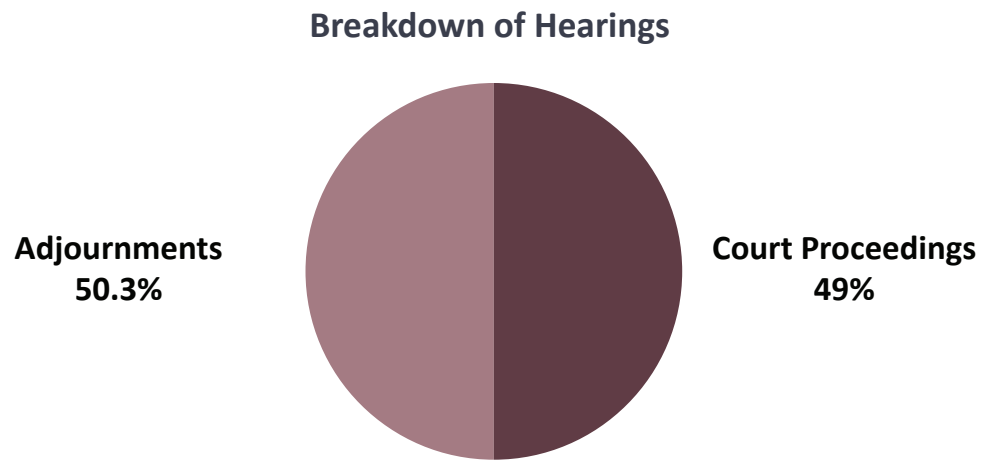
The total time from submission of the challan to the court, until the final verdict of the court is **5.7** months days, of which **2.7** months are taken in the framing of the charge and **3** months are taken for trial.

The timeline of framing of the charge is an area of concern. This is considered pre-trial and does not fall within the 3 month time limit imposed by the law. Falling within the jurisdiction of the Magistrate, which is general and not that of GBV courts, this demonstrates an astronomical duration that is often unaccounted for by law and practice. Discussions with practitioners reveal that delayed medical and forensic reports contribute to this delay. However, further qualitative investigation must be undertaken to understand the reasons for this delay and offer workable and practical solutions.

It is encouraging to see that the time limit of 3 months is followed by the court in normal and abnormal cases. As with investigation timelines, the few extremely abnormal cases[20], due to their special circumstances having a different timeline, which should not be reflective of the entire practice of the CJS in ICT. However, a further nuanced look at the trial process itself reveals that despite the court meeting the 3-month timeline, there are several gaps in the process that must contribute to the frustration and negative experience of the victim and complainant during the trial.

A significant part of lengthy timelines in framing of charge (Tc) and reaching the verdict (Td) is simply down to the constant adjournments that plague the case. Adjournments are a commonality of the courts, with a variety of reasons for this occurrence, ranging from the strategy of defence or prosecution, to non-attendance of witnesses or accused, etc. However, this results in increased pressure and trauma for the victim and challenges, not just the time limit of rape and sodomy trials imposed by law, but also principles of a fair trial. The figure below represents the breakdown of time on adjournments and when the court actually proceeded with trial hearings.

[20] 5 in number on the sample size for this study



HEARINGS	AVERAGE # BY CASE
Court Proceedings	6.60
Adjournments	5.65
Total Hearings	12.25

FIGURE 12: BREAKDOWN OF DELAY IN COURT HEARING

This is further elaborated in the figure below, explaining reasons for adjournments.

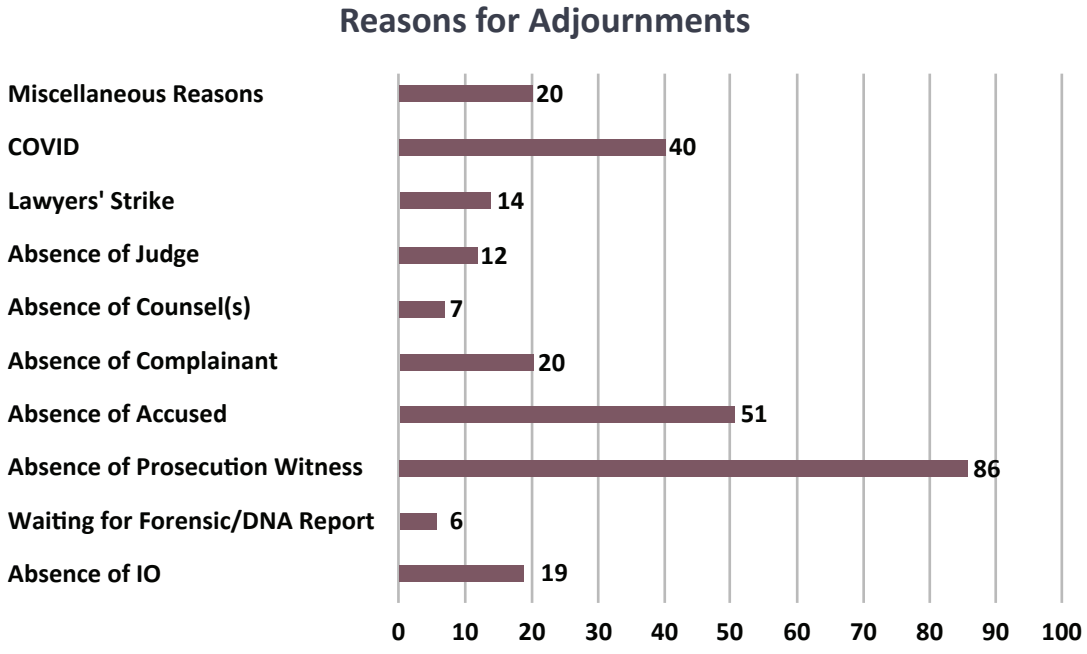


FIGURE 13: BREAKDOWN OF REASONS OF ADJOURNMENTS

The absence of key personnel in the trial (prosecution witness, complainant, accused, IO) are the main reasons for adjournments. This requires a more in-depth qualitative study to understand what the exact reasons for this issue are, and recommendations for procedural or policy change must be made accordingly.

4 IDENTIFICATION AND OBSERVATIONS ON PROCEDURAL CHALLENGES IN POLICE INVESTIGATION OF RAPE AND SODOMY CASES

The police investigation is the most critical element of the entire criminal case, which is meant to uncover the evidence as to the accused's guilt. There are clear processes laid out in the CrPC, police law and rules, and other criminal laws and judicial precedents. Additionally, through practice, a seemingly thorough process has been established.

However, despite this, the case files reveal a series of flaws and improprieties in the police investigation, which reveal not just improper following of process and procedure, but also hint towards a lack of understanding within the police about the nature of the crime, reasons for evidence collection and the minimum standards of evidence to have these upheld in court.

This section highlights critical gaps within police work which negatively impact the entire investigation.

4.1 ACCUSATIONS OF FALSIFIED FIRs

A massive issue occurs again and again in cases where out-of-court settlements have been reached, or presumed to have been reached, and the complainant turns hostile. In several cases, the complainant stated in court that they are illiterate and could not read the FIR, or did not read it, or it was not read back to them or that they were asked to sign or put their thumbprint on an empty sheet. Thereafter they testify that they did not make statements recorded in the FIR e.g., identification of the accused. This negates the entire prosecution case when the complainant himself/herself has now stated the FIR was false to begin with.

For this purpose, police must devise a method to overcome this hurdle. Options may include taking a photograph of the complainant with the completed FIR or ensuring the complainant places his/her thumbprint on the text of the FIR to demonstrate it having been written before their affirmation. This may strengthen the prosecution case, allowing them to continue with the prosecution even if the complainant has compromised out-of-court as **rape and sodomy are crimes against the state, not an individual.** Thus, the state may be able to continue with the prosecution.

4.2 RECORDING THE 161 STATEMENT OF THE VICTIM AND COMPLAINANT

According to the Supreme Court's judgment in Atlas Khan alias Attasi v. State & another (2014 P Cr. L J 1280), the solitary statement of the victim, if found independent, unbiased, confident, and straightforward, is sufficient for conviction. Rape is a crime that is often committed in private by known persons/acquaintances, and there is hardly any eyewitness to confirm the commission of the crime by the accused. This makes medical and forensic evidence along with the victim's testimony the sole sources of primary evidence to prove the offence. In the case of the former, defense counsel seeks to discredit the police and medico-legal officer's practices to dent the prosecution case via arguments like delays in conducting the victim's medical examination, questioning arrest of accused, challenging the chain of custody of evidence, and maintenance of evidence during collection and submission.

Therefore, it is essential to capture the victim's statement holistically and in sufficient detail to be able to create a complete narrative and picture to provide unshakable evidence against the accused. There are 3 occasions where the victim's statement is captured:

- Statement to the police under Section 161 CrPC.
- Statement to the Magistrate under Section 164 CrPC. This statement is admissible in court. If the accused is given an opportunity to cross-examine the victim, the statement can be used in court as the statement to be given at trial.
- Evidence given in court at trial.

While the statement is not admissible in court on its own, it can be used to demonstrate contradictions between the statement made in the 164 statement to the Magistrate and in court. Often the police do not consider the 161 statement to be particularly important due to its non-submission in court. However, as it may be used to contradict a witness, it is essential for the 161 to be as detailed as possible.

Despite the lack of 161 statements present in the case files provided to LAS, there is evidence of situations where contradictions were found between the 161 statement and later

[21] In past, the apex Court has rejected several appeals and ordered convictions based on the solitary statement of the victim (1995 SCMR 1765, 002 SCMR 1329).

statements. Further, the Criminal Justice System needs to recognize in cases of SGBV, particularly rape and sodomy, the recall of the victim may not be immediate even if it is fresh. Owing to factors like PTSD, trauma, etc., some details may emerge for the victim at a later stage.

Thus, it is recommended that while police must strive to get as many details as possible in the first go, two 161 Statements should be recorded, with some time apart to ensure that any details recalled later are also captured.

4.3 CONDUCTING MEDICAL EXAMINATION OF VICTIM AND ACCUSED

Significant advancements within forensic science, especially pertaining to DNA technology, have been imperative to criminal investigations.[22] In cases of sexual assault, forensically analyzed DNA evidence plays a crucial role in identifying perpetrators and accelerating legal proceedings. Prompt medical response to sexual assault can provide conclusive proof that confirms assault, with this biological evidence being strongly admissible as legal evidence in court. The importance given to forensic science and medical evidence has been recognised in Pakistan, highlighted in the 2016 amendments and several court judgments including the seminal Salman Akram Raja judgement 2013.

Upon receiving a complaint or registration of an FIR, the police are mandated to immediately send the victim for medico-legal examination, where forensic evidence from the body of the victim is also collected. The nature of rape and sodomy offences requires the collection of forensic evidence, in particular, to be done at the earliest possible due to the potential loss of such evidence.

Despite this, multiple cases, including LAS Cases # 30 and 59, revealed that no medical examination was carried out of the victim without any explanation. The lack of ensuring this step is taken not only results in the weakening of the prosecution case but also constitutes an

[22] However, investigation officers in Sindh and Islamabad face unique investigation challenges that compromises their ability to collect forensic evidence on time and in the proper manner. As evidenced in several LAS cases, lack of proper knowledge of DNA evidence collection and storage, and a murky understanding of evidence transferring protocols results in evidence contamination.

injustice to the victim, where full evidence is not collected, which could be essential to the case. This includes not just DNA, but other medical evidence such as marks of violence, swelling, forensic evidence, etc.

There is also a contradiction within the police on how it treats cases of attempted rape. On one hand, in several cases, no medical examination was conducted at all, indicating the misconception amongst police officers that an attempted rape does not warrant a medical examination. Such an assumption, as highlighted in discussion with police officers, is embedded in the idea that all medical evidence rests on just DNA which requires penetration. However, such a fixation with penetration being a prerequisite for medical examination does a disservice to the victim and the overall case. A medical examination is extremely vital even in cases of attempted rape since potential scratches, bite marks, swellings, and bruises can be significant pieces of evidence to prove that the incident did occur. Furthermore, the colour of the bruises can also reveal the time since the incident. Such details bolster the prosecution's evidence and help supplement victim and witness testimonies.

On the other hand, stemming from the popular notion amongst the police that DNA is paramount no matter what, the police treat attempted rape cases as that of rape by basing their whole case around DNA alone, where DNA from ejaculation may not even exist. LAS Case #64 revolves around the attempted sodomy of a 10-year-old boy but the entire investigative process of the police is predicated around collecting anal swabs of the boy and blood samples of the victim and accused, where there was no penetration. The whole exercise in forensic testing is counter-productive since the child in his statement did not indicate the attempt resulted in penetration, which was supported by the medical examination. This not only resulted in the misuse of time of the medical examiner and the police, but also presumably contributed to the additional trauma of the child, who was forced to go through anal examination and swabbing for no purpose. Little focus was placed on other evidence in this case.

While there is no denying that each case is subjective and requires a different approach, the contradiction in the police's current approach indicates a lack of consistent understanding of the crime itself, and therefore what evidence is required in a case of rape and attempted rape.

Several cases also reveal police failure to obtain the accused's DNA from him. It is essential for the police to ensure all evidence is triangulated and linked to each other. For example, if DNA is found on the body of the victim or at the scene of the crime, it must be cross-matched with the accused to ensure the DNA or forensic material is that of the accused, tying him effectively to the crime by giving direct evidence against him. In LAS Case # 25, the accused joined the investigation but refused to comply with the IO's and court's orders to go for a medical examination so that his DNA could be taken and submitted to the forensic agency. Even though the police may use the force of the law to arrest and force the accused to submit a DNA sample, this was not done. Ultimately, the forensic report yielded nothing substantial since the accused's DNA was not submitted and the accused was acquitted. Similarly, LAS Case # 20 was a unique one since the police were able to collect a range of extremely useful forensic material from the place of the incident. The IO collected the bedsheet that evidently showed semen, used tissue paper, and discarded condom from the dustbin, and the clothes worn by the survivor. These pieces of evidence were supplemented by vaginal and anal swabs of the victim and sent to the forensic agency. However, quite glaringly, the police failed to source the accused's DNA since he refused to turn up for a medical examination. It is imperative to remember that the police have the authority to obtain the accused's DNA even if he refuses to give it. In this particular case, the forensic analysis detected seminal material but could not carry any further matching analysis since they were not provided with any reference material (accused's DNA) to test against.

Considering the importance assigned to DNA reports in cases of sexual assault, there are recurring similarities between sample collection procedures as evidenced in LAS case files. Some articles prominently collected as forensic evidence include:

- Shalwar of the victim
- Shalwar of the accused
- Bedsheet on the crime scene (if relevant)

Prominently collected medical evidence during medical examinations include:

- High and low vaginal swabs of the victim
- Anal swabs of the victim
- Blood samples of both the victim and the accused
- Urine samples of the victim and the accused

This, however, evidences the police under-utilizing other forensic pieces of evidence other than vaginal and anal swabs of the victims along with their clothing. For example, hair strands, fingernails, and even cloth fibres can be significant pieces of evidence that should be searched for and collected from the place of incident. However, from our review of case files from ICT, there was no case where the IO searched for any form of hair strands or fingernails on the place of the incident or on the victim's body. Even in cases where forensic evidence other than vaginal and swabs is collected, there are issues. For instance, in LAS Case # 9, the defence counsel was able to raise considerable doubt over the prosecution's case by highlighting that the IO only collected the victim's clothing two days after the date of the incident.

4.4 CHALLENGES IN CHAIN OF CUSTODY

Chain of custody refers to the 'chronological and careful documentation of evidence' to establish its connection to a crime. All evidence and its transportation from the crime scene to the lab needs to be properly, chronologically documented, and verified to ensure that evidence is not contaminated, replaced, or tampered with. Proper documentation of the chain of custody is especially critical to investigations of rape cases because pieces of evidence collected from crime scenes of sexual assault are often time-sensitive and crucial in establishing links between the crime, the criminal, and the victim. Properly-maintained chain of custody documents are demonstrative of the 'traceability' and 'continuity' of the evidence from the crime scene to the courtroom.

A major issue identified by case analysis is the violation of the chain of custody of the DNA and forensic evidence. The entire evidentiary value of forensic results can be ruined if the defence counsel can highlight and raise doubts about the sanctity of the DNA chain of custody. Police officials must be familiar with the mandated protocol for transferring a person from the crime scene or police station to the hospital for medical examination. Often, victims of sexual assault change their clothing or wash their bodies after the crime takes place as they are not aware of the significance of DNA traces on their bodies. First responders with adequate training or background on DNA profiling are critical in ensuring the preservation of forensic evidence, and this knowledge corresponds to a better understanding of the importance of chain of custody documentation. LAS Case # 9 is evidential of a case investigation upturned because forensic evidence (shalwar that the victim was wearing during the incident) was not collected promptly and stored according to the protocol from the scene of the crime. These significant blunders are barriers in access to justice,

and major obstacles in curbing GBV in Pakistan. While there is a paramount emphasis upon positive DNA reports to increase conviction rates for cases of sexual violence, logistical discrepancies are unaccounted for when studying the reasons for failed DNA analyses.

LAS Case # 6 provides another compelling case study regarding how the entire prosecution case was left in shambles, despite positive DNA matches with the accused. The investigation officers were confused regarding who submitted evidence to Punjab Forensic Science Agency (PFSA) as they did not keep a record of the transfer of evidence. These irregularities in the chain of custody resulted in the DNA evidence being submitted with a delay of **4** days. At trial, the IO failed to establish a reliable account of how DNA was collected and submitted. His failure to produce the MLO that collected DNA samples of the victim and accused led the trial judge to severely censure his negligence since it was tantamount to safeguarding the perpetrator of the crime. Poor decision making and lack of knowledge of the law on the investigation front resulted in involved police officials being heavily censored and the accused being acquitted of his crime because the court ruled that despite the substantial forensic evidence, the lack of clarity on the chain of custody resulted in it being declared inconclusive and inadmissible. The police must be thoroughly trained in the technical and procedural facets of DNA collection, preservation, and submission.

The blame does not lie solely with the police. IOs, once they collect DNA samples from the MLO, have to send them to the forensic agency. Yet, in the time in-between, they have nowhere to appropriately preserve and store the samples. Thus, in many cases, the IOs end up taking these samples to their homes, which violates all protocol and chain of custody.

4.5 POLICE STORAGE OF MEDICAL AND FORENSIC SAMPLES

Chain of custody reports attached to case files list items collected during the investigation and items sent to external departments. The samples dispatched to PFSA are listed as labelled glass tubes containing vaginal or/and anal swabs, and tubes of blood samples. As per sound scientific knowledge, improper packaging of vaginal and anal swabs can increase the chances of the destruction of this DNA evidence. To prevent the growth of fungus and other microbes that thrive in anal and vaginal swabs stored in glass, these swabs need to be placed in regular brown envelopes instead. According to the chain of custody listings, this is not a common practice within Islamabad police.

4.6 DELAYS IN SUBMISSION OF MEDICAL AND FORENSIC SAMPLES

Delays in submissions of DNA evidence account for massive investigative delays. While 72 hours is the mandated timeline for the collection of DNA samples of the accused and/or victim, cases of GBV in Islamabad have delays of as long as **67** days between the FIR registration and victim's medico-legal examination. Furthermore, delays in the submission of victims' and accused's DNA can be as long as **72** to **78** days. These significant submission delays result in the misplacement of these samples, the contamination of DNA, and slow judicial proceedings. As per the due custodial procedure, samples and forensic evidence needs to be submitted to the PFSA for forensic analysis and DNA profiling. These pieces of evidence need to be dispatched immediately so that PFSA reports can be received in due time. These delays further contribute to delays in the submission of the 173 Challan. Forensic evidence submission and PFSA report receiving delays have contributed to as long as a **423-days** long delay in the submission of the 173 Challan; the assigned time for the submission of the 173 Challan is 14 days.

Despite the increased focus on DNA medical evidence, there were 37.5% (21 cases) recorded instances where the DNA samples of the accused were not sent to PSFA. While this is also because these cases were those of attempted rape and sodomy, multiple cases were riddled with issues of the loss and misplacement of evidence along with poor documentation and management of the chain of custody.

4.7 INEFFECTIVE CRIME SCENE/SITE MAPS

The site map of the crime scene is one of the most basic and important duties of the police officers in any crime. Maps and plans are useful in criminal investigation and prosecution for the following reasons:

- They provide a visual picture of the scene, making a more exact impression on the mind than a descriptive narrative report
- They make a clear explanation of an intricate case fairly easy

- Their preparation helps the IO in his observation and thought
- They introduce a certain method into the investigation
- They help Judges, Magistrates, Prosecution, and others to an accurate understanding of a case
- They often prove whether a witness is reliable or not. Thus, a plan may show whether a witness was of hearing or an incident or was unable to see what he stated he saw.

However, there are indications that the site map is often treated as a procedural formality. There is a recurring practice where crime scenes/sitemaps are not being made according to a proportional scale. Rather, IOs frequently just draw a rough sketch of the place of the incident with no reference to the geographic orientation and/or scale (e.g. LAS Case # 3, 5 & 60). A proper site map showing places of occurrence and the material landmarks help both supervising officers and trial courts to get an idea of the scene of the crime.

Further, in certain cases, especially LAS Case # 53, where there were multiple places of incidents, the police only focused on one. In cases of kidnapping plus rape, crime maps of both incidents i.e., place of kidnapping and place of rape, are not made as primary or secondary crime scenes, but rather only one of the two crimes is mapped out.

A case of rape or sodomy or sexual abuse has to be built up through circumstantial evidence. As noted above, the predominant focus on DNA seems to have led to a decreased focus on other types of evidence, and thus evidence collection. The gaps in preparation of crime scene/site maps are an indication and evidence of carelessness within police work.

4.8 CHALLENGES IN GANG RAPE CASES

In cases where multiple individuals are complicit in the act, two of our case files revealed instances where the police were unable to arrest all of the involved accused individuals. Not arresting all accused in gang rapes is a major theme of LAS Case # 35 and 50 where the police completed their investigations without having arrested all the accused involved in the gang rape. Worryingly, the DNA forensic processes were also completed without all the DNAs of perpetrators submitted for matching purposes.

A recurring issue is the focus on DNA evidence instead of circumstantial evidence.

4.9 CHALLENGES IN SUBMISSION OF FINAL 173 REPORT (CHALLAN)

A vital organ of a rape/sodomy case is the 173 challan which coalesces and consolidates all the investigation findings of the IO, medical examinations, and forensic results. Its submission is integral to the case's progression for without the 173 challan being submitted, the Judicial Magistrate generally does not pass on the case to the trial judge.

173 Challan Delays

	Forwarding of 173 Challan	Receiving by District Attorney	Receiving by Court	Total Time Taken
Maximum (# of days)	**432**	**170**	**220**	**526**
Minimum (# of days)	**10**	**0**	**0**	**32**
Median (# of days)	**50**	**21**	**24**	**118**

TABLE 7: 173 CHALLAN DELAYS BY NO. OF DAYS

A perusal of case files reveals the Judicial Magistrate constantly imploring upon the IO to submit the complete 173 challan. While the IO is asked to submit the challan within 14 days, this is hardly ever the case. Our data reveals that the submission of the challan can take as much as more than **1 year** in extraordinary cases and often takes at least **2** to **3 months**. This is, however, not always the IO's fault. In cases where the 173 challan takes an inordinate high time to be submitted, it is generally the forensic results where the delay occurs on the forensic agency's part.

Furthermore, a much more persistent and troubling issue within the transmission of the 173 challan is how significant delays occur on multiple stages. The way a 173 challan is submitted is built upon a certain step-by-step procedure. This is shown in the figure below.

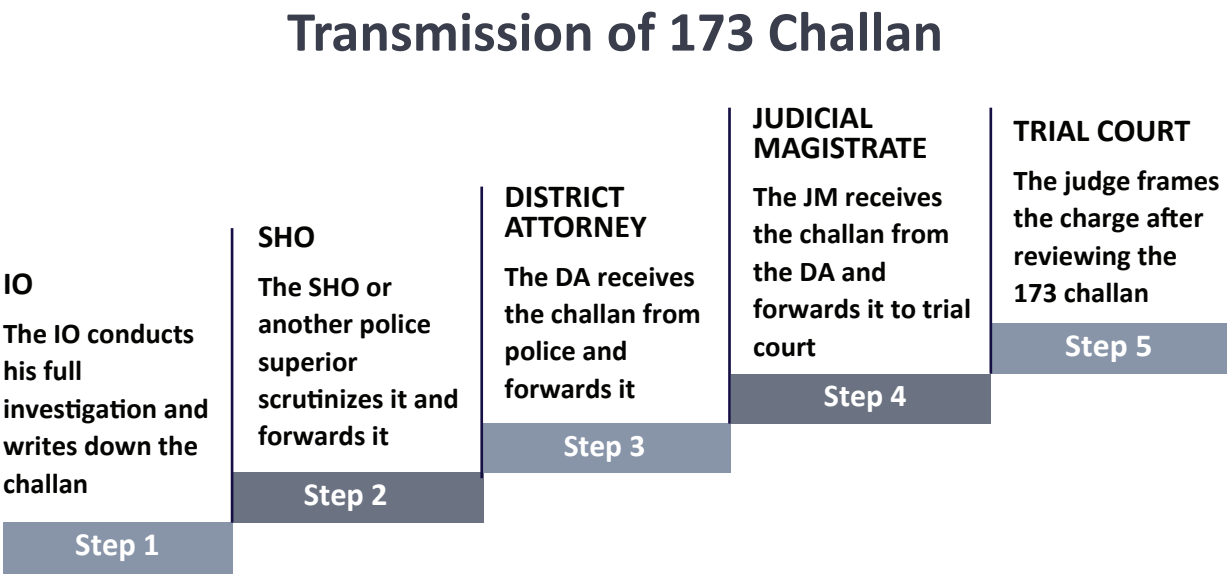


FIGURE 14: STAGES OF TRANSMISSION OF 173 CHALLAN

In some cases, it is clear that the fault lies with the IO i.e., step 1, as was seen in LAS Case # 6 and 9. In the latter case, the forensic results were released by the forensic agency at the start of November 2018. However, the IO for whatever reason submitted the 173 challan from his end at the end of May 2019. This massive delay of 7 months goes completely unexplained and unaccounted for since his final challan simply stated the results of the forensic report which had already been distributed by the forensic agency more than half a year back. Our interactions with IOs in multiple trainngs show that they are extremely overworked as they handle numerous cases at a time. This over-working might be an explanation for such IO-specific delays but this is just conjecture. There could very well be deeper issues of corruption, institutional impunity, lack of accountability, and professional apathy as well.

The case files reveal that there are few delays between steps 1 and 2 or between steps 4 and 5. However, persistent delays occur in the forwarding of the challan between steps 2 to 4. There is no explanation or clarity as to the reasons for the delay between submission of challan to the prosecution and submission to the court. This time period is often unaccounted for, falling outside the scope of police work, and before the time limit imposed at the trial stage. For example, it took a month in LAS Case # 21. In LAS Case # 8, the delays were as follow:

- Date of FIR to Forwarding by DSP: 29 days
- Forwarding by DSP to Receiving by DA: 170 days
- Forwarded by DA to Receiving by Court: 175 days

The above example shows that perhaps the blame does not always lie with the IO but rather with the wider bureaucratic mechanisms by which the 173 challan is forwarded and received by certain stakeholders. It would be a valuable exercise to probe deeper into what is beyond the delays occurring in the district attorney and courts receiving the challan. Such issues and delays are emblematic of wider bureaucratic inefficiencies in conventional and ineffective red-tape systems.

4.10 RAPE: OFFENCE WITH 2 CRIME SCENES

In a rape, there are two crime scenes: the location where the rape took place and the rape victim's physical person, including the clothing worn by the victim and the perpetrator. Both should be secured at the earliest possible.

The victim's body is examined by the medico-legal officer, who conducts the physical examination and collects all physical samples from the body for further analysis. As discussed above, efforts must be made to ensure the medical examination happens as early as possible after the incident and that the victim does not change her clothes or wash herself before the examination.

On-scene physical evidence is anything tangible that can establish a crime was committed or link the crime and the victim and/or the perpetrator and the victim. First responders to the crime scene must secure it to try to ensure no contamination of the scene and potential evidence. The objectives of the search of a crime scene in a rape case are the same as in any other major case[23]:

- Reconstruct what happened and establish that a crime occurred;
- Identify, document, and collect evidence of what occurred;
- Link the victim and the suspect to the scene of the crime;
- Identify and locate any witnesses; and
- Identify and apprehend the person(s) who committed the crime.

[23] Jetmore, L. Dr. (2006), 'Investigating Rape Crimes, Part 1: Guidelines for first responders', United States, Police 1 Lexicon, https://www.police1.com/police-products/investigation/evidence-management/articles/investigating-rape-crimes-part1-guidelines-for-first-responders-Szghj3goS1WxaXUu/, accessed on 18-12-2020

However, to collect such physical evidence, the IO must first be able to recognize such evidence. And further, if not collected, preserved, or analysed properly, it will fail to be admissible in court.

It is a common practice in rape and sodomy cases to only focus on the body of the victim as the main 'crime scene'. On-scene physical evidence, a crucial element in rape cases, is often ignored. When identified, it is not unusual for the crime scene not to be cordoned off, resulting in contamination.

In the cases examined, there had been little or no efforts to collect evidence apart from the statement of the victims or medical evidence. Police officers made a memo of sites and completed documentation, but apart from one case, no evidence from the site was taken for further examination. No circumstantial evidence was presented nor was evidence from private, natural witnesses, etc., even when they were available as per the original FIR and 161 statements of the other witnesses.

The lack of additional evidence other than medical and statement of the victim or complainant makes the prosecution case incredibly weak as even the solitary statement of the victim is strengthened by circumstantial or corroborative evidence. Further, it is not uncommon for the victim/complainant to reach an out-of-court settlement and resile from the case or turn hostile at trial. Given that rape and sodomy are considered crimes against the State, even where the victim resiles, the Government may continue to pursue the case. With strong circumstantial evidence, the prosecution could continue the case based on this evidence alone. Types of evidence including on-site evidence, technological evidence such as geo-tracking, etc. must be taught to all IOs, and made available to them.

5 COMPLICATIONS IN MEDICO-LEGAL AND FORENSIC REPORTING AND EVIDENCE

5.1 INSUFFICIENT MEDICO-LEGAL REPORTS

A victim must be taken for medical examination at the earliest possible after the registration of the complaint or an FIR. A medico-legal doctor, referred to as a Medico-Legal Officer (MLO), will conduct a physical examination of the victim and collect forensic and DNA samples, which are then handed over to the investigation officers, who then parcel the sealed and labelled samples and send them to PFSA. The doctor also provides a report of their examination which is used by the police for purposes of investigation and is submitted and used as evidence in court.[24]

These reports drafted by MLOs (and in some instances paramedical staff) are evocative of the medical fraternity's perception of sexual assault. Most of these reports often remark that 'no marks of violence' were found on the victim's body. And in cases where a victim does have marks of violence on their body, medical assessment of the marks is often penned in a reductive language which emphasizes that 'only nail scratches were found on the back' or 'only slight bruising on the right arm'. These reports are also problematic in their assessment of a victim's hymen-al presence and state of the vagina. For victims that are married and sexually active, their hymen status is reported as 'hymen not present, Victim A is sexually active'. The language on these reports' undertones subtle, clinical victim-blaming, and leaves further room for contradictory statements as these initial reports can be different from the facts observed in PFSA reports.[25]

[24] Crime Scene and Physical Evidence Awareness for Non-Forensic Personnel (United Nations Office on Drugs and Crime 2009), 4

[25] Rasool, Nouman, and Muzamal Rasool. "DNA evidence in sexual assault cases in Pakistan." Medicine, Science and the Law 60.4 (2020): 270-277.

Furthermore, these reports are also non-inclusive of a summary of the MLO's forensic interview of the victim or/and accused when they are brought in for their exam. This forensic interview is crucial in determining the location of biological fluids on the body that can be swabbed for analysis, and also gaining more information on the crime and trauma sustained physically and mentally. However, the MLO's evaluation of a victim's behaviour post-sexual assault is absent from the report. Instead, most reports recount surface-level interactions, with statements such as 'victim was able to introduce herself and seems to be in possession of sound health'.[26]

5.2 INSTITUTIONAL DELAYS IN FORENSICS

The average rape and sodomy case follows a certain step-by-step procedure regarding forensic evidence. The case's investigation officer has to take both the victim and the accused to an official medico-legal officer as soon as possible and collect their DNA samples. The victim's anal and vaginal swabs are also collected to detect any seminal material. This is shown in the figure below.

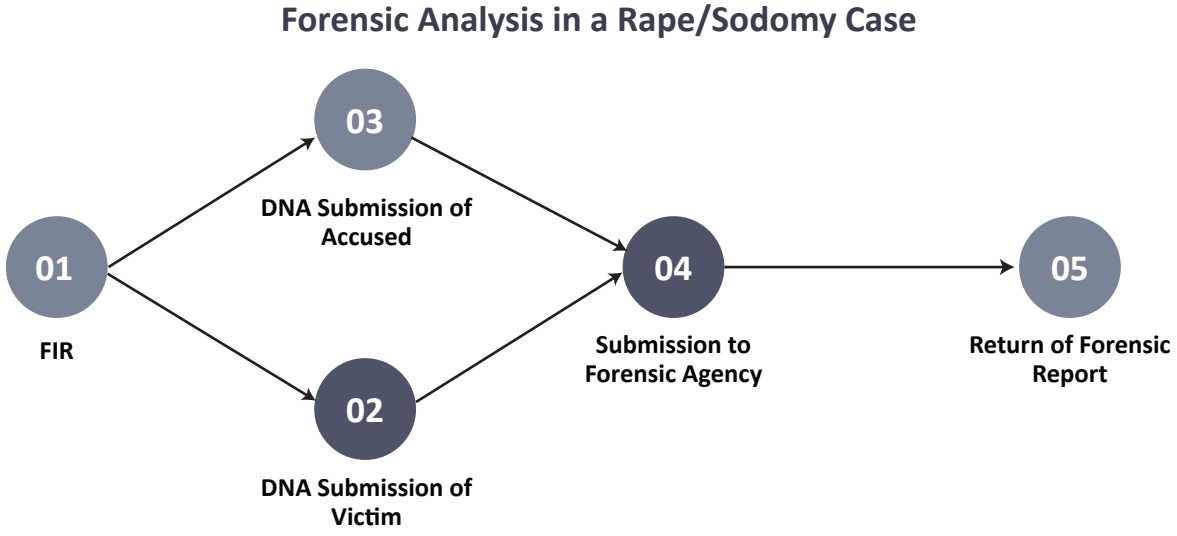


FIGURE 15: BREAKDOWN OF THE FORENSIC ANALYSIS PROCESS IN A RAPE/SODOMY CASE

[26] Smith M and Mann M. Recent developments in DNA evidence. Trends and Issues in Crime and Criminal Justice 2015: 506

It is incumbent on the IO to submit these swabs along with the DNA samples to the government forensic agency as soon as possible to ensure that the validity of the DNA sample is guaranteed. Generally, DNA tests are only successful within 15 days of the date of the incident. Thus, it is extremely important that the delay between the reporting of the crime (date of FIR), the collection of DNA samples and swabs, and their submission to the forensic agency is minimum. However, there are significant delays in the whole process as outlined in the table below.

Forensic-Specific Delays

	Submission of Victim's DNA	Submission of Accused's DNA	Submission for Forensic Analysis	Return of Forensic Report
Maximum (# of days)	**72**	**72**	**78**	**408**
Minimum (# of days)	**0**	**0**	**2**	**6**
Median (# of days)	**2**	**4.5**	**7**	**52**
Not Conducted	**20**	**22**	**22**	**22**
Denied by Person	**2**	**2**	**2**	**2**

TABLE 8: FORENSIC-SPECIFIC DELAYS BY NO. OF DAYS

Perhaps the most troubling delay is that of the massive time it takes for the forensic report to come back from the forensic agency. This entails that the trial proceedings are prolonged for the over-reliance on DNA results means that the prosecution's entire case often rests on the report. Of the 17 cases that had information on forensic report submission and return, 8 took more than two months for the results to return from the forensic agency. The delay in the forensic report is also one of the most major contributors to the long investigation times since the full 173 challan cannot be submitted until the forensic results are obtained from the agency and sent to the court.

6 LIMITATIONS IN PROSECUTING CASES OF RAPE AND SODOMY

ICT does not have an independent Prosecutor General with a Prosecution Department. The Advocate General currently holds an additional charge as Prosecutor General. The appointed prosecutors function under the District Attorney Department, ICT.

A lack of a dedicated Prosecutor General and the team is presumed to have an impact on the nature, quality, and oversight of operations of prosecutors across ICT. While this was not an area for research for this paper, this is something that requires more in-depth research, thought, and discussion.

6.1 LIMITED SCRUTINY OF THE 173 CHALLAN BY PROSECUTION

A key role to be played by the Prosecutor/District Attorney is the scrutiny of the challan submitted by the police to them before submission to the court recommending an accused/accuseds be taken to trial. This is prepared by the police and approved by the prosecution. The challan must give details of the investigation, investigation process, evidence found against the accused, etc.

As noted above, an approximate **7** months is taken by the prosecution at this phase, which is unexplained and contributes significantly to the length of the criminal case.

After an in-depth examination of the challan, the prosecuting officer concerned raises points of objections for consideration by the Investigating Officer and, if necessary, he directs the IO to investigate further in the matter. After compliance with objections raised by the prosecutors, charge sheets/challans are filed in the Court for trial.

The prosecutor should look for technical and investigative flaws in the challan to rectify and improve the case. This may include the following:

- Whether the provisions of the Code of Criminal Procedure have been violated. If so, how to get the necessary rectifications?
- If the F.I.R contains technical flaws, how is the case put on straight lines during investigation and trial, whatever the case may be?

- Whether the investigation officer conducted the investigation properly as per the law. If not, how can the case be improved?
- Is the oral, documentary, and circumstantial evidence in order with the criteria laid down by the Qanun-e-Shahadat Act, 1984?
- Whether all facts reflected in the F.I.R are commensurate with the challan, i.e., Report under section 173 of the Cr.P.C.? If not, how to plug the loopholes?
- Who are the witnesses and what are they attesting to?
- What evidence or witnesses are still required?

This level of scrutiny allows the police and prosecution time to work together collaboratively to strengthen the prosecution case or recommend discharging of the case if it is believed the case does not have sufficient evidence against the accused.

The number of flaws and lapses in the police investigation in the case files discussed above were not highlighted promptly by the prosecution or returned to the police to rectify mistakes or improve their cases. Timely and effective prosecution involvement would have been critical in giving the police an opportunity to strengthen the case, and providing the victim/complainant with full services and true access to justice.

For example, in LAS Case # 60, the victim was allegedly abducted from a shop. The shopkeeper's statement was not recorded by the police under Section 161 CrPC, nor was he called as a witness; the alleged victim stated she had eloped and was validly married in her Section 161 statement, but there was no proof of marriage provided or asked for or investigated. In her 164 statement, she refuted the earlier statement, saying she was abducted. The lack of testimony from a potential eyewitness – who was easily traceable, or of the marriage, which would require witnesses, a *nikkah khawan* to solemnize the marriage, at the very least, and a *nikkahnama* (marriage contract) at best, which would be key evidence in such case, were not provided, which is a gap that should have been caught by the prosecution.

In LAS Case # 61, while semen was found on the victim, it was not cross-matched with the accused. Thus, the negligence by the police, followed by the oversight of the prosecution, resulted in the victim not only having to go through the indignity of a physical examination, but the failure of both the police and the prosecution upon scrutiny to ensure a cross-check of the sample with the accused resulted in the examination being pointless and the loss of an invaluable piece of evidence.

This indicates either apathy, disinterest, or negligence on part of the prosecution, and puts on display the lack of coordination between police and prosecution in ICT.

6.2 LACK OF PRE-TRIAL PREPARATION OR COORDINATION WITH PROSECUTION WITNESSES

There are numerous cases where the victim/complainant and other prosecution witnesses change their statements at different stages e.g., in LAS Cases # 10 and 12 the victim gave one statement in the 161 statement, and changed it during the trial or when giving the 164 statements. In other cases, such as LAS Cases # 15 and 21, there were contradictory statements at different times, where the victim or complainant deferred from their original account or enhanced their statements.

This is problematic at trial, because while the court accepts certain additions, where there is a significant change in the statement or enhancement, then it views the testimony as weak and untrustworthy. Practice demonstrates and suggests that the majority of prosecutors only meet the witness at the time of trial and brief them before they take the stand.

Good practices dictate that the prosecutor must first scrutinise the challan, as discussed above, to identify anomalies or problem areas. For example, they could always have a second 161 statement or 164 statement recorded for purposes of clarification, or once they see gaps, they discuss a litigation strategy that accounts for the identified issues. For example, where there is an unexplained delay in reporting (which in itself does not defeat the prosecution case, as long as it is explained), the prosecutor can see how to address that through a supplementary statement or at trial.

Further, the prosecution needs to meet the victim/complainant/witness in advance, share with them all previous documents to remind them of what has been said and prepare them for court proceedings, including discussion on what happens in examination-in-chief and cross-examination and emphasise the need for honest truthful answers, in line with their previous statements. The prosecutor may also warn them of any major red flags that may be raised during the trial. At this stage, the prosecution may also assess whether there is a need for a translator if the witness is unable to communicate effectively in Urdu or English.

6.3 LIMITED INTERVENTIONS IN CASES OF COMPROMISE OR HOSTILE PROSECUTION WITNESSES

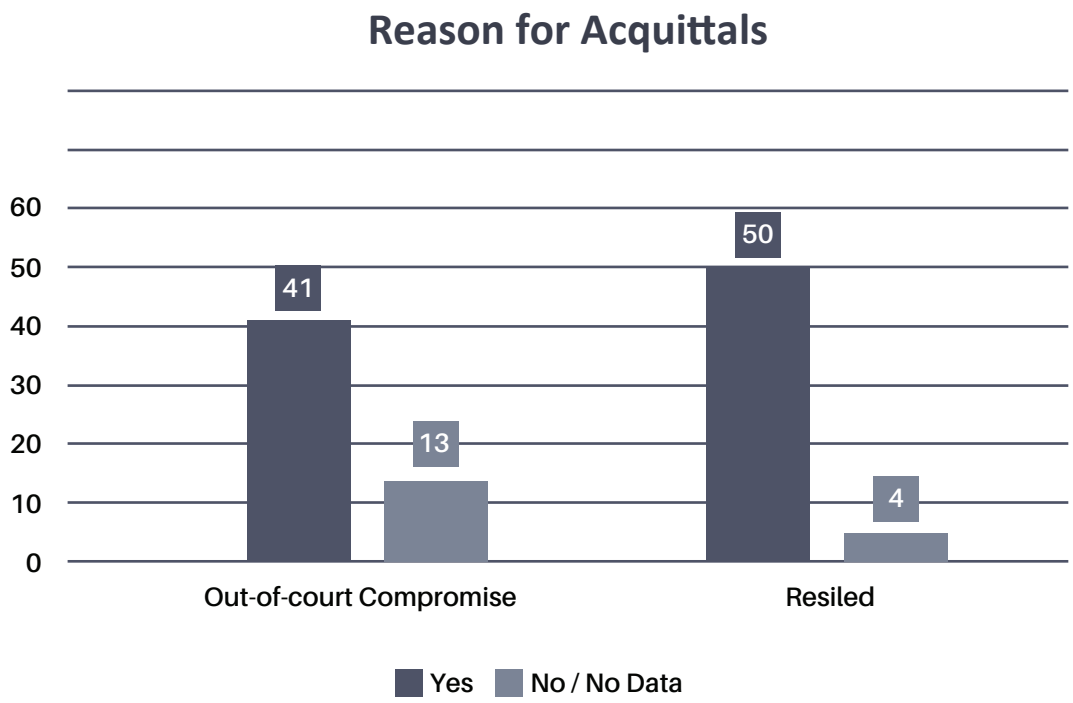


FIGURE 16: REASONS FOR ACQUITTALS AND A COMPARISON OF THEIR OCCURRENCE BY CASES

Out of the case files examined for this study, **76%** (41) of the 54 cases resulted in an out-of-court compromise. This was often accompanied by the victim/complainant and/or prosecution witnesses resiling from their earlier statements and redacting their accusations against the accused. In terms of resiling, an astounding 93% of all cases had the witnesses resiling from their statements and turning hostile. Not all cases have out-of-court settlements with the witnesses resiling; in some cases, victims and their key witnesses just simply rid themselves of the case by resiling even if they do not reach an out-of-court compromise with the accused.

There are several options for the prosecution to respond to such cases. However, the practice, as seen in LAS Case # 24, 29, 61, and 64, is that the prosecutor simply declares the witness hostile[27] and upon permission of the court asks them leading questions. The questions, as

[27] A witness who is antagonistic to the party calling them and, being unwilling to tell the truth, may have to be asked leading questions.

indicated by the court documents involve the victim being asked if they were telling the truth now and whether they gave the statement under pressure. No other tactics are seen to be used by the prosecutor to reveal any other story or details as to why the complainant/victim/witness has changed their story at trial. This reflects that the prosecutor was not in regular contact with the complainant/victim/witness in advance to understand and predict what would happen at trial.

Further, there is no evidence of the prosecutors using different types of questioning techniques to try to uncover the truth of what actually happened. Being allowed to effectively cross-examine a prosecution witness, the prosecutor can use all types of questions to try to get to the truth. The current questioning seems to be more of a tick box exercise as opposed to a strategic plan. Other tactics, such as when the complainant or victim redacts the 164-statement given to the Magistrate, the Magistrate must be called to give evidence as to whether they believed the victim/complainant had given their statement under pressure. This could significantly strengthen the case, even if it is compromised. However, this was not seen in any of the case files analysed for this study.

The assumption is that the prosecutor 'gives up' once the victim/complainant resiles or compromises and makes no efforts to proceed seriously with the case under the justification that the complainant no longer wishes to pursue the case. Since rape is a crime against the state, the prosecutor can go on prosecuting the case, even if the complainant resiles. This initiative from the prosecution needs to be taken and enhanced for better outcomes.

7 CONDUCTING TRIALS ON RAPE AND SODOMY: AREAS OF CONCERN

7.1 NEED FOR DETAILED 164 STATEMENT BEFORE THE MAGISTRATE

As noted above, the statements of the victim are essential for the case as the solitary statement of the victim, if unshakeable and found to be confidence-inspiring, can be sufficient for conviction. Every actor needs to ensure a detailed statement is taken.

The 164 statement to the Magistrate is the most critical because it is admissible in court. Especially where victims/complainants resile or compromise out of court and retract their statements, the court is bound not to accept such compromise and continue with the case. A strong 164 statement can make a massive difference in such cases.

The cases discussed above where compromise was effected and accepted by the court could have proceeded based on a strong 164 statement.

The Magistrate needs to exercise all caution and strategy to ensure every detail of the incident is captured. This may require using more nuanced techniques and strategies, but it is essential for ensuring a holistic detailed statement is provided.

7.2 LACK OF USE OF SPECIAL PROTECTION MECHANISMS

Under Section 352 CrPC, rape and sodomy trials are to be held in camera and other special protection mechanisms such as screens, video-link, etc. are to be used. No evidence was seen in any case where any application was made e.g. for use of CCTV camera to record the testimony of the victim, or any use was made of any sort of special protection mechanisms. The 2016 amendments primarily aimed to create a more victim-friendly space and establish GBV courts. However, no such mechanism seems to have been used in ICT, which is extremely unfortunate and defeats the purpose of positive legislative and policy interventions due to no implementation. Our research quantiatively documents improved user satisfaction (14% increase) in courts with Special Protection Measures in place.

7.3 THE PERVASIVE INSTITUTIONAL CULTURE OF COMPROMISE IN RAPE AND SODOMY CASES

The practice of compromise (or *razi naama*, in Urdu) in trial cases encapsulates socio-legal processes used by perpetrators to circumvent the Criminal Justice System and – at times – by victims as well to avoid tedious judicial processes and societal stereotyping, either forcefully or willfully. In Pakistan's patriarchal society, compromise serves as a means of "exposition of how secrecy may be thought of as 'indispensable to the operation of power.'"[28] There are no doubt various forms to systemically achieve compromise including informal means of mediation, plea bargaining, and out-of-court settlement, however, compromise in the offence of rape and sodomy is illegal under the Pakistan Penal Code (PPC).

Rape is a non-compoundable offence, which means that parties cannot – by any means whatsoever – pursue or achieve compromise contrary to the common practice. Coercing the victim/complainant and their family to enter into a compromise is an offence and triable by law. Albeit during the perusal of court orders and supplementary documents of a total of 54 case files for this research, it surfaced that in most of them out-of-court compromise and signed affidavits of the settlement were not only acknowledged and recognized by the court but also sanctioned using the court's stamp and the presiding judge's signature (as can be exemplified in LAS Case # 36 and 20).

Compromise is illegal yet a public secret in the cases of rape and sodomy. The utterance of word '*razi naama*' (in LAS Case # 10, 12, 14 & 16), 'compromise' or 'affidavit of settlement' before a trial judge – in non-compoundable offences – legitimises its operation and attaches an arbitrary meaning of justice to it which otherwise remains prohibited by law. Such instances show that despite very clear prohibitions under PPC, compromise in cases of rape is a possible 'solution' to regain and revive the lost 'dignity' and 'honour' for opposing parties. Hence, pragmatically, compromise gets actualized in court "through the law of evidence, where we find that the prosecution witnesses [victim and complainant] turn hostile to the prosecution case."[29] Such 'compromised' trial cases are never recorded as concluded due to out-of-court settlement, they are rather articulated in the category of hostility or non-seriousness of the complainant/victim (which further problematizes the court proceedings because rape is a

[28] Baxi, P. (2010). Justice is a secret: Compromise in rape trials. Contributions to Indian Sociology, 44(3), 207-233.
[29] Ibid.

crime against a state and not merely an individual and can be further prosecuted). The normalization of the 'socio-legal category of compromise converting terror, [fear and 'honour'] into a bargain' instead of criminalizing it as criminal intimidation of the victim and the family makes it more problematic than ever.

We observed a similar pattern in the cases analysed where complainant/victim (or someone through power of attorney) stated and/or acted in the following way, usually due to criminal intimidation, in turn leading to the acquittal of the accused:

- Victim/complainant revealed that they have 'joined hands' i.e., entered into an out-of-court compromise, and does not wish to proceed with the case (LAS Case # 12).
- Prosecution and defence counsels revealed that external mediators i.e., elders or community, have intervened to resolve the matter 'internally' (LAS Case # 17).
- Victim/complainant claimed that the police illegally obtained their fingerprint/signature on a blank paper, which was then turned into an FIR. That they never nominated the accused, and their statements are concocted by the police. This entails that the police is to blame for "wasting" the court's time and resources (LAS Case # 37).
- Victim/complainant resiled and stated that they had 'wrongly' nominated the accused and that the appointed accused is not the actual perpetrator (LAS Case # 22).
- Court order revealed that power of attorney on behalf of the victim was submitted, and the person decided to "forgive" and "exonerate" the accused and find no objection in their acquittal (LAS Case # 71).
- The defence counsel submitted "nikkahnaama" (marriage certificate) proving that both the parties had contracted marriage prior to the alleged incident. Sometimes, the chronology is not pondered upon if the legitimacy of *nikkahnaama* is already established in court. This entails that marriage after the incident is also used as a pretext to vilify the victim's intentions and as means to bypass law (LAS Case # 50).
- Building up on the finding we also found that in the cases of child sexual abuse, child marriage (also a criminal offense) was endorsed and used as means to compromise (LAS Case # 60).

The findings of this research uncover three (3) major phenomena. First, despite its illegality, alternate means of resolution through arbitration as out-of-court settlement and informal mediation by community elders *(jirga)* is still pursued in rape and sodomy cases. Second, court orders revealed that precedence is given to affidavits of settlement submitted by the

complainant/victim over all the collected evidence of rape. If the complainant/victim resiled and decided to 'forgive' and exonerate the accused then regardless of incriminating evidence i.e., victim's solitary statement, on-oath statements, and forensic evidence, preference is given to former (so-called victim's confessional statement). And third, marriage is commonly used as means to legalize compromise and make rape a compoundable offense. These all together create what Baxi (2010) termed as a "**culture of compromise**" that emphasize "how a criminal trial becomes a site for the contestation over the monopoly of an out-of-court settlement between the accused, the complainant, and the prosecuting agencies."[30]

7.3.1 Compromise as a Perceived Mechanism for Dispensing Justice

Parthasarathy & Oza (2020) in their article highlight that external means of 'justice' in rape trials administered by "respectable members of the community" reinvigorate and enforce gender, societal and familial hierarchies[31]. A perfect demonstration of this is the infamous case of Mukhtar Mai[32]. It is alleged that members of the community, after the incident, informed the police that "the dispute has been settled."[33] This incident proves that in a patriarchal society, a victim's body – whether a woman or a child – is portrayed as 'collective imagination of the community.' The use of extrajudicial institutions in rape trials for permitting settlements to restore 'normalcy' and maintain class and gender propriety in the society instead merely serve – and foster behaviours of – the rapists.

A compromise is seen as a second crime being committed against the victim because they once again seize the victim's agency for not being able to pursue her subjective decision-making. As Baxi argues "it is [the] alliances between families, governed by hetero-patriarchal and casteist

[30] Ibid.
[31] Parthasarathy, M., & Oza, R. (2020). Compromise in Rape Cases in Punjab and Haryana: Gendered Narratives Animating Judicial Decision-making. J. Indian L. & Soc'y, 11, 72.
[32] In 2002, Mai's brother aged 12 was abducted and gang raped in a village in southern Punjab. He was later confined and slandered for committing adultery. As a result, a panchayat was convened who decided to marry off Mai's brother with the girl and Mai with someone from the same community. The villagers refused to accept this decision and therefore Mai was called in the panchayat to formally apologise for his brother's deeds. When arrived, she was forcefully dragged from the convention to a hut, gang raped by 4 men while being guarded and watched by 10. The verdict of Anti-Terrorism Court (ATC) convicted 4 rapists and 2 jurors of the panchayat, remaining 8 were acquitted and subsequently freed.
[33] BBC. (2005). Mukhtar Mai - History of a rape case. BBC NEWS | South Asia. Retrieved November 28, 2021, from http://news.bbc.co.uk/1/hi/4620065.stm.

[in Pakistan, classist] constructs, that determine the contours of a compromise."[34] This culture of compromise, which is covertly perpetuated by the Criminal Justice System through persistent victim-blaming during investigation and trial, is indeed a complicated reality and can be presumed to contribute to the victim's loss of faith in the system.

The case files used for this study, and studies conducted in Sindh and Punjab, also corroborate the fact that a large proportion of rape and sodomy cases result in compromise/out-of-court settlement with complainants/victims resiling from their statements. In ICT, 76% of all cases resulted in confirmed or presumed compromise or out-of-court settlements. As noted earlier, prosecutors are not seen to make many efforts to overcome this hurdle and take these at face value. Judges seem to have a similar approach, with many compromises being accepted by the judge, even going so far as to state that in the order. This acceptance of compromise by the court goes against the law, which dictates that cases of rape and sodomy are not compoundable and out-of-court settlements are not allowed.

This can be seen in LAS Case # 10, a case of abduction, intoxication, rape, and sodomy, where the accused – as per the victim's testimony – was her ex-husband accompanied by two strangers. To prove the dissolution of marriage, *khulahnaama* was submitted to the court; however, in court, it later transpired that the marriage still holds. Nevertheless, the only accused arrested (ex-husband) was acquitted on the premise that the victim had resiled and accepted an out-of-court settlement facilitated by *Jirga*. The Additional Session and District court conceded to this settlement, approved it, and endorsed *Jirga's* decision that the accused will not physically violate her and will give her all her marital rights (as the court had already established that the marriage is still valid) or else the victim will re-lodge the FIR against the accused. It is unclear whether the victim found a sense of 'justice' by confiding in the decision of *Jirga* or was she coerced and swayed by the accused and/or the *Jirga* itself, before or during the five (5) months of delay in the trial due to pandemic-caused adjournments.

This study also found that the victim/complainant also turned hostile due to criminal intimidation perpetrated by the accused and/or other institutions and society members. LAS Cases # 53 and 70 show how the victim/complainant is threatened and pressurised to accept the compromise. The analysis also showed that cases, despite clear indications of intimidation, rarely get charged with 506 PPC[35]. According to LAS Case # 70, in which the husband of the victim was the sole

[34] Parthasarathy, M., & Oza, R. (2020). Compromise in Rape Cases in Punjab and Haryana: Gendered Narratives Animating Judicial Decision-making. J. Indian L. & Soc'y, 11, 72.

[35] Punishment for criminal intimidation.

eyewitness of the incidence of gang rape, the complainant (the husband) revealed that they were afraid of perpetrators and decided to 'settle' the matter as per the request of accused through certain compensation. However, after receiving death threats from the accused he decided to report the incident to the police. During the pre-arrest bail petition of the main accused, the complainant submitted the affidavit of compromise "on behalf of his wife (victim)" to the court, which was sanctioned; thus rendered the reason for acquittal. It is interesting to note that this case was registered against the offences of rape and criminal intimidation, albeit the police arrested only one out of three nominated accused and the victim/complainant received no protection from the police either. Additionally, knowing that the prosecution party received death threats from the primary accused, the court still decided not to take any action but simply acquit the accused based on the complainant's affidavit of compromise. Observations from this and LAS Cases # 14 and 23 reveal that a rape trial in Pakistan is used as a platform to contest for hegemony – often benefiting the accused – on an out-of-court settlement as they get authorized by the court itself.

We also observed in one of the outlier cases i.e., LAS Case # 53[36], that the court disproportionately gave precedence to the resiled statement of the victim/complainant even though the Judicial Inquiry report had recorded details of the incident of rape as well as malpractice of police and Magistrate – which explicitly contributed to criminal intimidation. The findings of the Judicial Inquiry report stated that the police "committed such mountainous blunders that no opinion other than this could be formed that both of them [Officer-in-Charge and IO] were in fact acting in connivance with accused or trying to protect/legitimise his unlawful acts." Not only did the police remain in contact with the accused, but the IO also himself admitted before the court that the victim was made to sit with the accused – who had previously threatened her of life – on the back seat of the vehicle during her escort to the district court. The accused received ample opportunity, since before and after the Judicial Inquiry, to incite fear and coerce the victim to resile, which became the reason for the acquittal. This case elucidates how gaps (criminal negligence) and loopholes created by the police and judiciary are predicaments that leave little choice for the victim/complainant but to accept compromise. In cases like such, we also found that judges arbitrarily put weightage on the accused being 'forgiven' and 'exonerated' by the victim, which in turn lead to them disregarding all the evidence of rape.

[36] A case of abduction, wrongful confinement, rape, forced marriage, forced conversion and criminal intimidation.

7.3.2 Forgiveness does not mean Expungement

Despite the recognition of the solitary statement being sufficient for conviction, the court has had different reactions and responses to such statements. The analysis shows that in several cases, rather than focus on the 161 or 164 statements, judges give disproportionate importance to the victim/complainant's resiled statement, which is clearly uttered either due to criminal intimidation, lack of faith in the Criminal Justice System, or an out-of-court settlement. As a result, all evidence of rape is discarded and neglected. Out of many such resiled statements, one that is also surprisingly approved in the court is where the rape victim/complainant 'exonerates' the accused of the offense of rape and 'forgives' him.

LAS Case # 64 is the testament of such mala fide practice. The accused had confessed to attempting to commit rape/sexual abuse of the child, aged 10 years, in police custody. However, in bail hearing, the complainant produced an affidavit of compromise before the Judicial Magistrate. Consequently, the victim – a 10-year-old child – was summoned before the Magistrate and upon inquiry stated that "he has forgiven the accused and that he does not want the accused to be kept in jail." The court relied on this statement and dismissed the case in favour of the accused. Not only is it unconstitutional and nullification of the law, but it also creates a practice of supporting out-of-court settlements instead of following the process of law and principles of a fair trial. Apart from questioning if statements are given without undue force, no further investigation is done as to why the victim changed the statement. LAS Case # 36 and 71 demonstrate a similar pattern. The judgements in both the cases posit that the parents of the victim (7- and 6-year-old children, respectively) have "forgiven the perpetrator in the name of Almighty Allah," and have exonerated the accused, and have no objection to his acquittal. The question here is not why a rape victim/complainant would 'forgive' the accused and abandon charges but rather why a judge would rely on the victim/complainant's 'pardoning-the-accused' statement even though there is enough medical and forensic evidence available for conviction (LAS Case # 36)? On what basis does the judge decide the probability of conviction in a rape trial?[37] And who should be held responsible for all the

[37] From the cases analysed, it seems that the judges perceived 265-K Cr.P.C. as an absolute power-yielding legislation that can be exercised at any stage of trial proceedings (including rape and sodomy cases), disregarding all evidence but approving out-of-court settlements and resiled statements, even if they make rape offences compoundable.

injustices experienced by those children? Should it be the 'respectable members of the community' who intervene to help reach a compromise between the opposing parties, or the family who abandoned the case, or the Criminal Justice System for its contribution in creating a culture of impunity for the rapists?

It is pertinent to note that a victim/complainant's pardoning statement must not be equated with expungement. This can be observed in LAS Cases # 57, 65, and 29. By doing so, the system establishes that rape is a personal/community matter and not an offence against the state. The analysis has revealed that compromises between the parties and forgiveness of the accused are linked to this perception of rape as a crime of 'honour'. It approves such social stereotypes that forces victim/complainant and their family to exonerate the accused so as not to avoid further "losing dignity and respect" and resort to compromise – usually through marriage – as means to regain it. As Jatoi (2016) asserted in her article "unless the legal framework accepts a heinous crime as just that — a heinous crime, without moral and societal connotations associated with it, there will be no justice, neither seen nor done."[38]

7.3.3 Marriage as Compromise

It is already established that compromise in rape cases is used as a mechanism to protect patriarchal norms. Within these norms, reviving the 'dignity' of women and their community is perceived as indispensable to rehabilitate 'normal' social relations. Sankari (2021)[39] in her article, Compromise in Rape Cases: The Need for Gender Sensitization, explains that these notions of honour, imposed by quasi- and intra-judicial institutions on the victim/complainant and their families, force them to view marriage as the only viable option for a better future after such a "dishonourable experience" of rape. Marriage is seen as a tool for the revival of a victim's lost 'honour' and a gateway for the victim to reinstate their position in society. The chances of marriage are already threatened due to this cultural notion that a rape victim is 'contaminated' and a 'damaged property.' It is one of the many reasons why victims of rape either avoid reporting the incident to their families and police or settle for marriage amidst court trials.

[38] Jatoi, B. (2016). The law that keeps on forgiving. The Express Tribune. Retrieved November 28, 2021, from https://tribune.com.pk/story/1199013/law-keeps-forgiving

[39] Sankari, B. (2021). Compromise in Rape Cases: The Need for Gender Sensitization. JURIST - Commentary - Legal News & Commentary. Retrieved November 28, 2021, from https://www.jurist.org/commentary/2021/07/sankari-compromise-rape-gender-sensitization/

Based on the analysis of case files, we divide such cases into three (3) distinct categories. First, perpetrators sway and rape women with the promise of getting married, as can be observed in LAS Case # 17. These instances reveal that it is commonly perceived that marriage after rape sanctifies the act by default. This was also found by Parthasarathy & Oza's study (2020) where the accused made false promises of marriage to enter a physical relationship with the victim[40].

Second, *nikkahnaama* is submitted before the court to justify the incident of rape; thereafter the victim often resiles, leading to acquittal. According to the amended section 375 of PPC (2012), "a man is said to commit rape who has sexual intercourse with a woman […]: 1. against her will, 2. without her consent."[41] Hence, marital rape is recognized as a punishable offense, and no marriage document justifies rape. This category also includes cases where marriage is contracted during the investigation or trial phase (after the incident), as can be observed in LAS Case # 50.

Third, the submission of *nikkahnaama* to justify rape but the age of the victim is below sixteen (16) years[42]. This can be exemplified with LAS Case # 14, where gang rape of 14/15 year old was justified through producing *nikkahnaama* and intervention by the *Jirga.*

LAS Case # 53 (details mentioned previously as well) is an interesting case study. According to the victim's on-oath statement, the accused had abducted and subjected her to physical and sexual abuse. She was then produced before a *molana* and under persistent threat – from the accused – was converted to Islam. After further being targeted to sexual abuse, the accused presented her to the same *molana* who solemnized her *Nikkah* with the accused. According to the victim, she kept on experiencing sexual violence until the day police recovered her and lodged the FIR. The judicial inquiry report scrutinized the case and cross-examined the accused and the *molana,* and successfully concluded that the victim was converted and solemnised through the "elements of coercion or duress." When perused through the accused and *molana's* testimony, one can ascertain that conversion and marriage are over accentuated. (As a result, the report recommended suspending *molana's* licence). The notion that once 'converted and married to the accused,' clearly indicate deliberate attempt of sanctification and legalization of rape. The judicial remarks in the report termed this process as 'violable of law.' It stated that,

[40] Parthasarathy, M., & Oza, R. (2020). Compromise in rape Cases in punjab and haryana: gendered narratives animating Judicial Decision-making. J. Indian L. & Soc'y, 11, 72.

[41] "With her consent, when the consent has been obtained by putting her in fear of death or of hurt," or with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married."

[42] According to S. 375 PPC (2012), a man is said to commit rape with or without the consent of a girl aged below sixteen (16) years. The age of consent in Sindh is eighteen (18) years.

"[…] the foundations of this entire transaction [forced conversion and solemnizing the marriage] seemed violable of law, and if the foundation of something was based on criminal intimidation and violable of law then the entire superstructure built on it would fall down on ground like house cards."

Generally, while it is difficult to determine whether the victim compromised (through marriage) by practising her agency or under coercion, it is crucial to note that compromises in rape cases have no legal legitimacy. This can be corroborated through the Supreme Court's (SC) judgement in one of the Haryana cases where SC quashed the defence counsel's appeal of acquittal despite their submission of an affidavit of compromise. Sankari (2021)[43] explains that SC's action "crushed the patriarchal notion that a compromise (especially a marriage) can restore a victim's "dignity."

The notion of marriage as a compromise and that too being sanctioned by the court in the cases of child sexual abuse is the death of justice. The infamous case of Kainat Soomro[44] is the perfect demonstration of judicial failure because the court had sanctioned the allegedly forged matrimonial contract despite the victim's constant denial of it. A similar instance was observed in LAS Case # 14 and 60 where marriage – as a compromise – was sanctioned by the court assuming that the victims, aged 15 and 13 years old respectively, were said to have contracted marriage by their "freewill."

Utilizing the institution of marriage as means to compromise legalizes rape, and serves as an escape route for the perpetrators. It turns rape into a mere sexual encounter. It makes this heinous crime an act of passion, committed by both the accused and the victim willfully and with consent. As Sankari (2021) puts it, "It provides hope to the perpetrators […that] they can walk free, by coercing victims into a compromise."

[43] Sankari, B. (2021). Compromise in Rape Cases: The Need for Gender Sensitization. JURIST - Commentary - Legal News & Commentary. Retrieved November 28, 2021, from https://www.jurist.org/commentary/2021/07/sankari-compromise-rape-gender-sensitization/

[44] In 2007, Kainat Soomro (aged 13 years) was gang raped and later received life-threats from the accused to accept compromise. The accused got acquitted because 'marks of violence' were missing, and the victim had "allegedly" signed the contract of marriage by her freewill.

7.4 THE LINGUISTICS OF SECRECY AS CODED MISOGYNY IN JUDGEMENTS

"Language" is the most important tool judges have at their disposal in changing social mindsets and stereotypes[45]. But as much as it can be used for positive change, it has been also used to perpetuate existing stereotypes. Legal language is also a product of social construction, reflecting the biases and values of the societal norms, concepts, categories and terms, which has the potential to shape the understanding of situations. Through the way it defines things and talks about events, it has the power to silence alternative meanings and suppress other stories. In this regard, a judge is supposed to be impartial and objective in his reasoning; however, they too are inevitably constrained by their predispositions when arriving at a legal conclusion.

Judicial stereotyping is a common and pernicious barrier to justice, particularly for women victims and survivors of sexual violence[46]. Such stereotyping causes judges to reach a view about cases based on their preconceived beliefs, rather than relevant facts and actual enquiry. This can have potential wide-ranging consequences. A leading legal Realist scholar, Jerome Frank, further explained how legal judgements are a depiction of a judge's intrinsic prejudice and biases, embedded in social stereotypes, based on their instincts and impulses. He termed this personal impulse as "**judicial hunch.**"[47]

'Judicial hunch' is manifested implicitly in orders and judgements. Judge's opinions are therefore not exclusively anchored on a systematic analysis of fact and law but rather blended with their latent biases. As Schroeder hypothesizes that "every judicial opinion necessarily is the justification of every personal impulse of the judge concerning the situation before him, and the character of these impulses is determined by the judge's life-long series of previous experiences, with their resultant integration in emotional tone."[48] The employment of

[45] Finley, L. (1989)."Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning" Faculty Scholarship Series. Paper 4011.
[46] Pillay, N. (2014). 'Equality and Justice in the Courtroom'. Huffington Post. 3 March 2014.
Vandervort, Lucinda. "Mistake of law and sexual assault: consent and Mens Rea." Can. J. Women & L. 2 (1987): 233.
[47] Capurso, Timothy J. (1998) "How Judges Judge: Theories on Judicial Decision Making," University of Baltimore Law Forum: Vol. 29 : No. 1 , Article 2
[48] Ibid.

non-biased linguistics by the stakeholders of the Criminal Justice System (judges, police, medico-legal officers, and lawyers), depicted in judgements, further validates and conserves societal structures of kinship and alliance.

A preliminary linguistic analysis of the case files for this research showed that judgements are not necessarily void of judge's impartiality. The study of judgements[49] from the cases analysed explicated that judges engage in stereotyping in one of two ways. Judges may apply, enforce and perpetuate stereotypes in their decision-making by substituting stereotypes for law and facts in evidence. Alternatively, they may facilitate the perpetuation of stereotypes by failing to challenge stereotypes, for example by lower courts or other stakeholders like the police (in 173 challan). Albeit, they seem to reinforce patriarchal notions and classificatory practices of blaming the rape victim, associating 'honour' with rape, and describing rape as a 'consensual act', which in turn is portrayed within the semantics of compromise, presuming the 'impossibility' of conviction.

The findings of this research are therefore threefold:

- Judges often use the language of consensual act to describe assaultive acts i.e., sexual assault. Describing rape through euphemism like 'bad deed', 'act of depravity' or replacing the term 'rape' with '*zina*' (consensual sexual intercourse) or 'illicit' sexual intercourse by the defence counsel and IOs –supported, adopted, and employed by the judge as well – curtails and even conceal the intrinsic violence of the assault, making it easier to mislead and misdirect. It is possible that a judge may or may not be using such language intentionally, but the style/tone of judgements is demonstrative of their 'judicial hunch' and preconceived notions.
- Judgements revealed that the judge arbitrarily accord victim/complainant's resiled statements more weightage than any other statement asserted by the victim/complainant or witnesses through the duration of a rape trial. The legal conclusions often avoid assessing the credibility of the incident; it simply rejects the charge altogether, often blaming the prosecution party for 'wasting the court's precious time and resources.' The use of such a degrading and demoralizing tone for rape victims by the providers of justice not only re-traumatizes the victim but also violates victim's dignity and confidence. This

[49] It is important to emphasise that the research has analysed judgements, not the judges and their predispositions.

aspect of analysis also includes the use of such a tone where the judge demonstrates his sympathy with the perpetrator instead of remaining neutral. Once the victim/complainant is declared hostile or sine die (not appearing in the court), the tone is shifted to pitying the accused for being 'dragged' into the court. Judgements ascertain victim/complainant's resiled statement so important that they drastically transform their vision and therefore language to considering the accused and the court as 'true victim'.

- The judgements quite explicitly revealed the deployment of the language of compromise. As already discussed in length, the cases analysed found that courts have recognized and endorsed out-of-court settlements in the crime of rape. Judges systematically made the offense of rape compoundable by providing the accused with ample opportunities, through negligence and indifference, to abuse their power and force the prosecution (taking away victim's agency) into compromise. In such cases, courts became mediators aiming to balance the social relations and re-enact patriarchal norms. Judgements showed that the discourse of reconciliation oriented towards conserving and reviving family, conjugal relationships and stereotypes cause judges to misinterpret and misapply laws (especially 265-K Cr.P.C in rape trials). This discourse discounts all material evidence and rely excessively on pardoning statements and the 'compromised affidavits', which in turn lead to miscarriages of justice and re-traumatization of victim/complainant.

In Pakistan, as discussed, the majority of the power holders in society are male. Therefore, it can be said that legal language is largely male-defined and the process of reasoning is built on male conceptions of problems and of harm.[50] This means that the majority of the law can be said to be men's understanding of women, women's nature, their experiences and capacities as opposed to women's definitions that have informed law and legal language. This section provides a linguistics analysis of judgements from the cases analysed.

7.4.1 Using the Language of Secrecy to Describe Assaultive Acts

Rape victims are often subjected to severe character assassination, with every aspect of their personality and identity being over-analysed to prove that the victim herself was responsible for the crime committed against her. Additionally, certain law enforcement officials continue to

[50] Bavelas, J., & Coates, L. (2001). Is it sex or assault? Erotic versus violent language in sexual assault trial judgments. Journal of Social Distress and the Homeless, 10(1), 29-40.

assess women according to their set traditional patriarchal standards of morality and any non-conformity from such standards is viewed negatively and harms the proceedings. In this regard, character-shaming and blaming the victim through storytelling practices are often deployed by defence counsel to discredit and disqualify the victim's testimony (LAS Case # 61). Take for instance the use of phrases like *izzat lutna* (dishonouring act), *zina* (illicit sexual intercourse) and *bud-fely* (act of depravity) to describe the sexual assault in 173 challan by police reaffirms victim-blaming and 'dishonouring' culture. Interestingly, in LAS Case # 64, the incident of attempted sexual assault of a 10-year-old child was reported as "homosexuality" in the preliminary medico-legal examination report. However, the use of such terms like "outrage the modesty" (LAS Case # 46) in court, by judges, leads to the solidification of social stereotypes. This section will demonstrate the use of language and the perpetuation of stereotypes to describe sexual assault by using examples from judgements in cases of sexual violence against women.

LAS Case # 71 is a case of attempted rape of a 5/6 years old child. In the judicial order, the incidence of rape was rather described as:

> **"The case of the prosecution, as set up in the FIR, is that, accused attempted to commit *Zina* with the niece aged 5/6 of the complainant, therefore this case was registered. […]**
>
> **"I have carefully examined the respective arguments and gone through the file which reveals that the allegation against the accused facing trial is that he attempted to commit *Zina* with the niece of the complainant." (Same pattern is observed in LAS Case # 62)**

Language gives a vision of reality, a story. It can give different impressions of one incident. The term *Zina* inevitably connotes mutuality and consent in the act of sexual intercourse. It also refers to extramarital sexual affairs which is frowned upon in the context of Pakistan. Its usage in judicial settings obscures the very distinction between a consensual act and a non-consensual act i.e., assault, in law – wherein latter is force and abuse of power over the body and agency of another. It describes assault as an act of pleasure done with the free will and consent of the victim. The court of law is not authorised to alter the language of a statute for the purpose of supplying a meaning, yet it is true that in certain circumstances it is permissible for the courts to give effect to the true and patent intention of the law-maker. However, in the aforementioned case, the incorrect interpretation of the law while describing the attempted rape of a child leads to manifest absurdity and serve re-enactment of societal stereotypes.

The language used in the judgement of LAS Case # 23 also reaffirms the idea of mutuality in the offense of rape:

> **"When she prepared the tea the proposed accused mixed some intoxication in the tea and she became senseless and he committed rape with her and assured her that he will marry her and not with her sister […] The proposed [accused] by blackmailing the petitioner has committed rape with her several times."**

The word 'with' implies consent as it is used for the purposes of defining 'accompanying another', or in connection with another, etc. It does not identify the use of force in a case of rape. Therefore, it indicates the consent of the victim. Moreover, it can be noticed that while describing the facts of the incident the victim is directly referred to using the pronoun 'she', whilst the accused is mentioned indirectly by using terms like 'proposed' or 'appointed'. The only instance the accused was referred by 'he' was to connote that the sexual act was committed. The judge could have categorically stated that the 'accused raped her' or the 'victim was subjected to rape.' These definitions and terms identified by the judges have a direct impact on shaping our understanding, thought process, and assumptions about the way people think and social issues.[51]

[51] Finley, L. (1989)."Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning" Faculty Scholarship Series. Paper 4011

7.4.2 Exoneration of the Accused and the Benefit of Doubt

From the cases, the analysis shows that rape trial does not disproportionately convey true facts and evidence, instead, it mimetically re-enacts the rape and distorts, discredits, devalues the victim's testimony, which in turn inscribes further blame and humiliation on them. This inference was observable particularly in the cases where the victim was declared hostile. Among many other reasons for their hostility (discussed in earlier sections), one is the victim's position in court and being assaulted via the use of offensive and demoralising language. As Baxi, points out that "positioned as a bystander in a case between the accused and the state, the rape survivor experiences the trial as Kafkaesque".[52] A perusal of judgements revealed three clear patterns. First, overreliance on the victim's resiled statements leads judges to use linguistics that discredits and blame the prosecution. Second, the victim's inability to fight back or produce evidence contribute to the judges' attitude of sympathising with the accused. And third, prejudice in judgement showed character assassination of the victim and focusing on the past relationship of the victim with the accused.

7.4.3 Discrediting/Blaming the Victim

The judgement in LAS Case # 9 (a case of attempted rape) targeted prosecution for their mistakes. It underestimated the credibility of the victim's detailed and independent solitary statement and employed the language of inscribing blame on the victim.

> **"[Beside victim and one witness's on-oath] the prosecution did not produce the remaining witnesses. […The complainant then resiled and negated her story during cross-examination]. The accused was not arrested at the spot. She further stated that she did not want to pursue the case further and have no objection, if the accused is acquitted. The cross-examination and other record reveals that the alleged torn clothes were not produced by the complainant before the police at the spot-on day of occurrence and same were produced on 11.12.2017. It appears that the said recovery has been managed. If the police came to the spot then why she failed to hand over the clothes then-and-there to police."**

[52] Baxi, P. (2014). Public secrets of law: Rape trials in India. Oxford University Press.

In the above excerpt, it is evident that the victim is blamed for not submitting the evidence on time. Instead of stating a fact in judgement, the judge's opinion seems to be overly relying on the defence's argument about delayed submission of material evidence. The language here is not even phrased to highlight the negligence of the victim and/or the police, rather the former is essentially blamed for the delay. Such antagonistic tone presumes mala fide intention of the victim, which in turn depicts her as a liar. The judgement discounts the trauma victim must have experienced and exclusively relies on her resiled and compromised statement, making it an important opportunity for the judge to reassert his prejudice.

The analysis of judgements also revealed that besides being called a 'liar', the victim/complainant is also denigrated for the alleged 'misuse' of the justice system – as can be exemplified in the below-given excerpts from LAS Case # 46 (a case of attempted sexual abuse of a child):

"the complainant did not take interest and played hide and seek with the court proceedings and played mockery."

"If other witnesses are summoned there would be no probability of conviction of the accused and continuation of the trial against the accused would be a futile exercise and abuse of law." (Also mentioned in LAS Case # 53)

The words 'mockery', 'futile exercise' and 'abuse of law' depicts that whoever steps up to seek justice and then resile due to societal and familial pressure, criminal intimidation, or loss of faith in the system are the main culpritss for exploiting the law and its resources. This shifts the blame from the accused for committing the offense of rape (which the state can prosecute) to the victim for manipulating and ridiculing law for personal gains (or 'ulterior motive' as mentioned in LAS Case # 14), making the court the 'real victim'.

7.4.4 Sympathising with the Accused

Society and the Criminal Justice System also tend to sympathise with the accused in many ways, some subtle while some overt. This sympathy towards the accused and the reservation of doubt solely in the victim's testimony add to the victim's trauma. There are many ways in which the Criminal Justice System sides with the accused. While the victim faces character assassination and defamation, the accused enjoys character building. The character of the accused is analysed to make justifications for why it is not possible for the accused to have committed such a crime. The education, profession, and socio-economic status of the accused can all be used to bolster society's arguments against the victim, and increase the criminal justice system's doubt in the victim's testimony. If the accused is well-educated, then their education can be used as a shield against the victim's testimony – 'how can someone so educated do something so heinous?' If the accused is uneducated, then their lack of education is used to justify the crime, and the blame is shifted towards the education system and lack of government reforms regarding education. If the accused is wealthy, then their wealth is used to doubt the victim's testimony – 'Why would someone so rich do something like this?' This is observed in LAS Case # 46 where the age of the accused serves as a pretext by the judge to demonstrate his inherent bias towards the victim's testimony.

> **"The accused who is old age person cannot be placed on the mercy of complainant for further many months. […] accused cannot be dragged in the court for further many months"**

The enmeshment of class and gender in the analysis of a victim and perpetrator's identities is further evidenced in Baxi's citation of a case where the victim hails from a low socioeconomic background. In this case, the medical jurisprudence comments on the victim's 'class' and how someone from the 'labour class' should have been able to resist their assailants as their bodies are used to performing hard labour.[53]

[53] Ibid.

The language used in the decree thus explicates that the custodians of law are not free of biases and prejudices. The age-old principle of law being blind is violated when the judge demonstrates his sympathy with the perpetrator – in judgements using such tone, style or terms – instead of remaining neutral. In the examples below, the tone of the judgement is not neutral; instead attempts to serve the accused to regain his lost respect are observable, which in turn contributes to discrediting the commission of the crime and/or the victim's testimony.

> **"The petitioner was dragged in the FIR maliciously, mala fidely, and with ulterior motives by the prosecution and has no role in that criminal act. And that the petitioner is absolutely innocent and has been involved by the police with mala fide intentions." (LAS Case # 14)**

> **"The petitioner is previously non-convict and processing the case after the compromise with the affectee will damage his career and life irreparably." (LAS Case # 59)**

The excerpt from the verdict of LAS Case # 59 shows that the judge not only sympathises with the accused based on his past clean record but also takes into consideration his future life and career. In a rape trial, where it is established that a victim is one who was subjected to such a heinous crime, this treatment for the accused after endorsing a compromise reveals the judge's initial 'hunch' and his inherent bias. Without a doubt, it is the victim who had to experience trauma, not the accused. Therefore, the use of the phrase 'damage his career and life irreparably' for the accused is immoral and a misinterpretation of law.

7.4.5 Prejudice Embedded in Doubt

An example of subjective judgment by the judiciary is their focus on a victim's background, and how any aspect of the victim's life can be moulded to justify her sexual abuse. If the accused and victim are relatives or people who knew each other before the crime was committed, their relation is used to either justify the crime or its dismissal. For example, suppose the victim was educated beyond higher secondary and was a graduate or graduate student. In that case, her education is used against her to argue that 'letting her go to' university led to her being raped. The university is here portrayed as an institution that exposes women to an 'open world' with increased interaction with the opposite sex. These interactions and the daily commaute to and from university are marked as contributing elements to the rape. Additionally, suppose the

victim is a working woman. In that case, her employment is used to make a strong case for how the victim was responsible for her rape because she chose to work instead of being at home and catering to her family. Interaction with men that are not immediate family, be it via education or profession, is understood as something done purposely to invite the committing of sexual assault against the victim.

"It is an admitted fact that the complainant went to the UK with help of [the accused]. The longstanding relation between the complainant, her family and the accused has not been denied."

"Complainant went to England for her study [name of the institution] and the accused also went to England UK for education in the same institution. […] they have both got admission in the same institution on the same date."

"The photograph further shows that the complainant had love and faction towards other family members including the first wife of the accused. These photographs are sufficient for the relationship between both the families."

Baxi in her study of rape trials notes that the judiciary defamess victim's character in various ways including targeting their past or overly relying on forensic evidence – ignoring the delay in case reporting due to being threatened and/or traumatization – reinforces patriarchal victim-blaming culture within the precinct of court as "deeply entrenched, phallocentric notions of justice".[54]

This is evident from the aforementioned excerpts from the final verdict of LAS Case # 49 where the victim's relationship with the accused and his family is overly relied upon and used as the foundation to justify the act being conducted consensually, via the victim's free will and after solemnizing marriage[55]. A similar pattern can be observed in LAS Case # 23 where the judgement has attempted to belittle the offence of attempted rape:

"Evidence reveals that the offence of rape was not completed only the allegation of attempt of rape has been levelled."

[54] Ibid.

[55] The accused was acquitted on the submission of a marriage certificate and photographs depicting 'good relations' with the accused and the family.

The placement of the word 'only' in the sentence shows that as per the judge's opinion, the incomplete act of rape is not a serious crime as a completed act. It portrays the incidence of attempted rape as requiring less juridical attention and resources than an offense of sexual assault. The use of such linguistics, discussed in this section, further encourages the perpetrator to coerce prosecution into out-of-settlement. And hence, the deployment of the language of compromise normalizes the offence of sexual assault while also preserving patriarchal notions and empowering victim-blaming culture.

7.4.6 Linguistics of Compromise

Courts and law enforcement agencies play an integral role in the operations of public secrecy. The linguistics and stylistic analysis manifesting those judgments seem to be grounded in socially constructed thoughts of the judges, emphasising the importance of stereotypical social setup and tradition which in turn aims to preserve patriarchal norms. Judges and other stakeholders impose and accentuate on such cultural assumptions and prejudice in the court setting, which then transform rape victim's testimony into statements of consensual sex (as in LAS Case # 23 where the police refused to lodge an FIR to "suppress the charges "in the name of family honour and future life of the victim/petitioner""). During cross-examination, defence lawyers ubiquitously dictate the linguistic space as a strategy by constant repetition of the incident and describing it in consensual terms[56]. Its consequences are often reflected in verdicts where the judge seems to adopt defence lawyers' linguistics, albeit in a less harsh tone. This makes the victim's experience of testifying traumatic and one that can be characterized as a re-rape, where the victim's agency is once again attacked. This, along with other factors (discussed in the section on compromise), forces the prosecution to settle either out-of-court or through marriage or pardoning to avoid further being subjected to violence. Even though Pakistan's law does not permit compromise in non-compoundable offences, by endorsing settlement and marriage-as-compromise through engraving it in judgements, judges provide rapists a safe haven to get acquitted. While applying the linguistics of compromise in a rape trial, judges misapply, misinterpret and misdirect law that creates a discourse of reconciliation and a culture of impunity for the rapists.

To exemplify misapplication of law through deploying the linguistics of compromise, below we will discuss two (2) cases in particular.

[56] Baxi, P. (2014). Public secrets of law: Rape trials in India.

"Though the offences u/s 365/377-B of PPC are non-compoundable, but it is settled law that in the category of non-compoundable offences, the compromise can be considered." (LAS Case # 59 – during post-arrest bail petition)

As explicated earlier as well, the law clearly states that rape is a non-compoundable offense which means compromise is prohibited and illegal.

"Compromise has been affected between the petitioner and the complainant through their elders, therefore further proceedings in the case will be futile. […] (LAS Case # 59)

Despite the illegality of compromise in rape trials, the judge acknowledged the intervention of 'elders' in mediating an out-of-court compromise. The judge not only accepted their decision but also declared investing further time and resources in prosecuting this case a 'futile' exercise, one that would not lead to a conviction.

"Though the offense u/s 376 PPC is not compoundable in nature, but after the statement of the complainant, the case has become one of further inquiry and probe. The complainant is sui juris and fully knows her good and bad who categorically stated that accused is not her accused […]"(LAS Case # 59)

The judge referred to the victim as 'sui juris' or an independent person capable of making one's own decision. However, in doing so, he ignores the fact that the victim has been subjected to rape and, consequently, trauma. Such language is employed to help judge distance himself and the court (or state) from the crime and make rape an individual or personal matter. It conceptualizes rape as a sexual and 'mutual' concern instead of power-based violence and a crime against the state. Additionally, the use of the term 'categorically' shows that the court considers the victim's resiled statement indispensable to the case and the verdict. This simply discounts the victim's previous statements and disregards all material and non-material pieces of evidence. As Jerome Frank had conceptualised the judicial decree is reflective of judicial hunch which is then justified and blanketed by the (mis)interpretation of law.

LAS Case # 53 is yet another example of the misapplication of the law. It is a case of abduction, wrongful confinement, forced conversion, forced marriage, rape and criminal intimidation. The judicial inquiry report had already established, with evidence, that the victim was forcefully converted and solemnized. The report also declared that the victim was threatened with life and thus had to constantly experience criminal intimidation from the accused and the police even after the incident was reported. Nevertheless, during the rape trial, the court ignored all the findings and recommendations of the judicial inquiry report, endorsed the conversion and marriage, and accepted the complainant's resiled statement, declaring the case as 'groundless' and yet another futile exercise.

> **"It appears that the alleged abductee was Christian by faith and she contracted marriage with the accused with her free will and consent after embracing Islam. Nobody forced her to change her religion, she embraced Islam with her free will, consent. […] Particularly when she converted to Islam then her previous marriage with the complainant dissolved.**

> **"It has been alleged that the offense does not attract as per averments of the case. The complainant [husband of the victim] himself is negating the commission of the alleged offense. No offense is made out against the accused/petitioner. No evidence is available on record to connect the accused/petitioner with commission of offence. The case is groundless and there is no probability of conviction of the accused/petitioner."**

It has been said, for instance, "[t]he Criminal Justice System can play a major role in the process of replacing "mythical" views of sexual assault, and the social definitions of sexual assault based on these myths, with views based on fact and the results of empirical studies that are relevant to the legal definitions of sexual assault."[57] They must debunk stereotypes and patriarchal notions in gender-based violence cases, and challenge the stereotypical reasoning of other judges and other actors in the legal system especially through the use of objective and legal language.

[57] Cusack, S. (2014). Eliminating Judicial Stereotyping. Equal Access to Justice for Women in Gender-Based Violence Cases Final Paper. Submitted to the Office of the High Commissioner for Human Rights

8 CROSS-CUTTING THEMES AND AREAS OF CONCERN

8.1 LACK OF DETAILS OF ACTUAL OFFENCE IN INVESTIGATION

There is very little detail provided of the actual criminal act itself in any of the documents across all stages of the Criminal Justice System. Vague statements such as "He did bad things to me" (LAS Case # 6) are instead used, or simply "he committed zina" or "he raped me". There is little detail provided of the actual incident. Placing this in direct contrast with other criminal offences, such as, for example, hurt, where great detail of the offence itself is given and critical in understanding what happened.

This would be important for example for the police to understand which type of rape was committed i.e., digital; penile penetration of the vagina or anus, and thus which section of law to apply, was a condom used, where did he ejaculate or did the accused ejaculate at all, etc.; for the medico-legal to identify which part of the body to look for any type of evidence; for the Magistrate to decide exactly which crime was committed and which section of law e.g. attempted rape vs. rape or sodomy vs. rape; for the prosecution to frame the arguments in court and to ensure a clear narrative of the victim is provided to ensure no gaps are left in the prosecution's cases, and for the judge in balancing out both arguments and making a decision on the case.

This ambiguity is also evidence of a tendency to tone down the severity of the offence. There is discomfort within Pakistani society when it comes to discussing anything involving sex, whether consensual or rape, even when required. There is limited language in describing this type of violence "that wants it to remain unspeakable, in the shadows, unnamed."[58] It is confusing how to talk about "sexual violence without either trivializing it, obfuscating the systems that enable it, or getting so specific as to become salacious or triggering."[59] Thus, the

[58] https://www.vox.com/culture/2017/11/30/16644394/language-sexual-violence
[59] https://www.vox.com/culture/2017/11/30/16644394/language-sexual-violence

language either allows it to be 'fuzzy' or provides details allowing the reader to understand and imagine exactly what happened.

In the opinion of the authors, in a criminal case, it should be necessary to go the latter route. It is important to recognise that these acts are violent. **"If you're a judge and you're writing about a defendant who's convicted, you wouldn't want to write about it in terms of the defendant's having 'intercourse' with the victim or 'fondling the victim' rather than 'he forced his penis into her vagina' or something that reflects the reality of the crime,"**[60] The same way, a criminal case would describe a murder, or an injury, giving details of the hurt caused, a rape must be described. This was emphasised by Constance Grady, who stated, **"the less specific my language is, the more invisible the violence becomes."**[61]

Many of the cases, which is common in precedents as well, use the language of consent in cases of rape, referring to the rape as 'illicit intercourse', 'subjected her to intercourse' etc. The word 'intercourse' is one associated with consensual sex. Sex or intercourse without consent or against the will has a specific name i.e., rape or *zina bil jabr*. **"Using words that are "nicer" versions of the true word diminishes the experience of the survivor and the severity of the crime."**[62]

8.2 DISPROPORTIONATE EMPHASIS ON DNA EVIDENCE AND LIMITED FOCUS ON CIRCUMSTANTIAL EVIDENCE

Recent developments in the study of forensic evidence have significantly shifted the onus of a conviction or acquittal in a GBV case to DNA evidence. These developments include massive advancements in DNA mapping in Pakistan. However, the shift from forensic evidence acting as an additional source of evidence to being – in some cases – the only investigative action by the police has been rampant and concerning.

Further, there seems to be little recognition or understanding even amongst all the criminal justice actors (police, prosecution, and judiciary) of the value of DNA. While indeed a positive DNA and match with the accused prove sexual intercourse with the victim, but it does not

[60] https://www.americanbar.org/groups/diversity/women/publications/perspectives/2015/winter/how_language_reflects_our_response_sexual_violence/
[61] https://feminisminindia.com/2020/12/03/language-around-rape-india/
[62] https://rsvporg.co.uk/blog/the-power-of-language/

prove that the sexual intercourse was without consent. Additional evidence is needed to prove the lack of consent which goes beyond medical evidence. However, the police have not been seen to make the effort to prove this point in the case files analysed, nor do the prosecution and judiciary place too much emphasis on it. Instead, often negative DNA and forensic tests are seen as a basis of acquittal.

While the Supreme Court has ruled that DNA tests should be conducted and samples should be preserved for all sexual offence cases, the Supreme Court also attests to the non-infallibility of DNA evidence. Amendments made to the Cr.P.C. under the Criminal Law (amendment) to Offences Relating to Rape Act 2016 mandate the post-arrest medical examination of a person accused of sexual offence. The 2018 Zainab Rape and Murder Case is an example of successful DNA profiling, where DNA profiles were generated for more than a thousand males dwelling in the vicinity of the crime scene. The DNA samples of the perpetrator matched with the vaginal swabs of the victim, resulting in the successful conviction of the perpetrator. The Lahore Motorway gang rape case is another example of successful DNA profiling and geo-fencing, where the prime suspects were identified using NADRA records and their fingerprints stored in the national database.

The contribution of forensic analysis examination in the successful solving of prominent sexual violence cases has veered the focus of investigational bodies towards DNA profiling and evidence collection from the incident investigation. While the successes of the Zainab Case and Lahore Motorway Gang Rape case have been pivotal in introducing national-level advocacy and policy measures, at the same time, these cases have contributed to unrealistic expectations from DNA analyses from within the prosecution and investigative bodies. LAS Case # 64 is an example of futile attempts at medical examination and DNA matching. This was a case of attempted rape; hence, taking anal swabs of the victims and submitting them to the PSFA only served to add to the victim's trauma and extended the trial.

Considering the lack of proper DNA evidence collection and storage practices within ICT police, the emphasis placed on DNA evidence to solve cases of sexual assault is misplaced. While DNA evidence can be a strong corroborative piece of evidence, it is not the strongest corroborative evidence and should not be treated as such by the police and judiciary.

Aligning with the disproportionate focus on DNA and forensic evidence (without collection of sufficient evidence for the latter), a recurring theme is the lack of focus on indirect or circumstantial evidence by any of the actors. Circumstantial evidence is defined as follows:

"In law, evidence not drawn from direct observation of a fact in issue. If a witness testifies that he saw a defendant fire a bullet into the body of a person who then died, this is direct testimony of material facts in murder, and the only question is whether the witness is telling the truth. If, however, the witness is able to testify only that he heard the shot and that he arrived on the scene seconds later to see the accused standing over the corpse with a smoking pistol in his hand, the evidence is circumstantial; the accused may have been shooting at the escaping killer or merely have been a bystander who picked up the weapon after the killer had dropped it."[63]

Rape, sodomy, and other forms of sexual violence are cases most often conducted in secret, and rarely is there evidence found in such cases. Medical and forensic evidence are also limited. Thus, primary focus is placed on the solitary statement of the victim, and upon circumstantial evidence which allows for an inference that the accused is the person guilty of this specific crime. This would include in addition to medical evidence, documentary or digital evidence (CCTV cameras, geo-tracking, phone records, recording etc.), eyewitness accounts placed accused at the scene of the crime etc.

Unfortunately, an examination of these case files reveals that few, if any, of the cases focus on circumstantial evidence. The focus is on medical/forensic evidence and solitary statements of the victim. However, circumstantial evidence, as the primary form of evidence, or as corroborative evidence would be critical. Whether it is the police who do not collect such data for whatever reason or prosecution of who does note this during scrutiny of the challan, criminal justice actors must emphasise the collection, presentation, and use of such data at trial.

[63] Britannica, The Editors of Encyclopaedia. "circumstantial evidence". Encyclopedia Britannica, 12 Apr. 2018, https://www.britannica.com/topic/circumstantial-evidence. Accessed 19 January 2022.

8.3 CHILD VICTIMS: IS THE SYSTEM FAIR TO THEM?

A predominant number of sexual assault cases involve child victims, below the age of 18. According to Sahil's "Cruel Number 2020" report, 8 children are abused daily in Pakistan – a surge of 70% since 2019.[64] When a child is sexually assaulted, whether through grooming or abduction or forceful confinement, s/he initially experiences helplessness with denial. As a result, the process of disclosure often happens either accidentally (usually among children aged below 7 years) or purposefully (common in adolescents and teens). Once disclosed to parents, guardians, or a relative, the child first encounters scepticism, isolation, estrangement, and lack of credibility or acceptance. Considering that in most cases of child sexual assault the perpetrator is a trusted relative or an acquaintance to the victim or their family, the child often meets two immediate reactions: victim-blaming and implausibility of the incident. These factors coupled with societal prejudice (where sexual assault is a taboo topic associated with 'shame' and 'dishonour') often culminate either in discounting the occurrence of assault or delayed reporting. A further complication is that disclosures happen in phases, over time – not in an event as is generally perceived – and may include denial, utterance, recantation, and restatement that the abuse did in fact occur.[65]

Thereby, it is incumbent on law enforcement sector and the judiciary to ensure an easy and less traumatic process of reporting child sexual abuse and better evidence collection/presentation "by adopting investigative [and prosecutorial] tactics that are developmentally, culturally, and gender-appropriate for children."[66] The analysis of cases under this research however showed absence of victim-centric operating procedures in the Criminal Justice System, ubiquitously resulting in retraction and/or court-sanctioned compromise.

It is observed, and as reported in the literature, that physical, material, or forensic evidence is typically absent in the cases of child sexual abuse. This leads to a greater reliance on child

[64] Sahil, "Cruel Numbers 2020", http://sahil.org/cruel-numbers/
[65] London, K., Bruck, M., Ceci, S. J., & Shuman, D. W. (2007). Disclosure of child sexual abuse: A review of the contemporary empirical literature. Child sexual abuse, 21-50.
[66] Group Development Pakistan (n.d). Criminal Justice Matters Involving Children Training Manual for Judges, Prosecutors and Investigators. Retrieved from https://gdpakistan.org/wp-content/uploads/2020/10/CRIMINAL-JUSTICE-MATTERS-INVOLVING-CHILDREN.pdf

witnesses where the child's memories of traumatic events and the ability to testify with a clear and coherent narrative becomes an important element of the rape trial.[67] However, where a judge and police officer assesses the victim's age and perceived credibility prior to deciding whether to include the victim in the legal proceedings, they disregard the child's willingness to testify and participate in processes and – most importantly – child's trauma and ability to respond. As a result, the judiciary either do not even give an opportunity to the child – even if older – to testify as can be observed in LAS Case # 71 or overly rely on the child's 'pardoning' statement leading to the acquittal of the accused, as observed in LAS Case # 64. Similarly, due to lack of evidence, the trial often "comes down to the word of a child versus the word of an adult."[68] This again accentuates upon the judicial responsibility of protecting and supporting the child not only from any sexual victimization or secondary trauma – inflicted during cross-examination – but also to safeguard the child's interests and rights. Nonetheless, judicial intervention is least likely observed "to protect the child witness from badgering or oppressive questioning" rather the intervention is seen to further impose and reinstate societal perception and patriarchal norms.[69] Unfortunately, the absence of a child psychiatrist – who could help reduce secondary trauma – further aggravates their access to justice. LAS Case # 64 is a testament to such practices where the child-victim is put through unnecessary difficulties.

From the analysed cases of child sexual abuse, it is evident that these cases are treated in the same manner as of sexual assault of adult victims regardless that the factors that contribute to case attrition in the former are different than in the latter. In LAS Case # 64, a case of 10-year-old boy's attempted rape, the victim is asked 'life questions' by the Magistrate Judge in isolation. The judge himself then records that after building rapport when the 10-year-old victim was asked to forgive the accused, he agreed. Even the judge's attempt to dispose of the case through illegal practices within the precincts of court speaks in length about the pervasive culture of compromise and impunity for perpetrators of child sexual abuse. Similarly, to control a child's autonomy by acquitting the accused based on parents' 'wish' to exonerate him without the child's consultation in the presence of a trained psychiatrist is yet another

[67] Block, S. D., & Williams, L. M. (2019). The Prosecution of Child Sexual Abuse: A Partnership to Improve Outcomes: Final Summary Overview. University of Massachusetts, Lowell.
[68] Ibid.
[69] Cossins, A. (2009). Cross-examination in child sexual assault trials: Evidentiary safeguard or an opportunity to confuse?. Melbourne University Law Review, 33(1), 68-104.

demonstration of a miscarriage of justice – LAS Case # 71 and 36 testify to this. This display of power dynamics in court proceedings echoes the similar feelings of powerlessness that the child experiences as a result of sexual assault.[70] Moreover, repeated attempts made by the police to encourage prosecution to enter into compromise further sacrifice children's rights. Formally, this systematic mockery of justice for child victims of sexual assaults is what we could term as **'Legitimate Bullying.'**

[70] Ibid.

CONCLUSION

This research paper has attempted to provide a quantitative and qualitative analysis of rape and sodomy cases in ICT.

The quantitative analysis has developed a timeline of the process of a rape or sodomy case across the Criminal Justice System from reporting until the first verdict. It captures specific moments and patterns of delays and potential process gaps in the system. The in-depth analysis of these timelines reveals the disproportionate time taken during the investigation period, particularly within the prosecution department and at the time of framing of the charge. While our data reveals that the actual trial is concluded within the 3 month provision as per the Criminal Law Amendment Act of 2016; 50% of this time is denoted to in court adjournments instead of actual proceeding of the trial. Throughout the duration of GBV case in the judicial system, two actors and moments call for further attention: once, when the file is received by the prosecution and before it is submitted to the court; and second when the file is with the Magistrate at the time of framing of the charge.

The qualitative analysis identifies the procedural, process, and cultural challenges and gaps from the four main steps in a criminal case i.e., the investigation by the police, medical examination, prosecution, and the trial. Similar issues can be seen across the board including challenges in understanding, collecting, storing, and using medical and forensic evidence; the disproportionate focus on medical and forensic evidence as opposed to circumstantial evidence; improper preparation and work with the victim/complainant and prosecution witnesses in timely manners at all stages resulting in ineffective and contradictory statements being made; the high number of cases being compromised, whether confirmed or presumed due to redaction of testimony of the prosecution witnesses at trial and lack of effort by prosecution and judiciary to circumvent that; the acceptance of compromise of the cases by judges in violation of the law; the need for increased use of special protection measures; and the critical need for gender-sensitive and appropriate language in judgments. Individual challenges for each actor identified to provide a framework for training and future evaluation of these actors.

	Recommendation	CJS Actor
	Policy Development & Legal Reform	
1	Formation of an independent and functional prosecution services to be established under a Prosecutor General	Federal Ministry of Law and Justice Interior Ministry
2	SOPs for investigation of rape cases to be developed in line with new laws. Paticular focus must be placed on forms of evidence in addition to DNA and forensic evidence, to remove unnecessary reliance on these.	Police Federal Ministry of Law and Justice Interior Ministry
3	SOPs for collection of DNA in rape Cases	Police Health Department
4	SOPs/Guidelines for prosecutors for prosecution of rape and sodomy cases Paticular focus must be placed on forms of evidence in addition to DNA and forensic evidence, to remove unnecessary reliance on these.	Prosecution Department Federal Ministry of Law and Justice
5	SOPs/Guidelines for operations of GBV Courts (includes victim support services)	Federal Ministry of Law and Justice Islamabad High Court
6	Increased number of Gender Protection Units across ICT	Police Interior Ministry
7	Prosecutorial guidelines on scrutiny of the challan Paticular focus must be placed on forms of evidence in addition to DNA and forensic evidence, to remove unnecessary reliance on these.	Federal Ministry of Law and Justice Prosecution Deartment
8	Scrutiny of challan and litigation to be done by same prosecutor	Office of the Prosecutor General, Islamabad

9	Psychologist to be appointed at the thana level or at Gender Protection Unit	Police
10	New medico-legal proforma must be created and notified in line with the new definition of rape.	Ministry of Health
11	Effective implementation of new laws on rape, sodomy and child sexual abuse.	All departments
12	Performance Management of all Criminal Justice System actors with key performance indicators to measure process, performance, results and quality. This must include: Process level indicators to assess performance in terms of timelines, delays and holds ups Quality control: Regular qualitative analysis to dissect challenges identified in timeline, but also to assess quality with regards to gender sensitisation, adherence to law (e.g. not accepting compromises) and ensring victim centric approach etc. Quarterly reports and analysis must be presented to the relevant federal and/or provincial departments which may include law, health, interior/home, human rights/women development/social development etc.	Police Prosecution Medico-Legal Department Judiciary

Training and Knowledge Building		
1	Mandatory gender sensitization training included in training, linked with Performance Management Framework. Focus must be placed on gender sensitisation, addressing sexual myths and stereotypes and tackling inappropriate assumptions rape and key concepts of consent, force, coercion, victim blaming etc; importance of all types of evidence, in order to challenge the over reliance on DNA and forensic evidence, focus on digital evidence etc.	Police Prosecution Department Ministry of Health Judiciary (Magistrates and GBV Courts)
2	On-going training to be transformed to skill development through adult learning methodology not academic based to increase only knowledge	Police Judiciary Medico-legal
3	Mandatory training for prosecution, especially those posted at GBV Courts on strategic planning & handling rape and sodomy litigation	Prosecution Department Ministry of Law
4	Interviewing victim	Police on first interview with victim Recording comprehensive 161 statement in gender friendly manner Magistrate on recording comprehensive 164 statement in gender friendly manner Prosecutor in pre-trial meetings with victim/complainant GBV Court Judge to oversee and ensure protection of victim during trial
5	Preparation of victim for trial	Prosecution Department
6	Revising curriculum for health practitioners and medico-legal	Ministry of Health

Improvement in specific processes required		
1	Thumb print over FIR	Police
2	Faster 164 statements to be recorded	Police Magistrate
3	Ensuring all documentation is noted and completed in a timely manner	Police
4	Police & prosecution to collaborate from when FIR is registered	Police Prosecution Department
5	Medico-legal examination to be conducted at earliest	Police Medico-legal Department Ministry of Health
6	Appropriate number of medico-legal officers to be trained & incentivized	Ministry of Health
7	Facilitating private witnesses to record statements through witness protection and video-link testimonies	Police Prosecution Department
8	Prosecutors taking a more pro-active role to return 173 challan to IOs for further investigation is needed.	Prosecution Department

Required Resources		
1	Rape kits, sample collection and transport kits	Police Interior Ministry
2	Special Protection Mechanisms to be established in all GBV Courts including waiting rooms, video-link testimonies & required equipment & any other required resources	Ministry of Law and Justice Islamabad High Court

This study has enhanced the understanding of the challenges and gaps in ICT in responding to rape and sodomy cases and trials. In addition to a contribution to the larger discourse on access to justice and rule of law, this study provides a pathway for these CJS actors for their self-improvement and growth. It is hoped that these key CJS institutions use this document to further create their own policies and improve the overall response in such cases, and ultimately improve the access to justice for victims of rape and sodomy across Sindh.

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