



**CHALLENGES FOR
SUCCESSFUL OUTCOMES**

IN RAPE TRIALS



Sexual Violence Responsive Framework

BOTTLENECK REPORT - 2023

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Executive Summary

Pakistan's Criminal Justice System's (CJS) approach to Sexual and Gender-Based Violence (SGBV) cases remains an area in dire need of improvement. From 2017 to 2023, the Legal Aid Society (LAS) has tackled 97 cases, ranging from domestic violence to acute sexual assaults. This active involvement has generated a comprehensive dataset, reflecting both the broader systemic challenges and the intricate nuances that SGBV cases experience within the CJS.

This report stands as a testament to intensive legal efforts and engagement with key members of the justice system, such as the police, prosecutors, and judges, along with experts on gender and psychology. It sheds light on the alarming and distressing conditions in which survivors/victims seek justice despite legal frameworks and public outcry. An in-depth analysis is laid out in the subsequent sections highlighting our findings in detail, and the summary below presents key findings and recommendations.

#	Findings	Recommendations
1	Many CJS actors demonstrate a limited grasp of substantive law on SGBV, as evidenced by inconsistent interpretations and applications of SGBV laws among officers. This often leads to ineffective case handling.	Conduct regular promotion-based “in-service training” or professional development for capacity building on substantive laws related to Gender Based Violence (GBV) targeting Police, Prosecution, Medico-Legal Departments, and Magistrates.
2	There are marked deficiencies in evidence collection from SGBV crime scenes and the digital realm. This is evident from cases with improperly collected evidence, leading to weak prosecutions.	Implement skills-based in-service capacity building on evidence collection from crime scenes and digital evidence training for the Police, Medico-Legal Departments, and Judiciary.
3	Communication barriers, especially during victim interviews, are highly prevalent. Victim testimonials frequently indicate discomfort and hesitancy, exacerbated by the lack of safe environments for interviews.	Develop enhanced communication and interviewing skills, particularly for interviewing victims, and allocate resources for safe spaces for interviews.
4	Coordination gaps among CJS actors lead to delays and miscommunication, as observed in inconsistent departmental transfers.	Mandate regularized coordination among the Police, Prosecution, and Medico-Legal Department.
5	The absence of standardized performance assessments and an over-reliance on certain evidence types, like DNA in older cases, compromises the quality of SGBV case processing.	Implement Performance Management Frameworks for critical actors and provide guidance on evidence prioritization.
6	Witness handling is often subpar, with many witnesses feeling ill-prepared for trials. This is reflected in their inconsistent court statements.	Facilitate specialized training on Witness Preparation and develop standardized witness handling protocols.
7	GBV court proceedings and rape case prosecutions often display gender biases and lack clear procedural guidelines. This is evident from the gendered language in court documents and procedural ambiguities.	Promote Gender Sensitization training and formulate SOPs for SGBV Courts and prosecutions for rape cases.
8	GBV cases witness a lack of proactive roles in investigations and a dearth of standardized performance metrics in courts, leading to prolonged trials and inconsistent standards.	Encourage a proactive approach in investigations and establish Standard Performance Metrics for all GBV courts.
9	Procedural inconsistencies and a lack of best practices across SGBV case handling are apparent, as seen in differing approaches to similar cases.	Introduce comprehensive Standard Operating Procedures (SOPs) across the board.

Socio-Legal Context

Pakistan is in the throes of cultural conservatism, where societal stigma still stands as a significant barrier to effectively prosecuting sexual violence. The country has recently plummeted on gender parity – the 'Global Gender Gap Report 2022' by the World Economic Forum placed Pakistan 145 out of 146 on the gender gap index. Across all sectors, there's agreement on the prevalent and urgent issue of sexual violence, evidenced by high incidence but low conviction rates due to societal barriers and institutional challenges.

Updated, regular data on rape cases and their conclusions is scarce, making it challenging to analyze or provide evidence-based responses to a plethora of issues. The existing limited data, however, reveals a concerning and challenging scenario. At the provincial level:

- **Khyber Pakhtunkhwa's** Prosecution Department reported 809 cases of assault on women and 498 rape cases from 2014-2016
- **Punjab's** 2016-2017 data unveiled a 96% acquittal rate, 87% of which resulted from evidence dearth and witness retraction
- **Sindh's** police data from 2020 noted 330 rape cases. Conviction rates dwindled from 9.7% in 2017 to 3.5% in 2020, while pending cases surged from 67% in 2017 to 92% in 2020

There is no similar data available from Islamabad Capital Territory and Baluchistan. However, comparable patterns might be inferred for these regions, given the similarity of issues in the CJS.

Journey Through The Criminal Justice System (CJS)

The journey through the Criminal Justice System for Sexual Violence (SV) cases is shown below:

Criminal Justice System Process

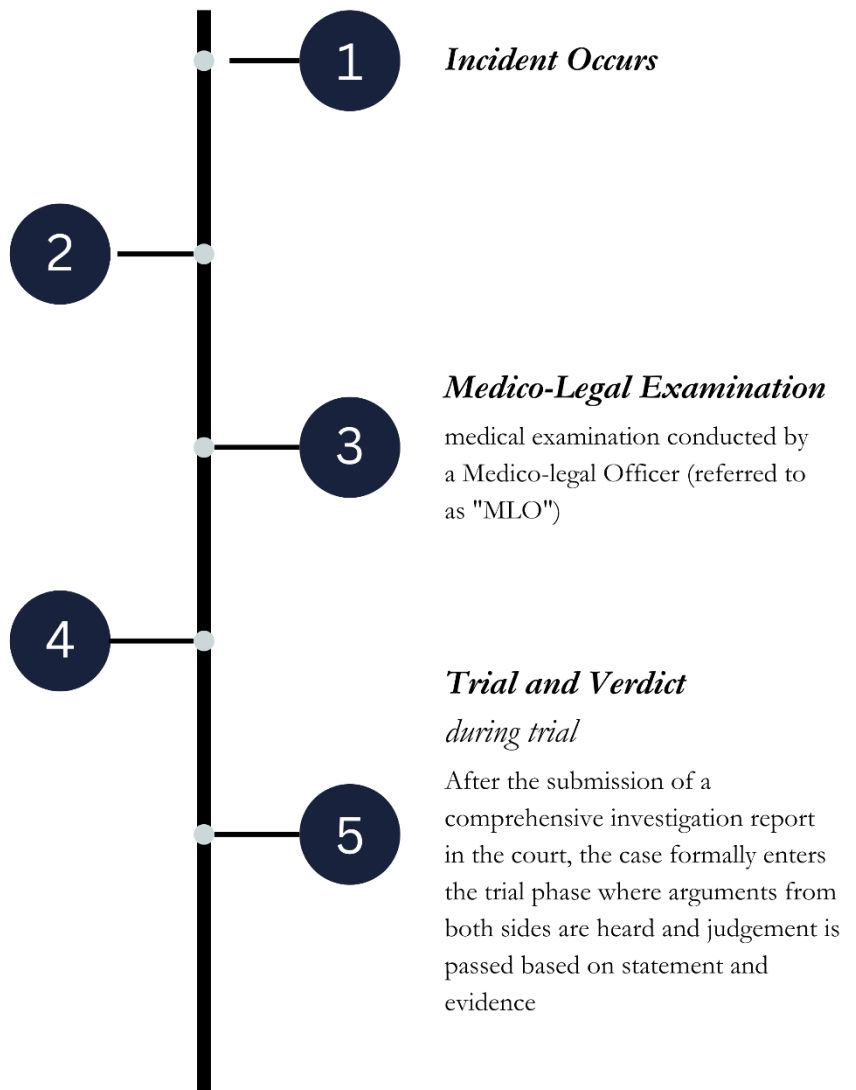
Key Steps

Registration of FIR

The Criminal Justice System's (CJS) response to Sexual Violence is incumbent upon registration of the First Investigation Report (FIR) before the Police that kick starts the crime scene investigation for evidence collection.

Submission of 173 challan & framing of charge in front of the magistrate

pre-trial
recording of crucial statements of the victim before the Judicial Magistrate



Medico-Legal Examination

medical examination conducted by a Medico-legal Officer (referred to as "MLO")

Trial and Verdict

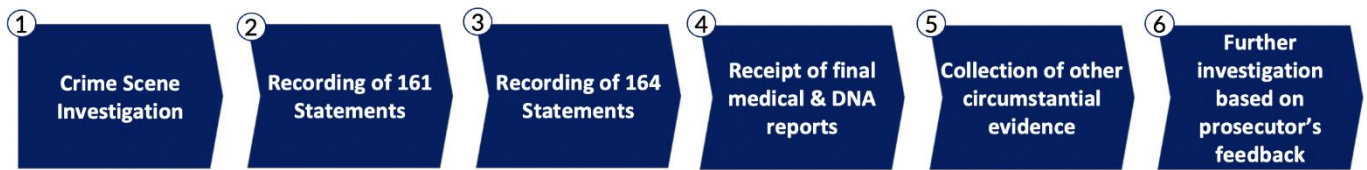
during trial

After the submission of a comprehensive investigation report in the court, the case formally enters the trial phase where arguments from both sides are heard and judgement is passed based on statement and evidence

The Investigation Process follows 6 key steps that are laid down below:

Investigation Process

key steps



Legal Process – deep-dive:

Between 2006-2021, Pakistan witnessed notable legal shifts¹:

- A widened, gender-neutral definition of 'rape.'
- Stricter penalties for specific rape scenarios
- Emphasis on DNA evidence
- Introduction of specialized cadres like GBV Courts, GBV Prosecutors, and Special Sexual Offences Investigating Units (SSOIU)
- The 2016 and 2021 Acts reinforced Special Protection Mechanisms (SPM), encompassing in-camera trials, non-disclosure of victims, and video-link testimonies

Additionally, cases such as the Salman Akram Raja judgment in 2013; Kainat Soomro petition in Sindh High Court; a judgement by the Lahore High Court have declared the archaic two-finger test illegal and against the Constitution, since they carried no forensic value in cases of Sexual & Gender Based Violence (SGBV) and more importantly, offends the dignity of the female victim.

A 2021 assessment by LAS alongside the Sindh Commission on the Status of Women unveiled disparities in SPM execution across 27 GBV Courts in Sindh. Notably, while Karachi East is an exemplar, other courts display inconsistent operations.

The LAS User Satisfaction Survey in 2 districts of Sindh and Islamabad Capital Territory showed increased satisfaction with GBV Courts even with the implementation of low-cost SPMs. On average, Special Protection Measures resulted in more than 14% (Karachi), 18% (Hyderabad) & 21% (Islamabad) improvement in overall user satisfaction scores among all users of GBV courts compared to non-GBV court users.

However, victims continue to confront a culture of silence, insensitivity, biases, and victim-blaming by the police. The lack of integrated victim support exacerbates attrition risks. Furthermore, in the few SGBV cases that reach trial, victims are burdened with demeaning practices, protracted proceedings, and the prevailing trend of case compromise or withdrawal.

The *Gap Analysis of the Investigation and Prosecution of Rape and Sodomy Cases in Sindh 2021* (hereafter referred to as the “Gap Analysis”) conducted by LAS exposes delays:

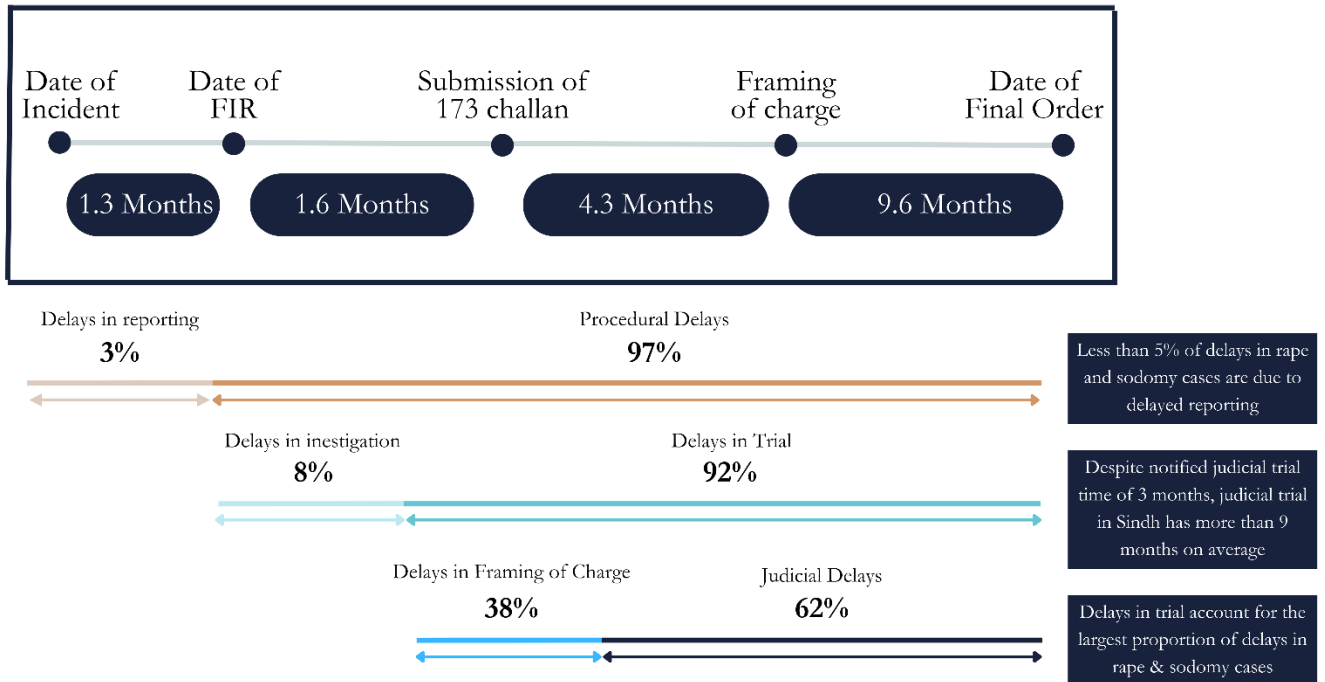
- Investigations extend an average of 1.6 months, contrary to the 14-day legal mandate
- Judicial Magistrate's charge framing averages 4.3 months
- Trials conclude in an average of 9.6 months, doubling the legal stipulation

¹ Protection of Women (Criminal Law Amendment) Act 2006; Criminal Law (Amendment) (Offences Relating to Rape) Act 2016; Criminal Law (Amendment) Act 2021; and Anti-Rape (Investigation and Trial) Act 2021

The time taken in Rape & Sodomy Cases is laid out in the visualization below:

Time Taken in Rape & Sodomy Cases

The average time taken from the date of the incident to the final order in rape & sodomy cases.



*Gap Analysis Investigation and Prosecution of Rape and Sodomy Cases (Oct 2020)

A 2017 report from one district of Punjab provides similar delays for cases registered post the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 (hereinafter referred to as “2016 Act”): 250 days for a case to be decided after registration of FIRs; average delay of 32 days in medical examination etc. The evidence demonstrates the protracted nature of the investigation and trial of rape and sodomy cases, which is an injustice to the complainants/victim.

Legal Aid Society’s Project: “Increasing Citizen’s Confidence in the Criminal Justice System to Protect Them by Effectively Responding to Cases of Sexual Violence in Sindh”

LAS collaborated with the Foundation Open Society Institution – Pakistan from 2019-2023² to enhance the Criminal Justice System’s (CJS) response to sexual violence in Sindh. This was done using a 3-pronged approach: raising awareness at the community and district level, building the capacity of CJS and government actors, and advocating for policy and legislative improvements.

A primary objective was collaborating with the CJS, especially the Office of the Prosecutor General of Sindh, in litigating rape³, sodomy, and domestic violence using the latest legal tools and precedent. This strategic litigation aimed to instill tolerance, normalcy, and consistent use of the law. The goal was to cultivate a CJS culture where Special Protection Mechanisms (SPMs) and a victim-centric approach became the standard.

² A pilot project was implemented between 2019-2020, followed by a 3 year project between 2020-2023, concluding in March 2023

³ Male or anal rape was tried under Section 377 Pakistan Penal Code 1860 (PPC) until the amendment to the definition of ‘rape’ through the Criminal Law (Amendment) Ordinance in 2020, which became an Act in 2021. Thereafter male and anal rape fell within the new definition of rape in Section 375 PPC.

Methodology

This report adopts a qualitative approach to document the experiences and challenges faced at every step of the way in pursuit of 97 cases in 3 judicial districts of Sindh. This report aimed to develop a greater insight into the issues faced by CJS actors and the users of CJS in the pursuit of justice. By pinpointing the specific areas or processes where improvements have occurred along with where gaps, delays, or clear gender violations continue to happen, it will grant a specific focus for initiatives aimed at criminal justice reform. To ensure the confidentiality of the persons involved in litigation, each case has been assigned a number which is its only identity tracker.

The analysis for this report was conducted through a 4-tiered process:

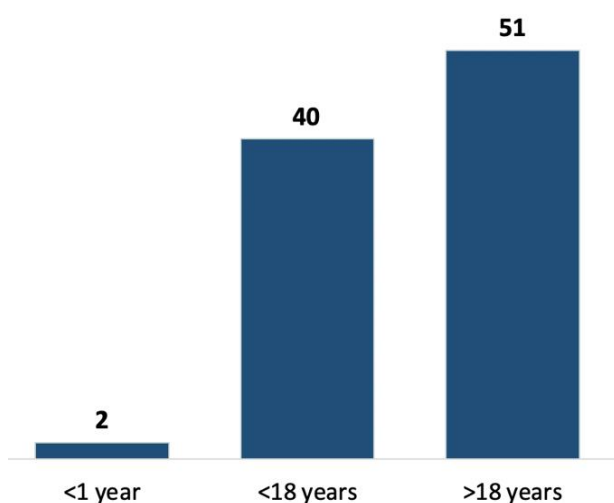
- i. Analysis of 97 case files with a legal, human rights & gender lens
- ii. Focus Group Discussions with LAS lawyers who have pursued the cases themselves or in collaboration with the prosecutors held in February 2023
- iii. Capturing the perspectives of police, prosecutors, and judges during training conducted by LAS on this topic between January – April 2021 and 2022 in Sindh and at the Federal Judicial Academy, Islamabad
- iv. In-depth interviews with Psychologist and Gender Trainer and Police Surgeon, Karachi. Both interviewees were trainers in the police, prosecution, and judiciary training with LAS.

Analysis of LAS Case Files

Legal Aid Society (LAS) worked on 97 cases. The victims of the cases included 82 women/girls and 15 men/boys. The age groups and gender differences in cases are visualized below:

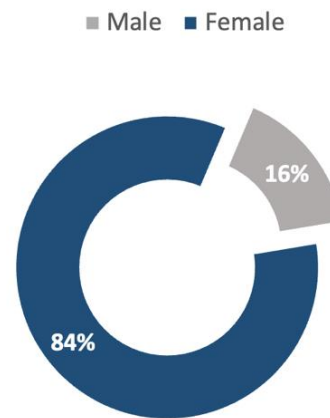
Victims across age

Number of victims across each age category



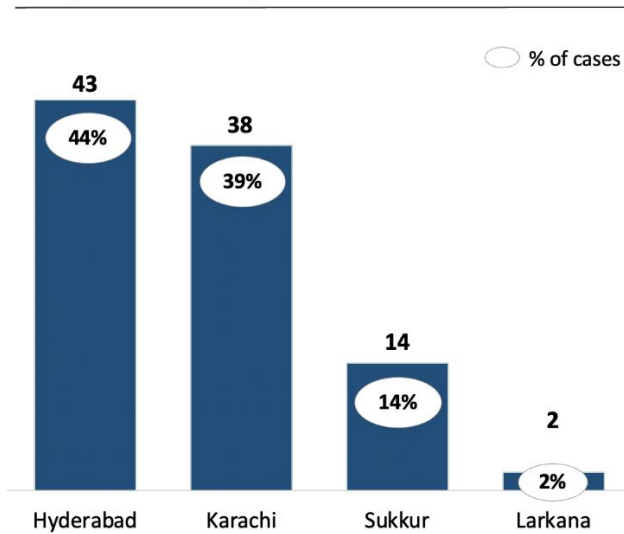
Gender Difference

% of cases split by gender

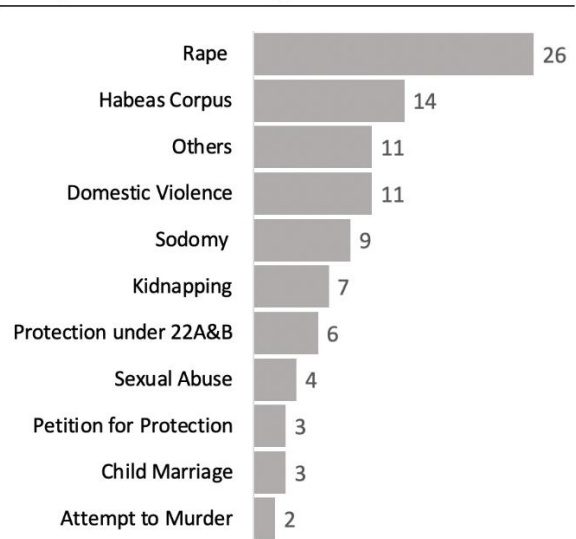


Most cases were from Hyderabad, followed by Karachi, Sukkur, and Larkana. The top 3 case categories were Rape, Domestic Violence, and Sodomy (discounting habeas corpus cases, and an “other” case category – including various incidents of honor, outraging the modesty of women, attempts to kidnapping, jactitation of marriage, maintenance, and child custody.). These details are visualized below:

Cases across geographies
No. of cases across regions



Types of cases
No. of cases across case type

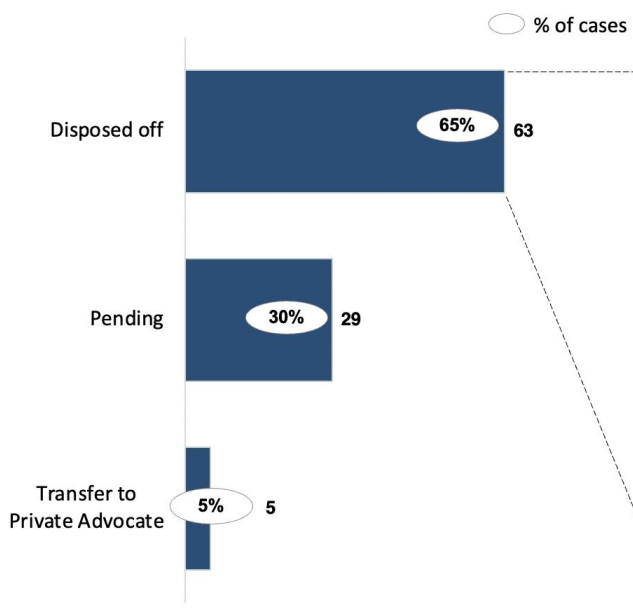


Note: in the visualization above, the % figure has been rounded-off – hence, equaling 99 and not 100

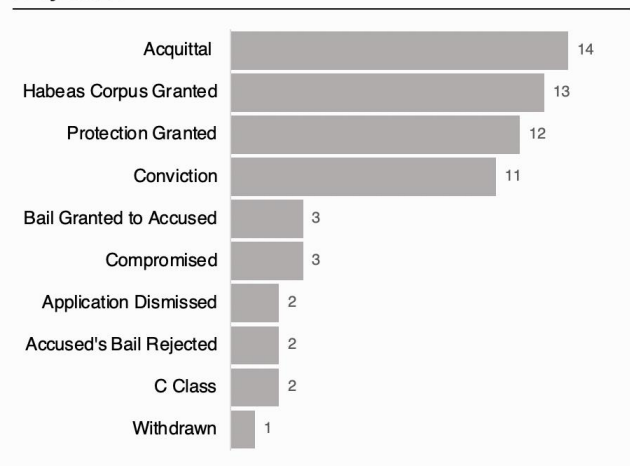
LAS provided support to the cases by giving legal aid (91 cases), providing legal advice (4 cases), and providing assistance to the prosecutors (2 cases). Of these, 63 cases were disposed of, while 29 are pending before the court at the time of filing this report. 5 cases were transferred to private advocates.

The above-mentioned disposed-off cases have resulted in 11 convictions, 25 cases where protection and habeas corpus applications by LAS advocates were approved, and 14 acquittals. More details on the status of cases are shown below:

Status of cases
No. of cases against outcome



Status of disposed off cases
% of cases



Overview of Investigation Processes

Below, we have highlighted vital gaps that occur during the investigation process:

Lack of a “Think-Trial” Approach in an Investigation

A police investigation consists of a series of steps as under the law (e.g., FIR is registered, the victim is taken for medico-legal, 164 is recorded, etc.), but which extends to the type of evidence which is collected and the process of collection (e.g., medico-legal certificate, medical samples to be sent to the forensic lab, 161 statements to be recorded, etc.). This ‘process,’ which establishes the core of the investigation, is an essential procedure. However, it appears that the police follow this procedure as a ‘checklist’ and a tick-box exercise instead of thinking of it from the perspective of the trial.

Discussions with the police during training conducted by LAS⁴ revealed that many of the Investigating Officers – those who form the SSOIU – had no idea about the minimum standards of different forms of evidence to be allowed in court, any rules or precedents surrounding them – especially recent ones, and admitted that they believed that turning their investigation into a legal case is not their job, but that of the prosecution – with whom they have minimum contact as it is. Thus, for example, the practice of using police officers to witness police memos or drawing of the site maps or arrests is an easy way for them to fulfill their checklist with the justification that no private witness ever wants to come to court but not realizing the lack of the private witness may result in that evidence not being allowed to be submitted into court.

“Manufacturing” of a “Perfect” First Information Report (FIR)

A frequent defense strategy is to question the credibility of prosecution witnesses (complainant, victim, or police officers) by highlighting discrepancies between the First Information Report (FIR) and later statements. This tactic portrays the witness as untrustworthy, suggesting they embellished the last testimonies. An instance is observed in SV-Khi case 16, where the FIR's contents differed from subsequent statements by the purported victim.

Ironically, this defense approach isn't rooted in legal stipulations. The FIR isn't substantial evidence during the trial; it merely records initial information. Neither the complainant nor the police are expected to be comprehensive⁵. While the FIR might be referenced to contest a witness's account, it isn't supposed to have intricate details⁶, and any omission can't be grounds to disregard a witness's testimony.

During training sessions for the SSOIU⁷, many police officers misunderstood the FIR's role and perceived it as crucial evidence. Along with some in prosecution and even the judiciary, they fail to recognize that the FIR just flags a crime's occurrence without elaborating on specifics like culprits or crime scenes. Therefore, the defense's strategy to question based on the FIR's supposed contradictions is misleading. It's imperative for all parties involved to understand the FIR's limited scope⁸.

This misunderstanding often leads police officers to draft FIRs with unnecessary details to aid victims rather than using the complainant's words⁹. Consequently, if the FIR is "crafted" by the police, contradictions can arise when the complainant recalls events later. One gender trainer, engaged in police training with LAS, recounted her experience reporting the theft. The police, while documenting her FIR, rearranged the events, making them inconsistent with her recollection and potentially jeopardizing her future testimony in court¹⁰.

⁴ Police trainings on Investigating Sexual Violence were conducted in collaboration with the Training, Department, Sindh Police in Karachi, Pakistan between January – April 2022, conducted by Legal Aid Society

⁵ FIR to give material particulars of the case without giving detail of incidental matters [1993 SCMR 1614]

⁶ PLD 1961 SC 230 ref. (SC) PLD 1978 SC 10

⁷ PLD Supreme Court 1977

⁸ PLD 1964 SC 26

⁹ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khawaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

¹⁰ Police trainings on Investigating Sexual Violence were conducted in collaboration with the Training, Department, Sindh Police in Karachi, Pakistan between January – April 2022, conducted by Legal Aid Society

Limited Evidence Collection¹¹

It is typical for the entirety of the evidence in a rape case to be: solitary statement of the victim; DNA evidence (made mandatory under law¹² and precedent¹³); private witnesses/interested witnesses to arrest; memo of the site or other processes etc. However, looking at successful national and international examples, teachings, and guidelines, it becomes clear that the potential evidence in rape cases is much broader than what is generally collected in Pakistan¹⁴.

While some judgments¹⁵ now identify DNA as corroboratory and not primary evidence, many judges continue to base their decisions on whether matching DNA has been found, as seen in SV-HYD 7, where this was identified as pivotal corroborative evidence resulting in conviction. This raises serious concerns as the need to provide concrete DNA evidence in sexual assault cases has become increasingly important if a prosecutor hopes to secure a conviction.

Although there is evident growth in how evidence is collected – systematic medico-legal exams and swabbing DNA from victims and the accused are now more routine. Yet, glaring gaps remain in the police and medico-legal’s systematic and almost mechanical process with little demonstrated application of mind, logic, or common sense. For example, if the incident had occurred a significant time ago, DNA evidence would have been lost. Forcing a victim to undergo a medical examination and have swabs collected for DNA etc., is not going to yield any results and violates the victim’s dignity.

The current investigatory lens heavily centers on DNA, often sidelining other forensic types like saliva, sweat, and hair. Rich, detailed accounts from victims could reveal avenues for additional evidence, from saliva-linked bite marks to potential evidence on the accused’s body. Moreover, evidence collection frequently bypasses non-forensic categories, including trace evidence, toxicology, digital forensics¹⁶, and pattern imprints. Fingerprints and hair, staples in international investigations, can crucially position an accused at the crime scene.

A narrow focus on DNA can be perilous. Building a case should harness the full spectrum of evidence, offering a robust corroborative foundation. This is further complicated by police dependency on specialized units for evidence collection, exemplified by lapses in SVR_Suk 3. Training deficiencies among the Sindh Police aggravate these challenges – with infrequent training sessions spaced across years, officers often lack the skills to manage various forensic evidence types adeptly. This dearth of supplemental evidence often results in acquittals, showing the pivotal role of comprehensive evidence collection in ensuring justice.

Success Story – SVR Hyd-5

In this case, a 7-year-old girl was abducted from a public place with the intent to commit rape. However, when several people caught him, he left the child and escaped.

While there were some bruises on the victim’s body, there were no marks on her vaginal area, and there was no semen detected or DNA matched.

The judge noted a significant amount of ocular evidence from independent witnesses, which trumps the lack of corroborative DNA evidence, and the accused was convicted.

Success Story – SVR Khi-18

The accused abducted a 9-year-old girl and took her to a factory, but was not allowed in, then took her to the roof of a masjid and attempted to rape her. She managed to escape. The accused was eventually identified through the use of CCTV cameras of the factory and, after that, arrested and convicted.

¹¹ This sub-section has been informed by the following: Waltke, H; LaPorte, G; Weiss, D; Schwarting, D; Nguyen M; Scott, F, (2017) ”Sexual Assault Cases: Exploring the Importance of Non-DNA Forensic Evidence”, National Institute of Justice Journal, <https://nij.ojp.gov/topics/articles/sexual-assault-cases-exploring-importance-non-dna-forensic-evidence>

¹² Anti-Rape (Investigation and Trial) Act 2021; Code of Criminal Procedure (Sindh Amendment) Act 2017

¹³ Salman Akram Raja and another vs. Government of Punjab through Chief Secretary Civil Secretariat Lahore& Others (PLJ 2013 SC 107)

¹⁴ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khowaka S, Lari, M, Durrani, F, Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

¹⁵ PLD 2007 Supreme Court 183; 2013 SCMR 203

¹⁶ Digital forensics is a branch of forensic science that focuses on identifying, acquiring, processing, analysing, and reporting on data stored electronically

Due importance not given to the witness statement recorded under Section 161, CrPC.

The witness statement recorded under Section 161 CrPC (the 161 statement) is meant to be an aid to the investigation: helping the police identify where, who, and what to investigate. These are not applicable in court as evidence. However, it can be used by the defense in cross-examination if the witness gives a contradictory or different statement at a later stage. This could include, for example, the manner in which the incident occurred, any increased details at a later stage (considered exaggerations), or different facts presented, e.g., naming a different accused.

It is common practice identified by various case law analyses and substantiated by the analysis of LAS cases that inevitably, the defense brings up the 161 statement to contradict the statement of witnesses. The purpose is two-fold: Solitary statement of the victim is sufficient for conviction if believable, unshaken, and credible¹⁷. Using the 161 statement, the defense attempts (and sometimes succeeds, such as in (SVR-Khi 14) to prove to the judge that the victim is untrustworthy due to statement contradictions. This is meant to shake the credibility and veracity of their statements.

In the training of the SSOIU, while discussing the 161 statement, several senior Investigating Officers learned for the first time how the 161 statement could be used in the trial. They admitted the casual nature of their recording of the statement and the lack of importance they give to it as it is not usually presented in court. The police record it as part of its checklist. It is often casual, written by the police in a certain format – not in the words of the witness. It usually has sufficient but not detailed case facts and is considered more of a formality.

Thus, without sufficient or lack of detailed statements in the 161 statement, it is an advantage given to the defense instead of being crafted accurately by the police.

Limited detail about the incident recorded by police during the investigation

In rape cases, the victim's interview is the primary source of evidence and leads. Yet, there's a significant issue with how these statements are recorded. Instead of diligently documenting the victim's exact words, police officers often summarize what the victim says, resulting in a transformation of the original statement for clarity. This means the actual case documentation isn't the victim's narrative but the police officer's understanding or version of it. This practice impacts the investigation and trial of rape and the more significant perception within the criminal justice system.

The firsthand narrative of the victim, complete with their words and expressions, is absent from the official documentation. In cases where the victim's statement is paramount, retaining their natural narrative is crucial. Their choice of words, often indicative of their experience and emotional state, is invaluable.

Yet, police officers often default to 'legal' or 'police' language when documenting these statements, possibly glossing over critical specifics. This tendency is exacerbated by an inherent patriarchal bias within police processes, revealed in their language choice. Explicit terms like "rape" are frequently substituted with terms like "sexual abuse," diluting the gravity of the incident. This linguistic minimization contrasts with how other crimes like theft or murder are documented, suggesting a systemic downplaying of gender-based violence, particularly rape.

This reluctance to detail the rape itself, possibly to protect societal sensibilities, results in significant gaps in the investigation. For instance, essential forensic details, like whether the perpetrator used a condom or the location of ejaculation, are often omitted. Without such specifics, evidence, like discarded condom wrappers, might be overlooked, hindering the identification of the assailant.

The ambiguity of these statements also manifests in numerous cases. In SVR-HYD 3, there's no clarity on how the victim's modesty was insulted. In SVR-Khi 25, details about the use of force and the removal of the victim's clothes are missing. And in SVR-Khi 12, the lack of specific incident details resulted in confusion about the appropriate legal charges –if there was no penetration, even if by the fingers, it would be sexual abuse¹⁸; if penetration did not occur due to external circumstances, it would be attempted rape;^{19,20} if there was a penetration of a body part by fingers, it would be rape. Unfortunately, the lack of clarity made the investigation and prosecution challenging, i.e., which one to prove and how?

17 2011 SCMR 1665; 2011 YLR 1744

18 Section 377A and 377B Pakistan Penal Code 1860

19 Section 376 and 511 Pakistan Penal Code 1860

20 Section 375 and 376 Pakistan Penal Code 1860

Such ambiguities can further perplex courts. For instance, in one LAS SV Case, clarity was sought on how the victim's clothes were removed – a detail that could indicate the use of force or a threat. Inconsistent details or later additions can make the victim's testimony appear unreliable or exaggerated.

Most victims might not understand what is considered "evidence," especially in nuanced scenarios like sex crimes. However, their narratives, which may include seemingly insignificant details, could reveal vital clues about the suspect's intentions or guilt²¹. It's paramount that investigations capture the authentic experience of the victim.

In essence, the victim's detailed account should be the cornerstone of the investigation, which makes capturing good statements from the victims. Requirements of a good statement may include the following:

Accuracy: Statements should be exact, capturing the deponent's true intent, especially since words can have varied meanings. The investigator's role is to reflect what the deponent means, not to interpret it.

Completeness: Ensure all pertinent details are included. Investigators should address the questions: Who? What? Where? When? Why? and How? Each crime will necessitate different specifics in the statement.

Conciseness: While being comprehensive, statements should also be succinct, expressing details in as few words as needed.

Objectiveness: Investigators must remain neutral, documenting the deponent's words without personal biases or interpretations.

Comprehensiveness: Any reader should easily understand the statement and cover all relevant issues. Since deponents might not know legal intricacies, investigators should ask appropriate questions to extract necessary evidence. Key facts shouldn't be altered or omitted. Despite an interview yielding a plethora of information, the investigator must discern what to include in the final statement, ensuring its accuracy and comprehensiveness²².

Lack of knowledge of law and precedent

Critical amendments in rape laws and pivotal precedents from superior courts in Pakistan, such as the notification of Standard Operating Procedures (SoPs) on DNA collection in rape cases²³, have been introduced. However, there's no systematic mechanism ensuring all police officers, especially the SSOIU, receive these updates. The primary training for officers happens upon their promotion, roughly every 10-12 years²⁴, and even then, recent legal precedents aren't covered. Training initiated by the police department or in partnership with civil society organizations is sporadic. Consequently, the DIG of the district and SHO of each station shoulder the responsibility to keep their staff informed.

This system, unfortunately, leads to inconsistent outcomes due to officers' unawareness of current laws, an issue underscored by LAS lawyers. Many police officers, for instance, still incorrectly address cases related to the gender-neutral definition of rape introduced in 2020 through the Criminal Law (Amendment) Ordinance 2020. Additionally, a significant number remain unaware of notifications like the DNA SoPs.

A 2022-2023 assessment²⁵ showed a substantial lack of police knowledge regarding these DNA SOPs. For example, 43.6% were curious if they had received them. Further, although over half expressed confidence in their understanding, deeper inquiries exposed gaps in their knowledge. Some even mistakenly believed the SOPs applied to unrelated crimes like theft or terrorism. During LAS training sessions²⁶, many officers lacked understanding of various types of evidence, and the superior courts set minimum standards of evidence.

²¹ "Improving Sex Crime Victim Interviews: 12 Do's and Don'ts", Marie De Santis Women's Justice Center, [www.justicewomen.com](http://justicewomen.com/cj_improvingrapeinterviews.html), accessible at http://justicewomen.com/cj_improvingrapeinterviews.html

²² Van Der Merwe, E. (2010) "The Value of the Victim's Statement in the Investigation of Rape", University of South Africa

²³ On June 4, 2021, the Sindh High Court vide its order in the Kainaat Soomro case laid down Standard Operating Procedures (SOPs) for the sampling and preservation of DNA samples in rape and sodomy cases.

²⁴ Legal Aid Society, (2020) "Training Needs Assessment of the Sindh Police". Legal Aid Society

²⁵ Legal Aid Society, 2023, "Report on Awareness and Use of Standard Operating Procedure on DNA in Sindh Police", Legal Aid Society & Sindh Commission on the Status of Women

²⁶ Police trainings on Investigating Sexual Violence were conducted in collaboration with the Training, Department, Sindh Police in Karachi, Pakistan between January – April 2022, conducted by Legal Aid Society

This knowledge deficit weakens the SSOIU and the investigation process. Incorrect charges can misdirect efforts, wasting court time and resources and potentially making vital evidence inadmissible at trial. Efforts to implement procedural changes are mainly ineffective without proper training and awareness.

Importance of a detailed 173 challan

The police, upon conclusion of its investigation, submits to the prosecution department a report under Section 173 CrPC (hereinafter referred to as the 173 challan). There are 3 types of reports the police can give:

- i) A report in which one or more persons are recommended for trial. Such reports are commonly called challans. A Challan can be both interim and final.
- ii) A report of cancellation. Such a report declares a case false or otherwise unfit for prosecution for defined reasons.
- iii) A report of untraced. Such a report is an intimation that the Police have not been able to trace the person responsible for the offense in question and have no reasonable hope of doing so

“Where the police are satisfied enough evidence exists against one or more subject, the police recommends the first report, that the suspect/suspects should stand trial.... A complete report/challan may be filed in the first instance or following the submission of an interim challan. Interim Challans/interim Police reports are used for cases where an investigation has not been completed within the statutory period of fourteen days. In such cases, the Police have to send an interim report indicating the result of the investigation finalized till that time, along with reasons for not filing a final report. The Prosecutor shall examine the reasons assigned for the delay in the completion of the investigation and, if he considers the reasons compelling, request the Court the postponement of the trial and, in case the investigation is not completed within a reasonable time, request the Court for commencement of trial. Similarly, in cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial based on the evidence available on record. The Court may then choose to proceed with the trial or to defer it for a certain period depending on the circumstances of the case. An interim report can form the basis of a trial, and accordingly, the Police should be careful in formulating such a report. Where the Police have submitted a final report, they can file a supplementary report.”²⁷

The 173 challan is meant to “document the evidence collected by the Police, the opinion of the Police, and the Police decision to charge a particular person based on the available evidence.”²⁸ In their scrutiny, the prosecutor must examine the process of investigation and the substance of the challan within the framework of law and precedent to decide whether to submit the case to the court or return it to the police for further investigation. The police need to provide a holistic, detailed narrative, explaining every little detail, e.g., identifying suspects and what specific role is attributed to them; or identifying how they discovered any form of evidence such as CCTV camera footage and steps they took to ensure legal accuracy.

The 173 challans currently submitted by the police do not provide adequate details for the prosecution to understand how the police came to their conclusion. It copies/pastes the FIR, the witnesses’ statements, etc., but rarely divulges investigation details. The prosecutor must have this knowledge to make decisions on the next steps, but also be cognizant of weaknesses of the case in terms of process and substance and whether there is a need for further evidence, etc.

Lack of Involvement in the Prosecution

A police officer is not meant to have all the legal knowledge as that of a lawyer. As per the law, the prosecution department is to be informed as soon as an FIR is registered.

“... [A]fter receipt of First Information Report which a prosecutor must receive immediately, he is bound to contact the concerned Investigating Officer and guide/advise him throughout the investigation process to lead to better quality criminal cases, fit for prosecution. The guidelines on Police Prosecutor Co-operation are contained in Standard Operation Procedures on the subject. Once report of an investigation has been made, he may lawfully ask whether a particular line of enquiry was followed, what evidence was collected and/or whether the Police acted in accordance with the Prosecutorial Advice.”²⁹

In the United Kingdom, Prosecutors are instructed³⁰ to advise the police and other investigators about the following:
Possible reasonable lines of inquiry;
Potential charges;

²⁷ Sindh Judicial Academy, (2020), “Session 03: Submission of Challan”, under the project Police Prosecution Coordination for Investigators & Prosecutors, Sindh Judicial Academy, available at: <http://sja.gos.pk/assets/manuals/Submission-of-Challan.pdf>

²⁸ Ibid

²⁹ Sindh Judicial Academy, (2020), “Session 03: Submission of Challan”, under the project Police Prosecution Coordination for Investigators & Prosecutors, Sindh Judicial Academy, available at: <http://sja.gos.pk/assets/manuals/Submission-of-Challan.pdf>

³⁰ Rape and Serious Sexual Offences (RASSO) Legal Guidance 2022, Crown Prosecution Services, United Kingdom

- Evidential requirements;
- Pre-charge procedures;
- Disclosure management;
- Asset recovery, including the overall financial strategy;
- The overall investigation strategy, including whether to refine or narrow the scope of the criminal conduct and the number of suspects under investigation;
- Legal elements of offenses.

The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, widens the powers of the prosecution. Every report under Section 173 of the CrPC must now be forwarded to the court through the Prosecutor. The prosecutor is bound to examine and scrutinize the report and direct the IO to make corrections before submitting the same to the court.

Unfortunately, this does not happen in practice. It appears that except on an ad hoc basis, prosecutors either do not understand or seek to play their obligated roles. There is very little involvement of the prosecution during the investigation. The police and prosecution work in silos in sequential order (the police investigate, then the prosecution starts looking at the case) rather than working jointly as a team. This is not good practice, results in an investigation that is weaker without the guidance of legal expertise delays the process in case the prosecution decides to return the case to the police for re-investigation or further investigation.

Exceptions, however can be seen, which may be indicative of changing trends. For example, in District South in Karachi, due to the efforts of the DPP, more prosecutors are involved in the investigation and finalization of challans with the police.

An unofficial compromise attempted at the police station before the registration of the FIR.

Every LAS lawyer reported that the police regularly attempt to affect a compromise at the police station before the registration of an FIR. They noted that the police try to use scare tactics with the complainant of long delays, shame, etc., and try to advocate for compromises. In cases involving family members, there is disbelief, attempts to compromise, and then waiting for approval of the SHO before they register cases.

Not only is this practice illegal, but it also violates the dignity of the complainant/victim, impedes their right to access justice, creates further stigma around rape, reduces the trust of the complainant/victim in the police, sullies the reputation of the police force.

Prosecution Process

Every case has a different litigation strategy developed based on existing evidence. Legal education in Pakistan does not give any skills-based training, and lawyers, including prosecutors have to learn such skills on the job and thus, through experience. A good prosecutor will ensure all steps involved with prosecution have been taken effectively and promptly.

The assignment of GBV Prosecutors has made a significant improvement in how cases are being proceeded with in the court. Discussions with LAS lawyers³¹ and GBV Prosecutors³² during training revealed that since they have a specialized mandate, they are better able to research, understand and strategize for their cases.

They better understand some of the crucial information, such as reading and understanding medico-legal reports, are mostly updated on law etc. However, gaps identified suggest specific areas of improvement for furthering the positive initiatives and their outcomes.

Lack of Collaboration with Police and Medico-Legal Department

As noted earlier, the police, prosecution, and medico-legal departments do not work in a coordinated joint manner. Instead, they work in silos – sticking to their official job descriptions without working as a team. This results in gaps that could be avoided through regular interaction and collaboration.

Police & Prosecution

This has been discussed above. The lack of guidance from the prosecutor's department has often resulted in weak evidence or insufficient evidence. It can lead to incorrect sections being included or investigated or not investigated by the police. For example, in SV Khi 12, if the case is for sexual abuse, proof of motive of the accused is not necessary – it is a strict liability crime, i.e., the act is sufficient to constitute the crime. For attempted rape, one must assess whether the only reason rape did not happen was because of external factors stopping the perpetrator before he was able to complete the act of rape.

The police are also not aware of the latest laws and precedents; by the involvement of the Prosecutor, this gap could be covered with the latter giving guidance as to what additional evidence is needed, process, and basic standards to ensure it is admissible in court.

Prosecution & Medico-Legal

Given the importance of DNA and other forensic evidence, there should be regular coordination between the two. Medico-legal reports are often detailed with medical terminology and outcomes which are not necessarily understood by the prosecution. The prosecution must work with the Medico-legal doctors to understand what the report says, its impact on their case and what other corroboratory evidence is required. Dr. Summaiya Tariq, Police Surgeon Karachi continues to reiterate her opinions captured in earlier research in 2021³³

“Dr. Summaiya, during her training with prosecutors, highlighted that prosecutors do not ask adequate questions of medical officers. She also noted that this might be because prosecutors do not have a strong grasp of medical evidence and terminology. She, however stated that this is precisely why prosecutors should ask more rigorous questions of the medical officers to give their expert opinion. She advised that prosecutors should have regular phone calls with medical officers while preparing a case strategy to understand best exactly what to ask at the time of testimony.”³⁴

Scrutiny of the 173 Challan

One of the primary tasks of a prosecutor is to scrutinize the 173 challan submitted by the police under Section 9 Criminal Prosecution Service (Constitution, Functions, and Powers) Act 2009. The prosecutor decides the investigation and evidence are sufficient and submits it to the court for framing of the charge and initiation of the trial. If, however, the prosecutor feels the evidence is insufficient, it can be returned to the police for further investigation within 3 days³⁵. This could include the following scenarios.

³¹ Focus Group Discussion held with LAS lawyers on 15-02-2023 in Karachi & online

³² LAS conducted trainings, meetings and discussions in collaboration with the Department of Prosecutor General, Sindh between 2020 – 2023

³³ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khawaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

³⁴ Ibid

³⁵ Section 9(4)(a), Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009

“For example, the submission of the final challan is by the prosecutor, which gives full details of the accused as well as all claims and evidence against him/them. Thus, upon examination, if the accused have not been assigned a specific role in the commission of the offence in the statements of the victims and witnesses and challan, as was in the Mukhtar Mai case³⁶, the case against them would fail, resulting in acquittal. Further, the prosecution must assess the evidence against each individual accused to be able to put it to him during the examination. If not done, the evidence can be used for maintaining a conviction or sentence. For example, in a 2016 SC case³⁷, the prosecution made the error of not putting the medical evidence to the accused during his examination as per required procedures. Thus it could not be used against him for maintaining the conviction or sentence.”³⁸

As has been observed in other research³⁹, there is little evidence that the prosecution exercises this option. Thus, it is not uncommon to find gaps in the investigation, such as incorrect charges as discussed below, which could have been filled promptly if the prosecution had, in fact utilized the option and the police could have gathered more evidence. For example, in several cases, geo-tracking could have been used to identify the location of the accused or victim at the time of the crime, etc.

It is also important to note that the prosecutor who does the scrutiny of the challan is not the same prosecutor who takes the case forward to trial. Best practices suggest – and were supported by GBV prosecutors themselves – the use of ‘vertical prosecution.’

“Vertical prosecution is recommended in all sexual assault cases. Vertical prosecution of sexual assault cases means the same prosecutor, who has specialized training in sensitive crime issues, is assigned to the case from beginning to end. With vertical prosecution, victims can work with the same prosecutor and investigator from the time potential charges are first reviewed through the sentencing of the offender. Vertical prosecution has been shown to improve conviction rates, reduce victim trauma, and provide more consistent, appropriate sentencing. It is therefore considered best practice.”⁴⁰

Incorrect Sections in the Charge

The prosecution and Magistrate have a specific duty and the time to ensure that the correct charges are submitted to the court or admitted for trial. There should be little allowance for mistakes or negligence by prosecutors at this stage.

There are 3 opportunities during the process of submission and initiation of trial that provides an opportunity to identify the exact offense with which the accused is to be charged:

- (i) The police identify the specific legal provisions and offenses which the accused is being charged with when submitting the 173 challan to the prosecutor
- (ii) The prosecutor confirms the specific legal provisions and offences which the accused is being charged with when submitting the 173 challan to the court
- (iii) The Magistrate, looking at the entire prosecution case and evidence, makes the final decision about which offences the accused will be charged with and the specific legal provisions.⁴¹

Despite this, it can be noted that an incorrect charge has been included in the case. The negative impact of this is leading the prosecution attempting to prove a different offense than the one that was committed. For example, defining attempted rape as sexual abuse as identified in SVR-Khi Case 10. It also evidences a gap in the knowledge of the Prosecutor and Magistrate about law and the latest legal amendments and their interpretation.

Lack of Witness Preparation⁴²

There are several cases where a lack of witness preparation is evidenced, resulting in their statements being contradictory to earlier documentation and statements. This results in them being considered unreliable and their

36 The State vs. Abdul Khaliq (PLD 2011 Supreme Court 554)

37 The State and others v. Abdul Khaliq and others (PLD 2011 Supreme Court 554)

38 Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khowaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

³⁹ Ibid

⁴⁰ Wisconsin Adult Sexual Assault Response Team Protocol (pp. 22-30) by Wisconsin Coalition Against Sexual Assault, 2011. Retrieved from https://www.wcasa.org/file_open.php?id=203

⁴¹ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khowaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

⁴² The response has been curated from the following resources: Medwed, S.D. 2019, “Coaxing, Coaching and Coercing: Witness Preparation by Prosecutors Revisited”, Ohio Journal of Criminal Law [Vol 16:379]; “Preparing vs. Coaching: Witness Deposition Ethics”, <https://www.casamo.com/preparing-vs-coaching-witness-deposition-ethics/>, accessed on 22-03-2023; “Preparing an Expert Witness for Trial”, <https://www.casamo.com/preparing-expert-witness-trial/>, accessed on 22-03-2023;

testimony untrustworthy. This can be seen in the cases SVR Khi Case 14. Contrary to this, in SVR-Hyd Case 7. The witness explained in detail the event, identifying details of the car she was taken away in, why she stayed silent and did not raise a hue and cry, conversations between the accused, etc. The details and the sufficient capture of her narrative provided a credible statement by the court.

It is considered good trial practice to ensure a witness is adequately prepared. An unprepared or ineffective witness may damage any case, no matter how good other evidence may be, particularly in cases of rape and Gender Based Violence (GBV), where the solitary statement of a victim which is believable and unshaken can be sufficient for a conviction. It is also important for a prosecution's trial strategy to interview witnesses before the trial to understand the strength of their case, and determine the sequence of presentation.

Legal ethics require that a lawyer should not *coach* a witness but can *prepare* a witness for trial. While the line between the two is very thin, there are general guidelines and rules which attempt to define the differences between the two. A lawyer must not guide a witness towards dishonesty, support felonious conduct, provide testimony scripts, bait false testimonies, or manipulate other testimonies. Ethically, they can orient the witness to the courtroom environment, explain legalities, strategize testimonies, ensure honesty, polish responses, build confidence, clarify courtroom procedures, practice questioning, review evidence, and offer support and reassurance.

Countering Contentious or Problematic Evidence by Handling Prioritizing

The prosecution needs to be prepared to counter-evidence against it or fill in gaps in the prosecution case. For example, whether it's incomplete memos by the police in case of evidence, or counter-allegations from the defense, the prosecution should be prepared.

If, for example, the prosecution identifies missing information in the testimony of the victim or witness, they can act in accordance promptly. For example, recording a second 164 Statement for the Magistrate, which is admissible in evidence; calling the right experts such as Psychiatrists to testify to the emotional trauma of the victim, etc., explaining the delay in registration of FIR through calling of additional witnesses or having it covered through the testimony of the complainant, countering inconsistencies in different statements of the victim/complainant and protecting it during the examination in chief, etc.

Out-of-Court Settlements or Compromises

Comprises in rape cases are, unfortunately very common. LAS research in 2021⁴³ evidenced confirmed that 22% of the sample size cases had compromised, and 57% of the victims turned hostile (recant) and stopped supporting the prosecution case, indicating that out-of-court compromise had been achieved.

Victim Recantation is a retraction or withdrawal of a reported sexual assault. Because victims use recantation to halt criminal justice involvement, it should never be viewed, in and of itself, as an indication of a false report. Many factors may influence a victim's decision to recant:

- Victims may not have initially realized the toll that a criminal investigation and trial would take on them mentally, emotionally, physically, and financially, and later decide to end their involvement with the legal process.
- Victims may face tremendous pressure from family, friends, and the community not to report or participate in prosecuting the offender. This is especially true when the assailant is known to the victim.
- Victims may withdraw their participation because they have grown tired of lengthy investigative delays, slow court dockets, or when they feel uninformed about and uninvolved in, the decision-making process.”⁴⁴

Since rape is considered a crime against the State, the case can proceed without the victim or complainant's participation. Currently, the mechanism used is that the prosecutors identify the victim, complainant, and other private prosecution witnesses as hostile and effectively cross-examine them. This does not have the desired effect as it determines that the victim/complaint no longer wishes to proceed with the case – which judges may simply use as a reason to dismiss the case, such as in SVR-Suk Case 12, where no other evidence was submitted or considered, or any actions taken to understand why the alleged victim recanted her earlier statements. In such cases, the prosecution needs to do the following:

⁴³ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khowaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

⁴⁴ Wisconsin Adult Sexual Assault Response Team Protocol (pp. 22-30) by Wisconsin Coalition Against Sexual Assault, 2011. Retrieved from https://www.wcasa.org/file_open.php?id=203

- Prepare for the reality that the victim may compromise from day 1, thus ensuring the 164 statement is not just verbally recorded but also electronically, and advocate for cross-examination to be done there and then; and for ensuring other evidence to back the victims' initial statements is provided;
- Continue prosecution of the case effectively despite the withdrawal of the victim/complainant;
- Use strategic interviewing techniques to bring out the necessary information to support your case from the victim or admit to compromising out of court.

Success Story: SVR-Khi 17

The case involved the rape of an 8-year-old girl by the brother of her maternal grandfather. While evidence was collected and submitted, including the confession of the accused before the Magistrate, the statement of the victim before the Magistrate was not recorded.

The LAS lawyer discovered that the family had effected an out-of-court compromise with the accused. While they proceeded with the case after initial counseling by the lawyer, the complainant refused to bring the victim forth to give her statement, despite repeated court orders. The prosecutor and LAS lawyer both proceeded with submission of evidence in the court, and the court continued the hearings despite the recanting of the complainant and private prosecution witnesses. The accused was convicted based on existing evidence, including the confessional statement convicted the accused of rape.

Upon appeal to the Sindh High Court, the victim's family refused to contest the case. The case was remanded to the GBV court for rehearing. In this instance, the victim was brought to court to give her statement in favor of the accused and recant her statement. However, on seeing the accused, the victim broke down and could not speak, and showed other signs of terror. The judge immediately removed the victim from the stand and continued trial in his chambers. He wrote that the victim exhibited signs of trauma at the sight of the accused, which led him to believe that the accused was guilty. This, coupled with the confession, the accused was convicted once again.

Lack of Initiative to Use Special Protection Mechanisms and Services Under Law

The law under Section 352 of the Pakistan Penal Code 1860 and Sections 8, 12, and 13 of the Anti-Rape (Investigation and Trial) Act 2021 allows for the use of special protection mechanism (SPM) during the trial of rape. These include the use of shields, which are now common in GBV Courts; waiting rooms in select GBV Courts; the use of CCTV cameras for recording evidence; use of pre-recorded evidence of victims etc. The law always allowed for specialized and expert witnesses where and when necessary. Experts could include psychologists to testify to the impact of trauma on victims to calculate hurt or testify to a victim's mental health after a rape etc.

Unfortunately, these mechanisms and services have not been avidly used by the prosecutor and even LAS lawyers in cases of rape. While there has been progress in the arguments placed before the court or in mannerisms, there remains a reluctance to change the mechanisms of a trial by suggesting or requesting CCTV cameras or pre-recorded evidence. When LAS lawyers were asked about their reluctance to do so⁴⁵, they said it is hard to convince the trial court to do something new or different until orders come from superior courts. They are hesitant to change the status quo in case it negatively impacts their client or due to the uncertain outcome of the use of different mechanisms. They also suggested that some of the protection mechanisms were unavailable in the GBV courtroom in their district, or they would not do so due to a judge they knew would not support any such changes⁴⁶.

When asked about the lack of use of experts, many did not understand what and when they should use them. At the trainings, it was suggested that experts could be helpful to the prosecutor's case, indicating that they use child psychologists to interview children or assess the mental damage to them. While everyone (LAS lawyers and prosecutors) agreed wholeheartedly – there has been little evidence of any such tactics or mechanisms being used.

⁴⁵ Focus Group Discussion held with LAS lawyers on 15-02-2023 in Karachi & online

⁴⁶ Ibid

To change the nature of the trial, these mechanisms (which have been proven to significantly increase the level of satisfaction and trust with the GBV courts) must be used regularly and effectively by prosecutors and lawyers of the complainant. These have been created specifically to support the victim, especially with the intent to the re-traumatization of the victim undergoing trial.

Judiciary

Gender-Based Violence (GBV) Courts were established by the National Judicial Policy Making Committee of the Supreme Court in November 2019. They were then given legal cover under the Anti-Rape (Investigation and Trial) Act 2021. The judges have undergone various trainings at the Sindh and Federal Judicial Academies in collaboration with civil society organizations such as LAS.

Lack of Precedents Interpreting the New Law

It is essential to recognise that with a recently passed law and without precedents from the senior judiciary, implementation of law will be ad hoc and at the discretion of different judges. While some matters are clear, e.g. the changed definition of rape, other issues are more complicated. For example, Section 16(2) of the Anti-Rape (Investigation and Trial) Act states that if the defense counsel does not appear for 2 hearings and the case is adjourned, then a new defense counsel may be appointed by the Court. Several accused have taken advantage of this by not hiring a new defense counsel and thereby extending trial time under the principles of Fair Trial under the Constitution of Pakistan⁴⁷. However, without State resources to pay a defense counsel or through bad intent on the part of the defendant, the trials are prolonged. Conducting a hearing without the defense counsel is also a violation of fair trial. There is no clarity on a response to situations such as this at this point. Superior Courts must first have the opportunity to hear such cases and provide a solution through precedent. In the meantime, the interpretation of the law will continue to be ad hoc and discretionary amongst the trial courts.

Use of Special Protection Mechanisms (SPM)

GBV Courts are meant to provide an expeditious and safe environment for reduced trauma of the victim during a rape trial. As noted above, Section 352 of the Pakistan Penal Code 1860 and Sections 8, 12, and 13 of the Anti-Rape (Investigation and Trial) Act 2021 allows for the use of SPMs during the trial of rape. These also include camera trials, the use of CCTV cameras or other modern devices for conducting testimonies of victims, etc. A User Satisfaction Survey for GBV Courts in 2 districts of Sindh conducted upon implementation of at least 2 special protection mechanisms, i.e., screens and waiting rooms, evidenced a 14% increased satisfaction level of end users as opposed to regular criminal courts⁴⁸.

On-ground LAS lawyers report that such measures are available on an ad hoc basis. Only a few courtrooms have waiting rooms, not all of them conducted in camera trials, and only a few cases allowed for giving testimony using modern devices, such as SVR Khi Case 8, where testimony was provided through a video-link. This is at the discretion of GBV Court judges along with a lack of resources which results in inconsistent use of SPMs across Sindh. Without being able to discuss this with judiciary members, it remains challenging to understand why the GBV Courts have not put in place any such measures consistently across the country.

“The judges, particularly GBV Courts, should ensure that such special protection mechanisms are easily available for victims, taking the discretion to implement some of them on their own accord, especially when involving children. In particular, judges should have a strong hold over the courtroom setup and trial management to make allowances for such mechanisms and remain flexible to change processes to suit the different needs of the alleged victims”⁴⁹.

Compromise in Courts

In some instances, the parties admit an out-of-court settlement. In others, as discussed above, the victim/complainant and other private prosecution witnesses turn hostile and stop supporting the prosecution case. The prosecution and court commonly accept this at face value, complete the trial’s formalities and conclude, usually with an acquittal⁵⁰.

However, compromise is illegal. If judges accept compromise as a reason to acquit the accused or that the complainant no longer wishes to continue with the case, they are committing an illegality. Where compromise is suspected due to the recanting of the victim/complainant and prosecution witnesses, the judge should then consider

⁴⁷ Article 10A, Constitution of the Islamic Republic of Pakistan 1973

⁴⁸ Court User Satisfaction Survey - Comparative Assessment of Criminal and Gender Based Violence Courts in Karachi Hyderabad, and Islamabad Capital Territory 2022

⁴⁹ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case”, Legal Aid Society; Khawaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

⁵⁰ Randhawa, S, David, S., Zia, M. (2021), “Gap Analysis of Investigation and Prosecution of Rape Case in Sindh”, Legal Aid Society; Khawaka S, Lari, M, Durrani, F. Awan, M. Dr, Rehman, A; & Ashraf, A. (2022) “Gap Analysis of Investigation and Prosecution of Rape Cases in Islamabad Capitol Territory”, Legal Aid Society.

other evidence and assess whether the evidence supports the earlier accusations or the later recanting. The judge should also take the opportunity to speak to the victim/complainant in private to assess reasons why they have turned hostile or compromised the case and give time to them to reconsider their decision. They must conduct a risk assessment if they suspect the victim may be under threat and provide security or send the victim/complainant to a shelter or safe space until they have made a decision.

Documented Recording of the Trial

In any interaction with the judiciary, whether recording a statement under Section 164 CrPC before the Magistrate or at trial in the GBV Court for rape cases in Pakistan, the manner in which the examination of witnesses, including the victims, and the way it is documented is vastly different. While questions are often asked in Urdu or a local language, the court transcript does not record the entire conversation word for word, noting both queries and responses. Instead, the narratives or responses of the witness are recorded after undergoing 5 types of transformation:

- i. Translated into English – the court language
- ii. Summarised instead of noted word for word
- iii. Turned into a narrative instead of documenting the questioning back & forth
- iv. Summarised
- v. Translated into court & legal language and not the language used during the testimony.

Thus, the actual narratives are not being appropriately captured, and given the importance of the victim's testimony, this could negatively impact the prosecution case. Often a judge's decision or future appeals are made based only on documentary evidence. The solitary statement of the victim is sufficient for conviction – but it is not the victim's statement that's read, but the court clerk's version of it. Good practice, as is followed in international courts such as in the United States, United Kingdom, etc., have detailed transcripts with questions, answers, and responses can help a lawyer and court. Examples of how it can be helpful include:

- **Creating a trial strategy:** Reading or listening time and again will help one comprehend more of what was said and what can be useful. It also helps catch subtle nuances and word choices that may have been missed earlier but allow a better understanding of the witness' intentions and thoughts.
- **Establishing trial tones:** Transcripts, along with recording what was said, are also helpful in capturing what was felt. For example, when a witness recounts the incident or story, the exact transcription can indicate what he was feeling at the time.
- **Preparation for appeal:** An exact record of what would be said can be used in an appeal. Re-reading the transcript helps you determine what went wrong and seek to demonstrate a procedure or substantive errors that can form the basis of the appeal.

Audio transcriptions of court proceedings are critical when it comes to presenting the most accurate information possible and ensuring that no important details are lost.

Use of Electronics in Trial

Despite the increased usage internationally and even nationally in some cases, the use of electronic communication, recording, and documentation including both audio and visual, remain minimal. The Anti-Rape Act requires explicitly the 164 of the victims to be recorded, but to date, all LAS lawyers and prosecutors note that this is not done. The law again suggests the use of CCTV cameras and other modern devices to allow for evidence to be given from a distance, but few, if any, of the GBV courtrooms have the required setup, nor have they used this regularly.

Analyzing Successful Convictions: Factors Contributing to Success

From an analysis of the 11 successful convictions and discussions with the LAS lawyers who pursued these cases, certain factors contributing to the success become evidence. These have been discussed below.

Processes must be complete:

All 11 conviction cases evidence that the police investigation has been thorough and all required documentation was done at the time of investigation; all of them were timely signed/registered; all the necessary processes were conducted without any gaps. The Investigating Officers were very clear in how the investigation was conducted, providing a logical, clear, and concise overview of the investigation, leading to the conclusion as evidenced in the 173 challan. This inspires confidence in the police and police processes.

Importance of the Victim's Statement:

The solitary statement of the victim remains one of the most critical pieces of evidence. Except for one case, where the victim was too young to testify, every victim gave an unshakable statement during cross-examination. The victim's statement was one of the significant reasons for the conviction of the accused.

A collaborative relationship with Prosecutors:

LAS built a strong relationship with the Prosecution Department and the Prosecutors assigned to the GBV Courts. This relationship has been based on key components: sharing of strategy, sharing of relevant case law with each other; LAS staff working in collaboration and not a competition with the prosecutors; LAS staff not seeking to take full credit for the successful cases, instead, it seems to work WITH the prosecutors and are mindful and respectful of their position and work. Some positive advocacy points with the prosecutors included the provision of a compendium on case law on sexual violence, which is often used by some of the prosecutors.

Effective legal research:

The LAS team conducts detailed legal and social research, presenting it during the trial to support their stance. They've addressed the oft-used defense of personal enmity by providing relevant law and precedent, arguing that any such claims need substantiation. They also successfully argued that a delay in reporting rape isn't necessarily detrimental to a case. Moreover, they've stressed that while DNA is pivotal, other evidence, such as circumstantial and ocular, can hold equal importance.

Use of different legal techniques and strategies:

Trials of rape usually follow a certain pattern and outcomes, with little bolder strategy employed. The LAS team ensured it used different legal strategies common in other cases to build their own cases. For example, as noted above, the solitary statement of the victim is the most important piece of evidence in a rape trial. However, in many cases, the victim is unable to provide a statement, for example in the case of a child below the age of 5. The LAS team invoked the principle of 'Res Gestae', an exception to the hearsay principle. Here, if a victim narrates the complete details of an incident to another person immediately after the incident – the testimony of the second person is valid and acceptable in court and holds significant value.

Submission of Written Arguments:

It is not common practice to submit written arguments. However, LAS lawyers working with prosecutors have adopted this practice. Written arguments, including all relevant case law, are submitted into the court in every single trial in which LAS is involved. This is critical because it helps refresh the memory of the judge of the arguments made and is essential for the knowledge building of judges themselves.

Information and Close Relationship with Victim & Family:

The lawyer must build a strong relationship with the victim and family. In a long, traumatic investigation and trial process, the lawyer's support is often the strength behind the victim and family. Steps to create a trusting relationship with the victim and family include:

- Regular communication about the case, providing updates, explaining processes, timelines, etc.

- Ensuring regular presence in the courtroom. Even if the case is adjourned, the presence of the lawyer indicates that the victim and family that lawyer will be present with them regardless of other complications
- Ensuring rejection of bail in such cases. Bail matters are often the first hearings in cases of rape. If a lawyer can ensure the accused is in lock up and bail is rejected, it builds the lawyer's trust with the victim and family
- Counseling the family into continuing with the case and court and not to compromising it out of court

Increased knowledge and sensitivity of prosecutor & judge due to specialization: The special prosecutors and GBV Courts deal with similar subject matter regularly. Through increased practice, arguments presented, and oversight of such cases, etc., judges, in particular, developed a more knowledgeable and sensitized approach to cases of rape. For example, rape myths are not regularly relied upon. For example, there is reduced expectation of a victim to raise a hue and cry; emphasis is placed on the psychological impact of rape on the victim. Dealing with the same subject matter has refined their knowledge and capacity to prosecute (for prosecutors) and oversee (judges) cases.

Progress and Positive Changes

In addition to recognizing success factors in conviction, it is also essential to identify gains achieved in the larger framework. Unfortunately, there has been no comprehensive, evidence-based study or review of a large sample of cases post-2020, thus, there is no verifiable data on this apart from the LAS User Satisfaction Survey. Therefore, to identify if any progress or gains have been made, discussions were held with the LAS lawyers and interview with Police Surgeon Karachi. The following are some positive gains achieved since 2019:

Medico-Legal Reports:

- The two-finger test has mainly become obsolete, with few exceptions
- Due to extensive training on medico-legal reports for police, prosecution, and judiciary, including those organized by LAS between 2021 – 2023, there's a better comprehension of the report's contents and its utilization
- Following policy reforms, the proforma for rape and domestic violence in the medico-legal department has been revised. Training for the medico-legal staff has played a pivotal role in refining report-writing methods. Reports have become more apparent and often include a medico-legal opinion, aiding the CJS in understanding examination outcomes

Prosecution Improvements:

- Prosecutors have undergone extensive training in:
 - ✓ Witness preparation
 - ✓ Effective Examination in Chief of the Witness and appropriate objection strategies against unlawful questions from the Defense counsel
 - ✓ Admissibility of evidence
 - ✓ Formation of final arguments
- Prosecutors are regularly updated with the latest case law and other recent developments.
- Enhanced quality of prosecution is also attributed to better coordination with the complainant's counsel
- Empowering the complainant with adept advocacy and legal representation has proven crucial for the success of GBV cases

Police Reforms:

- The police are now more rigorous in ensuring thorough investigation processes, including proper paperwork, memo creation, and signing. A noted decline in these previously highlighted issues is commendable.
- A shift towards a more GBV-sensitive and victim-centric approach by the police is observable, reducing their previous biases

Judiciary Sensitization:

- Judges have become more receptive to GBV and rape cases, often employing discretion to minimize victim trauma and adopting a more gender-sensitive language and methodology. The User Satisfaction Survey indicates that this improved judicial approach is a significant factor in elevated beneficiary satisfaction
- GBV prosecutors, due to specialized work, have portrayed greater case ownership, as evidenced by consistent court attendance, partner collaboration, and a deeper understanding of the offense
- Both GBV prosecutors and courts persevere with cases even amid suspected or confirmed compromises, leading to convictions

Overall Outcomes:

- Solitary statements from victims under section 164 of the CrPC have become mandatory, enhancing conviction rates
- GBV-focused lawyers from LAS report faster case conclusions than before, alleviating delays in other cases

Conclusion

This report has sought to identify specific bottlenecks by examining the challenges stage-by-stage. Through this evidence-based research, policymakers can implement targeted and outcome-oriented initiatives and actions with potentially high results.

Additionally, this report highlights the importance of adaptive and dynamic strategies within the CJS, especially concerning GBV cases. As societies evolve and complexities arise, our systems must be equipped to respond with precision and empathy. The highlighted bottlenecks and their solutions provide a blueprint for building a more responsive and effective justice system. Embracing these insights will streamline the legal process and foster an environment where victims feel heard, validated, and protected. This proactive approach can reinforce trust in our institutions and ensure a safer, more just society.



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