ROLE OF MEDICOLEGAL EVIDENCE IN RAPE TRIALS

A review of judgements at the session court in Mumbai

Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai

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A REVIEW OF JUDGEMENTS AT THE SESSIONS COURT IN MUMBAI

Cehat

Centre for Enquiry into Health and Allied Themes (CEHAT)

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For copies of this report, please contact:

Centre for Enquiry into Health and Allied Themes (CEHAT)
Survey No. 2804 & 2805
Aaram Society Road,
Vakola, Santacruz (E).
Mumbai - 400055
Tel.: (91) (22) 26673154, 26673571
Fax: (91) (22) 26673156
Email: cehatmumbai@gmail.com
Website: www.cehat.org

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Contents

Foreword

The CEHAT Report examines the role of medico-legal evidence in securing justice for the victims of rape. The report is an analysis of 96 judgements related to rape adjudication in the Sessions Courts in Mumbai. The survivors of rape in these cases had sought support from hospitals which implement a gender sensitive response to rape. The Report examines how medico-legal evidence plays an important role in the trial of the accused in rape cases.

CEHAT has been working for a comprehensive health care response to sexual violence. In the course of its work it has encountered deep-seated biases and stereotyped beliefs about rape in addition to absence of suitable therapeutic as well as medico-legal responses by hospitals to the victims of rape. Its work involving direct intervention to help survivors, training of health-care providers and research in legal advocacy areas is well known. This report makes an important contribution to fair adjudication of rape cases.

The report has relied upon the recommendations of the Verma Committee, the resultant amendments in the Penal Code and the Criminal Procedure Code and the procedural guidelines along with the protocol for medical personnel to respond to gender violence in a gender sensitive and scientific manner issued in 2014 by the Ministry of Health and Family Welfare, Union of India. After examining the Sessions cases, it exposes various stereotypes and social preconceptions relating to the victim and the accused, which still seem to colour the trials in such cases. Why are there much fewer convictions in the case of adult women than in case of girls below 18; why is rape by acquaintances more difficult to establish; why delay in filing FIR leads to suspicion without taking into account the social realities which prevent a woman from going to the police or barriers to approaching family members?

The report also points out that the defence emphasizes cases where there is absence of genital injury, ignoring the importance of other injuries and other

health complaints, although courts have become more sensitive to the nature of injuries that may indicate rape.

Although Section 357A introduced in the Criminal Procedure Code provides for compensation, only one fourth of the victims received compensation which varied from Rs. 4000 to Rs. 40000! There is a clear need for proper criteria for awarding compensation. The punishment pattern also needs proper criteria.

The report provides useful data for those concerned with providing proper therapeutic care to rape survivors and will help those concerned with fair adjudication of rape cases.

7th September 2020

Sujata Manohar

Mrs. (Justice) Sujata Manohar (Retd.)

Acknowledgements

The report "Review of case judgements of sessions courts in Mumbai" is based on analysis of court judgements and medico legal proformas used by health care professionals in examination and treatment for rape survivors. This report is an outcome of partnership between CEHAT and MCGM for implementation of comprehensive health care response to rape survivors across 3 Municipal hospitals.

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Data management : Anupriya and Rajeeta Chavan
Data analysis : Anupriya, Sangeeta Rege and Padma Bhate-Deosthali
Report writing : Sangeeta Rege, Padma Bhate-Deosthali, Anupriya.

Executive Summary

Health systems and health professionals play a crucial role in responding to survivors of sexual violence. But several issues constrain health systems from fulfilling its role. These range from lack of uniform guidelines and training, emphasis on archaic medical examination procedures and non-recognition of health consequences of sexual violence.

CEHAT was one of the first organisations to collaborate with MCGM and demonstrate implementation of a comprehensive health care response to sexual violence. Gender sensitive health care was at the core of such a response. This model was initiated 3 public hospitals in Mumbai in 2008 and integrated important elements based on World Health Organisation (2003). Guidelines for medico legal care of victims of sexual violence. It comprised of informed consent, removal of unscientific finger test and prohibited recording laxity of vagina and anus amongst others. Subsequent years saw changes in Indian laws related to sexual violence. Protection Of Children from Sexual Offences (POCSO) Act, 2012 and Criminal Law Amendment (CLA) Act, 2013 laid down therapeutic and forensic obligations of Health care providers (HCP). Since then, all Municipal Hospitals in India have been directed to implement Guidelines and protocols: Medico legal care for survivors/victims of sexual violence issued by Ministry of Health and Family Welfare (MoHFW 2014).

A robust and comprehensive health care response to rape survivors can play an important role in survivor's journey for legal justice. With the aim of understanding the role of Health care providers as expert witnesses in the court, we sought to analyse court judgements and role of medico legal evidence in the process of trial. This report present analysis of 96 judgments of the session courts in Mumbai for a period of 2008-2015. The analysis aims to present factors that led to convictions and acquittals in the course of rape trials and its association to medico legal evidence presented in the courts.

Key Findings:

- Out of 96 judgments, convictions took place in 41 case judgements. All the convictions were found in survivors lesser than 18 years except for 2 survivors who were adults.
- 65 survivors faced penetrative sexual violence, 28 of the survivors faced non penetrative sexual violence. Non-penetrative form of sexual violence was found in survivors under 18 years.
- Only 18 survivors suffered genital injuries; while 10 suffered physical injuries. This means less than 1 in 5 survivors faced genital injuries and even lesser faced physical injuries.This finding is in keeping with global evidence by the WHO that states that only one third of survivors may report any injury on their bodies. (World Health Organization [WHO], 2003) reiterating the fact that sexual violence does not always require physical force.
- On an average duration of court trial three years, POCSO and CLA both emphasis on speedy trial in sexual violence cases but still the implementation of the same is not achieved in reality.
- The law mandates compensation to rape survivors. Sec 357A was added to the Criminal procedure code and every State in the country was directed to create a compensation scheme in consultation with the central government package. It is therefore a matter of concern that only 24 survivors received any compensation. The amount ranges from 4000 to 40000 INR.
- The number of years of punishment in youngest rape survivors ranged between 6 months to life imprisonment, in adolescent age group its seen to be between 2 to 4 years and in adults its 2 years. The pattern of punishment and sentencing is highest in the age group of 0-12 years.

Factors affecting the status of judgment:

- *Immediate reporting of incidence:* Out of 96 cases an FIR was filed immediately in 44 cases but there was a delay in the rest. Analysis of the judgements indicate that delay in recording an FIR plays a role in acquittals as the courts fail to recognise circumstances leading to a delay.
- *Presence of Genital Injury:* The presence of genital injuries seemed to play some role in conviction in rape. But physical injuries were not seen to have

an effect on the court outcome. Conviction was also secured in the cases were genital and physical injury were found during medico-legal examination.

- *Doctors' Deposition:* The deposition of a doctor as an expert witness appears to play a role in court trials. The Prosecution was able to secure the presence of doctors in 61/96 cases. Of 61 cases, doctor sexpert witness seems to have played a role in securing convictions in 36 cases.
- *Preparedness of Prosecution:* Out of 41 cases where in conviction took place - prosecution was well prepared in all except 2 cases. Prosecution made efforts to dialogue with the Health Care provider to understand the nature of examination, reasons for lack of injuries and assisted in becoming well versed with the medical expert testimony.
- *Non-recognition of health consequences other than injury:* Courts have not recognised a range of health complaints such as unwanted pregnancies, white discharge, and pain in micturition despite medical expert presenting these in the court. 11 survivors had faced health complaint which was documented on medico-legal records but the courts did not take cognisance of these health effects.
- *Presence of eye witness:* It is well establised that an act of rape does not have eye witnesses. But 5 convictions were secured on the basis of eye witnesses' accounts. Reliance of the court on eye witnesses is a concern because the focus seems to shift from survivor's testimony.
- *Victim turning hostile:* A vexing question is that survivors turning hostile and that seem to have led to 20 acquittals. Of the 20 cases, four survivors were in the age group 0-12, 5 in the age group 13-17 and 11 in the age group of 18 and above.
- *Promise of marriage:* 10 survivors lodged a rape complaint related to breach of promise to marry. The court procedure has not evolved to understand the nuances of circumstances leading to women filing such complaints. The langauge of the courts indicates victim blaming attitudes.

The report highlights continued reliance of courts on genital injuries and a bulk of questions for medical experts were on aspects of injuries and status of hymen of survivors. Language of these judgements also indicates victim blaming

attitudes more so with adolescents and adult women. Lastly there is a need for courts to look in to the phenomenon of victims turning hostile during the trials and create a witness protection scheme/program that enables them to continue staying in the criminal justice system by building their confidence in proceeding in their journey to justice.

List of Abbreviations

CEHAT	Centre for Enquiry into Health and Allied Themes
CLA 2013	Criminal Law (Amendment) Act 2013
CWC	Child Welfare Committee
FIR	First Information Report
FSL	Forensic Science Laboratory
HCP	Health care Professionals
HRW	Human Rights Watch
IO	Investigating Officer
IPC	Indian Penal Code
JVC 2013	Justice Verma Committee
MCGM	Municipal Corporation of Greater Mumbai
MoHFW	Ministry of Health and Family Welfare
NCRB	National Crime Records Bureau
POCSO 2012	Protection of Children from Sexual Offences Act 2012
PP	Public Prosecutor
VAW	Violence Against Women
VAW/C	Violence Against Women and Children

1. Introduction

Health systems and health professionals play a crucial role in responding to survivors of sexual violence. They have therapeutic as well as forensic roles mandated by laws on sexual violence. Both the Protection of Children from Sexual Offences Act 2012 (POCSO 2012) and the Criminal Law (Amendment) Act 2013 (CLA, 2013) recognise the need for immediate care of survivors of sexual violence beyond the medicolegal role of doctors. These changes were spurred by the massive campaign following the brutal gang rape of a young woman in Delhi, which stirred the nation in December 2012. It brought forth concerns related to gaps in State response to sexual violence. Archaic definitions of rape, procedural failures in investigations, inadequacies in medico legal response by the health sector and institutional biases amongst others received the attention of the media and society.

Consistent agitation by civil society compelled the Indian government to constitute a committee to review possible amendments to the criminal law and advise the government on taking necessary measures to respond to sexual violence against women. This led to the formation of the Justice Verma Committee (JVC) (Verma, Seth, Subramanian, 2013). The JVC report was pivotal in bringing landmark changes in rape response in India. Several recommendations of the committee were used to amend the existing legal framework.

The definition of rape was broadened, new offences were added, procedures in relation to reporting, investigation and trial of sexual offences were changed, and a new sentencing regime was introduced, which required different stakeholders such as the police, doctors, Child Welfare Committees (CWCs), Prosecutors and Courts to take cognisance of the changes. The Ministry of Health and Family Welfare, Union of India (MoHFW, 2014) was the first to respond in 2014 by issuing procedural guidelines along with a protocol for medical professionals to respond to survivors/victims of sexual violence. The protocol enables providers to respond to the issue of sexual violence in a gender sensitive

and scientific manner. It recommended discarding the two-finger test and reiterated that comments on "habituation to sexual activity" should be forbidden in medical examination reports. Medical providers were advised to document only signs of fresh injury to the hymen.

This review report presents findings on the impact of gender sensitive medicolegal response on survivors' access to justice through detailed analysis of the orders of the Sessions Courts in Mumbai.

Expanding the Definition of Rape

The Justice Verma Committee noted the prevalence of stereotyping rape as a crime against the honour, chastity, virginity and marriageability of a woman. It advocated approaching the issue from a constitutional perspective and recommended that rape be viewed as a crime against her bodily integrity and sexual autonomy. Such characterisation provided the conceptual foundation to the recommendations of the Justice Verma Committee for changes in the law, including the insertion of a definition of consent in Section 375 IPC.

The Criminal Law (Amendment) Act, 2013 expanded the definition of rape. Although, the Verma Committee[1] recommended that the offence be defined in a manner wherein it could be committed against any sex, Parliament did not make that change. Hence, it is only possible for a man to rape a woman. The offence covers four types of sexual acts:

- First, penile penetration of the vagina, mouth, urethra or anus
- Second, insertion of an object or a body-part, other than the penis, into the vagina, urethra or anus
- Third, manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of the woman
- Fourth, application of the man's mouth to the vagina, anus or urethra of the woman.

[1] The Committee was constituted by the Central Government in December 2012, following the brutal gang rape of a woman in a Delhi bus, to recommend amendments to Indian criminal law on sexual offences against women.

The amendment increased the age at which a girl could consent to a sexual act from 16 years to 18 years. Section 375 IPC provides for a single standard of consent for all cases of rape-an "unequivocal voluntary agreement" by the woman to participate in the specific sexual act. Willingness to engage in the sexual act may be communicated by the woman through words, gestures or any form of verbal or non-verbal means. It also clarifies that lack of physical resistance to penetration shall not be considered as implying consent.

These legal changes have several implications on medical evidence as the nature of sexual violence and circumstances of the assault determine the kind of medical evidence that may or may not be found on the body of the survivor. Additional progressive amendments made in the law included recording the offence of rape in a place where the survivor was comfortable, recording section 164 CrPC statement of a survivor in front of a judicial magistrate, explicit enlisting of duties of medical providers, special provisions for in camera trials, directions for women judges to preside in hearings and compensation by States to survivors.

Institutionalised Biases against Rape Survivors

There has been a noted increase in the number of rape cases registered after changes in the definition of rape in 2013 (National Crime Records Bureau [NCRB], 2018). However, one of the major concerns has been that the conviction rate in rape cases is abysmally low at 27.2 per cent. Of the 1,56,327 rape cases on trial in 2018, trials were completed in 17,313 cases and convictions in 4,708 cases. This is lower than the conviction rate in 2017 which was 32.2 per cent.

As early as in 1952, the Supreme Court of India ruled that a conviction for rape could be based solely on the victim's testimony. It was held in various cases that a court may convict the accused based solely on the woman's testimony that she did not consent, as long as the court found it reliable. In order to infer that the survivor did not consent, it may rely on other corroborative evidence such as medical examination, witnesses, and surrounding circumstances. But as noted by the JVC, the access to justice for rape survivors is wrought with institutional biases against them, namely, the police, health and courts.

In a research study undertaken to understand sentencing policy in rape cases, Satish, (2016) examined 800 cases decided by the Supreme Court of India and 21 High Courts over a quarter of a century, between 1984 and 2009. He found that rape adjudication in India has always been impacted by preconceived notions, myths and stereotypes about the offence and about victims of rape. He maintained that rape myths, such as absence of injury indicates consent during intercourse or rape by a stranger is necessarily "more traumatic" than by an acquaintance, are prime factors considered in rape sentencing. This stems from stereotypes prevailing in the country which consider virginity to be of utmost importance to a woman. Mrinal's analysis shows that presence of injuries on the victim or violence lead to increased sentence and their absence translates to "consent" of victim, and that "non-injuries rapes are not really violent crimes".

In rape cases, the defence counsel cross examines the victim to show that she was of a generally "immoral character". The assumption was that "promiscuous" women and women of "easy virtue" were more likely to have consented to sexual intercourse. Despite the change in the law in 2013 disallowing any reference to past sexual history, medical examinations continue to assess women's past sexual history through medical tests that claim to demonstrate women's habituation to sexual intercourse.

The reliance on stereotypes and rape myths has a detrimental impact on rape adjudication, where, for their testimony to be treated as credible and sufficient for a conviction, a specific type of behaviour is expected of rape survivors before, during, and after the act. The stereotypes and behaviours that have been considered relevant during rape law adjudication in India have included:

- the past sexual conduct of the survivor
- the relationship between the accused and the survivor - the act of rape when committed by an acquaintance is considered less serious than when it is committed by strangers
- whether the survivor screamed during the incident
- whether the survivor resisted physically

- the time gap between the incident and registering of the FIR
- whether the survivor informed her family, friends, or onlookers right after the incident.

Only an exceptional rape survivor-as determined by myths about how women do (or should) act during sexual violence-was given the protection of the law. The Amendment in 2013 extended the definition of rape beyond peno-vaginal penetration, to include penetration by the penis of orifices other than the vagina of a woman, as well as penetration by objects or body parts other than the penis, into the vagina, and other orifices of a woman. Although the acts constituting intercourse were broadened, the core issue in proving rape remains establishing non-consensual penetration. In order to convict a man of rape, the prosecution has to prove that penetration/attempted penetration had occurred without the woman's consent. Proving lack of consent thus is often the crucial element in rape cases. Since there are generally no witnesses to the act of rape, prosecutors have to rely on the testimony of the victim along with any other relevant evidence (such as medical evidence) to show that the woman had not consented to penetration.

Over the years, cases indicate that the police continue to ask doctors to opine on the virginity of the survivors, whether they are habituated to sexual acts, whether the hymen is intact. Similar experiences were described by doctors in their interface with the Public Prosecutors and Judiciary. All the three law enforcement agencies only focus on the determination of virginity, habituation to sexual acts and hymenal injuries. The thread of investigation is not acquainted with the limitations of medical evidence (Centre for Enquiry into Health and Allied Themes [CEHAT], 2018).

Implementation of a Comprehensive Health Care Response to Sexual Violence

Several studies, victim testimonies and other reports had highlighted deep-seated biases and stereotypes about rape besides gaps in therapeutics as well as medicolegal responses by hospitals. The most glaring gap was the lack of therapeutic care (Human Rights Watch [HRW], 2010). The Centre for Enquiry into Health and Allied Themes (CEHAT) has actively paved the way towards establishing right to health care for survivors through its work involving direct intervention with survivors, training of health care providers, research and legal advocacy. This was much before changes were incorporated in law. It set a comprehensive model in three hospitals in collaboration with the Municipal Corporation of Greater Mumbai (MCGM). Such a response was an extension of efforts of MCGM to respond to Violence against Women (VAW). One of the first efforts by the Corporation was made in 2000, in collaboration with CEHAT to set up a hospital-based crisis centre called Dilaasa[2]. At Dilaasa, the hospital staff was equipped to recognise VAW as a public health issue, and identify violence amongst patients coming to the hospital as part of clinical enquiry. Dilaasa provided psychosocial care to survivors.

The model for comprehensive health care to rape survivors comprised

- Operationalising informed consent for survivors of sexual violence
- Carrying out systematic documentation of history of sexual violence
- Using gender sensitive protocol for examination and collection of relevant forensic evidence
- Recording a reasoned medical opinion
- Providing first contact psychological support and free medical support
- Maintaining a clear and fool-proof chain of custody

[2] Dilaasa is India's first hospital based crisis centre. It is a joint initiative of MCGM and CEHAT. It has been replicated in several states in India and is financially supported by the National Urban Health Mission (NUHM).

This required in-depth training of Health care Professionals (HCPs), in communication skills so that they could elicit details related to forms of sexual violence, gain comfort in speaking to children, adolescents, adult women as well as survivors with psychosocial and physical disabilities, sex workers and persons belonging to sexual minority communities. Hands-on training enabled them to understand the nuances of seeking informed consent, eliciting details of violence, putting the survivor at ease during medicolegal examination and offering psychological first aid. An important aspect of the response was to also discard age old and archaic forms of examination such as comments on hymenal status, assessment of habituation to sexual activity, build of the survivor and overemphasis on presence of injuries. Court appearance and presentation of expert medical opinion were also woven into the training as eventually doctors would present evidence in courts. Training also offered guidance on drafting a medical opinion based on clinical findings as well as recording circumstances in which the assault took place. Practical support was offered to HCPs post training in the form of visits as well as creating a 24x7 helpline. The phone line served two purposes - one was to provide telephonic support to survivors who came in contact with hospitals and the second was to assist HCPs in case of any difficulties with operationalising the response. An important mechanism initiated by the Director of public hospitals was the setting up of Hospital Monitoring Committees. These committees comprised senior adminstrators, doctors and nurses in the emergency department, gynaecology department, medical records officials and hospital police outpost staff. These monthly meetings became forums to review rape response and the extent to which comprehensive services could be delivered. It also discussed impediments faced by HCPs of the hospitals and the need for amending strategies (Rege, Bhate, Reddy & Contractor, 2014). A core aspect of the response was crisis intervention services for rape survivors, which was extended to 728 of them during 2008-2015.

By 2012, MCGM had developed a robust system of implementation related to medicolegal care for rape survivors. Findings of the five-year implementation (2008-2012) were disseminated across different states to urge HCPs to adopt a comprehensive health care model for rape care. When the Nirbhaya incident

took place in 2012, it illustrated glaring gaps in existing response mechanisms, one of them being the response of health providers. JVC, in its review of the health sector's response to rape, referred to the MCGM's 'comprehensive healthcare model for rape care'. Drawing on JVC's recommendations, the Ministry of Health and Family Welfare (MoHFW) set out to design a protocol for the health sector on rape response. It invited CEHAT amongst other experts to be on the advisory committee for the formulation of health sector protocol for rape care. MoHFW issued a protocol for medicolegal care in rape in 2013 and directed all states to ensure its implementation. Maharashtra, Karnataka,Tamil Nadu, Madhya Pradesh, New Delhi, Orrisa, Uttar Pradesh, Meghalaya are some states who have issued directives for its implementation.

In Mumbai, efforts of implementation of the comprehensive health care model for rape have been extended to several public hospitals. These efforts were expected to enable comprehensive presentation of medical opinion citing the presence or absence of evidence and reasons for it. This, in turn, would assist the courts in examination of medical evidence in the adjudication process of rape trials.

Modi's *Medical Jurisprudence and Toxicology* a prominent forensic medicine text book, in its latest edition, replaced the chapter related to "rape examination" with one that drew majorly from protocol and guidelines for medicolegal examination of rape by MoHFW (Kannan, 2016). This change was significant because courts relied heavily on Modi's medical jurisprudence in rape adjudication.

This review report traces the role of medical evidence in rape trials and seeks to understand whether expert testimony of providers plays a role in rape adjudication.

2. Methodology

The study is based on an analysis of medicolegal records and orders of the session's courts. The medicolegal records are unique as the three hospitals where the survivors were examined are following a gender sensitive protocol and approach. The hospital staff has been trained to provide sensitive medicolegal care to all survivors of sexual violence.

Objective of the Study

- To examine the role of medicolegal examination in court trials.
- To understand factors affecting court outcomes resulting in convictions or acquittals in rape trials based on analysis of the judgements.

Methodology

The research team had data on 728 survivors who had been examined in the three hospitals between 2008 and 2015. Using this information, the team searched for the court orders of the trial court on the court website. In 139 cases, the website indicated that the case had reached an outcome. Of these, there was no judgment available for 29 survivors. The e-Court website had not uploaded the court order. Nearly 14 cases pertained to those of elopement, where the girl had run away with a boy on her own will. The judgements stated that the girls were not forced or pressurised by their boyfriends/partners. These were not included for detailed analysis. Only the remaining 96 judgements were considered for content analysis.

Analysis

Variables such as age of the survivor, marital status, relationship with abuser, duration of the trial, time lapse between episode of rape and recording of an FIR, details of type of sexual violence, compensation awarded, deposition of doctor in court, reports from the forensic science laboratory (FSL) and court outcome were entered in the SPSS statistical software.

Medicolegal evidence was analysed with regard to the nature of medical evidence present or absent, nature of health consequences including injuries, medical opinion provided by the doctors, deposition of doctors in the court and its effect on the court outcome - conviction/acquittal and cross examination of the doctors in courts. We also compared the contents related to medicolegal findings cited in the judgements with the medicolegal proformas filled by doctors to assess discrepancies. The nature of sexual violence documented, circumstances in which the rape had taken place, activities performed by the survivor after sexual violence, time lag between the assault and examination in the hospitals, type of evidence collected and dispatched to the forensic science laboratory. This comparison was carried out to analyse if there were any discrepancies in the two documents and if it played a role in convictions/acquittals.

In consultation with an expert lawyer, the judgements were analysed to understand the role of the prosecutor, and the sensitivity of the court. Aspects such as number and nature of witnesses called during trial, type of evidence presented by the Public Prosecutor (PP), *Panchanama* reports, were noted to understand the preparedness of the PP. Additionally, aspects such as sensitivity of courts, and biases and stereotypes of rape survivors were analysed based on the language used in the judgements.

In order to understand the experiences of doctors as expert witnesses, efforts were made to reach out to doctors based on these judgements but many could not be located because they were transferred or their contact numbers were not available. Only four doctors were available for interview and their experiences have been included in the analysis.

3. Profile of Survivors

During 2008-2015, nearly 728 survivors approached the three hospitals implementing comprehensive health care response to sexual violence. Of these, the judgments of the trial court were available for 96 survivors, that is, for 13% of the cases. The highest number was recorded in 2014 immediately after the changes were implemented in rape law in the country, POCSO 2012 and CLA 2013.

Of the 96 where court outcomes were available, 47 were survivors aged less than 12, 25 were between 13 and 17 years and 24 were above 18 years. Only two of these were male survivors, one was a child below 12 years and one was between 13 and 17 years.

Table 1 : Distribution of Cases across Age Groups

Year	No. of Survivors	Total	Age		
			0-12	13-17	18 and above
2008	9	3	0	0	2
2009	15	3	1	1	1
2010	30	3	3	0	1
2011	38	7	2	3	2
2012	37	13	7	1	5
2013	100	19	10	6	3
2014	358	43	19	14	10
2015	141	5	5	0	0
Total	**728**	**96**	**47**	**25**	**24**

Table 2 : Profile of Survivors

Marital Status	Age	Male	Female	Total
NA	0-12	1	46	47 (49%)
NA	13-17	1	24	25 (26%)
Married	18 and above	NA	12	24 (25%)
Single		NA	9	
Separated		NA	3	
Total		**2**	**94**	**96**

Table 3 : Relationship with the Abuser

Relationship with the Abuser	Frequency	Percent
Father	2	2
Family	9	9
Neighbour	26	27
Acquaintance	31	33
School Staff/Teacher	2	2
Boyfriend	11	11
Unknown	15	16
Total	**96**	**100**

As seen in Table 3, 84% of the abusers were known to the survivor, 60% of the abusers were neighbours or acquaintances, 9% were family members, 2% were fathers, 2% were teachers, and 11% were boyfriends. These were in keeping with the National Crime Records Bureau (NCRB), which shows that in 93% of the cases, the abuser was known to the survivor. In 16% of the cases, the abuser was unknown. These were strangers who were not known to the survivor. They were traced based on the description provided by the survivor.

Of the 96 survivors, 84 were brought to hospital by the police. This means is that they went to the police to lodge a complaint and were then brought to the hospital for medicolegal examination. Nearly 11% of the survivors came to the hospital directly and 1% was brought by parents.

Table 4 : Pathways to Hospital after Sexual Violence

Pathway to Hospital	Frequency	Percent
Parents	1	1
Police	84	88
Self	11	11
Total	**96**	**100.0**

Table 5 : Forms of Sexual Violence across Age Groups

Forms of Sexual Violence	0-12	13-17	18 and above	Total
Penetrative	26	15	24	65
Non-penetrative	21	7	0	28
Not known to survivor	0	3	0	3
Total	**47**	**25**	**24**	**96**

As seen in Table 5, survivors below 18 years were subjected to non-penetrative forms of assault. These were in the form of making the child masturbate the abuser, sucking, licking of breasts/lips and touching/rubbing of genitals of the accused on the survivors. Three survivors were unable to state what kind of assault was inflicted on them due to intoxication and death in one case.

Table 6 : Forms of Sexual Violence

Forms of Sexual Violence	Frequency	%
Peno-vaginal penetration	44	46
Penetration of mouth by penis	4	4
Penetration of vagina by finger	7	7
Penetration of anus by penis	1	1
More than one form of penetration	9	9
Non-Penetrative sexual violence	28	29
Not known by survivor	3	4
Total	**96**	**100**

The most common form of sexual violence attempted was peno-vaginal penetration. As seen in the table oral penetration by penis and penetration of vagina by finger were also reported.

Table 7 : Health Consequences of Sexual Violence across Different Age Groups

Health Consequences of SV	0-12	13-17	18 and above	Total
Genital Injury	15	1	2	18
Physical Injury	2	2	6	10
Genital & Physical Injuries	2	1	0	3
Other health complaints	5	3	3	11
Pregnancy	0	4	0	4
No health complaints	23	14	13	50
Total	**47**	**25**	**24**	**96**

Nearly 18 of the 96 survivors suffered only genital injuries, 10 suffered only physical injuries and 3 suffered both genital and physical injuries. Less than 1 in 5 survivors suffered genital injury and even lesser suffered a physical injury. These findings are in keeping with global evidence by the WHO that states that only one third of survivors may report any injury on their bodies. (World Health Organization [WHO], 2003). Other health complaints reported by survivors were pain and tenderness in abdomen, pain in genitalia, white discharge and burning micturition.

Table 8 : Duration of Trial Related to Sexual Violence against Children

Duration of Trial	After POCSO (14/11/2012)	Before POCSO (14/11/2012)	Total
Less than 1 year	4	5	9
1 - < 3 years	32	10	42
3 - < 5 years	14	0	14
5 years or more	3	1	4
Information not recorded in judgements	3	0	3
Total	**56**	**16**	**72**

The duration of the trial for survivors below 18 was anywhere between one and three years on an average. This was seen before the advent of POCSO but seems to have continued after POCSO came into practice too. The POCSO Act states that a trial in any case of child sex abuse should be completed within one year. Of the 56 cases, only four were closed within a year.

Table 9 : Duration of Trial Related to Sexual Violence against Adult Survivors

Duration of Trial	After CLA 2013 (3/02/2013)	Before CLA 2013 (3/02/2013)	Total
Less than 1 year	2	3	5
1 - < 3 years	6	7	13
3 - < 5 years	5	1	6
5 years or more	0	0	0
Total	**13**	**11**	**24**

The duration of trial in the case of adult survivors too was three years on an average. It has remained the same before and after the Criminal Law Amendment to Rape (CLA, 2013).

4. Factors Associated with Court Trials

This section presents the various factors associated with the court outcomes in the 96 cases as decided by the trial court.

Table 10 : Age and Status of Judgement

Status of Judgement	0-12 years	13-17 years	18 years and above	Total
Acquittal	17	16	22	55
Conviction	30	9	2	41
Total	**47**	**25**	**24**	**96**

The most number of convictions were seen in the youngest age group 0-12 years, followed by adolescents. Amongst adult women there were only two convictions.

Table 11 : Relationship to Abuser and Status of Judgement

Relationship with Abuser	Acquittal	Conviction	Total
Acquaintance	16	15	31
Boyfriend	11	0	11
Family	7	2	9
Father	1	1	2
Neighbour	12	14	26
School staff	0	1	1
Teacher	1	0	1
Unknown	7	8	15
Total	**55**	**41**	**96**

As seen in Table11, acquittals were higher in the category of abusers who were family members. For the rest, there is a mixed outcome as far as convictions are concerned with almost the same numbers being convicted or acquitted. These need close examination to understand the factors that may have affected

survivors' access to criminal justice. What stood out was that there was not a single conviction when the offender was a boyfriend. In all the 11 cases, women were compelled to file a complaint when there was a refusal to marry after having sexual relations. Consent for sexual relations was offered by women because they were promised marriage. In rape adjudication, the burden of proving that the sexual act took place without the consent of the woman lies with the prosecution. "Formal definition of consent", thus becomes difficult to prove for the prosecution. The prosecution also finds it difficult to prove fraudulent intentions of the accused. This could be a reason for acquittals. However, there is evidence of the judiciary perpetuating stereotypes pertaining to rape survivors. There seems to be a tendency of passing off these cases as frivolous and a case of the relationship between the man and woman going sour. In fact, instances of the judiciary expressing sympathy with the perpetrator have also been found in judgements (Dhonchak, 2019).

Table12 : Time lag between Recording of FIR and Status of Judgement

Delay in Reporting	Acquittal	Conviction	Total
No delay	19	25	44
1-4 Days	18	10	28
5-7days	5	2	6
8 days- a month	3	1	4
More than a month	10	3	14
Total	**55**	**41**	**96**

As seen in Table 12, when there is no delay in recording the FIR, chances of convictions seem to be higher. This may also have to do with the commonly held perception that if rape is reported immediately it is a "true case". Delay in reporting is treated with suspicion alluding to a deeply entrenched notion that it is a false complaint against the perpetrator and to discredit the survivor's testimony. But there is a lack of recognition of social realities of survivors that leads to delays in recording the FIR. The barriers in disclosing the incident of sexual violence to family members, making a decision to report, challenges encountered in getting a complaint registered are some circumstances that may lead to delays and require to be explained in the court proceedings (CEHAT, 2018).

Table 13 : Health Consequences and Status of Judgement

Health Consequences of SV	Conviction	Acquittal	Total
Genital Injury	10	8	18
Physical Injury	2	8	10
Both	3	0	3
Other Health Complaints	4	7	11
Pregnancy	1	3	4
No Health Complaints	21	29	50
Total	**41**	**55**	**96**

The presence of genital injuries seemed to play some role in determining conviction in rape. But physical injuries were not seen to have an effect on the court outcome. The definition of rape under (IPC) does not require proof of bodily resistance by survivors, yet the court has a tendency to look for genital injuries in the form of injuries to the hymen as it fits their understanding of aspects that constitute rape. There seems to be a gradation of genital injuries which are thought to harm a woman's virginity, whereas other injuries do not seem to be given such credence. The nature of injuries and its role in acquittals and convictions are described in the next section. In addition to physical injuries, other health complaints as well as pregnancy were not seen to result in more convictions.

Table 14 : Deposition of Doctor and Status of Judgment

Doctor's Deposition	Acquittal	Conviction	Total
No	30	5	35
Yes	25	36	61
Total	**55**	**41**	**96**

The deposition of a doctor as an expert witness appears to play a role in court trials. The Prosecution was able to secure the presence of doctors in 61/96 cases. An expert witness like a doctor enables the clear presentation/clarification of the presence or absence of medical findings.

The examining doctor is called in court as expert witness during trial. This is laid down in Section 45 of the Indian Evidence Act which states, "When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger impressions, the opinions upon that point are obtained from persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions." A person called upon to provide such opinions is called an expert witness. In cases of sexual violence, owing to the skill of doctors in conducting examinations and collecting evidence that may prove valuable in the case, they are called upon by courts as expert witnesses. Healthcare providers often fear court calls and may not attend when called. This affects the survivor's access to comprehensive healthcare and also in securing justice. This violates the healthcare providers duty to serve as an expert witness when summoned by the court.

As seen in Table 14, doctor's deposition has been recorded in 61 of the 96 cases, which conveys that in many cases, the examining doctors did not appear before the court. It is likely that the prosecution has its own biases and decides when to call and when not to call the doctors (who have examined survivors of sexual violence) to court. This can also be attributed at times to their limited understanding of medical evidence - where absence of medical evidence is understood as not requiring a doctor to provide an explanation to the court (Rege, Deosthali & Reddy, 2017)

As reported earlier (Tables 8 & 9), the average duration of trial for all survivors was three years. The duration of trial did not seem to have a major effect on the outcome of the case. But there were proportionately more acquittals amongst cases that were decided within a year and most of them were cases of adult women. Procedural lapses and irregularities may arise when there is a perceived urgency to complete trials, hence there is the danger of rushing trials without adequate preparation (Satish, 2016). For most of the survivors and their families (74%), the court outcomes came within three years of the incident. But a quarter of them have struggled for more than three years. Of these, 18 survivors were below 18 years of age.

Table 15 : Compensation Awarded by Court

Compensation Awarded by Court	Survivor age 0-12 years	Survivor age 13-17 years	Survivor age 18 years and above	Total
Yes	18	4	2	24
No	29	21	22	72
Total	**47**	**25**	**24**	**96**

The law mandates compensation to rape survivors. Sec 357A was added to the Criminal Procedure Code and every state in the country was directed to create a compensation scheme in consultation with the central government package. It is, therefore, a matter of concern that only one-fourth of the survivors received any compensation. Of 24 survivors who received compensation - 18 were below 12 years, 4 were in the 13-17 year group and 2 were adult women. The amount of compensation varied. For children below 12 years, 3 were awarded compensation that was less than INR 5000, 4 survivors received compensation that ranged from INR 10000-15000, 6 survivors received INR 20000-40000 and in 6 cases, the amount was not mentioned in the judgement. In the 13-17 age group, of four survivors, one was awarded INR 25000, in two cases there was no mention of the amount and in one case, the judgement mentioned that the accused should pay a fine. In cases of adult women, one was awarded INR 4000 and the other was awarded INR 30000. The judgement does not throw light on ways by which the compensation was arrived at providing a wide variation between INR 4000 and INR 40000.

Table 16 : Sentencing

Age	Terms of Punishment						Total
	Less than a year	1-3 yrs	3-5 yrs	5-10 yrs	10-20 yrs	Life impris-onment	
Survivor age 0-12 years	1	7	6	9	1	6	30
Survivor age 13-17 years	0	3	0	4	2	0	9
Survivor age 18 years and above	0	0	0	2	0	0	2
Total	**1**	**10**	**6**	**15**	**3**	**6**	**41**

As seen in the table, the number of years of punishment to abusers of the youngest age group range between 6 months and life imprisonment, to abusers of adolescents, it is between two and four years and in the case of adults, it is two years. The pattern of punishment and sentencing is highest for abusers of those under 18 years of age.

5. Factors Related to Convictions

This section presents factors that contributed towards convictions in rape trials. Of 96 rape survivors, there were 41 convictions. Of the 41 convictions, only two were adult survivors and all the rest were children. It points towards the sensitivity of the courts towards children.

Table 17 : Age of Survivor in Convicted Cases

Age	Frequency	Percent
0-12 years	30	73.2
13-17 years	9	22.0
18 years and above	2	4.9
Total	**41**	**100.0**

Table 18 : Time Taken to Record an FIR in Convicted Cases

Recording of FIR	Frequency	Percent
No delay	25	60.9
1-4 Days	10	24.3
5-7days	2	4.8
8 days - a month	1	2.4
more than a month	3	7.3
Total	**41**	**100.0**

An FIR was recorded immediately by 25 survivors and that seemed to have been seen favorably by the court. In cases where there was delay, the prosecution was able to explain the delay. For instance, in a 5-year-old there was a delay of a few days in recording an FIR. The defense counsel argued that the delay indicated that it was a fabricated case. But the prosecution was able to explain the delay by stating that the parents spent three days just to get medical attention for their child. To support this submission, medical records of treatment were also placed in front of the court. In another instance, again of a child, the defense accused the prosecution stating that the delay in FIR occurred because

of the time spent by the parents in tutoring the child. Here too the prosecution was able to refute it and state that the accused threatened to harm the child's parents. This rendered the child helpless but when she did disclose it to her parents after six days, they lodged a complaint immediately. The court found the explanation for delays in recording an FIR reasonable.

The prosecution plays an important role in presenting barriers faced by survivors which delay the recording of an FIR. While the delay in reporting is associated with the veracity of the survivor's complaint, a well-prepared prosecution can delink the two aspects.

Table 19 : Relationship with the Abuser

Relationship with the Abuser	Frequency	Percent
Known	33	80
Unknown	8	20
Total	**41**	**100.0**

Most of the cases were those where the abuser was known to the survivor. In eight cases, the abuser was not known.

Table 20 : Forms of Sexual Violence and Conviction

Form of sexual violence	Frequency	Percent
More than one form of penetration	5	12.2
Non-penetrative	14	34.1
Penetration of mouth by penis	4	12.2
Penetration of anus by penis	1	2.4
Penetration of vagina/urethra by penis	13	34.1
Penetration of vagina by body parts	4	7.3
Total	**41**	**100.0**

Almost a third of the convictions had been secured in non-penetrative forms of sexual violence. All of these were children in the age group 0-18 years as defined under the POCSO Act. The prosecution was able to explain different forms of

sexual violence such as touching of genitals of the child, rubbing them on the child, touching of breasts amongst others. These are important learnings because they also educate the trial process about different forms of sexual violence. There is also a recognition that medical evidence may not be relevant in such assaults.

Table 21 : Presence of Injury and Conviction

Injury Sustained	Frequency	Percent
No	25	61
Yes	16	39
Total	**41**	**100.0**

Most survivors did not sustain injuries despite penetrative assaults. This is a progressive step on the part of the courts in appreciating that the absence of injuries does not negate the occurrence of sexual violence, because often courts are preoccupied with the extent of injuries occurred due to rape.

Chemical Analysis Reports

FSL reports either for clothes/mobile clips or swabs were presented in 27/41 cases.These helped in those cases where the semen and blood stains matched with the accused, and when the DNA of the baby matched with that of the accused. In instances where the FSL report was negative, doctors were able to explain that the survivor did not state that ejaculation occurred and that could be the reason for not finding seminal stains.

Genital swabs were collected in 23/41 cases based on the history of sexual violence. In 12 of these cases, the report was negative, but the doctor and the PP explained the reasons for a negative report by stating the facts of the case, such as no mention by survivor of any ejaculation or time lapse. In 11 cases where the swab was collected, the judgement does not refer to findings of chemical analysis of swabs.

In one instance, semen found on clothes (trousers) of the accused as well as on the bedsheet, were consistent with the testimony of the survivor. The judgement stated that the blood group matched with seminal stains found on the victim's clothes as well as those on the accused. However, the chemical analysis report related to the blood group was not presented to the court to prove that the blood group 'O' of the accused matched with the one found in the seminal stains.

The preoccupation with collection of swabs by doctors was seen in a case where swabs for semen detection were taken in the case of fingering.

Table 22 : Formulation of Medical Opinion and Conviction

Opinion Formulated	Number	Percent
Yes	25	61
No	16	39
Total	**41**	**100**

Nearly 25 of the 41 convictions had a well formulated medical opinion placed by the prosecution before the court. It mentioned signs of use of force where they found any form of injury on the body of the survivor. In cases where there was no injury found on examination, the doctors explained the absence of injury based on the nature of sexual violence (non-penetrative assault/oral penetration) and time lapse in reporting to the hospital after the incident. Even the language used in medical opinion saw a shift. Instead of using "habituated to sexual intercourse" for adult survivors, doctors had used the term "survivor is a multiparous woman" meaning that she has delivered children vaginally and hence may not show signs of attempted/completed intercourse on genitals. The term, 'habituated' is damaging to the survivor and has been disallowed by Sec 53A IEA of the Indian Evidence Act to discuss the character of the victim or of such person's previous sexual experience.

Some important aspects missed in the medical opinion were health consequences suffered by survivors. Health complaints such as attempted suicide, white discharge and tenderness were missed in the formulation of medical

opinions. Besides, there was little or no documentation related to the threats faced by survivors. Use of weapons such as sickle and knife to hurt the survivors would have been crucial to explain the lack of resistance offered by survivors. These aspects need to be reiterated through training sessions and discussions with doctors.

Table 23 : Doctors' Deposition

	Frequency	Percent
No	5	12.2
Yes	36	87.8
Total	**41**	**100.0**

The prosecution was able to secure doctors as expert witnesses in 36 cases. This is an important factor as the examining doctors can provide explanations for not just the presence of health consequences but also for their absence. Samples for chemical analysis by the FSL were sent, many of the test results were negative. Doctors were able to provide scientific explanations for not finding evidence. The defense lawyers are known to cross examine the doctors and question their findings.

- In the case of a child rape survivor, the defense lawyer asked the doctor whether the injury sustained by the child could have been self-inflicted. The doctor was able to explain to the court the history given by the child during examination and the injury corroborated with it.

- In another instance, a child survivor had to seek treatment for genital herpes, here too the defense asked the doctor if this could be a self-inflicted wound, but the doctor brought it to the notice of the court that genital herpes is a sexually transmitted infection and its occurrence in a child is a clear sign of sexual violence.

- Another example is of the doctor who expressed concern about the child having to go through multiple medicolegal examinations. This is important to mention, as doctors often restrict their responses to what they are asked.

However, there were instances of gaps in the doctor's deposition in the court. A young girl was brought for examination after sexual assault and it revealed a genital injury which was documented in the opinion. But when asked in the court if such an injury could occur due to scratching genitals or insertion of a pencil, the doctor responded that it was possible and did not offer any explanation to substantiate the earlier documented findings. Similarly, in the case of an adolescent girl who committed suicide after she was raped, the doctor deposed that due to extensive burns, injuries could not be seen and failed to offer any explanation why such injuries were invisible. The hospital records also did not mention the history of sexual violence. Such lapses can have a detrimental effect on the role of doctors as expert witnesses because they are expected to take the history and details of the episode that lead to health consequences.

Table 24 : Preparedness of Prosecution

	Frequency	Percent
Well prepared	38	93
Not well prepared	2	5
Can't say	1	2
Total	**41**	**100.0**

The role of prosecution is paramount in all court trials. It is their responsibility to present the case before the court and this includes bringing appropriate witnesses such as doctors and eye witnesses if mentioned in the FIR, presenting victims' statements, furnishing medicolegal proformas and medical opinions of examining doctors, providing medical proof of age, and counselling the survivor to speak in the court without fear.

An important step that must be followed in all cases is the recoding of the victim's statement before the magistrate. This was not done in 25 of the 41 judgements. The Criminal Amendment Act 2013 made it mandatory to record the statements of the survivors before the judicial magistrate as soon as the police was intimated about the offence. Similar provisions exist in POCSO too. This was introduced to provide survivors the scope to authenticate their statement and lend them assurance about the investigation. It also provides the police the scope to involve

support agencies such as one stop centers to put the survivor at ease before making such a statement. However, it is evident that the investigating agencies are not able to carry out the said procedures mentioned in the amended law.

Table 25 : Sensitivity of the Court

Sensitivity of the Court	Total	Percentage
Sensitive	40	98
Judgement is not in detail	1	2
Total	**41**	**100**

The judgement did not show biases in most cases. Steps such as disallowing direct questioning of the child survivors, quashing allegations put forth by the defense were also noted in the judgements. Some judges put survivors at ease and enabled them to speak without fear. In instances where children were too scared to speak, the court allowed the parent to assist the child to speak.

Similarly, the court also disallowed the defense from asking irrelevant questions - such as presence for an eye witness in cases of rape. In a POCSO trial when the court asked questions related to "disrobing" of the adolescent, she was unable to recall the exact piece of clothing; the defense tried to dismiss the survivor stating that she was making it up. But the court objected to it and explained that even if a single cloth from the body is removed it suffices to be called disrobing.

Some of the excerpts related to sensitivity in language of judgement are reproduced here

- In one case, when the child hesitated while identifying the accused in the courtroom, the judge noted, *"If the child was not able to recognise the accused; it was natural as there was a gap of 2 years; that child may not recall the exact features of the accused as he had grown his beard."*

- In another case, when the child was unable to speak in an in-camera trial, the judge noted, "*A child of such tender age will not able to speak if the child is not comfortable. The presence of the mother is necessary."*

- In a case of incest, when the defense tried to state that the child was tutored, the judgement stated, *"No daughter would like to implicate her father in such an immoral act unless she was subjected to the same… hence there is no reason to not believe…"*

But the judgements also carried statements which appear on the face 'sensitive' but have the potential of creating stereotypes of survivors, for instance, *"she became silent and had a tear when asked about the incident", "she ran away on seeing the accused"* are statements that can lead to stereotypes about how survivors should appear, that they must appear meek or timid and on the verge of a breakdown if they come face to face with the accused.

Eye witnesses in some cases led to conviction. In the case of a child, the accused had been caught in the act by pedestrians, and in the case of an adult woman, an eye witness testified that she had seen the accused leaving the survivor's residence. This is a matter of concern as in most cases of sexual violence there is generally no eye witness. Hence, the focus needs to be drawn back to the testimony of the survivors.

6. Factors related to Acquittals

Of the 96 judgements that were analysed, 55 were acquittals. The large number of acquittals are a matter of concern. Of the 55 where the accused was acquitted, we found that in 20 cases, the judgements have reported that the complainant turned hostile. Evidence from a study to assess the aftermath of rape on survivors and their families (Bhate-Deosthali et al., 2018) document negative attitudes of the community, victim blaming attitudes by law enforcement agencies and intimidating experiences of survivors that also play a role in survivors turning hostile in the courts. After entering the criminal justice system, the phenomenon of survivors turning hostile points to an arduous journey - full of hostility and isolation faced by them from all quarters including family, community/ neighbourhood, workplace and schools.

Framing a Medical Opinion

Medical opinions were appropriately formulated for 41 of the 55 survivors. Most of the medical opinions formulated by doctors had noted the nature of sexual violence, including the history of touching. Signs of use of force were mentioned in most of the opinions where the survivor had reported injury such as hymenal injury, bleeding and the like. The absence of injuries has been explained in most cases as due to the nature of assault or time lapse or marital status of the survivor. In cases where there were no signs of force, the doctor had rightly opined that sexual violence cannot be ruled out based on the history given. For instance, in the case of a five-year old, who reported non-penetrative sexual violence (touching of private parts) medical opinion documented the presence of tenderness to labia majora and an explanation for lack of injuries due to the nature of sexual violence.

But gaps in medical opinion were also found in 15 survivors.

Table 26 : Medical Opinion Formulated as per Protocol

Opinion Formulated	Number	Percent
Yes	39	71
No	15	27
No Information	1	2
Total	**55**	**100**

To illustrate these gaps

- In the case of a survivor who was below 18, the medical opinion only mentioned that a 22-week pregnancy was detected. No reference was made to the act of sexual violence, or that the survivor had been given a drink which rendered her unconscious. Thus, the history of sexual violence was not recorded in the medical opinion at all.

- In the case of a young married woman, a complaint of gang rape had been filed. However, neither the medical documentation mentioned the number of accused nor was the medical examination report placed on court record.

- Health complaints beyond injuries such as abdominal pain, tenderness in the body and genitals were missed in the medical documentation, though doctors offered survivors medication to deal with these health consequences.

- A blatant omission of health complaints was found in medical opinion related to a survivor who had attempted suicide. She was admitted to hospital for treatment of overdose of pills. She disclosed about the rape to examining doctor. While she was referred to the gynaecology department for a rape examination, suicidal attempt as a consequence of the assault, was not mentioned in the proforma.

Table 27 : Doctors Deposition in Court

Doctor called	Health Consequences	No Health Consequences	Total
Yes	16	9	25
No	10	20	30
Total	**26**	**29**	**55**

Doctors were not called in 30 of the 55 cases of survivors. This indicates a bias on the part of the prosecution that medical experts were called only when there was an injury/health consequence. But when absent, they were dropped from the category of witness. Nearly 29 of the 55 survivors did not have a health consequence when they were examined. This indicates a procedural lapse on the part of the prosecution because it is important that medical experts provide their opinion in such cases of sexual violence.

Medical experts were called in for 25 cases and the doctors were able to explain the medical opinion coherently. When it came to the defense examining the medical experts, challenges were faced by doctors.

Here are a few instances

- In the case of one survivor, no injury was found on her body or genitals. When the lawyer questioned the doctor whether forced sexual violence would cause injury, the doctor answered in the affirmative. The doctor's response did not take into account the delay in reaching a health facility and also the non-presence of injuries in two-thirds of the cases of forced sexual violence.

- In another instance of a six-year-old, medical findings documented redness and inflammation on the genitals of a young girl at the time of examination. It was corroborated with history given by her about sexual violence. When the defense lawyer asked the doctor whether such an injury could be caused by tight clothes or jumping or itching, the doctor maintained that the injury could be due to reasons other than sexual violence. In this instance though

the doctor had recorded medical findings in the hospital proforma, provisional opinion was missing in the records too.

- In an adolescent girl, medical examination recorded fungal infection. But the examining doctors had not provided provisional opinion in the report. During the trial, the examining doctor was not available so her colleague was brought to the court. While she could say that the girl had suffered fungal infection, the defense found loopholes as the medical reports were not placed before the court. The doctor also did not mention that the survivor had attempted suicide and those papers were also not produced in the court.

But there were some instances where the doctors supported their medical opinion firmly and held their ground despite cross examining by the defense lawyer.

- In one instance, the lawyer questioned the absence of injury in sexual violence faced by a married woman. The doctor explained that in the case of married women, it was common not to find any injury and added that the survivor also had vaginal births and so the chances of any injury were low. She was also able to state that she had washed herself before reaching the hospital and that could be the reason for not finding any medical evidence.

Chemical Analysis

There is a lot of credence given to chemical analysis of evidence because it is seen as neutral and scientific. But analysis of the judgements indicates gaps in the reports for chemical analysis. There were three survivors who reported unwanted pregnancy as a result of rape. While in one case, the police did not bother to seek the DNA result of the baby and match it with the accused, in another case, when DNA was taken the FSL reports stated that no DNA was found, and in the third case the FSL recorded that it did not match with the accused. In the case of a gang rape, it matched only with one of the accused. The consequences were baffling. When such reports are filed by the FSL, there is no effort by prosecution to seek clarity upon its meaning. In the absence of such clarity, such lapses continue to occur. In another case, a middle-aged

survivor had reported sexual violence and had sustained physical injuries including bite marks on the cheek. But those marks could not be matched with the accused.

Role of Public Prosecutor

Lack of legal preparedness by the prosecution contributed to acquittals. The prosecution failed to produce relevant witnesses before the court, did not orient the witnesses with court procedures, could not explain delays in lodging an FIR, and did not bring medical experts to the court.

For instance, it is a known phenomenon that the defense counsel invariably tries to prove that adolescents in the age group 16 to 17 years are adults, and that the sexual act was in fact consensual. The role of prosecution in such cases is to bring the medical certificate of age on court record. In at least two cases, the prosecution failed to secure an age estimation report where the survivors were 16 to 17 years and pregnant. Section 34(2) of the POCSO Act says that if the question arises whether a person is child or not, the court can determine the age of the person after satisfying itself about it. But in spite of this provision, the court has not taken steps to determine age when such a question arises.

- In another instance, a child survivor was taken to a private doctor by his parents; the doctor upon examination explained to the family that child had suffered sexual violence and directed them to a public hospital for medicolegal examination.The prosecution failed to bring the doctor as he was the first medical examiner or his documentation to court and lost an opportunity for explaining the delay in filing an FIR as the child's health was prioritised.

- In two cases, the prosecution was unable to prove the identity of the accused in court. One was of an adult woman who was sexually assaulted by the security guard of the building, while in another it was a child and the accused was a person from her neighbourhood. In both instances, there was an acquittal due to gaps in the preparation of the case by the prosecution and the lack of coordination with the Investigating Officer (IO) to establish the

identity of the perpetrator. The IO should have ensured identification of the accused by the survivor early in the investigation to avoid such a serious lapse.

Table 28 : Stereotypes held by Court

Sensitivity of Court	Survivor age 0-12 years	Survivor age 3-17 years	Survivor age 18 years and above	Total
Sensitive	3	2	4	9
Insensitive	7	6	2	15
Gaps in prosecution	7	8	16	31
Total	**17**	**16**	**22**	**55**

Insensitive comments were found in the judgements across age groups. These comments ranged from disbelief about the act of rape because the court held that a true survivor would raise an alarm immediately, alluding to this being a false case.

- In the case of a seven-year-old survivor, where the accused was her neighbour, the judgement mentioned that when the accused lived in a joint family comprising his mother and sister, it would not be possible to carry out such a heinous act. It went on to state that the child had overheard a dispute between her parents and neighbours calling it a coached and concocted testimony. No effort was made to assess the statement given by the survivor under Sec 164 CrPc.

- In the case of a fifteen-year-old survivor sexually assaulted by her tutor, the judgement pointed gaps in the statement of the survivor. No efforts were made to seek other witnesses going to the same tutor, rather the survivor was asked to provide evidence of going to tuitions. Though summoning other witnesses was well within the power of the court, it was not done. The judgement mentioned the name of the survivor too which is a contravention of the law itself.

- Stereotyping of survivor was also seen in statements used by the court - that the survivor and her family must be knowing how to file an FIR as they had lodged an FIR earlier and hence, the delay in filing an FIR was an indication that it was a false complaint or that it did not inspire the confidence of the court.

The courts sometimes highlight the presence of injuries and are unable to appreciate the range of health consequences that survivors may suffer. Pain in genitals, tenderness, difficulty in urination and defecation are not understood. In the case of a child survivor, delay in disclosure by the child to her mother was questioned. This was a case of incest by the father but the court was unable to understand the challenges of reporting incest and alluded to lack of injuries.

Non-recognition of pregnancy as a consequence of sexual violence was evident in the court's response in some cases. Despite DNA results matching the accused in one case, the court took a position that when a "cruel act of rape" had taken place it was unable to understand the delay in reporting the crime thereby questioning the credibility of the survivor's testimony. Threats about circulating MMS clips of the survivor was not even considered by the court.

We present a case study of a young girl to illustrate the lapses faced by her on several fronts from different functionaries that led to the acquittal of the abuser. Much more needs to be done to strengthen the prosecution as well as court outlook to assist survivors in their quest for justice.

M is a sixteen-year-old survivor of gang rape. She was compelled to disclose rape to her mother when she missed her periods and her stomach started to distend. Her mother brought her to a public hospital where examination found that she was pregnant for 22 weeks. In her medical examination, she revealed that she was raped by one person and that the accused had threatened to ruin her life if she disclosed anything, and this explained the delay in her approaching the hospital. The public hospital set the legal system in motion where an FIR was recorded by the police under POCSO. As soon as the offence was recorded, M was sent to a shelter home for children under the directions of the Child Welfare Committee (CWC). During the course of her stay, she mustered the courage to disclose that there were three men who had raped her. Though she had known one of the three men and was in love with him, she clearly stated that she never consented to any sexual relationship, neither with the man she loved nor with the other two. An additional statement was recorded by the police in the shelter home. Soon after M delivered a baby boy, it was given for adoption based on consent of her mother and herself as M was herself a child.

When M returned to her home, she was blamed by her parents for the incident, those in her neighbourhood also started passing comments. It was a difficult time for M to carry on with her regular life. But she was determined to pursue her case in the court.

Despite M following up in the court diligently, the case fell through. Several gaps in the investigation led to the acquittal of the abuser. When M delivered in the hospital, samples were not collected to be sent for DNA analysis by the doctor. Neither did the Investigating Officer ensure DNA sampling where the identity of the accused could be established, nor did the prosecution provide a reasonable explanation for the delay in recording of an FIR when the court raised this question. Age estimation to prove that she was below 18 was also missed by the prosecution. There was a complete lack of enabling environment for M to explain additions in the history at a later stage. The defense counsel stated that the accused was in fact M's boyfriend and this was clearly a case of relationship gone sour, thereby discrediting the testimony of the survivor.

It was only M and her mother's will power that led them to follow through the criminal justice system because clearly the system had failed the survivor.

7. Survivors turning Hostile: A Vexing Issue

The overall perception amongst stakeholders as well as within society is that an acquittal in a case of rape means that the "survivor was lying" contributing to the dominant narrative of 'False cases' being registered. The criminal justice system requires clinching evidence, which is often not present in cases of rape due to the circumstances in which such incidents take place. While the courts hold that the primary testimony of the survivor is paramount, courts have also been advised to check the reliability and credibility of such witness and her testimony. But analysis presented in the preceding sections have clearly shown the reliance of courts on aspects such as 'eye witness', 'injuries', 'DNA' besides the stereotyping of survivors that determine the outcome of a case. In this context, we attempt to understand the profile of the survivors, the nature of assault, consequences and reasons given by them for withdrawing the case.

Of the 20 cases, four survivors were in the age group 0-12, 5 in the age group 13-17 and 11 in the age group of 18 and above. Amongst adult survivors, 3 were married, 1 was separated and 7 were single. We have further classified 10 women who were promised marriage and consent to sexual relations was obtained under this promise of marriage, which will be discussed later in the study.

Around four survivors below 12 years had reported non-penetrative assault by unknown persons. This assault was in the form of touching genitals of the child, and in one case there was an attempt to penetrate the vagina with his finger. Medical examination showed that due to the nature of sexual assault, there were neither injuries on the body nor was any forensic evidence collected as it was not relevant due to the nature of assault. All the girls tried to resist by shouting out loud, which raised an alarm and the accused ran away. Based on the description given by the survivors, the accused were traced and the case had been registered. But in all these four cases, the survivors and their mothers could not recognise the accused in court. Whether this non-recognition was deliberate based on any threats or blackmail by the accused or due to any other reason is not known. In the case of adolescent girls in the age group, 13-17,

four reported peno-vaginal penetration and one reported non-penetrative assault. All five accused were known to the girls.

Some of the narratives of survivors point to life challenges and difficulties experienced in continuing criminal proceedings

- In the case of a fifteen-year-old who had been fondled and touched by her neighbour, the mother had promptly responded to her cries at the time of incident and rushed to rescue her daughter. They lodged a complaint immediately. However, later in court she said she wanted the court proceedings to end and then went on to say that she was not sure if she misunderstood her neighbour's actions. The girl and her mother said that they did not remember what they had reported to the police and were unaware of what the police recorded as it was not read out to them.

- In another instance, an adolescent girl was raped by her brother-in-law. She was kept as a domestic help in her sister's house. She was unable to disclose the episode till she required hospital intervention to deal with vaginal bleeding which she had for more than three weeks. Disclosure about rape occurred when the doctor asked the girl about her history and probed for sexual violence. The case was lodged and the accused were arrested. Collection of medical evidence was not carried out due to time lapse and treatment for bleeding was offered. But during the court proceedings, the survivor and her mother retracted their statements and said that sexual violence had not taken place. Taking cognizance of the seriousness of the case, the judge spoke to the mother who informed the court that she was concerned about her other daughter and her children as the accused was her son-in law. Therefore, she did not want to pursue the case any further.

- In another instance, the accused lived in the same neighborhood as the survivor and seizing an opportune time when the survivor's family left for work, he forced his way into the house and raped her twice. The girl was courageous enough to disclose the incident to her family, which led them to record an FIR. But by the time the case reached the court, the girl was not

traceable. In the court proceedings, the grandmother disclosed that the girl was married and the marital family had no information about sexual violence. They did not wish to pursue the case as it would ruin the survivor's married life.

In the category of adult survivors too, women turned hostile.

- In a case of gang rape on a pregnant woman, the medical examination noted physical injuries on her body. She and her family reported to the police station to record an FIR, the survivor had spat from the window and it accidentally fell on one of the accused. A group of five boys (accused) barged into her house and started abusing the survivor's husband. When the survivor intervened, she was raped and her husband was physically assaulted. Chemical analysis of clothes indicated seminal stains on the saree. Though the survivor came to testify, she told the court that no such incident had taken place and that she had lodged a false complaint on the advice of her father-in-law. It is important to note here that the woman was from a nomadic tribe, who eked a living in the city by selling utensils and clothes. There was tremendous pressure from the community to withdraw the complaint against the young boys.

- In another case, the young adult was a divorcee and lived with her parents. The accused lived in her neighborhood and had proposed to her several times. She turned down the proposal, after which he threatened her against marrying anyone else and the harassment continued. One day, he stopped her on her way to college, dragged her into his house, assaulted her and raped her. She reported the matter to her mother who brought her to the hospital. She suffered injuries due to the physical violence that he had inflicted on her. But later in court, she remained silent. However, it is likely that she was silenced by the accused and his family.

In the case of survivors turning hostile, it was commonly seen that the accused was a known person. But they had known them either because they lived in the same neighbourhood, were acquaintances, or were approached for employment.

In some cases, they lived in the same house as the accused. Survivors stated clearly that they were in no relationship with the accused. In fact, the accused had taken advantage of the familiarity and used threats and physical violence in addition to rape.

Case briefs mentioned in this section indicate the precarious position of survivors where they had little choice but to 'turn hostile' to save themselves from further scrutiny and embarrassment as the courts questioned their veracity.

8. 'Promise to Marry' and Court Outcomes

Nearly ten survivors had lodged a rape complaint related to breach of promise to marry. If a woman complains that the accused obtained her consent for sexual intercourse, by making a false promise of marriage then the accused can be convicted for offense of rape. Recording such a complaint is in keeping with Section 90 of IPC 1860, where a woman has to prove that the man had no intention to marry her in the first place and it has been obtained by 'misconception of fact' under Section 90 of The Indian Penal Code, 1860.

They had approached the court to seek justice, while some were persuaded to have sex by their partners saying that this was 'normal' in romantic relationships, most reported that their partners pressurised them to have sexual relations stating that anyway they were to be married. These are not isolate incidents but repeated acts of sexual intercourse, spanning over several months and years. Women narrated that they kept questioning the man about his promise of marriage and he continued to give excuses and promised to marry her soon. Many of them also reported physical, emotional and financial violence from their partners.

Role of Medical Evidence

Around six of the ten survivors suffered health consequences after the current episode of assault. Medical opinions clearly documented that physical consequences were present in the form of injuries over lips, face, thighs and breasts. In one instance, medical opinion recorded white discharge as well as vaginal itching indicating a sexually transmitted infection, as a health consequence.

In instances where there had been a delay in reaching the hospital, medical opinion took into account the time lapse and explained the lack of medical evidence and injuries owing to delay in reaching hospitals. Use of threats related to circulation of nude pictures as well as emotional blackmail was recorded by examining doctors.

However only a total of three doctors were called as expert witnesses.

- In one case, a 37-year-old woman was brought to the hospital for examination two months after the incident by the police. The doctor explained to the court that because of a gap of two months, no signs of use of force were seen on the woman.

- In the case of a nineteen-year-old, the doctor deposed that there was physical violence in the form of slaps and threats of circulating photos of the girl if she did not comply with the sexual act; however, no injuries were found. In this case, the doctor explained that the girl had stated that the boy had promised her marriage and that is why she gave in to his demands. However, the prosecution failed to bring on record that the same girl had attempted suicide and was admitted in another public hospital. The documents from the hospital as well as deposition by the doctor could have played an important role in explaining to the court the threat of self-harm to the young survivor.

- In the third case, the doctor told the court that there were no signs of use of force or health consequences because the survivor was brought ten months after the episode. She stated that there was threat and criminal intimidation for initiating sex.

A medical provider is an expert witness in the investigation process. The Prosecutor should call the doctors in all the cases, but based on how the prosecutor views the role of medical experts they get called, and not by default as stated in the law.

Around three of the ten women who had filed a complaint, informed the court that they were married to the man and therefore did not seek to pursue the case. Two other women came to the court but explained that they did not want to pursue the case as they wanted a closure and sought to move on.

There are several reasons for turning "hostile" in court and the Public Prosecutor could have played an important role to understand the reasons behind the withdrawal. Community's shunning them, families not wanting to support women, getting them married in a hurry, victim blaming approaches can also play a major role in survivors' withdrawing their quest for justice.

Even in the case of five women who pursued their case in court, the prosecution was not well prepared legally and hence was unable to present a coherent case. Questions related to delays in recording of FIRs, reasons for not finding medical evidence, circumstances that forced women to have sex on promise of marriage were missed. In fact, lack of proper counseling of the witness was blatant in these kinds of cases. There were instances of survivors reaching the court who were unable to speak in the witness box; they could not even stand by their testimonies. This could be due to fear which remained unexplored by the prosecution. The court ruled that the witness could not inspire confidence leading to acquittals. In the case of a 21-year-old woman the medical documentation stated that intercourse was forced upon her by promising marriage and blackmail. During the hearing, the survivor was not present but her aunt and friend came to the court as witnesses. They were unprepared for court appearance and the witnesses contradicted each other resulting in an acquittal. This shows a lapse on the part of the prosecution.

Biases were also found in the court conduct. In the case of a middle-aged woman pursuing the case, the court commented, "A 40-year-old woman having a child is habitual to sexual activity" and hence medical opinion is not found important. The wording in the judgement indicates stereotypes of character of a woman. Similar comments were made by court when a separated woman's case of promise of marriage was being heard; instead of providing an opportunity to the witness to be heard, the court asked her how she could pursue a case of marriage against a man before producing divorce papers. Such comments can break a survivor who braves societal opposition and reaches the court to pursue the case. These questions could have been directed to the prosecution as it was a lapse on their part.

The courts expect an unreasonably high standard for proving that the complainant woman did not consent to sex without taking into consideration social constraints and cultural contexts in which consent for sex was obtained. In doing so, the other violence inflicted on the woman is not even acknowledged.

9. Discussion and Conclusion

We attempted to understand how medical evidence was assessed by the courts and in the ways in which it impacted the final outcome. Although medical evidence is corroborative evidence in rape trial, there is a bias to rely considerably on it as it is considered scientific and neutral. But the limitations of medical evidence are often not understood by various stakeholders.

CEHAT's engagement with the health system has been focused on demystifying medical evidence, operationalising gender sensitive uniform protocols for medicolegal documentation, collecting evidence and prioritising care for survivors. Training of hospital staff, facilitating interface with police, courts, child welfare committees and monitoring the quality of response of hospitals have been our core activities. We hypothesised that if medical providers are well equipped to understand sexual violence, its forms, consequences, reasons for lack of injuries and the like, they could provide a reasoned medical opinion, which in turn, may be useful to the courts in rape adjudication.

It is evident from the analysis that medical experts in most cases were able to provide a reasoned medical opinion. They were able to also provide explanation for lack of medical evidence citing delays in reaching hospitals, nature of sexual violence and circumstances in which sexual violence occurred. These explanations were based on detailed documentation carried out by them while examining the survivor. Even during cross examination by the defense lawyer, in most instances, the doctors were able to explain that the injury was in sync with the history and their clinical examination, but in a few instances, they were unable to answer when defense counsel posed tricky questions during cross examination. One of the common tricks has been to ask doctors whether the said injury could be caused due to reasons other than sexual violence. And the answer to this may be in the affirmative as other actions definitely may result in injury and the moment this is stated, the medical evidence is then questioned and presented as 'not supporting the victim's statement'. This points towards

the need to train medical experts on how to depose in courts and how to respond to cross examination.

The courts relied on the presence of genital injuries, so a large part of the questions posed to doctors were on these aspects. POCSO 2012 and CLA 2013 while defining sexual violence drew attention to health consequences other than injuries. But the courts have not recognised sexually transmitted infections, genital discharge, unwanted pregnancies as health effects of rape. This non-recognition perhaps emerges from the lack of understanding the circumstances in which rape occurs as well as forms of sexual violence. Though the thrust of the court seemed to be on the presence of genital injuries, these alone did not lead to convictions. A combination of factors such as immediate reporting to police, recording an FIR, the presence of an eyewitness to corroborate sexual violence seem to have weightage while determining the case. It is a well-known fact that an act of rape does not usually have witnesses and hence, there is reliance on the survivor who provides her testimony to the court. Unfortunately, the report notes several examples where testimonies have been discredited as the prosecution was not sufficiently prepared and they failed to present the circumstances before the court.

The focus of the defense lawyer in cases involving adolescents and adult women seemed to be to prove that the survivor went with the accused on her own will and once this was established, the prosecution could not prove that the 'sexual intercourse' was against her will. The burden of proving that the act took place against her consent has to be discharged by the prosecution without any doubt, but even in instances where there were injuries, the prosecution was unable to present a coherent case. This is rooted in the belief that if a woman has interacted with a man on her own free will, then she has also consented to a sexual relationship. Given the compelling evidence that most rapes are committed by known persons, this belief must change.

Another emerging concern is the perception of consensual v/s non-consensual sexual relations. For cases filed as "breach of promise to marry", there is a general perception that women had consented to sex. Not a single conviction

was secured in this category as discussed in the preceding sections. The prosecution was unable to establish social factors that led to girls/women consenting to the sexual act. Thus, they could not establish that the consent, if at all was acquired, was under duress/false promise, and that the accused had no intention to marry since the beginning of the relationship. In many cases, the first sexual contact was forced and when the girl/woman decided to lodge a complaint, the man promised to marry her, to prevent her from going to the police and later broke that promise. These circumstances of abuse, threat, blackmailing were not considered by the court. The courts assumed that adult women are able to exercise sexual autonomy, which is not the case in a deeply patriarchal society such as ours where premarital sex is unacceptable and there is a preoccupation with virginity. Institutionalised biases have also been noted in judgements deciding on breach of marriage cases. For instance, in a Mumbai High Court judgement, the bench stated that an educated woman cannot be deceived and cannot be raped on false promise of marriage. Similar sentiments were echoed by the Orissa High Court, which reversed the conviction of a youth. It stated that rape laws should not be used to regulate intimate relationships where women are entering into a relationship by choice. There is an assumption that an adult woman is capable of taking decisions and that no one can force her to do so on the pretext of marriage. It is evident that the courts expect an unreasonably high standard for proving that the complainant woman did not consent to sex without taking into consideration social constraints and the cultural context in which consent for sex was obtained. This calls for urgent discussion and correction. These are women who have been wronged, cheated and abused and need redress. The courts expect that it be proved that the promise to marry was a promise given with no intention to honour it, and that such a promise was the only reason why a woman agreed to a sexual relationship. This is almost impossible to prove and so the abuser gets away from the charge of rape as well as with all other forms of violence. There is need to consider these as cases of domestic violence so that the survivor gets justice and relief.

The study uncovered another cause of concern that is 'victim turned hostile'. Nearly 20 out of 96 survivors turned hostile during the court proceedings. It is important to reflect on reasons leading to this phenomenon. Factors such as

continued support from prosecution, police assistance, financial security, encouragement from family, neighbours and community greatly help survivors in their quest for justice. But more often than not, survivors do not receive this kind of support. In fact, they are often ridiculed, discredited, ostracised for filing and pursuing rape cases. A recent study by CEHAT that assessed the impact of rape brought forth institutional and community biases that played a major role in demoralising survivors. Continual threats from the accused, community members pressurising the family to move out of the area, breakdown of informal support systems such as friends and co-workers add to the ordeal of survivors and perhaps these factors lead them to withdraw their complaints (Bhate-Deosthali et al., 2018). While the main objective is to secure a just trial, very little consideration is given to the creation of witness protection mechanisms such as anonymity, police protection throughout the trial period, psychological support. This calls for a witness protection scheme/program that continues to provide assistance to survivors and their families even outside court so that they feel confident in proceeding in their journey to justice.

To conclude, the study affirms the need to work in tandem with various institutions and review their responses on an ongoing basis. This is critical to make the access to justice possible for rape survivors.

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