

Barriers in Accessing Justice

The experiences of
14 rape survivors in
Uttar Pradesh, India



CHRI
Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the member states of the Commonwealth.



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has advocated, engaged and mobilized around human rights issues in Commonwealth countries. Its specialisations in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focused on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to accountability. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. We review pressures on media and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A new area of work is SDG 8.7 whose advocacy, research and mobilization across geographies is built on tackling contemporary forms of slavery.

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Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice. CHRI's seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights.

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Association for Advocacy and Legal Initiatives

Association for Advocacy and Legal Initiatives (AALI) is a women-led and women-run human rights organization committed to the protection and advancement of the human rights of women, children and other marginalized communities through direct intervention, capacity building, research and advocacy. With direct field presence in Uttar Pradesh, Jharkhand, and Uttarakhand, AALI has been providing technical support to various human rights organisations and groups across India.

Established in 1998, AALI's ideological framework, rooted in the United Nation's Convention against Elimination of all Forms of Violence against Women (CEDAW), envisions "an egalitarian system which recognizes women as equal human beings and promotes and protects their social, economic, and political rights guaranteed in the Constitution of India and in the international human rights treaties."

Based on feminist perspective and human rights approach, AALI believes the law is both a site for change, and a powerful tool to ensure social justice, hence it works with a multi-pronged strategic framework viz. Advocacy, Access to Justice and Capacity Building.

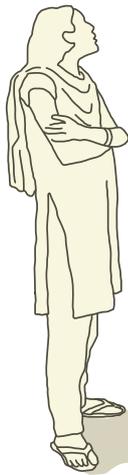
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The cover image has been designed to reflect and represent the barriers that women survivors face in approaching the police. It is not directed at any particular police department, rank, unit and/or personnel. All visual representations in this report are symbolic of the lived experiences from the cases.

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Acknowledgements

This study and report come out of a joint effort of the Commonwealth Human Rights Initiative and the Association for Advocacy and Legal Initiatives (AALI). We gratefully acknowledge the participation of the women survivors who spoke to us and openly shared their experiences and insights, and of AALI caseworkers and network lawyers. These contributions are the bedrock on which this study and report were made possible.

CHRI expresses special thanks to AALI for facilitating the interviews, providing invaluable perspective, and making it possible to conceive, and conduct, this study.

CHRI and AALI thank Ms Archana Singh, Central Administrator of the One Stop Crisis Centre, Lucknow for facilitating interviews with survivors and taking out time to share her perspective and knowledge, and all the staff of Lucknow's One Stop Crisis Centre who participated so significantly.

We thank Aditya Sharma for his comprehensive review and suggestions.

We are grateful for the support of the Hanns Seidel Foundation through which this report could be done.

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Executive Summary

This report documents 14 case studies of police refusal and failure to register complaints of survivors of sexual assault. It is a result of a study conducted by the Commonwealth Human Rights Initiative and the Association for Advocacy and Legal Initiatives from 2019-2020.

The 14 case studies are first-hand accounts of reporting sexual assault to the police by survivors and caseworkers from the seven districts of Aligarh, Amroha, Auraiya, Lucknow, Jhansi, Jaunpur, and Muzzafarnagar in Uttar Pradesh. Of the 14 cases profiled, 11 were complaints of rape and 3 were complaints of gang-rape.

The findings of the study describe that survivors faced delay, derision, pressure, and severe harassment when they approach the police to report complaints and seek the registration of a First Information Report. The survivors' experiences revealed that they faced discrimination by the police on the basis of gender and caste, impeding their access to justice at the gateway to the legal system. These experiences amplified the trauma of survivors and affected their mental and physical well-being.

1. Police delayed and/or refused to register a First Information Report (FIR) on receipt of complaints of sexual assault

Of the 14 cases, FIRs of rape were registered only in 11 cases. Of the 11 cases, the time taken by the police to finally register an FIR ranged from 2 to 228 days. In six cases, police registered an FIR after complaints were escalated to senior police officers, and in the remaining cases, the FIR was registered after a court order.

2. Women police officers did not record the first information of an offence of sexual assault

In 12 out of 14 cases, the survivors had to describe the details of sexual assault to a male police officer instead of a woman, contrary to the process laid down under Section 154 of the Code of Criminal Procedure (CrPC). None of the survivors knew that the law mandates that only a woman police officer is to record a complaint of sexual assault when the survivor herself goes to the police station to report.

3. Police disbelieve and discriminate against sexual assault survivors

Survivors revealed that police disbelieved them from the onset and often subjected them to misogynistic remarks. They also felt that police assume they are taking undue advantage of laws and make false claims to implicate men.

4. Dalit survivors of sexual violence face discrimination on the basis of caste in addition to gender

Dalit survivors expressed experiencing the double burden of discrimination on both gender and caste. The accounts of survivors and caseworkers revealed this discrimination based on caste further impeded women's access to justice.

5. Police routinely pressure complainants to settle or compromise with the alleged accused

Survivors and caseworkers underlined that the police mount pressure and intimidate them to look for solutions outside the legal system. Police try various coercive tactics to push survivors to settle or compromise by threatening to implicate their family members, or forcing marriage of the survivor and alleged perpetrator; and/or by forcing the survivors to dilute their written complaints.

6. Survivors were not aware of the immediate remedies to challenge the police failure to register their complaints as FIRs, leading to delay in accessing remedy

While all 14 survivors exercised their right to complain to the district Superintendent of Police (under Section 154(3) of the CrPC) after facing refusal at the police station, they needed external assistance and guidance which led to delay in accessing remedies. Of the 14, 11 learned of this right only after being advised by a caseworker or a lawyer. The time taken by all the 14 survivors to complain to the SP, from the time of first being refused at the police station, ranged from 1 to 111 days approximately. 5 out of 14 survivors exercised their right to file a complaint with the local Magistrate under Section 156(3) CrPC, following her complaint to the SP. The time taken to complain to the judicial Magistrate ranged from 3 to 74 days approximately from the time of complaining to the SP, and 4 to 146 days approximately from the time of first approaching the police station.

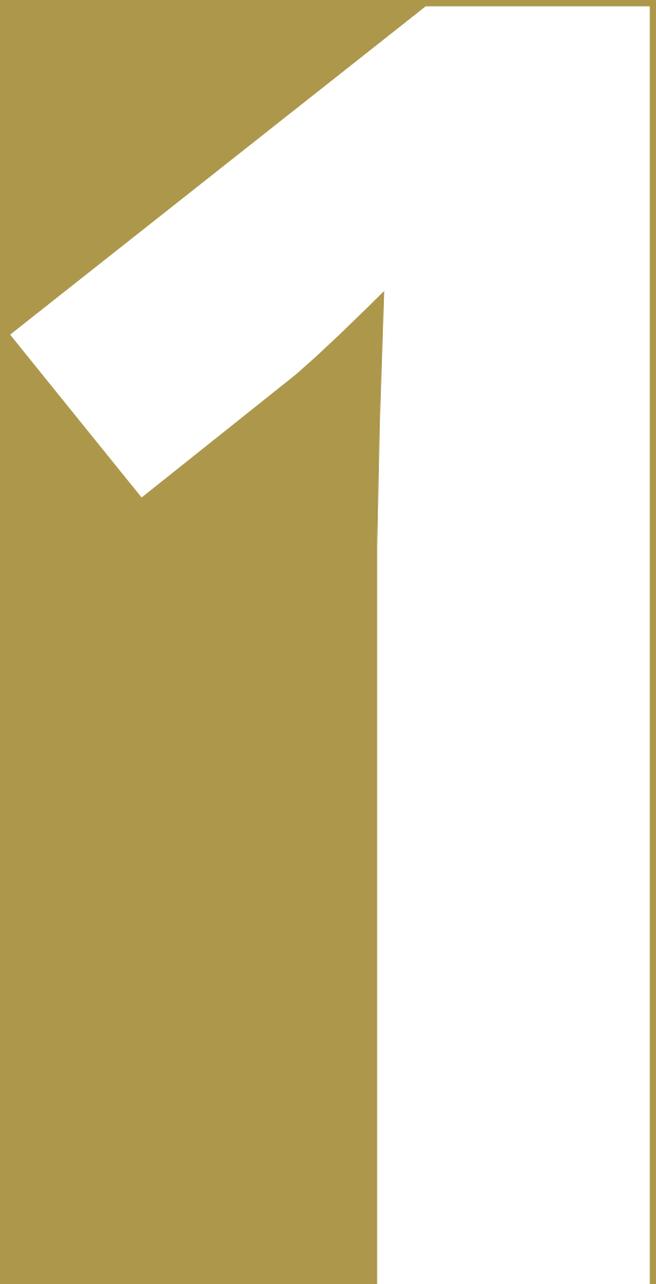
7. Survivors and caseworkers did not know about the provisions of Section 166A(c) of the Indian Penal Code (IPC) and that it could be invoked to hold police accountable

Survivors and caseworkers shared that they did not know that punitive action can be taken against police personnel for not filing an FIR in a case of a sexual assault, under Section 166A(c), IPC. On hearing of this possibility, they expressed apprehensions that complaining against police would lead to repercussions for them, and could jeopardise the registration and investigation in the case of sexual violence. They did not believe that police would be impartially prosecuted even if the process is initiated.

8. Non-registration of the FIR leading to harassment and distrust; causing distress and trauma amongst survivors

The survivors unanimously shared that delay in registration of FIR led to feeling re-victimised. The police failure to register the FIR in the first instance caused suffering, helplessness, and confusion; with serious impact on their physical and mental well-being.

Introduction





Articles 14, 15, 19 and 21 can only be protected if those who feel that they face the threat of a sexual offence can approach any police officer for protection or those who have been the victim of any sexual offence can register an FIR at the nearest police station/online and feel that their complaint will be properly investigated; without delay, intimidation, harassment or prejudice and irrespective of their economic or social status.

- Committee on Amendments to Criminal Law (2013)¹

1.1

Purpose and Aim

This report documents case studies of police refusal and failure to register complaints of sexual assault when first approached by survivors across seven districts of the state of Uttar Pradesh (UP). The case studies and findings describe survivors' experiences of reporting, facing refusal by the police, and the subsequent steps taken, with challenges faced, to get the police to register the complaints as First Information Reports (FIRs). This report underscores the impact of police delay/refusal to register FIRs, in the first instance, on survivors; especially the difficulties she experiences in accessing legal remedies. It specifically highlights the minimal recourse to the remedy contained in Section 166A(c) of the Indian Penal Code (IPC). Perceptions of the hurdles to invoke this remedy point to the serious lack of trust in police accountability.

1.2

Scope

This report is the outcome of a study, which began in 2019, conducted jointly by the Commonwealth Human Rights Initiative and the Association for Advocacy and Legal Initiatives (AALI).² It is based on 14 case studies of first-hand accounts of reporting sexual assault to the police by survivors and caseworkers from the seven districts of Aligarh, Amroha, Auraiya, Lucknow, Jhansi, Jaunpur, and Muzzafarnagar in Uttar Pradesh. Of the 14 cases profiled, 11 were complaints of rape and 3 were complaints of gang-rape.³

The survivors and caseworkers were reached through AALI, which provides pro bono socio-legal support to women across UP and other Hindi speaking states. AALI caseworkers are human rights defenders spread across the state at the grassroots who directly intervene and support women to access the criminal justice system, especially those from vulnerable communities.

1.3

Background

Sexual violence against women is rooted in patriarchal power structures prevalent in a society that is divided on the lines of gender and its many intersections.⁴ While sexual violence might appear limited to an 'incident,' the reality for women who experience it is that the act itself is only the beginning of a long struggle. In its aftermath, the experience of the violence is sustained through stigma and re-victimisation that is repeatedly

reproduced throughout institutions. Though inflicted on bodies, sexual violence has consequences apparently not limited to bodily harm. The violence is rarely understood as a violation of the right to bodily integrity of an individual; but is routinely associated with the 'honour' of family and community, and is thus assigned prolonged stigma.⁵

The severance of sexual violence from a rights discourse also renders redundant the scope of formal systems of justice to properly address the issue. Women are actively discouraged from accessing the criminal justice system, both directly and indirectly, as pursuing such cases are considered a further compromise of so-called 'honour'. Framing of sexual violence outside and independent of the purview of rights also leads to perpetuation of several harmful stereotypes about women.

It is common for women to be disbelieved, especially if they do not conform to the image of the 'perfect victim.' Narratives of survivors are doubted if they show any signs of assertion such as, ironically, the will to seek justice through formal means. This resultant culture of silence may well be one of the major reasons that cases of sexual violence are grossly underreported.⁶

For women survivors who do negotiate their way through these social structures and find their way to the police, the struggle is far from over. Patriarchal attitudes and harmful stereotypes also percolate through state systems. Women survivors often experience the same ordeal among the police as well, as they make attempts to access their rightful remedy. Experiences of direct intervention show that women face many challenges while even initiating the criminal process against sexual violence due to a multitude of reasons. The police have been observed to accord low priority to cases of violence against women, irrespective of its nature, and dismiss them as 'private matters' in clear violation of the rights guaranteed to women under the law.

1.4

Obligations of the State

The preceding reflections attract concern in light of the fact that the duty for prevention and redressal of sexual violence lies with the state, which is to be operationalized through its institutions and actors. The state is obligated to ensure that women have equal access to and can fully benefit from all their rights. And in case of violations, also seek and experience justice through legal mechanisms. The due diligence obligation of the state also reiterates its role in ensuring that private actors do not infringe on fundamental rights. In case of such an infringement, a robust response is expected from the state. Such responses must be mediated through justice systems that are readily available, easily accessible, of good-quality, and accountable.

However, when it comes to sexual violence, the justice system itself fails to interpret it as a rights issue and consequently, does not respond to this violence in a manner that qualifies the aforementioned parameters. In fact, it becomes complicit with the same oppressive structures that violate women's bodies in the first place.⁷

In recognition of these impediments, the Committee on the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW) observed in its 33rd General Recommendation, *"Stereotyping and gender bias in the justice system have far-reaching consequences on women's full enjoyment of their human rights. They impede women's access to justice in all areas of law, and may particularly impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts"*.⁸ It further went on to note, *"Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes, undermining the claims of the victim/survivor and simultaneously supporting the defences advanced by the alleged perpetrator. Stereotyping, therefore, permeates both the investigation and trial phases and finally shapes the judgment"*.⁹ The Committee urges state parties to, *"Take effective measures to protect women against*

secondary victimization in their interactions with law enforcement and judicial authorities”¹⁰, as well as “take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes; and take measures to prevent retaliation against women seeking recourse in justice”.¹¹

Ensuring access to justice for women is also a Constitutional obligation of the state. Article 14 of the Indian Constitution guarantees equality before law and equal protection of law to all. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex and place of birth. These rights place a responsibility on the state to ensure that women are protected from all forms of overt and covert discrimination, including gender based violence, and that their access to remedy in law is promoted and facilitated. Equality and non-discrimination are non-negotiable principles in not merely the substance of the law, but also in its practice. It is a well-founded argument that simply making provisions of law is not enough. Ensuring that all can access and benefit from the law is a true test of justice ‘seen to be done’. Despite the presence of such guarantees and clear obligations for the state in both international law and the Constitution, it is seen that women continue to remain excluded from the criminal justice system from the very first step, unable to even register their complaints in cases of sexual violence.

1.5 Statutory Provisions Mandating Registration of Complaints of Sexual Violence

The police is the gateway to the justice delivery mechanism. The police are responsible for taking written cognizance in cases of sexual violence and initiate investigation. The process of registering the complaint in the form of a First Information Report (FIR) is laid down in criminal law statutes. In addition to the procedure for registering the FIR, these statutes also contain legal remedies in case the police fail to do their duty.

The law is clear that it is mandatory on the police to register an FIR on the receipt of information (or a complaint) that a cognizable offence may have been committed.



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1.6

Police are bound to register complaints of sexual assault

The registration of a FIR by the police is the first step for setting the legal process in motion, following the reporting of a crime complaint. A FIR is a written document prepared by the police when they receive information about the alleged commission of a cognizable offence. It is the report of the information that first reaches the police about the occurrence of a crime or crimes, and is filed after a person reports crime to the police. It is only after the FIR is registered at the police station that the police can start the investigation into the occurrence.

Cognizable offences are serious crimes for which the police have the authority to arrest without a warrant, and start an investigation without the permission of a Judicial Magistrate. 'Cognizable offences' and 'cognizable cases' are defined under Section 2(c) of the Code of Criminal Procedure, 1973 (CrPC) in accordance with the First Schedule of the CrPC, or any other relevant law in force. Non-cognizable offences and cases, defined in Section 2(l) are less serious. All IPC offences are classified as either cognizable or non-cognizable in an accessible format in the First Schedule of the CrPC.

The law is clear that it is mandatory on the police to register an FIR on the receipt of information (or a complaint) that a cognizable offence may have been committed. This is implicit in the language of Section 154 of CrPC which lays down that the officer-in-charge of the police station is mandated to register every information, whether given orally or in writing, relating to the commission of a cognizable offence. While Section 154 is the legal provision which deals with registration of FIRs, particularly to lay down the procedure to be followed to register a FIR, the term "FIR" is not used in the CrPC.

Section 154 states, verbatim: "Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing

as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf”.

Due to differences in legal interpretation, a judgment of a five-judge Constitutional bench of the Supreme Court delivered in 2014¹² clarified the legal position. The Court held that if the information given to the police by a complainant or informant discloses the commission of a cognizable offence, it is mandatory for the police to register an FIR. The Court drew a distinction in the requirement of mere ‘information’ for registration of an FIR, and the weightier requirement of a ‘reasonable complaint’ and/or ‘credible information’ as a prerequisite to the arrest of a person.¹³ This led the Court to lay down that the non-qualification of the word ‘information’ in Section 154 means, that the credibility or reasonableness of the information cannot be called into question by the police, and so long as the information given to the police discloses the commission of a cognizable offence, the police is duty-bound to register an FIR on the basis of this information. On the question of whether the police had the power to conduct a ‘Preliminary Inquiry’¹⁴ before registering an FIR, and following from the duty to mandatorily register an FIR on the basis of information alleging a cognizable offence, the Court held that the police is not empowered to carry out an inquiry as to whether the information is reliable and genuine or not. The police are legally required to register a case and carry out the investigation. In case the police refuse to register a case, they violate their legal duty. While the Court stated that action “must” be taken against erring police officers for non-registration of FIR, it did not indicate whether the action be administrative, or legal/punitive, or both. All of the sexual offences, or also called gender-based offences, in the IPC are cognizable offences. Thereby, the obligation of the police to immediately register complaints of sexual offences as FIRs is clear and binding by law.

1.7

Procedure to register an FIR

Section 154, CrPC lists the mandatory procedures to be followed by the police to register an FIR. The information or complaint may be given in writing or orally to the police. Once the police receive the information, the following steps make up the process of registering it into a FIR:

a

If the information is given orally, the police officer must ask the complainant to narrate it so s/he can write it in plain and simple language as close as possible to the complainant's own words.

b

The complainant can ask the information recorded by the police is read back over to them.

c

Once the FIR is ready in its official format, it has to be signed by the person giving the information.

d

People who cannot read or write must put their left thumb impression on the FIR after being satisfied that it is a correct record.

e

It is the complainant's legal right to get a copy of the FIR immediately and free of cost.

f

The police must record the date and contents of the FIR in the police station diary.

1.8

Remedies for non-registration of FIR

Complaint to district SP and judicial magistrate

Legal remedies are provided for complainants, if the police refuse to register complaints into FIRs, at two levels. Section 154(3) of the CrPC enables an aggrieved person to send a written complaint to the district Superintendent of Police who if satisfied that the information discloses a cognizable offence, can order the Officer-in-Charge of the police station to register an FIR and begin investigation into it.¹⁶

The other remedy is to approach the Judicial Magistrate under Section 156(3), CrPC¹⁷ to ask the court to order the police to register the complaint and start the investigation.

Special procedures for registration of complaints of sexual offences.

The law¹⁵ mandates special procedures to be followed for the registration of sexual offences as FIRs. If the survivor herself reports the crime to the police, the information must be recorded by a woman police officer.

If the survivor at the time of reporting is temporarily or permanently mentally or physically disabled, then the police officer must record the information at her residence or a convenient place of her choice, in the presence of an interpreter or special educator.



The recording of the information must be video-graphed.

Recognising the importance of these remedies, the reality also is that accessing them places additional challenges and hurdles before any complainant. While these remedies are geared to set right that the FIR is registered, they do not in themselves initiate action against the police officer(s) who failed in their legal duty by not registering the FIR. It may be that SPs or Magistrates that prioritise accountability may choose to order disciplinary action, but this would be at their individual discretion. In practice, these remedies do not assure accountability of the police as a matter of routine.

Punitive Action

The vexed issue of police failing to register women's complaints of gender based violence into FIRs has long been recognised by official Committees, and legislative reform suggested. In fact, a call for punitive action against police officers for refusal was first recommended as far back as April 1980 by the Law Commission of India, chaired by Justice PV Dixit.

In its 84th report on Rape and Allied Offences, the Law Commission took the view "that in principle, the law should contain a specific provision dealing with refusal (or failure without sufficient cause) to register such cases".¹⁸ Concerned with the offence of rape, the Commission reiterated "the offence of rape is a cognisable offence and if the police fail to register it, it is a clear violation of the provisions of the Code of Criminal Procedure, 1973".¹⁹ It pointed to the need for penal sanction and concluded that as "we have been given to understand during our oral discussions that administrative action does not prove very effective, *prima facie* there is need for a suitable penalty".²⁰ The Commission recommended that a specific penal provision is added to the Penal Code which makes it a punishable offence (with imprisonment or fine) for the Officer-in-Charge of the police station to refuse to record information of any cognizable offence, not just rape. This is the wording recommended by the Commission:

"Whoever, being an officer-in-charge of a police station and required by law to record any information relating to the commission of a cognisable offence reported to him, refuses or without reasonable cause fails to record such information shall

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”.²¹

This recommendation remained in cold storage for years. Moving forward more than two decades, the historic Committee on Amendments to Criminal Law (also known as the Justice Verma Committee on Amendments to Criminal Law) was constituted in December 2012, in the aftermath of the brutal gang-rape and murder of a woman in Delhi and wide public demand for immediate systemic changes to better assure women’s safety, particularly stronger access to justice for victims of sexual assault. In identifying a large number of amendments to criminal law towards this end, the Committee referred to the 84th Law Commission and lamented that Parliament has so long ignored its recommendation to add a penal provision to hold the station-in-charge of a police station accountable for non-registration of FIR.²²

The Committee went on to recommend the insertion of a new Section 166A into the Indian Penal Code making it punishable for a public servant to “knowingly disobey any direction of the law” relating to the conduct of investigation. It included a subsection (c) to this new Section that made a public servant liable to 5 year imprisonment and fine for failure to record information of sexual offences when given under Section 154(1) of the CrPC.²³ The Committee extended the penal punishment significantly, to 5-year mandatory imprisonment, from the Law Commission’s recommendation of one year imprisonment or fine; and also made the penal sanction apply only to non-registration of sexual offences against women. In practice, the public servant referred to here will only be a police officer as it is the police that are vested with the power to record and register FIRs of complaints of the commission of cognizable offences.

Finally, the passage of the Criminal Law (Amendment) Act 2013 in April 2013 codified a penal provision through a new Section 166A with the inclusion of a subsection (c) which makes it punishable with imprisonment and fine for a public servant to fail to record information of stipulated sexual offences. A full summary of Section 166A(c) follows.

166 A:

Public servant disobeying direction under law– Whoever, being a public servant,-

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under sections:

- 326A: Voluntary causing grievous hurt by use of acid.
- 326B: Voluntary throwing or attempting to throw acid
- 354: Assault or criminal force with intent to outrage her modesty
- 354B: Assault or use of criminal force to woman with intent to disrobe
- 370: Trafficking of person
- 370A: Exploitation of a trafficked person
- 376: Rape
- 376A: Causing death or resulting in persistent vegetative state
- 376B: Sexual intercourse by a husband upon his wife during separation
- 376C: Sexual intercourse by a person in authority
- 376D: Gang rape
- 376E: Repeat offenders(under sec. 376, 376 A, 376D)
- 509: Word, gesture, act to insult modesty of woman

be punished with rigorous imprisonment for a term which shall *not be less than six months but which may extend to two years*, and shall also be liable to fine.

This is the law as it stands at present. Section 166A(c) provides the legal remedy to initiate criminal prosecution against a police officer for failure to register a FIR of a complaint of any of the stated offences. It seems Parliament struck a compromise in the quantum of punishment between the Law Commission and the 2013 Committee's recommendations, placing it at between 6 months to up to 2 years imprisonment and also liable to fine. Notably, the 2013 amendments also removed the requirement of having to obtain prior permission from the government to prosecute a public servant accused of sexual offences.²⁴

MHA Advisories

The Ministry of Home Affairs has issued a slew of national advisories to all states and Union Territories, steadily from 1995 onwards, towards a proactive response as well as preventive strategies to tackle crimes against women. About five specific advisories issued since 2009 are available on the MHA's website²⁵; calling for the adoption of various measures ranging from increasing the number of women police, to specific investigative units for crimes against women at the police station, among many others.

In parallel, the MHA has also issued about five advisories that reiterate the duty of police to register FIRs with no delay in cases of cognizable offences. These lay down measures that go toward guaranteeing mandatory registration if implemented. For instance, taking into account delay in registration when police receive a crime complaint of offences alleged to have taken place in another police station's jurisdiction, a 2013 MHA advisory instructs that even if the complaint/information relates to an alleged crime in another jurisdiction, the police are to issue a "zero" FIR, and ensure the FIR is transferred to the police station with jurisdiction.²⁶

In three advisories issued 2013 onwards, after Section 166A(c), IPC was legislated, the MHA repeatedly referenced the Section and urged police departments to issue instructions and institute targeted training for all police personnel to be made aware of this new punitive provision.²⁷ In an encouraging stance, the advisories refer to the section in the context of police accountability. These are capped off by a latest advisory issued in May 2019 which points to the failure of police to adhere to the requirement to mandatorily register FIRs, highlights the punitive provision of Section 166A(c), and stresses that the states/UTs should give strict instructions to the police "to ensure strict compliance with the provisions in the law with respect to registration of FIR".²⁸

The MHA has played a strong role in repeated assertion of pushing for adherence to the law, and prescribing tangible measures towards mandatory registration of FIRs, and

enforcement of Section 166A(c), through the national advisories. It is for police departments to adopt concrete measures, and issue department-wide circulars calling for zero tolerance of non-registration in tandem with strong reminders of the offence codified in the IPC.

UP Police Circular: August 2019

In August 2019, the Director-General of UP Police issued a Circular²⁹ pointing out concerns related to crimes against women not being properly registered by police in certain districts, stating this is “unexpected and unacceptable”. The circular makes clear that prompt registration of crimes against women is to be adhered to, and failing to do so would attract not only departmental action, but also punitive measures. Even in the absence of being able to pinpoint quantitatively, the circular recognises the depth of the problem of non-registration of FIRs in cases of violence against women.

1.9

Women survivors continue to face refusal in the first instance

Even with the punitive provision in law in place, the reporting of sexual assault has not eased for women survivors. Women continue to routinely face harassment and outright refusal when they first approach police to register complaints. This is confirmed not just by women’s rights organisations and lawyers who work directly with affected women, but by institutions as well.

The 5-judge Constitution bench of the Supreme Court in its 2014 judgment held that non-registration or burking of crimes by the police is a clear violation of victims’ rights.

However, following the insertion of the penal provision in the law, there is little evidence of the judiciary invoking the section of its own accord, though there are cases in which the practice of initiating departmental proceedings has been ordered by the courts.³⁰ In October 2016, the Bureau of Police Research and Development published a study titled “Non-Registration of Crimes- Problems and Solutions”.³¹ This was more than two

years after the Supreme Court reiterated that it is mandatory for the police to register FIRs on receipt of complaints of cognizable offences, and more than three after the passing of Section 166A(c). The study not only acknowledges the continuance of non-registration, but identifies reasons for it. The “lack of police accountability” is cited as one contributory factor.³² The study lays out the impact of non-registration:

“Overall, non-registration of crimes severely obstructs access to justice to the poor and people belonging to the marginalized and vulnerable sections. Overall, it erodes the efficacy and effectiveness of the police system and severely erodes the spirit of the rule of law”.³³

In acknowledging that the “victims” of non-registration of crime by police are mainly those from poor or marginalized sections of society, the study states that “most of them are women, youth, and poor farmers”. After conducting focus group discussions with women’s groups across states, the study pointed to “police apathy towards women victims”.³⁴ It was shared that women fear to go to report complaints alone; the police impose repeated visits to the police station; women feel harassed by the intimidating and embarrassing questions the police ask; and they and often their family members are subject to reprisals by the police if they complain to senior officers. Women feel the police subculture is “feudal and patriarchal” and biased towards them.³⁵

1.10

Absence of data on non-registration of FIR

The true extent of the numbers of cases not registered by the police is unknown, and probably impossible to ever procure through official statistics. In some countries, the government commissions a yearly public crime victimisation survey which not only records all types of crimes experienced by people, but also those crimes that may not have been reported to the police. In the Indian context, if this type of public crime survey was conducted, it could collect the numbers of cases in which someone went to the police to report a complaint but was refused.

In parallel with lack of data on the frequency of non-registration, there is no information in the public domain of what, if any, action is taken on accountability of police officers for this. Most

“application was not in public interest.”

“information is too large”

– Andhra Pradesh, Madhya Pradesh and Himachal Pradesh rejected the RTI application, citing various such reasons.

notably, there is no reporting of cases registered against police officers under Section 166A(c) in annual crime statistics. The lax environment makes it easy for police departments to pass off complaints as occasional, individual bad behavior, rather than persistent unchecked bad practice and a systemic malaise.

India's annual crime statistics report, *Crime in India*, does publish data on the number of complaints received by police (oral and written) and cases registered. While this provides overall, and state-wise, aggregate figures of the number of complaints received that were registered as FIRs or not; since 2016, the data on nature of complaints has not been provided. Also in the four-year period between 2014 and 2018, there has been tremendous inconsistency in what has been published under this data head in each year.

In 2018, CHRI filed Right to Information applications to all states and Union Territories in an attempt to capture and collate data on the use of Section 166A(c).³⁶ Information was sought primarily on the following: 1) the number of complaints received against police personnel for their refusal to register an FIR, and 2) the number of FIRs registered along with the details of the FIR. 25 police district offices/police units in eight states - Rajasthan, Gujarat, Assam, Goa, Karnataka, Jharkhand, Maharashtra, Telangana - and the Union Territory of Delhi responded with

incomplete, minimal information which was inadequate to understand if Section 166A(c) was being invoked against police personnel at all. The rest of the responses said that either no such case had ever been registered, or no information was available at that time.

Seven police district offices/police units in four states - Rajasthan, Jharkhand, Karnataka and Telangana - provided the FIR numbers. Even with these, copies of the FIRs could not be retrieved from the state police websites due to technical barriers.³⁷ Andhra Pradesh, Madhya Pradesh and Himachal Pradesh rejected the RTI application, citing various reasons such as, “application was not in public interest”, “information is too large” and “information sought is classified as conclusion”. Manipur and Tamil Nadu did not reply to the RTI application.

This revealed that data of the number of complaints registered under 166A(c) is not being uniformly maintained and so is not available, more than 7 years after the provision was codified.

This report aims to accentuate and call urgent attention to the grave problems of the police continuing to delay or refuse in the first instance to register complaints of sexual assault by women survivors, and not being held accountable for this breach of duty, through the documentation of 14 cases. The difficulties for women to access the available remedies, as well as the lack of reliability that the remedies will actually work in their favour, are also revealed. Ultimately, this report is a call for police accountability. We hope this will be seen as a springboard to push for adherence to the law and consequences for its breach, not only to make policing responsive and accountable to survivors of sexual assault but also to bring policing closer to fulfilling its constitutional mandate.

1.11

In Conclusion

References

- ¹ (Justice Verma) Committee on Amendments to Criminal Law, *Report of the Committee on Amendments to Criminal Law* (2013), Chapter Twelve - Police Reforms, page 320
- ² CHRI is a non-governmental organization that has worked on issues related to policing and police reform for over two decades. AALI is a women led and women run human rights organization working for the protection and advancement of human rights of women, children and other marginalized communities.
- ³ In this report, the understanding of the offences are based on the penal offences established in Sections 376 and 376D, and any other relevant provisions, of the Indian Penal Code.
- ⁴ Basu Roy, S., & Ghosh Dastidar, S. (2018), *Why do men rape? Understanding the determinants of rapes in India*. *Third World Quarterly*, 39(8), page: 1435-1457; <https://www.tandfonline.com/doi/abs/10.1080/01436597.2018.1460200> and Dey, A. & Orton, B. (2016), *Gender and caste intersectionality in India: An analysis of the Nirbhaya case, 16 December 2012*; <https://eprints.soas.ac.uk/29884/3/DEY%20Gender%20and%20Caste%20Intersectionality%20in%20India.pdf>
- ⁵ Lodhia, S. (2015), *From "living corpse" to India's daughter: Exploring the social, political and legal landscape of the 2012 Delhi gang rape*, in *Women's Studies International Forum* (Vol. 50, page: 89-101); <https://www.scu.edu/media/ethics-center/business-ethics/Lodhia-From-Living-Corpse-to-India's-Daughter-Women's-Studies-International-Forum.pdf>
- ⁶ Gupta, A. (2014), *Reporting and incidence of violence against women in India*, Rice Institute: http://porterfolio.net/uploads/article/file/7125/gupta-2014-Reporting-and-incidence-of-violence-against-women-in-India-_1_.pdf
- ⁷ Lodhia, S. (2015), *From "living corpse" to India's daughter: Exploring the social, political and legal landscape of the 2012 Delhi gang rape*, in *Women's Studies International Forum* (Vol. 50, page: 89-101); <https://www.scu.edu/media/ethics-center/business-ethics/Lodhia-From-Living-Corpse-to-India's-Daughter-Women's-Studies-International-Forum.pdf> and Bajpai, G. S., & Mendiratta, R. (2019), *Gender Notions In Judgments of Rape Cases Facing The Disturbing Reality*; http://14.139.60.114:8080/jspui/bitstream/123456789/47598/1/019_Gender%20Notions%20In%20Judgments%20of%20Rape%20Cases%20Facing%20The%20Disturbing%20Reality%20%28298-311%29.pdf
- ⁸ Convention for Elimination of All forms of Discrimination Against Women (sixty first session, 2015); Committee General Recommendation No. 33–Women's Access to Justice, para 26: <https://bit.ly/3gttgL3>
- ⁹ Ibid, para 27
- ¹⁰ Ibid, para 51(c)
- ¹¹ Ibid, para 51(d)
- ¹² Lalita Kumari v Government of Uttar Pradesh & Ors AIR 2014 SC 187
- ¹³ Refer to Section 41(b), (ba) and (g) of the Code of Criminal Procedure, 1973.
- ¹⁴ The Court laid out 5 broad categories of offences in which a preliminary enquiry is permitted but must be done within 7 days. Sexual offences do not fall in any of these categories.
- ¹⁵ Provisos to Section 154, CrPC state (verbatim):
Provided that if the information is given by the woman against whom an offence under Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer:
Provided further that:
(a) in the event that the person against whom an offence under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal code is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;
(b) the recording of such information shall be video-graphed;
- ¹⁶ Section 154(3) states: "Any person, aggrieved by a refusal on the part of the an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in

writing and by post, to the Superintendent of Police concerned who, if satisfied that such investigation discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence”.

¹⁷ Section 156(3) states: “Any Magistrate empowered under section 190 may order such an investigation as abovementioned”.

¹⁸ Law Commission of India (1980), *Eighty-Fourth Report on Rape and Allied Offences: Some Questions of Substantive Law, Procedure and Evidence*, Chapter 3: Arrest and Investigation, Part X, page 19: <http://lawcommissionofindia.nic.in/51-100/Report84.pdf>

¹⁹ Ibid, page 19

²⁰ Ibid, page 20

²¹ Ibid, page 20

²² (Justice Verma) Committee on Amendments to Criminal Law, *Report of the Committee on Amendments to Criminal Law (2013)*, Chapter Three – Rape and Sexual Assault, page 104

²³ Ibid, Conclusion and Recommendations, page 435

²⁴ The Explanation added to Section 197, CrPC states: “For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code”.

²⁵ The national advisories available on the MHA website can be found here: <https://www.mha.gov.in/documents/national-advisories?page=1>

²⁶ Ministry of Home Affairs, Government of India, Advisory (2013), *Registration of FIR irrespective of territorial jurisdiction and Zero FIR*, 10 May, <https://www.mha.gov.in/sites/default/files/AdvisoryFIR-290513.pdf>

²⁷ In addition to the 2013 advisory above, advisories in 2014 and 2015 were also issued: Ministry of Home Affairs, Government of India, Advisory (2014), *Compulsory Registration of FIR u/s 154 CrPC when the information makes out a cognizable offence*, 5 February, https://www.mha.gov.in/sites/default/files/AdvisoryFIR_060214.pdf; and Ministry of Home Affairs, Government of India, Advisory (2015), *Comprehensive Approach towards Crimes Against Women (2015)*, 12 May, https://www.mha.gov.in/sites/default/files/AdvisoryCompAppCrimeAgainstWomen_130515_0.pdf

²⁸ Ministry of Home Affairs, Government of India, Advisory (2019), *Failure to record information under sub-section (1) of Section 154 of CrPC punishable under S. 166A of IPC*, 16 May; https://www.mha.gov.in/sites/default/files/WSdiv_CrimeAgainstWomen_advisory_17052019.pdf

²⁹ Office of Director General of Police, Uttar Pradesh, Circular No. 36/19, 19 August 2019; See Annexure 1

³⁰ *Ram Kishore v. State of Uttar Pradesh* 2013 SCC Online All 13077; *Urmila Devi v. State of Uttar Pradesh* 2015 SCC Online All 4568

³¹ Bureau of Police Research and Development, *A Study on Non-Registration of Crimes: Problems and Solutions* (2016), <https://bprd.nic.in/WriteReadData/userfiles/file/201612200235022990797Report-Non-RegistrationofCrimesProblems&Solutions.pdf>

³² Ibid, page 38

³³ Ibid, page 38

³⁴ Ibid, page 98

³⁵ Ibid, page 98

³⁶ The RTI application is annexed in Annexure 2

³⁷ In its judgment in *Youth Bar Association of India v. Union of India* (AIR 2016 SC 4136), the Supreme Court directed that copies of every FIR, barring those of offences regarded as “sensitive in nature”, are to be uploaded on the police website within 24 hours of being registered. Technical barriers impede the online access to FIRs which is to be guaranteed. FIRs against police officers under Section 166A(c) should be uploaded and not prevented so in being seen as sensitive, for this does not apply.

Methodology



The study was undertaken to gain an in-depth understanding of the experiences of survivors of sexual violence in their efforts to begin the criminal process. To reiterate, their first point of contact is the police, and the first step the registration of the FIR. The study purposely looks at cases wherein the police refused to register the FIR, thereby impacting the survivor's right to access justice and compelling her to either escalate her efforts through the system, or withdraw from it altogether. The following specific objectives are addressed through the study:

1. To document the experiences and challenges of women survivors due to non-registration of cases of sexual offences by the police.
2. To understand how women survivors navigate legal processes in order to get their cases registered
3. To understand the impact of non-registration of cases of sexual offences on women survivors.

This study is largely based on interviews with survivors, AALI's caseworkers, network lawyers, and select staff of Lucknow's Asha Jyoti Kendra (the city's One Stop Crisis Centre) on their experiences of reporting sexual assault complaints to the police. Interviewing a mix of survivors, as well as case workers, enabled the study to capture the experiences and perspectives of the survivor herself and those working in her support in tandem.



CHRI and AALI interviewed nine caseworkers and 14 survivors from seven districts.

The interviews were conducted by CHRI, and for as many as possible, with AALI. For a few interviews of survivors who had approached the AJK, an AJK caseworker accompanied CHRI. CHRI and AALI interviewed nine caseworkers and 14 survivors from seven districts - Aligarh, Amroha, Auraiya, Lucknow, Jhansi, Jaunpur, and Muzaffarnagar. Following an initial review of case documentation and discussions with caseworkers, CHRI and AALI identified these 14 cases where the police failed to register the FIR when first approached by the survivor. As a part of this study, each of these is recorded as case studies.

The interviews involved asking the respondents a consistent set of questions centered on the experience of reporting, facing refusal by the police, and the subsequent steps taken to get the complaint registered, by using a semi-structured

questionnaire.³⁸ Attempts were made through the interviews to also understand the impact of such an experience on the survivors' lives. Questions also included trying to gauge levels of awareness of the remedy contained in IPC Section 166A(c) and perceptions of the possible challenges in invoking this remedy.

Every interview was conducted only after each interviewee was assured of confidentiality, and gave consent. All 9 caseworkers interviewed signed the consent form. 9 survivors signed the consent form; and the rest gave their consent orally as they were apprehensive about putting their signature on a document. In conducting the interviews, each respondent was briefed about the rationale and aims of the study. While measures were taken to conduct the interviews with survivors in private, this was not possible as family members were in proximity.

With the consent of survivors, documents such as First Information Reports (FIR), complaint applications sent to Senior Superintendent of Police/Superintendent of Police (SSP/SP) or higher police officials, and applications under Section 156(3) CrPC and subsequent court orders were asked for but couldn't be retrieved for all the cases.

In this report, the names and any identifying information of respondents have been omitted to maintain their anonymity.

References

³⁸See Annexure 3

Socio-Economic Profile of Survivors



This section provides brief information on the socio-economic profiles of the survivors we spoke to. This is with the limited purpose of giving a glimpse of their lived realities.

Age

18-30	30-40	40-50	50-60
9	3	1	1

The survivors fall mainly in the age group of 18-30 years. At the time of the registration of FIR, the youngest survivor was 19 years old, and the oldest 55 years old.

Caste and Religious Profile

Hindu			Muslim
Scheduled Caste	General	Other Backward Classes (OBC)	
6	3	1	4

In terms of religion, 10 survivors are Hindus and 4 are Muslims. Of caste, six survivors are of a Scheduled Caste, one of an OBC, and three of others classified as general. We are not aware of the caste profiles of the Muslim survivors.

Employment Profile

No formal education	Up to Standard 8th	Graduates
6	4	4

The survivors we spoke to had varied levels of education. Out of 14, six had no formal education. Four had obtained education until middle school. Four were college graduates.

Education Profile

Homemakers	Domestic Workers	Others
7	3	4

Perhaps linked to lack of access to higher education, half of the survivors in our sample are not gainfully employed. This implies that they may be economically dependent on their family and relatives. Seven survivors out of 14 had no employment and were homemakers. Three worked as domestic workers. Four had different jobs including tailor, shopkeeper, labourer and a government servant.

Case-Briefs

4

The following **14 case briefs** summarise the experiences of each of the 14 survivors of attempting to report her complaint, facing refusal and/or delay in the first instance, pursuing remedies, and the final outcomes.

The case briefs are based on what survivors and caseworkers told us in our interviews with them, and we have stayed true to their accounts in their own words as far as possible.

The case briefs throw up common and disturbing trends, attesting to violations of legal rights and misconduct by police in the process of registration of FIR. These are listed, as well as the approximate time taken for each FIR to be finally registered in each case following the first refusal by the police.

Case 1.

AGE : 40-45 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Domestic Worker	Muslim	Not Known	Aligarh

Basic Information

The survivor has alleged that her husband's friend raped her in her home in **May, 2017**. She, by herself, went to the local chowki on the same day of the incident.

Reporting and Refusal

At the local chowki, the survivor met a male chowki in-charge of the rank of Sub-Inspector (SI). She narrated the incident and also told him the name of the alleged perpetrator. She gave him her written complaint which he did not accept. No action was taken.

Violations and Misconduct by Police

1. SI did not record information relating to a cognizable offence.
2. SI denigrated the survivor's looks.
3. Woman police officer did not record the information of an offence of sexual assault.
4. SI made the survivor wait in the police station for hours with no action taken.
5. SI invalidated the survivor's narrative.
6. Survivor's case was diluted as registered as an attempt to rape (S. 376 IPC read with 511 IPC) instead of just S. 376.
7. SSP/SP did not invoke IPC S. 166A(c) against the SI and the SHO.

After 15 days

She was beaten up and molested by the same perpetrator. She went back to the chowki and submitted a written complaint to the same officer in charge. Though he took her application, he did not initiate any of the needed steps to register her complaint. He made a remark to her saying, “tum itni khoobsurat bhi nahi ho ki tumhe koi pareshan karega, tum koi laundiya bhi nahi ho jo tumhe koi sexually assault karey” (you aren’t even beautiful that someone will trouble you, you aren’t even a young girl that someone will sexually assault you). For the rest of the month, no action was taken by the police.

June 2017

She sought the help of a lawyer. The lawyer advised her to send complaints to the Senior Superintendent of Police (SSP) and other higher officials. Over a period of the next 3-4 months, with the help of the lawyer, she sent complaints to various authorities like the SSP’s office, the District Magistrate’s office and the State Women’s Commission, but she did not get any replies.

The survivor met with a caseworker through the lawyer. The survivor narrated her ordeal to the caseworker. Subsequently, the caseworker took steps to support the survivor.

16 October 2017

The perpetrator beat and raped her. The same day, the survivor went to the police station by herself and met a male police officer of the rank of SI. She went with a written complaint. The officer went through it. He told her that the Station House Officer (SHO) of the rank of Inspector is not at the police station and asked her to wait. While she was waiting, the caseworker spoke to a woman Constable about the survivor's case over the phone, and requested her to assist in registering an FIR. The survivor waited till dusk before finally returning home, with no action taken.

11 November 2017

12 November 2017

The survivor went back to the police station with the caseworker in the morning. The complaint was given to the male officer of the rank of SI. He heard the survivor's multiple incidents of alleged rape. While listening to her, the caseworker noticed that the SI was smirking at the survivor. The SI also asked the survivor whether the sexual incident was consensual or not, even though the survivor had told him that the perpetrator had raped her. Then, the officer asked them to wait for the SHO, who only arrived at 5 pm. The survivor and caseworker left, again with no FIR in hand.



13 November 2017

REGISTRATION

The survivor went to the SSP's office with the caseworker and a lawyer. They took a written complaint, drafted with the help of the lawyer. The SSP read the complaint and forwarded it to the concerned police station. The survivor and the caseworker went to the police station and met the SHO. He spoke to the survivor and asked the officer-in-charge of the police station to register an FIR immediately.

The copy of the FIR was given to the survivor on the same day.

The police took **181 days** approximately to register an FIR in this case.

Case 2.

AGE : 19 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
Standard 5th	Homemaker	Hindu	SC (Scheduled Caste)	Amroha

Basic Information

The survivor has alleged that a man from the neighboring village raped her in her home on **3rd March** 2017. On **4th March**, the survivor went to the police station with her father, to report her complaint and get a FIR registered.

Reporting and Refusal

At the police station, the survivor and her father met the SHO of the rank of Inspector and gave him a written complaint. The survivor narrated what happened in her own words to the SHO. After listening to the survivor, the SHO told them, *“ye biradri ka mamla hai, aap log shaadi kardo unse. Mukadma karke koi faida nahi hai”* (this is a matter of the community, you get both of them married. Registering a case at the police station is of no use). The survivor and her father returned home with no FIR in hand. Following this, the SHO threatened the alleged perpetrator and asked him to marry the survivor.

Violations and Misconduct by Police

1. SHO did not record the information relating to a cognizable offence.
2. Woman police officer did not record the information of an offence of sexual assault.
3. The police and the panchayat tried to force marriage of the survivor and the perpetrator.
4. SHO invalidated the survivor's narrative.
5. Police sought a bribe from survivor's father to arrest the perpetrator.
6. SSP/SP did not invoke IPC S. 166A(c) against the SHO.

Reference

³⁹The FIR included both the rape by the perpetrator in March and the alleged offences by the uncle.

1 May 2017

The perpetrator and the survivor were married. He did not bring her into his home and forced her to live with his uncle. The uncle made her do all the house work and even sexually harassed her.

23 June 2017

REGISTRATION

The survivor and her father went to the office of the Superintendent of Police (SP). She told the SP all that had happened, and also gave a written account. After listening to the survivor, the SP ordered the SHO of the concerned police station to file an FIR immediately.³⁹ The copy of the FIR was given to the survivor on the same day.

22 April 2017

Under pressure from the village panchayat and the police, the survivor's father agreed to marry his daughter to the perpetrator.

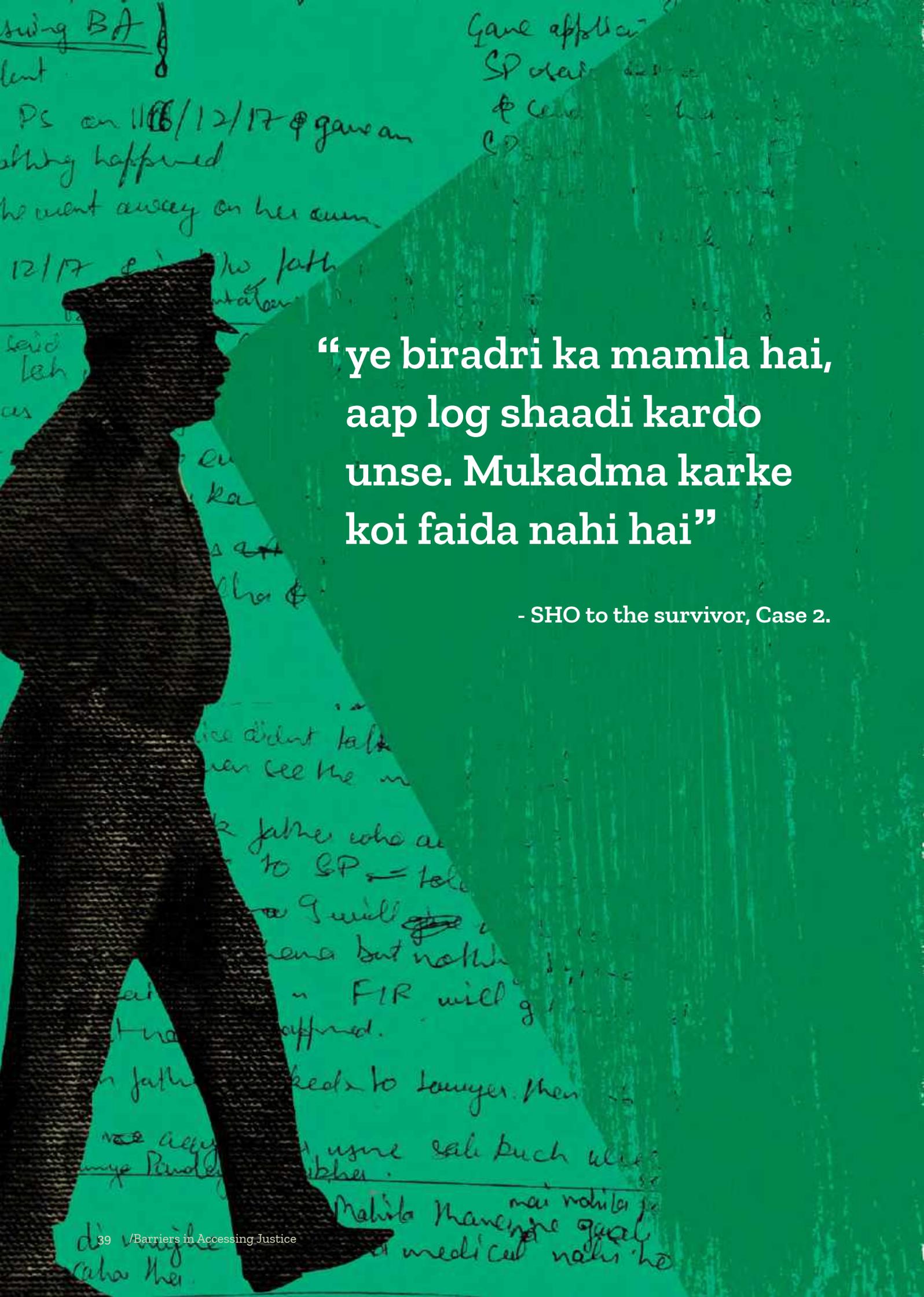
22 June 2017

The uncle dropped her at a bus station telling her he will be back soon but he never returned. The survivor found a way back to her natal home by night fall.

Notes

The police did not arrest the perpetrator after the registration of the FIR. In relation to this, the survivor's father went to the office of the Deputy Inspector General (DIG), Moradabad to give a written complaint. He met the caseworker here for the first time. He told the caseworker that the local police was asking for money to arrest the perpetrator. He also told him that he does not have any money to give to the police. To create pressure on the survivor's father to settle the case, a case was registered against him by the local police.

The police took **111 days** approximately to register an FIR in this case.



“ye biradri ka mamla hai,
aap log shaadi kardo
unse. Mukadma karke
koi faida nahi hai”

- SHO to the survivor, Case 2.

I was
Raped
and the
police took
111 Days
to listen.

- Survivor, Case 2.



Case 3.

AGE : 21 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
8th Standard	Tailor	Muslim	Not Known	Amroha

Basic Information

The survivor has alleged that a man she had known for 4 years raped her close to her home on **6 June 2019**. The survivor did not go to the police station for eight days after the rape as the village panchayat was pressuring her to marry the alleged perpetrator. Her family had to agree and waited for eight days. The perpetrator did not agree to marry the survivor. On **14 June 2019**, the survivor and her family went to the police station to get an FIR registered.

Reporting and Refusal

At the police station, the survivor and her family met the SHO of the rank of Inspector along with a woman police Constable. The survivor narrated the details of her case to the SHO. As she was speaking, the Constable put the information in writing but it is not known whether the information was read over to the survivor or not. The survivor was then asked to sign this document. The SHO told the survivor, *"nikah hoga abhi aur insaaf milega"* (you will get married and shall have justice). The survivor was asked to go home and given an assurance that swift action would be taken.

Violations and Misconduct by Police

1. SHO did not record the information relating to a cognizable offence.
2. SHO did not give the copy of an FIR immediately.
3. SHO tried to force the marriage of the survivor and the perpetrator.
4. SHO threatened the survivor's family for complaining to the SP.
5. Misplaced the copy of the survivor's written complaint.
6. The police pressured the survivor to dilute her complaint.
7. SP did not invoke IPC S. 166A(c) against the SHO.

15 June
2019

The survivor and her family did not hear from the police for the next three days.

16 June
2019

Meanwhile, the caseworker read about the case through a local newspaper and subsequently met the survivor and her family. The caseworker advised the family to go to the SP's office as no action was being taken by the police station. The survivor's family shared with the caseworker that they felt the police were not acting on their complaint because the perpetrator had allegedly bribed the police.

17 June
2019

REGISTRATION

The survivor and her family went to the office of the SP. She submitted a written complaint, and also met him to describe all that happened. The SP called up the police station and ordered the SHO to register an FIR. The survivor and her father went to the police station where the SHO rebuked the survivor's father for complaining to the SP. He threatened him with a beating, saying "*giraake marunga tujhe toh saari akad nikal jayegi*" (I will hit you so hard that you'll learn a lesson about your audacity). The police told the survivor that they had lost her original complaint and she was asked to rewrite the information in 4-5 lines only. The FIR was registered on the basis of this information. The police did not give the survivor a copy of the FIR immediately. She obtained a copy through the village Pradhan at a later date.

The police took **3 days** approximately to register an FIR in this case.

Case 4.

AGE : 30 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Domestic Worker	Hindu	SC (Scheduled Caste)	Lucknow

Basic Information

The survivor has alleged that a man from her village raped her in an agricultural field near her home on **4 June 2019** around 7 pm. The survivor called up the 112 helpline, after which four to five police personnel reached the spot. They asked the survivor to come to the police station in the morning to report, as there were no women police at the police station. On **5 June 2019**, the survivor, by herself, went to the police station in the morning around 8 am.

Reporting and Refusal

At the police station, the survivor met a police Constable and gave him a written complaint. Her complaint was forwarded to a Munshi⁴⁰ who was the acting in-charge of the police station, as senior officers were deployed for Eid preparations. The Munshi asked the survivor to come in the evening when the SHO would be present. She returned in the evening and met the SHO of the rank of Inspector. After listening to her narrative in the absence of a woman police official, the officer told the survivor, *“ki tum gareeb ho, tum rehne do, and waise bhi tum jhoota case likha rahi ho toh case nahi likha jayega”* (you are poor, you shouldn't pursue this case, and you are getting a false case registered so the case won't be registered). He told her to go home. The survivor heard that the alleged perpetrator had already spoken to the police and bribed them.

Violations and Misconduct by Police

1. No action was taken on the survivor's complaint in the first instance.
2. SHO did not record the information relating to a cognizable offence.
3. Woman police officer did not record the information of an offence of sexual assault.
4. Munshi misplaced the copy of the survivor's written complaint.
5. SHO made allegations against the survivor and threatened to file a case against her.
6. SHO gave false and misleading information to the survivor that complaint cannot be written without CO's orders.
7. SHO pressured the survivor to dilute her complaint.
8. SP did not invoke IPC S. 166A(c) against the Munshi and the SHO.

Reference

⁴⁰Munshi refers to the main record-keeper of the police station

- **6 June 2019**

The survivor went to the Asha Jyoti Kendra (AJK) where she narrated her ordeal to a caseworker. The caseworker wrote out a complaint for her. The same day the caseworker along with the survivor visited the police station and met the SHO. A woman police official was present in the police station, but there was no interaction between her and the survivor. They told the SHO that the survivor had come to the police station yesterday to submit her complaint of rape but was prevented from doing so. The SHO asked the Munshi about her complaint, to which he replied that he had misplaced it. When the caseworker asked about the delay in registration, the SHO said that “mahila ke ghar pe daru ka dhanda hota hai isliye jaach hogi pehle” (woman engages in bootlegging at her home so we need to undertake an enquiry before we register the complaint). The caseworker asked the SHO to contact the Circle Officer (CO) with regard to this case. The SHO told them that he cannot disturb the CO in the afternoon as he would be resting. He also told the caseworker that he can't register such cases without the permission of the CO.

- **6 June 2019**

REGISTRATION

The caseworker called the SSP's office from the police station to complain of the police actions and refusal. Over the phone, the SP ordered the SHO to register an FIR. After the caseworker left, the SHO told the survivor that *'tum rajneeti khel rahi ho, tumse rajneeti karaya jaa raha hai.'* (you are playing politics and people are using you for their political ends). Even after the SP's order, the SHO pressured the survivor to submit a diluted complaint. The survivor did not budge and informed the caseworker about this over the phone. The caseworker called up the SHO and asked him to register the FIR on the basis of the information as given in her original complaint. The FIR was finally registered. A copy of the FIR was given to the survivor on the same day.

The police took 2 days approximately to register an FIR in this case.

Case 5.

AGE : 36 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Domestic Worker	Hindu	SC (Scheduled Caste)	Lucknow

Basic Information

The survivor has alleged that her brother-in-law raped her at a hotel in **December 2017**. After a few days, the survivor went to the police station with her father to report her complaint and get an FIR registered.

Reporting and Refusal

At the police station, the survivor met a male police officer of the rank of SI. The survivor gave him a written complaint and narrated her case to him with no women police present. The police officer took the signatures of the survivor and her father on a blank paper and told them to return home. The next day, the survivor came to the police station to meet the same police officer, but he did not meet her. The survivor waited at the police station for the whole day. She also spoke to the SHO, but he did not pay any heed to her.

Violations and Misconduct by Police

1. SI did not record the information relating to a cognizable offence.
2. Woman police officer did not record the information of an offence of sexual assault.
3. SI made the survivor and her father sign a blank document.
4. SI made the survivor wait at the police station for hours with no action taken.
5. SI taunted her with the claim that she was filing a false case.
6. SSP did not invoke IPC S. 166A(c) against the SI and the SHO.

Reference

⁴¹All-Woman police stations are staffed mainly by women police to receive, register, and where possible, investigate crimes against women.

- **After 3-4 days**

The survivor went repeatedly to the police station over the next 3-4 days, but no action was taken on her complaint. Once the SI even told her, *“tum paise ke liye kar rahi ho isliye false case laga rahi ho”* (you are doing it for money, that’s why you want to register a false case). The survivor said the alleged perpetrator had been in touch with the officer and had bribed him.

- **After 2 more days**

The survivor went to the All-Women police station.⁴¹ She met an officer of the rank of SI and gave a written complaint. The survivor was told by the officer that she would get justice, but no action was taken on her complaint.

- **8 April 2018**

REGISTRATION

After three months, on 8 April 2018, the survivor went to the SSP’s office on the suggestion of a lawyer. She gave a written complaint and explained her ordeal. After listening to the survivor, the SSP called up the concerned police station and asked them to register an FIR in the case.

- **12 April 2018**

Four days later, on 12 April 2018, the concerned police station registered an FIR in the survivor’s case.

The police took **117 days** approximately to register an FIR in this case.

Case 6.

AGE : 55 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
BA	Service (Government service)	Hindu	General	Jhansi

Basic Information

The survivor has alleged that her domestic help repeatedly raped her between the years 2016-19 at her home. The perpetrator had been allegedly blackmailing her, threatening to leak videos of her and make them go viral online. On **19 January 2019**, the survivor, by herself, went to the police station to report her complaint and get an FIR registered.

Reporting and Refusal

At the police station, the survivor met a male SHO of the rank of Inspector and gave him a written complaint. The survivor narrated her case with no women police present. After listening to the survivor and going through her complaint, the SHO said to her, "*Teen saal tak hota raha aur tum boli nahi*" (It kept happening for 3 years and you didn't say anything). Her complaint was not registered. For the next few weeks, until **10 February 2019**, the survivor kept going to the police station. She would meet different police officials each time, but no one took any action on her complaint. The survivor said she could not gather the courage to ask the SHO why no action was being taken on her complaint. The survivor sent a written complaint to the SSP's office through a registered post.

Violations and Misconduct by Police

1. SHO disbelieved the survivor and maligned her.
2. SHO did not record the information relating to a cognizable offence.
3. Woman police officer did not record the information of an offence of sexual violence.
4. SSP/SP gave orders to hold an inquiry on receiving a receipt of the commission of a cognizable offence.
5. SSP/SP did not invoke IPC S. 166A(c) against the SHO.

Reference

⁴²These platforms provide mechanisms to file complaints and facilitate redressal of grievances for members of the public against public servants/authorities.

19 February 2019

She met the SSP. After hearing her, the SSP gave orders to the concerned police station to hold a preliminary inquiry in the case. He even forwarded her application to the SP's office. The survivor met the SP, and all she got was a casual perfunctory response that the "inquiry will happen". No steps were taken.

1 March 2019

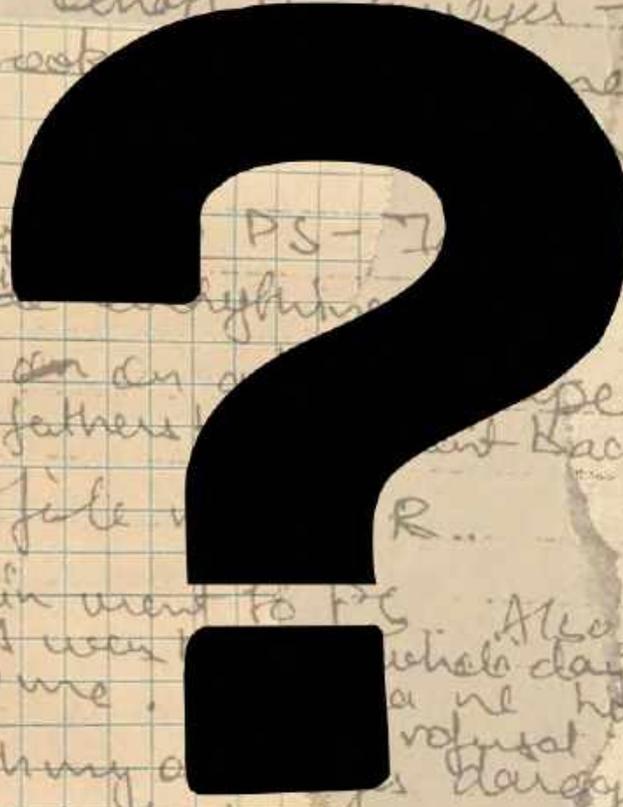
The survivor sent a written complaint to the National/State Commission for Women, Chief Minister's Jansunwai Portal, and the Centralised Public Grievance Redress and Monitoring System.⁴² Over the course of the month, the survivor kept following up on her case at the SSP's office, the SP's office, CO's office, and the police station. In the same month the survivor got a call from the CM's Helpline portal asking about the status of her case. The survivor told them that her FIR has not yet been registered.

15 April 2019

The survivor got her first inquiry report on the CM's portal. The report was also marked to the SSP and SP offices. The survivor followed up on her case with the SSP office. The SSP office further followed up with the SHO of the concerned police station but no action had yet been taken.

May 2019

The survivor gave a written complaint to the DIG. The DIG gave orders to the CO to look into the case, and forwarded the complaint to him. The CO sought a response from the SHO of the concerned police station, to which he replied that the survivor was trying to register a fake case.



“Teen saal tak hota raha aur tum boli nahi?”

- SHO said to the survivor, after listening and going through her complaint



May & June 2019

The survivor followed up on her case with different authorities. While following up with the SSP office, the survivor met a caseworker who then accompanied the survivor to more offices of authorities.

13 July 2019

REGISTRATION

The survivor and caseworker went to the SSP's office. Journalists were present in his office to report on the survivor's case. Under pressure, the SSP called up the concerned police station and ordered the SHO to file an FIR in the survivor's case immediately. The Chairperson of the State Women's Commission also called up the SHO to register the FIR. The survivor was immediately called to the police station and her FIR was registered on the basis of her complaint. A copy of the FIR was given to the survivor the same day.

The police took **175 days** approximately to register an FIR in this case.

Case 7.

AGE : 25 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
BA	Homemaker	Hindu	General	Auraiya

Basic Information

The survivor has alleged that acquaintances she knew from her local bank branch had **gang raped** her in a moving car on **28 February 2018**. The survivor did not go to the police station to report for about nine months following the rape, as she was being blackmailed by the alleged perpetrator(s). On **19 November 2018** she, by herself, went to the police station to file her complaint and register an FIR.

Reporting and Refusal

At the police station, the survivor met the SHO of the rank of an Inspector and gave him a written complaint. She also described what happened, with no woman police present. After listening to her narrative, the SHO said, "Main nahi likhunga tumhari application, tum fasana chahti ho, tumhara kuch vaad-vivaad hue hoga aur jiske khilaaf tum likhwa rahi ho who ek sarkari officer hai toh hum nahi likh sakte" (I won't register your complaint, you want to implicate the person, some dispute must have taken place and the person whom you want to register a case against is a government servant so I won't write it).

Violations and Misconduct by Police

1. SHO did not record the information relating to a cognizable offence.
2. Woman police officer didn't record the information of an offence of sexual violence.
3. SHO tore up the survivor's written complaint.
4. SHO maligned women survivors of sexual violence.
5. IGP forwarded the complaint for inquiry rather than ordering the registration of the FIR immediately.
6. A case was registered under S. 376 (rape) instead of S. 376D (gang-rape).
7. SP did not invoke IPC S. 166A(c) against the SHO.
8. CJM did not invoke IPC S. 166A(c) against the SP, CO and the SHO.

19 November 2018

In addition to refusing to register the complaint, he also said that “*Saali har roz mahila aati hai, kabhi koi kapde phaadke aa jati hai toh kabhi koi aase hie*”. (Everyday some women come, some come with torn clothes and some like this). The SHO tore up the survivor’s complaint in front of her and told her to go home. The survivor also heard derogatory comments from other male police personnel, such as “*Ki hum shakal dekh ke bata dete hai*” (We look at a woman’s face and can tell). Women police did not interact with the survivor.

13 December 2018

REGISTRATION

When no response came from any of the police officials, the survivor’s lawyer in the Court of the Chief Judicial Magistrate filed an application under Section 156(3) CrPC. On 30 January 2019, the magistrate ordered the concerned police station to register an FIR.

After few days

After a few days, a lawyer asked the survivor to meet the Inspector General (IG), Kanpur. The lawyer and survivor went to the IG’s office to submit a written complaint and tell him in person about her case. At first, he rebuked her by claiming that she was trying to “frame” a public servant. Eventually he told her that he would order an inquiry to be done and sent her complaint to the SP. Within a week her application reached the CO’s office and the survivor was called there. Her lawyer accompanied the survivor. The CO’s reader noted her complaint but no order was given to the concerned police station to register an FIR in the case.

1 Februray 2019

The police station registered the FIR. The survivor got the copy of the FIR through her lawyer after two days.

The police took **74 days** approximately to register an FIR in this case.

Case 8.

AGE : 27 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Runs a shop	Hindu	OBC (Other Backward Class)	Jhansi

Basic Information

The survivor has alleged that a man from her village raped her in her home on **2 November 2018**. On **3 November 2018**, she went to the police station with her father-in-law to get an FIR registered in her case.

Reporting and Refusal

At the police station, the survivor met a male officer of the rank of SI and gave him a written complaint. She described the details of her case with no woman police officer present. The SI did not act on the complaint. He told the survivor that he would visit the village later in the day and asked her to return home. After a few hours, the SI visited the village, but left without meeting the survivor.

Violations and Misconduct by Police

1. SI did not record the information relating to a cognizable offence.
2. Woman police officer didn't record the information of an offence of sexual assault.
3. SHO did not record the information relating to a cognizable offence even after the court's order.
4. SP did not invoke IPC S. 166A(c) against the SI and the SHO.
5. CJM did not invoke IPC S. 166A(c) against the SP, SHO and the SI.

December 2018

30

The alleged perpetrator sexually assaulted the survivor again. She went to the police station and gave the same SI a written complaint application. The SI assured her that he “will catch the perpetrator and put him behind bars”. With this, the survivor was told to go home. Thereafter, she followed up but no action was taken. The survivor also learnt that the perpetrator had bribed the police officer.

January 2019

14

The survivor met the caseworker who advised her to meet the SP. The survivor went to the SP’s office with her father-in-law. She gave him a written complaint and narrated her ordeal. The SP heard her but didn’t say anything. He forwarded her complaint to the concerned police station. The FIR was not registered. She followed up with the SP’s office a couple of times but the FIR was not registered.

REGISTRATION

March 2019

29

With the help of a lawyer from AALI’s network, she filed an application under Section 156(3) CrPC in the Court of the jurisdictional Chief Judicial Magistrate. The court asked for a report from the concerned police station within 14 days. Subsequently, the police sent a report to the court which, as according to the survivor’s lawyer, contained the wrong facts and refuted that sexual assault took place. The lawyer made oral arguments to counter the police report.

May 2019

21

The application under Section 156(3) CrPC was accepted by the court on 21 May 2019, and ordered the police station to register an FIR. But even after the court’s order, the police did not register the FIR. The lawyer asked the court to order the police to provide an action taken report.

June 2019

19

Once the court asked the police for the report, the police registered the FIR on 19 June 2019. The copy of the FIR was given to the survivor on the same day.

The police took **228 days** approximately to register an FIR in this case.

Case 9.

AGE : 23 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
Pursuing BA	Homemaker	Hindu	SC	Jaunpur

Basic Information

The survivor has alleged that acquaintances from her village kidnapped and gang raped her on **10 December 2017**. In her allegation she states that she escaped, after six days, and returned home on **16 December 2017**. On **17 December 2017**, the survivor's father went to the police station to report the complaint on his daughter's behalf and sought registration of an FIR. He was told that the case doesn't fall under that particular police station's jurisdiction, and was asked to go to the police station with jurisdiction. On **18 December 2017**, the survivor and her father went to the police station with jurisdiction in the morning.

Reporting and Refusal

At the police station, the survivor first met a police Constable and told him about her case. The constable asked them to wait as the SHO of the rank of Inspector was not present at the police station. They waited for almost three hours before meeting an SI. The SI also asked them to wait for the SHO. They waited until 4 pm before returning home.

Violations and Misconduct by Police

1. Zero FIR was not filed by the officer at the first time of the reporting of a cognizable offence.
2. SI did not record the information relating to a cognizable offence.
3. Woman police officer did not record the information of an offence of sexual assault.
4. SI made the survivor wait at the police station on several occasions for hours with no action taken.
5. SHO did not record the information relating to a cognizable offence.
6. SHO did not record the information relating to cognizable offence even after the court's order.
7. SHO made false and misogynist remarks against the survivor.
8. SP did not invoke IPC S. 166A(c) against the SI and the SHO.
9. CJM did not invoke IPC. S. 166A(c) against the SP, SHO and the SI.



19 December 2017

The survivor and her father went back to the police station, but could not meet the SHO. This continued for the next 2-3 days.



22 December 2017

The survivor and her father went to the police station. They finally met the SHO and gave him a written complaint. After hearing the survivor describe what happened to her with no woman police present, the SHO asked them, "*Kaha thee aap log itne din tak?*" (Where were you two all of these days?). The survivor's father told him they had been coming to the police station but were only made to wait. The survivor's father felt perhaps the SHO was purposely delaying in anticipation of money. Both returned home with no FIR in hand.

In all this time spent in the police station, the survivor did not have any interaction with any women police. Subsequently, on the suggestion of a lawyer, the survivor and her father went to the SP's office, and gave him a written complaint. SP told them that he would forward their complaint to the police station, but yet no action was taken.

5 January 2018

REGISTRATION

With the help of a lawyer, the survivor and her father filed an application under Section 156(3) CrPC in the court of the Chief Judicial Magistrate. On 16 January 2018, the Magistrate ordered the police to register the FIR.

Subsequent to the Magistrate's order, the survivor's father went to the police station after a couple of days. Seeing him there, the SHO scolded him saying, *"Tum phira agaye"* (You have come again.) He also made offensive remarks like *"Aap apni beti se dhanda kara rahe the pehle, ab yaha aake complaint likhwa rahe ho"* (Earlier you were making your daughter solicit, and now you are coming here to file a complaint).

25 January 2018

Meanwhile, the caseworker learnt about the case when it was published in the local newspaper. The caseworker went to meet the survivor and her family when the caseworker discovered that their FIR was not registered even after the court's order.

“Aap apni beti se dhanda kara rahe the pehle, ab yahan aake complaint likhwa rahe ho”

- SHO scolding the father

27 January 2018

The survivor's father, caseworker, a lawyer and journalists went to the police station. The Magistrate's order was shown to the SHO. The SHO asked the caseworker her opinion on the case, to which she replied that if the survivor has said that she has suffered sexual assault, then it is the police's duty to register the case and leave it to the court to decide the merit of the case. The case worker also told the SHO that if a police officer did not register the case, then a complaint could be filed against the police as well. The SHO registered the FIR that day.

The police took **40 days** approximately to register an FIR in this case.

Case 10.

AGE : 37 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Labourer	Hindu	SC	Lucknow

Basic Information

The survivor has alleged that her neighbour raped her at her home on **17 October 2016** in the evening. On **18 October 2016**, the survivor herself went to the police station to report the crime and get an FIR registered.

Reporting and Refusal

At the police station, the survivor met a male officer of the rank of SI. The survivor narrated her case with no women police present. The SI told her *"Aap farzi case lekeaye ho, mahila aase bolti rehti hai"* (You are coming here with a fake case, women make up such cases). The survivor responded by asking why a woman would concoct a story and come forward to complain at the police station. Eventually, the survivor was asked to "solve" her issue by herself and no action was taken on her complaint.

Violations and Misconduct by Police

1. The SI accused the survivor of lying.
2. SI did not record the information relating to a cognizable offence.
3. Woman police officer didn't record the information of an offence of sexual assault.
4. SI made derogatory remarks against survivor and sexual assault survivors.
5. SSP did not act on a complaint of a cognizable offence.
6. SI tried to delay/not register FIR even after court's order.
7. The copy of the FIR was not given immediately.
8. The SHO tried to extort money to provide the FIR copy.
9. CJM did not invoke IPC S. 166A(c) against the SSP, SHO and the SI.

Notes

Since the alleged perpetrator was harassing the survivor by hurling abuses at her and banging at her door, she called the caseworker at Asha Jyoti Kendra (AJK). The caseworker asked the survivor to call the police helpline, 112. When police came to her home in response, the caseworker later learnt that some of the police personnel were rude to the survivor; one even verbally abused her. The caseworker filed a complaint against the police personnel.

19 October 2016

The survivor went to the SSP's office, on the suggestion of her lawyer, with a written complaint but was unable to meet the SSP

22 October 2016

REGISTRATION

With the help of a lawyer, she filed an application under Section 156(3) CrPC in the Court of the local Judicial Magistrate. The court ordered the concerned police station to file an FIR in this case.

20 October 2016

She went again, and again, but could not meet him as he was not present in the office. She submitted a written complaint, got a receipt, but did not hear back from the SSP's office.

26 December 2016

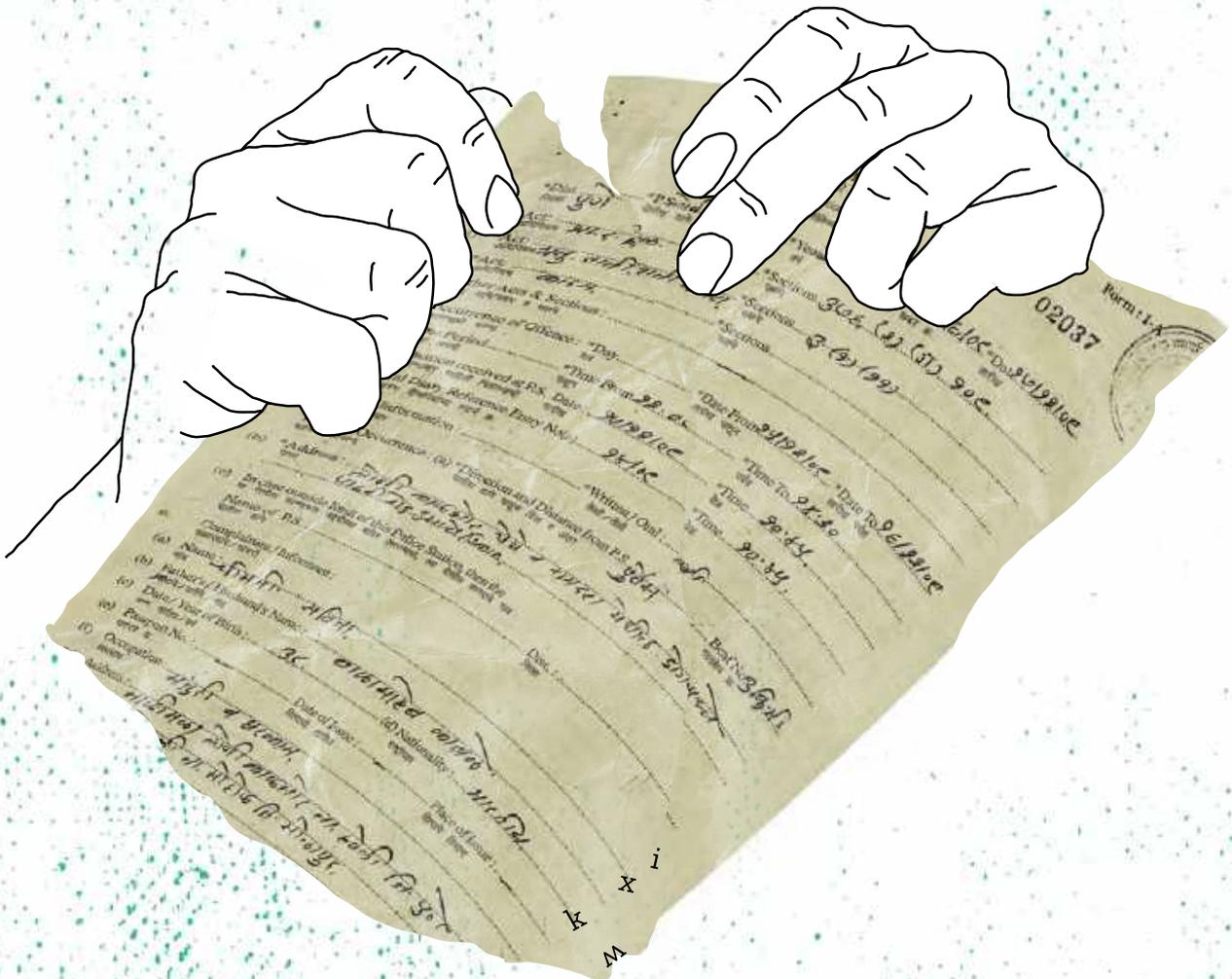
The concerned police station called up the survivor and asked her to come to the police station. The SI tried again to dissuade the survivor by maligning her as wanting to register a false case. The survivor responded saying, "*Ki kyu koi mahila itne bhagegi farzi case keliye*" (Why would a woman run from pillar to post for just a fake case). Eventually, the police registered the FIR. The survivor got a copy of the FIR after two weeks. The SHO tried to extort money from the survivor for the FIR copy.

The police took **69 days** approximately to register an FIR in this case.

**“Saali har roz mahila
aati hai, kabhi koi kapde
phaadke aa jati hai toh
kabhi koi aise hie.”**

The SHO tore up the survivor's complaint
in front of her and told her to go home.

- Case 7



o 1 b n a r p z
p A n b e s i a
W o e j c h e n s
g m v j c k e h
u e h z u e s a
e B z u e s a e
4 a e

Case 11.

AGE : 33 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
Phd, BEd.	Homemaker	Hindu	General	Muzaffarnagar

Basic Information

The survivor has alleged her brother-in-law (BIL) raped her on **17 January 2017**. The survivor went to the police station after a month and a half of the alleged incident, as her in-laws had pressured her not to go to the police. On **8 March 2017**, the survivor visited the All-Women police station with her father and a lawyer to get an FIR registered.

Reporting and Refusal

At the police station, they met the SHO of the rank of Inspector. They gave her a written complaint and the survivor narrated all the details of her case. After listening to the survivor, the SHO told her, "the problem is not of sexual assault but it's between you and your husband", adding that "*Tumhare saath sexual violence nahi hue hai, kuch misunderstandings hue hai*" (Sexual violence has not happened with you, this is some misunderstanding). The SHO pressured the survivor to go for mediation.

Violations and Misconduct by Police

1. SHO did not record the information relating to a cognizable offence.
2. SHO invalidated survivor's narrative.
3. SHO accused the survivor of filing a false complaint.
4. SSP did not act on the receipt of a commission of a cognizable offence.
5. A police personnel dissuaded the survivor from filing a complaint to the SSP's office.
6. CJM did not invoke IPC S. 166A(c) against the SSP and the SHO.

March 2017

8

The survivor visited the All-Women police station with her father and a lawyer to get an FIR registered.

Notes

The allegation of rape was on her brother-in-law. But it was compounded by the cruelty of her husband, brother-in-law, mother-in-law and other family members. She gave all of this information to the police but police went on to treat this case only as one of a domestic dispute and completely ignored the sexual offence. This can be gauged from the comments made to the survivor by the SHO who in pressuring her to go for mediation, considered this to be a family dispute.

May 2017

19

The survivor sent a written complaint to the SSP's office through post. There was no response, until one day, an officer apparently from the SSP's office came to her home and told the survivor that there was no point in sending complaints as no action will be taken.

May 2017

24

REGISTRATION

The survivor filed an application under Section 156(3) CrPC in the Chief Judicial Magistrate's Court. She alleges the magistrate took money to take cognizance of an offence under Section 376, IPC. Ten days after the proceedings, the Magistrate gave an order to register an FIR at the All-Women police station. On 18 June 2017, the FIR was registered. The survivor got the copy of the FIR through her lawyer.

The police took **102 days** approximately to register an FIR in this case.

Case 12.

AGE : 23 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
Standard 5th	Homemaker	Hindu	SC	Aligarh

Basic Information

The survivor has alleged that her brother-in-law raped her on **21 April 2018** at her place where she lived with her in-laws and other family members. The survivor went to the police station after **15 days**, when the pressure by the in-laws at home became unbearable for her. She went with her mother and brother to report her complaint and get an FIR registered.

Reporting and Refusal

At the police station, the survivor met a male police officer of the rank of SI. While the survivor was narrating the details of her case with no women police present, she felt the SI was not paying attention to her suffering. He dismissed her by saying *"Yaha kuch nahi hoga, aap jao yaha se"* (You please go from here, nothing can happen here). The survivor had a feeling that the alleged perpetrator had already influenced the SI.

Violations and Misconduct by Police

1. SI did not record the information relating to a cognizable offence.
2. Woman police officer did not record the information of sexual violence.
3. SI did not update the survivor on her complaint and spoke insensitively.
4. SSP did not act on the receipt of commission of a cognizable offence.
5. CJM did not invoke IPC S. 166A(c) against the SSP, SHO and the SI.

- When no action was taken at the police station, the survivor went back to her hometown with her mother and brother.

- **7 May 2018**

All three of them went to the local police station, met a male officer of the rank of SI, and gave him a written complaint. No women police were present when she gave details of her case. The survivor's mother asked him to register her daughter's complaint. The officer told her that "*Aapki application likh lenge bol diya haina, zaruri nahi hai aapkes aamne likhna*" (Why do you bother about the application, I have told you that we will write the application, it's not necessary to write it in front of you).

- **11/12 May 2018**

The survivor and her mother went to the police station to find out the status of her complaint. She met the same police officer. The officer told them that "*Humne bola hai ki karwai kar rahe hai, ab hato yaha se aur zaada dimag mat khao*" (I told you that enquiry is going on, don't trouble me and let me work).

Notes

The survivor was allegedly raped by her brother-in-law. The violence was compounded by the cruelty and violence faced by her at the hands of her husband, mother-in-law and brother-in-law over dowry. She gave all of this information to the police. The police neglected and ignored the survivor and her mother whenever they went to the police station to seek information on their complaint.

The survivor and her mother then met a lawyer. On his advice, the survivor sent a written complaint to the SSP's office and to the All-Women police station as well. But no response came from either.

The survivor, with the help of her lawyer, filed an application under Section 156(3) CrPC in the court of the Chief Judicial Magistrate to register an FIR under other gender-based offences, but did not include rape (S.376, IPC).

No FIR was registered in this case.

Case 13.

AGE : 23 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
No formal education	Homemaker	Muslim	Not Known	Amroha

Basic Information

The survivor alleged her neighbor raped her on **14 May 2018**. The survivor and her family members went to the police station on the same day to report the crime.

Reporting and Refusal

At the police station, the survivor met a male SHO of the rank of Inspector and gave a written complaint. The SHO heard the survivor's narrative in the absence of any women police personnel. The survivor's brother raised his voice when asking the SHO to register an FIR. The SHO got angry and roughed up her brother for his raised tone. The SHO also made remarks about the survivor's mother saying "*Bache control nahi hote aur case leke aa jaate ho*" (You can't control your kids and come up with cases like this). Later the same day, the SHO registered an FIR without telling the survivor and her family. He did not explain the Sections that were invoked in the FIR. The SHO included Section 354 (sexual harassment) instead of Section 376 (rape). The survivor and her family got the FIR copy 3 to 4 days later. The survivor's family also learnt that the perpetrator spent a night at the police station and got released in the morning on bribing the SHO.

Violations and Misconduct by Police

1. SHO did not record the information in a case of a cognisable offence.
2. Woman police officer did not record the information of an offence of sexual assault.
3. SHO manhandled the survivor's brother.
3. SHO made derogatory remarks about the survivor's mother.
4. SHO did not explain the sections written in the FIR to the survivor and her family.
5. The copy of the FIR was not provided to the survivor.
6. Personnel at CO's office made the survivor sign an unexplained document.
7. The FIR did not include S. 376 and was registered under the lesser offence of S. 354

15 May 2018

The village panchayat and other influential people met the survivor and her family and coaxed them to settle or compromise in the case.

17 May 2017

The caseworker visited the survivor to ask about the FIR copy. After going through the FIR, the caseworker learnt that Section 376 has not been included, and realised the survivor was not aware of this or what it meant for her case. With the help of the caseworker, the survivor sent complaints to the offices of the Dy. SP and SP to inform them that the accurate penal Sections were not stated in the FIR.

16 May 2018

Meanwhile, a caseworker learnt about the case from the local newspaper and visited the family on 16 May 2018. He witnessed the people meeting the survivor's family and pressuring them to compromise.

22 May 2018

The survivor and her family went to the SP's office and narrated the full details. The SP spoke to the SHO over the phone regarding the survivor's complaint. He also sent the complaint to the Dy. SP's office. The SHO called up the survivor and her family to meet him at the police station. The SHO told them that they had registered their case and the family need not visit the SP's office again.

Within a week of meeting the SP, the survivor's mother compromised with the alleged perpetrator under pressure from the village panchayat, on the condition that the perpetrator would not stay in the village for the next three years.

The next week, the CO's office called up the survivor and her mother. After hearing that they have come to a compromise, the police asked them to sign a document, which was not explained to them. The survivor signed and they returned home.

FIR was registered under S. 354 instead of S. 376.

Case 14.

AGE : 23 Years

EDUCATION QUALIFICATION	OCCUPATION	RELIGION	CASTE	PLACE
7th Standard	Homemaker	Muslim	Not Known	Muzaffarnagar

Basic Information

The survivor alleges that acquaintances of her husband gang raped her in an agricultural field, while she was going to her maternal home on **2 May 2019**. Two days after the incident on **4 May 2019**, the survivor and her parents went to the police station to report the crime. Futile discussions with the village pradhan (Village Head) caused the delay in going to report. The survivor's family wanted the village pradhan to go with them to the police station, but he wanted them to compromise.

Reporting and Refusal

At the police station, the survivor and her family met a male police officer of the rank of SI and gave a written complaint. She described her case to him in the absence of any woman police officer. After going through the complaint, the SI told them, *"You are lying and doing all of this for money"*. He told the survivor since the SHO is on leave, he would be the one to decide if her case would be registered. The survivor and her family returned home. The survivor's father later learnt that the alleged perpetrator had bribed the officer in-charge at the police station.

On **6 May 2019**, the survivor and her family went to the police station again and gave a written complaint to a male police officer of the rank of SI. A woman police officer was also present. She asked the survivor about the complaint. The survivor gave all the information. The officer kept the application and the family returned home assuming that the case would finally move forward.

Violations and Misconduct by Police

1. SI did not record the information relating to a cognizable offence.
2. Woman police officer did not record the information of an offence of sexual assault.
3. SI invalidated the survivor's narrative.
4. SSP forwarded the complaint for an inquiry, rather than registering a crime.
5. SHO misled the survivor about an "inquiry" process before FIR in a cognizable offence
6. The police fabricated a false case against the survivor's father, with incorrect and unsubstantiated charges.
7. SSP did not invoke IPC S. 166A(c) against the SI.

● 8 May 2019

After getting no response from the police station, the survivor and her father went to the SSP's office. The SSP was not present in his office.

● 9 May 2019

They went again to the SSP's office. The survivor gave the SSP a written complaint. After going through the application and hearing the survivor, the SSP sent the application to the concerned police station after ordering an inquiry to be done. The same day, the caseworker learnt about the case from a relative of the survivor's family.

● 10 May 2019

The caseworker met the survivor's family and went to the police station with them to get the complaint registered. The caseworker and survivor met the SHO and asked him to register an FIR. The caseworker also told him about the Supreme Court order that mandates the filing of an FIR in case of a cognisable offence and the police are not supposed to ask for any justification from the survivor before filing the FIR. The SHO told them that there are a lot of SC orders and said, "*Procedure hota hai ki inquiry ke baad hie FIR hoti hai, nahi toh koi bhi aayega aur bolega rape hue unke saath aur fir compromise ho jayega*" (There is a procedure that FIR gets registered only after inquiry otherwise anyone will come and say rape has been committed against me and then afterwards, the parties will come to a compromise).

● 13 May 2019

The caseworker accompanied the survivor's family to the police station and met the SHO. The latter told them that an inquiry was ongoing and went on to make allegations that the survivor's father was fabricating this case in order to get money from the perpetrator, and that he wanted his daughter to divorce her husband. When they demanded that the case be registered, the SHO said "*Aapko pata nahi hai kitna dabaav hota hai humpe, har sarkaar chahti hai ki aakre kam hone chaiye*" (You don't know how much pressure we are under, every government wants the crime data to show fewer crimes being committed).

Meanwhile, a case was registered against the survivor's father. Police went to their home to arrest her father on charges of attempted murder (though the charges invoked were under IPC S. 323 which is a lesser offence of voluntarily causing hurt). The father got scared and settled the case both with the police and perpetrator.

No FIR was registered in this case.

Findings



The findings suggest that the police routinely fail to register an FIR in cases of sexual assault in the first instance, when this is what the police are mandated to do as per the law. **Sexual assault survivors face delay, derision, pressures, and harassment from the police in the process of reporting their complaints of sexual assault and seeking for these to be registered as FIRs.** Survivors feel discriminated against by the police, as affirmed by caseworkers. There is an overwhelming feeling that women are harassed, victimised and targeted by the police based on their gender. Survivors and caseworkers feel that the police disbelieve them from the onset.

This disbelief is motivated by prejudices such as how women exaggerate and take undue advantage of laws meant to protect them and provide remedy against gender-based violence in order to implicate men under serious charges. Gender-based discrimination is compounded by discrimination on the basis of caste. There is repeated emphasis by the police in multiple instances on looking for 'solutions' outside the legal system. The police insist on brokering compromises between the survivor and the alleged perpetrator through extra-judicial and often, illegal methods. Complainants inevitably have to resort to remedies that do not always work and require more paperwork and legwork. The anxiety around using such remedies is compounded by lack of correct or adequate information surrounding provisions and procedures of law. The narratives of the survivors and caseworkers regarding the entire process of reporting also throw up procedural lapses at multiple points that systemically delay and deter their access to remedies. All of these point to a persistent failure of the police to hold themselves accountable at all levels for not registering FIRs on receiving complaints of sexual assault.

Survivors of sexual violence are stigmatized by the experience of the violence and the patriarchal narrative surrounding the consequences of sexual violence for themselves, their families and their communities.

When they find no acknowledgement and support from the formal legal system, and are in turn faced with reiteration of the stigma, it amplifies their trauma, affects their physical and mental well-being, and leads to breakdown of trust in the police. They are forced to resort to solutions outside of the criminal justice system in order to protect themselves from further crime, re-victimization and shame. This gives the impression of a vicious cycle; where women undergo violence and are subjected to stigma, navigate their way through a distrusting and dismissing system, and are further traumatized by the experience. Such rejection then becomes systemic. Women find no encouragement in entering formal systems in the quest for justice and the patriarchal status quo remains firmly in place.

Provided below is a summary of the major findings that emerged, illustrated by direct quotes and experiences narrated by the survivors and caseworkers. Our effort is to stay true to what was said to us by reproducing the statements verbatim, and draw out patterns or make larger connections to put the lived experiences into a larger legal/policy context.

1. Police delayed and/or refused to register a First Information Report (FIR) on receipt of complaints of sexual assault.

Of the 14 cases, FIRs of rape were registered only in 11 and that too after considerable delay. In two cases, the survivor and her family had to compromise under pressure and no FIR was registered. In the third case, the FIR was registered with the main offence as sexual harassment; not rape, negating the nature of sexual assault that allegedly took place.

Of the 11 cases in which FIR was registered, the time taken by the police to actually register an FIR ranged from 2 to 228 days. **In six cases, the police registered an FIR after the matter was escalated to the SSP/SP and they intervened.** In three cases, the police at the level of the SHO, and/or the SSP/SP, told the survivor that the FIR will be registered only after a preliminary enquiry ascertains the facts, while it is a settled principle that the police has no power or discretion to carry out such an enquiry.⁴³ **In five cases, the police registered the FIR only after the Chief Judicial Magistrate passed an order after the survivor approached the court.**

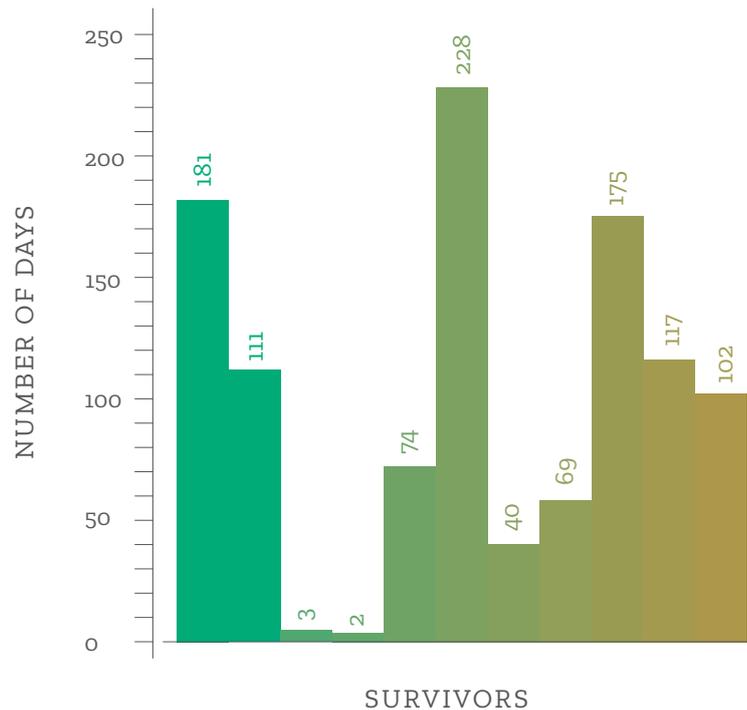


Figure 1: Number of days taken by the police to register FIR in 11 cases of rape.

The caseworkers collectively agreed that the police routinely delay or refuse to register offences of sexual assault. Caseworkers expressed that a major reason for this is that police are under pressure to show that crime is not rising in their jurisdiction, leading to deliberate suppression of complaints reported. Caseworkers surmised that government exerts pressure on the police to not register all cases of sexual assault, especially rape, reported to them so as to create and sustain a false image of “women’s safety” among the public.

Caseworker from Muzaffarnagar

“Police want to register less crime so that on-record data is less. Actually this is government policy (orders from higher officials) to not register the cases of sexual harassment and rape”.

Caseworker from Lucknow

“Police are concerned about the crime rate of their area. They do not want to show an increase in the crime rate so they don’t register the cases of rape promptly”.



A candid acknowledgement of showing fewer crimes of sexual violence by a police Inspector himself to a caseworker:

You don't know how much pressure we (Police) are under, every government wants the crime data to show fewer crimes (sexual violence) being committed.

Police don't want to show a lot of cases of sexual violence because of government pressure.

– Caseworker from Jhansi

I feel that police don't want the crime numbers to go up, that's why they don't register the rape cases.

– Caseworker from Amroha



A caseworker also shared his view that police delay registration to weaken the survivor's case and increase the chances of the accused being granted bail.

“I have myself seen, and a lawyer has told me, that whenever there is a delay in registering of an FIR then there are higher chances (for accused) of getting bail at court”.

– Caseworker from Amroha

Such insight from caseworkers, who have the advantage of viewing the system closely, shows that while the police have a duty to provide a remedy to survivors of sexual violence, their actions display complete disregard for the same. In fact, by delaying and refusing FIRs, the police deliberately contribute to ensuring that the interests of the alleged perpetrators are protected. The act of sexual violence itself stems from power differentials between the survivor and the perpetrator. The refusal of the police to register such cases offers reaffirmation to the power held by the perpetrator over the survivor, by the very system meant for the protection of women survivors.

2. Women police officers did not record the first information of an offence of sexual assault

Police stations are unfamiliar spaces for many women. They project the impression of stringency, hostility, bureaucracy and exclusion. The image of the police is associated with fear and clout, both of which are drawn from the power embodied by the uniform. When only male officers largely populate police stations, women may find such spaces uncomfortable and intimidating instead of safe and secure. In cases of sexual violence women survivors may come in to the police station bearing stigma, shame and trauma and have to relive their experiences while reporting the facts. It is important that creating a comfortable space where women can feel reassured neutralizes the power associated with the police as a symbol, in such situations, at least. Having women police officers hear the facts and register the FIR is a possible step towards creating such a space, where women can identify, up to at least some degree, with those to whom they are recounting their very private experience of violence.

In 12 cases, at the stage of first reporting complaints, survivors had to describe the details of sexual assault to a male police officer instead of a woman. This contravenes the procedure laid down under Section 154, CrPC that requires a woman police officer to record complaints of sexual offences when given by the survivor herself. None of the survivors knew that the law mandates that only a woman police officer is to record a complaint of sexual assault.

While this study could not examine and compile the numbers of women police in the police stations accessed by survivors, this finding could be a signal of a slew of systemic problems at the police station level - that there is a critical shortage of women police in police stations; women police are not being called on to respond to women complainants; or a combination of both. During the interviews, the caseworkers pointed out that talking to men makes it difficult and uncomfortable for survivors to talk about what happened to them openly and freely. In the absence of a conducive environment for women complainants to be able to share and speak about sexual violence without fear or hesitation, the FIRs, which are registered, will not be accurate or represent the first known facts in their entirety. This has legal implications for the case as it leads to lesser offenses than what is required by the situation being invoked, and so weakening cases from the perspective of complainants, from the first step of the legal process.

Caseworker from Aligarh

"The issue with the survivor is that she is not able to speak openly. So it's important to make her feel safe and secure and give confidence so that she speaks about the incident openly".

Caseworker from Amroha

"The survivor is not able to talk about her incident in great detail as she feels uncomfortable. If rape has happened, the survivor is not able to say it directly, instead she will say I was disrespected or something like that".

Caseworker from Muzaffarnagar

"When a survivor narrates their story to police personnel they talk very softly and in turn police talk sternly so they feel the pressure".

Caseworker from Jaunpur

"There is no privacy given to the survivor when she visits the police station".

Caseworker from Lucknow

"When the survivor is not able to clearly describe what happened, relevant Sections are left out and the FIR is not accurate to what may have happened".

Caseworkers observed that the role of women police personnel in police stations is very limited, exposing the lack of equal opportunity for women police.

Caseworker from Amroha

"Women constables usually are there to take the survivor for medical and for S. 161 CrPC statements. All the work is done by a male Sub-Inspector, women personnel only assist. They are often not even actively involved in the case".

Caseworker from Jaunpur

"Woman police personnel only work when daroga (Sub-Inspector) asks her to get S.161 CrPC statement and for medical. Otherwise everything is being asked by the daroga himself".

3. Police disbelieve and discriminate against sexual assault survivors

Across districts, the accounts of survivors and caseworkers revealed that **the police disbelieved survivors' allegations of sexual assault from the onset, and made misogynistic, unnecessary and offensive comments.** The survivors felt that the police assumed that they sought to implicate the alleged accused for ulterior motives. The caseworkers unanimously asserted that the police attitude and behavior towards survivors was highly prejudiced, derogatory and discriminatory.

Survivor from Lucknow

"The police said that I was there with a fake case, women make up such cases".

"I was told by the police that I was lying and doing all of this for money".

Survivor from Aligarh

"The police said that I wasn't even beautiful enough for someone to trouble me; I wasn't even young, why will anyone sexually assault me".

Survivor from Muzaffarnagar

"I was told that the problem is not of sexual assault but something else between me and my husband".

"The police officer told me that what happened with me was not sexual violence but some misunderstanding".

Survivor from Auraiya

"The police told me that they won't register my complaint; that I want to falsely implicate the person. They said that some dispute must have taken place and the person who I was registering the case against is a government servant, so they won't write it".

"I was also told that every day some woman comes, some come with torn clothes and some like this".

Survivor from Jaunpur

"The police questioned us only asking where we were for all these days even though we were going to the police station for the past three days".

Caseworker from Auraiya

"When a survivor goes to the police they have to hear a lot of comments and taunts like women come to the police station after tearing their blouse and clothes".

Caseworker from Aligarh

"Police think that a survivor wants to implicate someone or something else must have happened like Domestic Violence and she is exaggerating to bring in rape and register a case. Overall police feel that the survivor lies and she does or says things in lieu of something else".

Some caseworkers also shared that the police think survivors misuse sexual assault laws and manipulate the system for their own benefit. The police think that mandatory registration of an FIR in sexual assault cases has given survivors a lot of liberty which is being abused by women. They view that this reiterates gender prejudice, and insensitivity towards the survivors.

Caseworker from Auraiya

“The police feel that the government has given a lot of facilities to women that they are misusing it now and using to settle scores. Women implicate men; they purposely want to do this”.

Caseworker from Lucknow

“The police think that women have a lot of freedom as per the law and they are taking undue advantage of it, framing innocent men. Patriarchy is also one of the reasons that such an insensitive attitude prevails and exists”.

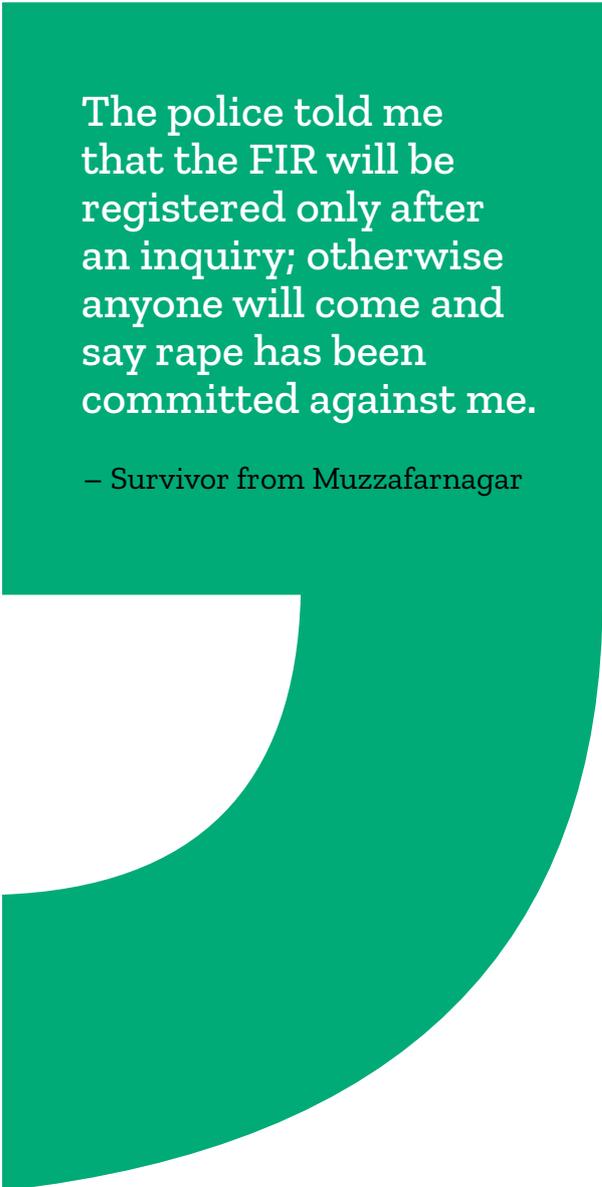
These accounts underline the prejudice against women complainants that pervades the policing system. The police uncritically subscribe to harmful stereotypes about women and perpetuate them openly. **Women are considered to be selfish, malevolent, conniving, lying and manipulative by the police. Their accounts are constantly scrutinized, disbelieved and ‘evidence’ is asked of them, even when they are only at the first stage of reporting the crime.** They are also insensitive towards the realities of the trauma experienced by women and equate delay in reporting to lying.⁴⁴ The police also harbor many patriarchal notions regarding sexual violence and pass comments that insinuate that age and appearance are the reason behind such violence. Such comments and attitudes towards survivors of sexual violence reiterate and compound the stigma women already carry. Such discourse leads to systematic discouragement of women from entering the criminal justice system and severely hampers their right to access justice.



The police told the caseworker in-front of me that I engage in bootlegging, so we (police) need to do an enquiry before we register the complaint.

– Survivor from Lucknow

In some cases, the police dissuaded the survivor from registering her case, responding that without holding an inquiry, a case of rape will not be registered. This violates the established legal standard.



The police told me that the FIR will be registered only after an inquiry; otherwise anyone will come and say rape has been committed against me.

– Survivor from Muzzafarnagar

“Whenever a survivor goes to the police station, the police personnel will say it’s a fake case. They will say that we will have to do an inquiry first which the law does not permit. The police personnel will ask for the evidence from the survivor itself. Until they are not convinced seeing the accused or when her injuries are explicitly visible or if it’s a case of acid attack. **Police rather believe the accused than the survivor.**”

– Caseworker from Lucknow

4. Dalit survivors of sexual violence face discrimination on the basis of caste in addition to gender

Dalit survivors face the double burden of discrimination on the basis of gender and caste. Survivors and caseworkers expressed that caste discrimination is rampant at the police station and caste of the aggrieved person impacts the decision-making of police officers with respect to the registration of the FIR.⁴⁵

Survivor from Jaunpur

"My FIR couldn't get registered because they are from the dominant caste. The police officers at the police station and SP rank were of the same caste as that of the alleged accused."

Caseworker from Jaunpur

"If such an incident happens with upper caste women then police (usually) are more sensitive. If it happens with Dalit women then police think they are doing for money. That's why police want to suppress such cases".

Caseworker from Auraiya

"Police work here seeing the caste of the people. If a Brahmin is aggrieved and the police personnel are Brahmin, then delay (usually) won't be there. So, it all depends on the caste which one belongs to. Even if any case of Dalit community gets registered then police do not do proper investigation. People feel dejected going there (police station) again and again. So, people end up wanting to compromise. Dalit women are more suppressed than non-dalits".

Caseworker from Muzaffarnagar

"If the (alleged) rapist is from a powerful or dominant community then a case will not get registered easily. Pressure on the police from persons belonging to a dominant caste to not register rape cases is common. Seeing such influence of the alleged accused over the police demoralizes the survivor".

It is important to note here that when it comes to caste, power dynamics are at play on multiple levels. The decision making of the police is influenced by the caste of the complainant, the accused as well as their own. As soon as the question of caste comes in, arbitrariness plays into the matter and the police

engage in deliberate permutation. **When the complainant is from a Dalit community and the accused is a non-Dalit, the caste clout of the accused becomes the determining factor. The police display solidarities if the accused belongs to their own caste.** Irrespective of the caste of the alleged perpetrator, Dalit women's cases are not taken seriously and the complex intermingling of their gender, caste and class leads to perpetuation of the notion that they have vested interests in bringing cases of sexual violence. Sexual violence against Dalit women, especially when committed by dominant castes, is an indicator of the severely skewed power relationships that exist between such communities. Such power permeates even women's quest for remedy, as the caste identity of multiple actors, including those representing state agencies such as the police, insist on not compromising on the status quo.

5. Police routinely pressure complainants to settle or compromise with the alleged accused

Survivors and caseworkers recounted how police routinely intimidate survivors and her family members to settle or compromise in the case with the alleged perpetrator. Across the cases studied, police threatened to implicate family members in criminal cases; or attempted to broker marriage between the perpetrator and the survivor in connivance with the village sarpanch (village head). Survivors said bribes were used to sway the police and aid the perpetrator.

Survivor from Amroha

"I didn't go to the police station for eight days as the village panchayat pressured me and my family to marry to which we agreed and waited for eight days".

"Also, pressure was created on us by filing a false case against my father for eve teasing a woman from the accused's family. Police took money from the other party and filed a case. To get the matter settled we also had to give money at the police station".

"Police officer told my family that this is a matter of the community; you get both of them married. Registering a case is of no use".

Caseworker from Amroha

"I have seen that police is complicit with the village panchayat to reach a compromise in rape cases too".

Caseworker from Muzaffarnagar

"To discourage the survivor, a cross case is also registered against the survivor's family member. It is rampant here. It's used frequently to discourage people from coming to PS and file their complaint/FIR".

"Police will say such things to survivor that tumhari izzat kharab ho jayegi, teri shaadi nahi ho payegi, rishtedaar kya kahenge (Your honour will get tainted, you will not be able to marry, what will relatives say). So by saying all of these things they try to push women to compromise in rape cases".

Caseworker from Jhansi

"There is always an attempt by the police to compromise between the two parties, in rape cases too".

Caseworker from Lucknow

"Police also push for compromise in rape cases. Cross case on the survivor and her family is also another challenge that a survivor has to face".

"Police takes a partisan approach when they have been influenced by the sarpanch or pradhan of the village".

Another way by which the **police mounted pressure on the survivors was by forcing them to dilute their written complaints**. Caseworkers narrated incidents where police said they had misplaced the original written complaints by survivors; caseworkers regarded this as a deliberate tactic to prevent strongly-worded and comprehensive applications from being used as the basis for FIRs. In any case, it is highly irresponsible of the police to misplace important documents like written complaints.

Caseworker from Jaunpur

"At the thanas police personnel try to shorten the complaints".

Caseworker from Lucknow

"Biggest challenge is that applications of survivors are being misplaced intentionally by the police at the police station".

Caseworker from Amroha

"The survivor's family told me that the police station had lost their complaint application and was pressured to give a new application in just four to five lines. The FIR was registered on the basis of the new application".

The pressure to 'compromise' or 'settle' cases, using whatever means possible, is indicative of the relatively low priority granted to sexual violence by the police. **Sexual violence continues to be associated with the issue of 'honour,' thereby apparently 'resolved' by active collusion between the community and the police through marriages between the survivor and the accused.** The illegality of such acts has been upheld by Courts.⁴⁶ In situations where such 'settlements' are not proposed or agreed upon, all attempts are made by the police to either not let such cases enter the criminal justice system in the first place, or be diluted to the extent that the police does not need to invest its interest and resources into the same. Such outcomes, with the underlying motives often swept under the rug, strengthen the discourse about women being liars and manipulators. Women survivors are left with very little choice for obtaining justice in such situations as they are threatened and intimidated by the community and pressured and manipulated by the police.

6. Survivors were not aware of the immediate remedies to challenge the police failure to register their complaints as FIRs, leading to delay in accessing remedy

While all the survivors exercised their right to complain to the SP after being refused at the police station, 11 survivors, out of 14, only became aware of this right after being advised by a caseworker or a lawyer. Lack of awareness meant time was lost in her accessing the remedy and the survivor had to face increasing uncertainty and anxiety. On average, **across these 14 cases, the time taken by survivors to complain to the SP ranged from 1 to 111 days approximately from the time of first**

approaching the police station. In 8 cases, the survivor met the SP within 15 days of the refusal approximately and the remaining cases varied from 30 to 111 days approximately.

Only 5 survivors out of 14 exercised their right to file a complaint with the Chief Judicial Magistrate under Section 156(3) CrPC, following her complaint to the SP. **The time taken to complain to the CJM ranged from 3 to 74 days approximately from the time of meeting the SP, and 4 to 146 days approximately from the time of first approaching the police station.** The fact that survivors had to resort to approaching the court suggests she could not get relief from the police, at the police station or from the SP.

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7. Survivors and caseworkers did not know about the provisions of Section 166A(c) of the Indian Penal Code (IPC) and that it could be invoked to hold police accountable

Survivors and caseworkers revealed that they did not know that they could file a complaint against police personnel for not filing the FIR in a case of sexual assault. Once they learned of this possibility, survivors showed willingness to file a complaint, but were fearful of repercussions from the police.

Survivors from Amroha

"We did not know that we could file an FIR against the police for not filing our case. But we didn't want to complain against the police as it would have cost us big nonetheless we could have tried".

"Police officer had forced us to sit in the police station. We are scared of the police so we can't complain against them".

Survivor from Lucknow

"Yes, if it's against the police personnel of X police station then I will do it. But it might get difficult for me to pursue it".

"My lawyer told me that we can complain against the police. If I will get justice (from the court) only then I will put an application against the police".

Caseworker from Aligarh

"From now on, I will advise survivors to ask for action under Section 166A(c). Though I am sure the police will put pressure and threaten the survivor and caseworker both".

Caseworker from Auraiya

"If we file any complaint against any police officer then there will be consequences. Survivor and caseworker will get threats from police".

Caseworker from Amroha

"The challenge of using this section against police is that police personnel can file a false case against anyone. Another thing is that there are police dalals who can threaten you or put your life at risk".

Caseworker from Jhansi

"Survivors say they do not want to take any risk with the police especially when their case is going on. It is also because of fear, survivors don't complain as they think they might be put into trouble by the police or their family members may be framed in a false case".

In addition to retaliation from the police, survivors and caseworkers shared their doubts that the investigation against police would be just, fair and impartial. They apprehend that investigating officers would give preferential treatment to the implicated police personnel from the same department.

Survivor from Jaunpur

"My FIR couldn't get registered so how I can think that I will be able to complain against them because their own people would be registering the FIR".

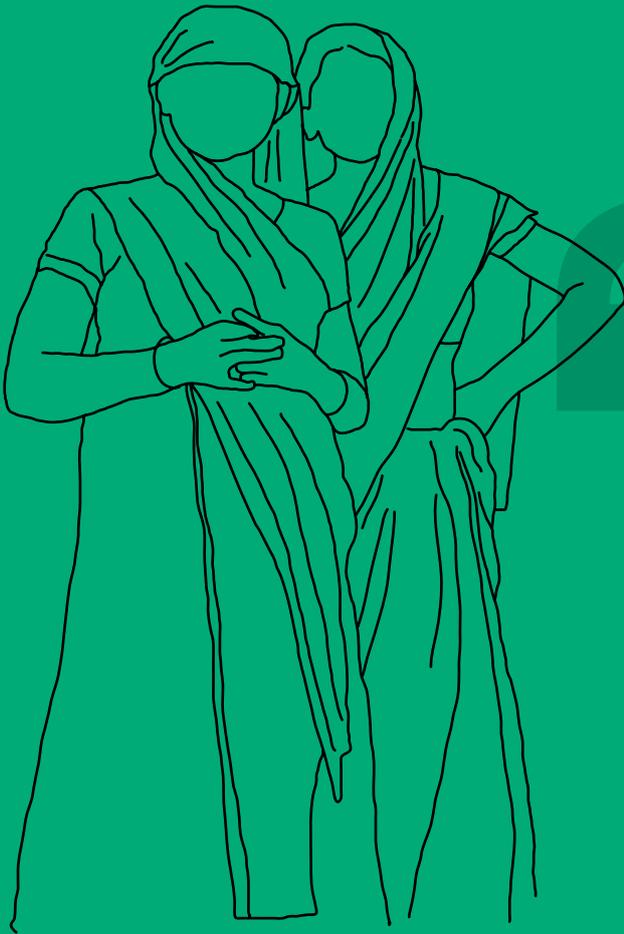
Caseworker from Lucknow

"The whole police department shall give preference or favor their people, if this Section is used".

Caseworker from Muzaffarnagar

"Investigation of IPC S. 166A(c) will only be done by the same police department so nothing will happen".

"Challenge of using this Section is that investigation would be done by the same police department against the police personnel".



I didn't know that I could complain against the police personnel. Now I would want to complain against each one of them as they kept telling me that the accused will get arrested but nothing happened.

– Survivor from Auraiya

I feel like complaining against them but I don't have my back covered. I have to live in this town, my son is also here. I'm scared about what will happen if I complain. I feel it can backfire against me.

– Survivor from Muzaffarnagar



Caseworkers shared their views that there is greater chance of impartial investigation if the complaint is made by senior officials and not by ordinary complainants.

Caseworker from Muzaffarnagar

"It can only be solved if some higher official orders filing of S. 166A(c) and investigation by a higher authority"

Caseworker from Lucknow

"If such a complaint goes to the Senior Superintendent of Police or District Magistrate then they should themselves file a case against the police personnel".

It is also important to know that when the process of filing an FIR in itself is so long drawn, the prospect of starting another proceeding in order to hold the police accountable is difficult since survivors and their families are already physically and emotionally fatigued. Survivors have expressed that they are grateful that the FIR for sexual violence was registered in the first place despite so many challenges, and that undergoing another process to implicate police officers would be an ordeal. They also believe that such a step could jeopardize the case of sexual violence they managed to lodge with such difficulty.

Additionally, the fear associated with the image of the police, amplified by their experience of discrimination and harassment from the system during their attempts to file an FIR are also key factors contributing to women's decisions to not proceed against the police.

In two cases in which we could access the applications filed under Section 156(3), we found that the judicial magistrates did not invoke Section 166A(c) against the police officers implicated. Also, the lawyer did not pray for registering a case under this Section against the erring police officials.

In one of the cases, police defied the orders of the CJM to register FIR and continued to delay. Even after the passing of the magistrate's order, police delayed the registration of FIR by 29 days.

8. Non-registration of the FIR leading to harassment and distrust; causing distress and trauma amongst survivors

Survivors unanimously felt that the police harassed and re-victimised them by not registering their sexual assault complaint. They were of the view that police did not safeguard their legal rights. They explained that they had to make multiple visits to the police station and had to run from pillar to post to get their FIRs registered. **In two of the cases the survivors were subjected to assault and rape again by the alleged accused after the police refused to register their cases in the first instance.** Survivors shared that this shook their trust in the police. They felt the police did not do good by them or their family; and rather instilled fear in them.

Survivor from Aligarh

"The biggest challenge is to get our complaint registered. But then what's the purpose of a police station if cases are not getting registered".

Survivor from Amroha

"I thought, when I went to PS, my report would be written with ease and I feel that's what a police station is meant for. I thought the police would do an investigation".

Survivor from Lucknow

"I thought that my complaint would get registered. I really thought police would catch the accused. I felt that no one listens to the poor".

"I went to PS thinking that something good will happen with me. Now after all of the harassment, I don't think police personnel and police station will give me justice".

Survivor from Jhansi

"I got very upset and felt harassed as months had passed by but my report couldn't get registered".

Survivor from Muzaffarnagar

"My experience with the police was very bad. My expectations were not fulfilled. I thought the police were there to guard the victim but they didn't guard me".

In pursuit of getting an FIR registered, the survivors expressed the physical and mental toll they endured. The anxiety in relation to their continuing suffering caused them to lose sleep and appetite. It induced a feeling of helplessness to the extent that some of them expressed suicidal thoughts.

Survivor from Aligarh

"I used to cry and feel very angry that nothing was happening on my complaint. My appetite had died due to stress. I couldn't get sleep because of what happened to me".

"I felt so sick all this while. I was not able to eat anything, felt so angry at the police and my situation".

Survivor from Amroha

"I was always tense thinking about what would happen in my case. I was not able to eat and used to have sleepless nights".

Survivor from Auraiya

"When nothing was happening (in her case), I thought that it's good to die. Even my in-laws told me bad things and now my husband is asking for a divorce".

Survivor from Lucknow

"I am still not able to sleep properly, even my legs shake. At times I am up the whole night. I am running on medicines and that's how I am alive".

Survivor from Jhansi

"I kept unwell during the time when I was running around, I couldn't get sleep and didn't feel hungry. I used to tell the caseworker that I will commit suicide as nothing is happening in my case".

References

⁴³ Lalita Kumari v. Government of Uttar Pradesh & Ors AIR 2014 SC 187

⁴⁴ In State of Punjab Vs. Gurmeet Singh and Ors (AIR1996 SC 1393), the Supreme Court of India has asserted that it cannot be overlooked that there may a variety of reasons for women to not immediately go to the police station to file an FIR in cases of rape. The association of questions regarding reputation and honour might lead the woman to go for filing the FIR only after enough thought has been given.

⁴⁵ Under Section 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, a Dalit victim has a similar remedy to complain of non-registration of FIR if the case being complained of falls in the category of "atrocities".

⁴⁶ State of M.P. vs. Madan Lal 2015(2) ACR2162(SC)

Conclusion & Recommendations



The findings provide strong evidence of the struggle faced by women survivors of sexual violence in their quest for justice.

They are discouraged from approaching the criminal justice system by social institutions such as family and community, and are offered or forced into illegal compromises and settlements before, as well as, during the criminal process.

Such practices contribute to the stigma suffered by the survivor, often delaying her decision to seek recourse in the justice system. However, refusal of the police to file FIRs in cases of sexual violence in dereliction of their obligations under the law introduces a further delay, institutional in nature, that has serious implications on the woman. Such refusal is accompanied by blatant discrimination on the basis of gender and caste and constant humiliation and coercion. This adds on to the trauma women are already suffering and it has an adverse impact on their health and well being. Delay by the police in registering an FIR and initiating the process of investigation, often unaccounted for during the trial, not only has implications on the evidence but also creates windows of opportunity for the alleged perpetrator to threaten and harass and sometimes, even repeat the sexual violence. Women survivors are unaware of the legal remedies available to them in case of non-registration and such remedies also might not always work if used. Survivors and their support persons are also unaware of the penal provision of Section 166A(c) present in law so as to hold the police accountable. However, survivors are also fearful of using such a provision because it requires them to actively “take on,” a much more powerful system that has already victimized them enough. They are also afraid of jeopardizing their chances of getting justice in the original case of sexual violence.

All of these factors block women’s rights to access justice right at the outset; when conversely by law, unhindered lawful registration of complaints into FIRs in all cases of sexual offences is guaranteed. The continuing reality of the barriers at the very first stage is a signal of the urgent need for the police to take effective and wide measures to remove these barriers.



Delay by the police in registering an FIR and initiating the process of investigation, often unaccounted for during the trial, not only has implications on the evidence but also creates windows of opportunity for the alleged perpetrator to threaten and harass and sometimes, even repeat the sexual violence



This will require police departments to recognize that bias and discrimination against women exists within their ranks and is a prime factor that perpetrates the denial of women's legal rights. The shift needs to be made where police personnel respect the constitutional right to equal protection of the law and facilitate women's right to obtain justice through the legal system. CHRI and AALI believe that an integral starting point would be for justice institutions, beginning with the police, to respond within a frame which is survivor-centric and trauma-informed. This frame can be developed by institutions in tandem with the needed individual experts and institutions to ease the difficult process of reporting sexual violence to the police and seeking registration of cases for all survivors.

Ensuring lawful and unhindered registration of FIRs is a legal duty of the police. Ensuring it is not only a measure of good policing, but also one which will bring dividends in building public trust in the police. There is an urgent need to strengthen the institutional commitments to upholding this legal mandate and protecting this legal right.

Recommendations

In this light, the following concrete and actionable recommendations are directed to a variety of stakeholders, towards addressing the critical issues raised through the experiences and challenges of women survivors documented in this report, and the larger goals of lawful registration of FIRs, police accountability, and non-discrimination.

Ministry of Home Affairs

1. Issue an advisory to all states and Union Territories (UTs) to prohibit the assessment of police performance on the basis of crime statistics.
2. Institute a comprehensive national review of the status of implementation of all MHA advisories issued to address the prevention of, and police response to, crimes against women by calling for action taken reports from every state and UT.

increase the number of women in the state police at all levels

EXPOSE
illegalities and/or
victimisation

combat patriarchal
attitudes and harmful
stereotypes about
women in training

trauma-informed & survivor-centric response

FIRST INFORMATION R

पहिली खबर

(Under Section 154 Cr

prohibit the assessment of
police performance on the
basis of crime statistics

National Crime Records Bureau

1. Revive, from this year, the state-wise break up of data on the nature and number of oral and written complaints received by the police and the subsequent number of cases registered under the IPC and special laws in the annual Crime in India report.⁴⁷

Given the importance of these statistics, it is recommended they are made available again not only state-wise, but also district-wise.

2. Collate and publish the number of First Information Reports (FIRs), state-wise, registered against police officers for non-registration of cases of sexual offences under Section 166A(c) IPC in the annual Crime in India report.

Ministry of Women and Child Development

Frame and draft guidelines, in collaboration with the Ministry of Home Affairs, that lay down guidance and actionable measures towards a trauma-informed and survivor-centric response of all relevant criminal justice actors – the police, judicial magistrates, prosecutors, and lawyers - to survivors of sexual offences as a model. Involve civil society groups, technical experts, and expert institutions in the framing and drafting of the guidelines. Provide and facilitate orientation sessions on the guidelines in all states and UTs in coordination with each relevant department.

State Departments of Women and Child Development

1. Conduct a state-wise audit of all established One Stop Crisis Centres to assess that the Centres are functioning at their full sanctioned staff strength with the required infrastructure to be able to provide the range of services they are to guarantee to survivors of sexual violence. Place the audit report on the Ministry's website and widely in the public domain. Ensure audits are done at regular intervals.

2. Conduct a state-wise review of the number of cases brought against police officers under Section 166A(c) IPC by the Police Facilitation Officers in each One Stop Crisis Centre, since April 2013 to the present.⁴⁸

3. Issue an advisory to all One Stop Crisis Centres calling for a six-monthly report to be published and publicized widely on the number of cases of non-registration and complaints under Section 166A(c) IPC forwarded to the police and the action taken on them.

4. Issue an advisory to all One Stop Crisis Centres mandating that every complaint under Section 166A(c) IPC forwarded by a Police Facilitation Officer to the local police is also to be sent to the district Superintendent of Police and the local Judicial Magistrate, with the needed follow-up protocols in place.

5. Conduct regular and periodic specialized studies on the police response to cases of sexual violence, and the challenges faced by women and children in navigating the stages of the criminal justice system, including a focus on the processes of reporting complaints and seeking registration of FIRs.

Parliament

Members of Parliament to regularly ask questions on the total number of cases registered, state-wise, against police officers for non-registration of FIRs in cases of sexual offences under Section 166A(c) IPC.

National and State Human Rights Commission

Ensure any specific complaints of non-registration of FIR in cases of sexual offences are specifically collated and reported in Commissions' annual reports, as a sub-section of the total number of complaints of non-registration of FIR reported

National and State Legal Services Authority

1. Develop and institute a specific training module in the introductory training syllabus, in collaboration with independent experts or institutions, for legal aid lawyers and paralegal volunteers (PLVs) on a gender-based approach to crimes against women, including the legal rights and remedies codified for survivors of sexual violence in the legal process. Ensure refresher training is given at regular intervals with the involvement of civil society, women's rights groups, and lawyers with a demonstrated gender-based focus in their practice.

2. Conduct frequent legal awareness camps at the taluka/district level with the assistance of local legal aid lawyers and PLVs, in their areas of operation, on topics related to violence against women in private and public spaces. The camps can spread wide awareness at the community level of the legal protections and remedies available to women.

3. Conduct frequent joint sessions with Public Prosecutors and legal aid lawyers to discuss and frame actionable measures to guarantee the right of every victim to engage an advocate of her/his choice to assist the prosecution as laid down in Section 24(8) of the CrPC, with a special emphasis on women victims.

4. Monitor compliance with the Supreme Court's directions in *Delhi Domestic Working Women's v Union of India and Others*⁴⁹ relating to the right of survivors of sexual assault to receive legal representation at the police station. Ensure these directions are followed in collaboration with the Bar and the police department.

State Home Department

1. Frame and identify measurable performance indicators to systematically evaluate the performance of the police, at district and state levels, in collaboration with the State Security Commission where functioning.

2. Make lawful and prompt registration of complaints into FIRs a key measure of police service and performance.

State Security Commission⁵⁰

1. Draft measurable performance indicators to systematically evaluate the performance of the police, at district and state levels, in collaboration with the State Home Department.

2. Make lawful and prompt registration of complaints into FIRs a key measure of police service and performance.

State Police Department

1. Issue and strictly enforce a department-wide Circular that calls for strict compliance with the requirements of Section 154 of the CrPC with no exceptions allowed under any circumstances. The circular should include the following directions in relation to cases of sexual offences:

- The SP or any supervisory officer that receives a complaint of non-registration of FIR in a case of sexual offence at the police station to order, and personally monitor, an immediate time-bound inquiry against the Station House Officer and any other implicated officer on receipt of the complaint, and initiate proceedings under Section 166A(c) IPC on this basis.
- Station House Officers and district SPs to monitor full compliance with the requirement under Section 157(1) of the CrPC to immediately send all FIRs, with a focused look-out for FIRs in relation to sexual offences, to the local area Judicial Magistrate
- Produce a six-monthly report of the total number of FIRs, and status as of date, registered against police officers for non-registration of cases of sexual offences under Section 166A(c) IPC at the state, district, and police station levels, for review by a senior officer of the rank of Inspector General of Police and above
- Every Station House Officer, or designated Investigating Officer, to inform every survivor of sexual violence of her right to legal representation before any questions are asked of her as mandated by the Supreme Court in *Delhi Domestic Working Women's v Union of India and Others*
- SHOs to coordinate with the Secretary of the District Legal Services Authority or the Taluk Legal Services Committee (as applicable) to identify the legal aid lawyer designated/attached to his/her police station; and put up the names and contact details of the legal aid lawyers outside every police station
- Expressly prohibit IOs from conducting preliminary inquiry, or telling a survivor that preliminary inquiry is to be done in cases of sexual offences, as per the Supreme Court's directions in *Lalita Kumari v State of UP*.⁵¹

2.Training:

- Institute training on non-discrimination and equality to combat patriarchal attitudes and harmful stereotypes about women in induction training and periodically, through refresher and in-service training, throughout the span of a policing career
- Design and institute, in collaboration with independent experts or institutions, training on the guidelines for a trauma-informed and survivor-centric response when dealing with cases of sexual offences
- Design the training in collaboration with external experts to ensure it is of the needed and sufficient duration, uses interactive methodologies, and carries the accurate and necessary content
- Create and integrate content into the training on ways to recognize and remove pre-existing prejudices
- Incorporate human rights principles into all aspects of police training
- Ensure that training at all levels addresses issues related to discrimination against women within the police
- Design and adopt a specific module on registration of FIR with a focus on sexual offences at induction and refresher training
- Adopt scientific means to measure the impact of new training methodologies and content, and record regular feedback.

3.Recruitment:

- Commit to increase the number of women in the state police at all levels with the goal of achieving proportionate representation in a time-bound manner
- Hold special pre-recruitment training drives for prospective women candidates to impart necessary skills and strategies to strengthen their ability to compete
- Run recruitment drives at as many local levels as far as possible, not only in district headquarters.

4. Police Outreach:

- Run outreach programs to understand the barriers faced by women in joining the police and review recruitment strategies to remove barriers.
- Reach out to women at the district and taluka level to spread information about crimes against women and the police station and personnel to approach, with their names and contact details, at the time of distress.

State Judicial Training and Research Institute

- 1.** Design and institute, in collaboration with independent experts or institutions, training on a rights- based approach in the judicial response to violence against women, with judicial actions to enforce Section 166A(c) IPC as a key focus.
- 2.** Design and institute, in collaboration with independent experts or institutions, training on the guidelines for a trauma-informed and survivor-centric response.

High Courts

- 1.** Circulate the trauma-informed and survivor-centric guidelines to all district courts and Judicial Magistrates courts with directions for compliance
- 2.** Issue a circular directing all Judicial Magistrates to immediately invoke Section 166A(c) IPC on receipt of an application under Section 156(3) CrPC seeking registration of an FIR in sexual offence cases

Civil Society Groups

- 1.** Disseminate information, in simple non-technical language, on Section 166A(c) IPC to all relevant stakeholders
- 2.** For organisations with the capacity, regularly hold legal awareness workshops at neighbourhood levels for women
- 3.** For organizations that work directly with survivors, introduce specific formats to document i) delay, and ii) refusal by police in registering sexual offence complaints into FIRs. The documentation should include details such as the name of the police station, the date and time of reporting, all the steps taken by the survivor and/ or support persons and time spent, and the name and rank of the

police personnel interacted with wherever known.

4. For organizations that work directly with survivors, conduct regular awareness sessions for support persons, caseworkers, lawyers and survivors themselves as far as possible on the legal remedies available to push for FIR registration when the police fail in the first instance, and the punitive action that can be taken under Section 166A(c) IPC.

5. Coordinate with lawyers, whether known or legal aid, to enable legal representation or assistance to survivors seeking to register an FIR against police officers under Section 166A(c) IPC

6. Provide direct support to any survivor who seeks to register a FIR against police officers under Section 166A(c) IPC

7. Expose illegalities and/or victimisation as a result of police failure to register FIRs in sexual offence cases

8. Lend expertise to police departments in the design of non-discrimination/equality training and effective community outreach programmes.

References

⁴⁷ The National Crime Records Bureau's annual report, Crime in India (CII) published the "Nature and Number of Complaints Received by Police and Cases Registered under IPC & SLL" and provided it state-wise. However, the last three publications - CII 2016, CII 2017 and CII 2018 – provide only the all-India statistics, not the state-wise break up. The state-wise data was indicative of various key factors. Firstly, whether the number of complaints to the police have increased (which is a reflection not only of the commission of crime but also the confidence & trust in the police) or reduced in every state. Whether there was a change in the nature of complaints, the comparisons amongst states with similar and dissimilar crime rates; and the valuable correlation between the number of complaints received and the number of cases actually registered by the police in each state.

⁴⁸ As per the Implementation Guidelines for the Centres issued by the WCD Ministry in December 2017, a duty of the Police Facilitation Officer in each Centre is to initiate proceedings under Section 166A(c) in cases where it is found the police failed to register a complaint of sexual violence into a FIR:

Ministry of Women and Child Development, One Stop Centre Scheme, Implementation guidelines for state governments/UT administrators (2017), Page 7; https://wcd.nic.in/sites/default/files/OSC_G.pdf,

⁴⁹ 1995 SCC (1) 14

⁵⁰ The Supreme Court directed all state governments and Union Territories to establish a State Security Commission in its 2006 judgment laying down seven directives for police reform [Prakash Singh and Others vs. Union of India 2006 (8) SCC 1]. As one directives, SSCs are meant to be a policy-making and advisory buffer body to prevent illegitimate political interference in policing. Its membership is to be bi-partisan and include independent non-government members. Its main functions are to draft wide policy guidelines for the police and evaluate police performance.

⁵¹ AIR 2014 SC 187

Annexure 1

ओ०पी० सिंह,
आई०पी०एस०



डीजी परिपत्र संख्या-36/2019
पुलिस महानिदेशक,
उत्तर प्रदेश
गोमती नगर विस्तार-7
पुलिस मुख्यालय, ३०५० लखनऊ।
दिनांक: अगस्त 19, 2019

प्रिय महोदय,

अवगत कथना है कि महिलाओं के विरुद्ध होने वाले अपराधों की रोकथाम एवं महिलाओं के विरुद्ध अपराध कारित करने वाले अपराधियों के विरुद्ध कार्यवाही करने के सम्बन्ध में इस मुख्यालय के परिपत्र संख्या-33/२०१९ दिनांक २९ जुलाई २०१९ के द्वारा विस्तृत निर्देश निर्गत किये गये हैं, किन्तु विगत कुछ समय से ऐसा देखने में आ रहा है, कि महिलाओं के विरुद्ध होने वाले अपराधों के पंजीकरण में कतिपय जनपदों में अपेक्षित संवदेनशीलता एवं त्वरपूर्ण कार्यवाही नहीं हो रही है, यह स्थिति अनपेक्षित एवं अग्राह्य है।

उक्त के दृष्टिगत पूर्व में निर्गत किये गये निर्देशों के क्रम में निम्नलिखित निर्देश निर्गत किये जा रहे हैं:-

1. **महिला सम्बन्धी अपराधों का तत्काल पंजीकरण सुनिश्चित करना:-** महिलाओं एवं बालिकाओं से सम्बन्धित किसी भी प्रकार के अपराध का अविलम्ब पंजीकरण सुनिश्चित किया जाये एवं अभियोग पंजीकृत नहीं होने की दशा में सम्बन्धित थानाध्यक्ष/प्रभारी निरीक्षक एवं अन्य सम्बन्धित पुलिसकर्मियों के विरुद्ध केवल विभागीय कार्यवाही न की जाये वरन् उनके विरुद्ध सुसंगत धाराओं में अभियोग भी पंजीकृत किया जाये।
2. **थानों पर महिला अपराधों के पंजीकरण हेतु दृश्य स्थान पर नोटिस बोर्ड लगाया जाना:-** प्रदेश के समस्त थानों पर इस आशय का नोटिस बोर्ड लगाया जाये, जिसमें यह अंकित हो कि थाने पर महिला अपराधों के सम्बन्ध में प्रथम सूचना रिपोर्ट कायम न होने की दशा में पीड़िता एवं उसके परिजन जनपद के पुलिस अधीक्षक से सम्पर्क करेंगे। यदि पुलिस अधीक्षक के स्तर से भी तद्विषयक अपराध का पंजीकरण नहीं कराया जाता है, तो पीड़िता एवं उसके परिजन परिक्षेत्रीय पुलिस महानिरीक्षक/पुलिस उपमहानिरीक्षक अथवा जोनल अपर पुलिस महानिदेशक से सम्पर्क कर अपनी-समस्या से उन्हें अवगत करवेंगे। इस नोटिस बोर्ड पर जनपद के पुलिस अधीक्षक के साथ-साथ परिक्षेत्रीय पुलिस महानिरीक्षक/पुलिस उपमहानिरीक्षक अथवा जोनल अपर पुलिस महानिदेशक का सीयूजी नम्बर भी प्रदर्शित किया जाये तथा परिक्षेत्रीय पुलिस महानिरीक्षक/पुलिस उपमहानिरीक्षक का यह दायित्व होगा कि वे तत्काल सम्बन्धित थाने पर अभियोग पंजीकृत करवें एवं दोषी के विरुद्ध कार्यवाही भी सुनिश्चित करवें।

आप सभी को निर्देशित किया जाता है कि आप पूर्व में इस सम्बन्ध में निर्गत संगत निर्देशों के अतिरिक्त उपरोक्त दोनों बिन्दुओं पर कड़ाई से कार्यवाही करना सुनिश्चित करेंगे। इस सम्बन्ध में कोई भी लापरवाही अक्षम्य एवं अग्राह्य होगी।

भवदीय,


(ओ०पी० सिंह)

समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
प्रभारी जनपद-उत्तर प्रदेश।

प्रतिलिपि: निम्नांकित को कृपया सूचनार्थ एवं अग्रतर कार्यवाही हेतु:-

१. समस्त जोनल अपर पुलिस महानिदेशक, उत्तर प्रदेश।
२. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक/पुलिस उपमहानिरीक्षक, उत्तर प्रदेश।

Date: XXXX

To

The State Public Information Officer

Office of the Director General of Police, XXXX

.....

.....

Sub: Application for information under Section 6(1), Right to Information Act, 2005

Dear Sir/Madam,

1. Please specify:

a) The total number of complaints received against police personnel for refusal to register complaints alleging offences of Sections 326A,326B,354,354B, 370,370A,376,376A,376B,376C,376 D,376E,509 of the Indian Penal Code.

b) Of all the complaints received, in how many cases was preliminary inquiry done before the registration of First Information Report (FIR).

c) Of all the complaints received, in how many were FIRs registered against the police personnel under IPC Section 166(A)(c).

i) Of all the FIRs, how many FIRs were ordered by Superintendent of Police or Judicial Magistrate.

ii) The number of cases registered by the police department suomotu.

Please specify the following in the table below.

	1st Jan-31st Dec 2016	1st Jan-31st Dec 2017	1st Jan-30th June 2018
Number of complaints received			
Number of cases where preliminary inquiry held			
Number of FIRs registered			
Number of FIRs registered on order of S.P or Judicial Magistrate			
Number of cases in which suomotu cognizance was taken			

* IPC Section 166(A)(c) states:

i) Fails to record any information/ complaint made to police officer in respect of a cognizable offence punishable under section 326A, 326B, 354,354B, 370, 370A, 376, 376A, 376B, 376C, 376D,376E, 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine.

2. Please specify the following in relation to the FIRs registered:

FIR No.	Cognizable offence which police personnel refused to register(sections listed under IPC Section 166A(c))	Rank/s of the police personnel against whom FIR is registered	District, where FIR is registered

3. Please specify the following in relation to FIRs registered as of 31st August,2018

FIR No.	Date of FIR	Pending investigation (Yes or No)	Date of charge sheet filed	Date of final report filed	Police personnel convicted	Police personnel acquitted

4. Following the registration of FIR, please specify how many of the implicated police officers were suspended in the following time periods:

- a) 1st January 2016 to 31st December 2016: _____
- b) 1st January 2017 to December 2017: _____
- c) 1st January 2018 to 30th June,2018: _____

5. Of all the complaints received, please specify the total number which were:

	1st Jan-31st Dec 2016	1st Jan-31st Dec 2017	1st Jan-31st Dec 2018
a) Admitted for departmental inquiry			
b) Closed without departmental inquiry			
c) Departmental inquiry initiated			

6. Please specify the following where departmental/ inquiry was initiated:

Date of inquiry initiated	Is the inquiry pending, (yes or no)	If the inquiry is completed, date of completion or final decision	If the inquiry is completed, please state the action recommended.

I am a citizen of India and I would like to obtain the information by registered post at the address mentioned above. If possible, I would like to have the information in English. I am enclosing the required fee of Rs 10/- via Indian Postal Order no. 38F 011848with this request. Kindly inform me of any additional fees payable towards obtaining this information.

Signature of the Applicant

XXXX

Questions for Caseworkers

Date of the interview:

Place of the interview:

Basic Information

Name:

Age:

Job:

Working as a caseworker with AALI since:

District where working as a caseworker (list the areas covered):

If known, how many police stations are in the area where you work?

1. CASE INFORMATION

First contact with survivor

- How did you first meet the survivor?
- How much time after the alleged sexual assault did you come into contact with the survivor? [Specify hours or days as appropriate]
- Had the survivor gone to the police before you met her? [Document whether she went to the police station to report, or went to a senior officer first]
- Give brief details of her first contact with the police and what took place

Complaint written in advance

- Did you write the complaint in advance of going to the police for the survivor?
- Did you and the survivor write the complaint together?
- Did you include the legal sections that are to be invoked?

Reporting to the police

Police officer approached first (local PS, Special PS, DSP office, SP office or any other): mention the name of the office in full

**if it is the police station, skip to the next section below*

Date and time of visit:

(If not the police station, briefly describe what happened)

Reporting at the police station:

Name of police station:

Date and time when you first went to the police station:

Whether the survivor was accompanied by HRD/Case worker:

YES

NO

Who among the personnel did the survivor and/or case worker speak to (list if more than one, include rank and gender if known):

Rank and gender of police personnel who registered the complaint (preferably with name):

Whether FIR registered *at the police station the day you went*:

YES

NO

A. IF YES:

- Date of FIR:
- At what time was the FIR was registered:
- How much time was taken to register the FIR:
- If there was delay, what reasons were given:
- Sections in FIR
- Copy of FIR given free of cost: Y/N

If no,

a. What was the recourse taken by survivor/case worker

- Attitude of the police personnel (describe)

B. IF NO:

- Name and rank of police officer who refused to register
- Reasons given if any for refusal to register
- Attitude of the police personnel (describe, document comments made if possible)

Whether FIR registered after approaching the district SP, or any other senior police officer:

add details

- Name, rank, and office of police officer contacted subsequently
- Date contacted and/or met
- Attitude of police personnel (document comments made if possible)
- Documents submitted
- Whether complaint included IPC S. 166A(c) or not
- What steps or actions did the senior officer take?
- What steps did the survivor/case worker have to take after this meeting?

Date that the FIR was finally registered:

Legal sections listed in the FIR:

2. VIEWS

- What are the challenges you face when registering complaints of rape?
 - Is delay in registration routine and normal?
 - How often do you face refusal to register complaints of rape?
1) Very Often, 2) Sometimes, 3) Rarely
 - Why do the police delay?
 - Why do the police refuse?
 - Before we met and talked about it, did you know about Section 166A(c) of the Indian Penal Code and what it contains?
 - Would you want to use it to hold police personnel to account for refusal to register?
 - What are the possible challenges to using it?
 - What can make the process of registration of FIR easier?
 - How do you feel about the police?
-

Questions for Survivors

Basic Information

Age:

Educational background:

Occupation:

Caste:

Religion:

Place of residence:

General information

- When did the sexual assault happen?
- When did you approach the caseworker?
- What prompted you to approach the caseworker?

1. CASE INFORMATION

Reporting:

- When did you first approach the police station? (how much time after the incident)
- Did you go alone or with someone else when you first approached the police station?
- Did you meet any women police personnel and at what rank? (if yes, skip next point)
- If not, who among the personnel did you speak to and at what rank? (how many personnel you had to meet and narrate the incident before meeting the officer who wrote the complaint)
- How did the police officers behave (verbal and non-verbal cues) with you while you were narrating your case?

Registration of crime:

Was your FIR registered the same day you went to file it?

If yes, did you know the name and rank of the police officer who registered it?

Did s/he explain the procedure of registering your FIR to you?

Did the police give you a free copy?

Refusal to register the crime:

If No:

- What did the police personnel say?
- What was their attitude (comments, etc)?
- Did the police personnel tell you to go to another police station or office?
(for eg. Mahilathana or AJK)?
- What steps did you take?

2. VIEWS

- What did you expect when you went to register your complaint?
 - How did the experience with the police make you feel?
 - If the police refused to register your complaint, did you know that you can take action against the police for refusing?
 - *If yes, ask if she knows about 166A(c), or generally, if she knows there is a legal provision? Or does she say the only recourse is to complain to senior officers?*
 - Do you want to take action against the police personnel?
 - Do you trust the police?
-

CHRI PROGRAMMES

CHRI seeks to hold the Commonwealth and its member countries to a high standard of human rights practice, transparency and fulfill the Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

1. Access to Justice (ATJ)

* **Police Reforms:** In too many countries the police are seen as an oppressive instrument of the State instead of protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reforms so that police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

* **Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstay, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

2. Access to Information

* **Right to Information:** CHRI's expertise in the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting RTI laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervenes to bring best practices and knowledge to the governments and civil society both when laws are being drafted and when they are first implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, bring valuable insights to countries seeking to evolve new RTI laws.

* **South Asia Media Defenders Network (SAMDEN):** CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. An area of synergy lies in linking SAMDEN with RTI movements and activists.

3. International Advocacy and Programming

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations, especially at the UN Human Rights Council. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7, monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.

This report documents case studies of police refusal and failure to register complaints of survivors of sexual assault. The 14 case studies describe the experiences of sexual violence survivors in reporting their complaints, facing refusal and/or delay in the first instance, pursuing remedies, and the final outcomes. It concludes with a wide range of recommendations directed to various stakeholders.



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