

EFFECTIVENESS OF PROCEDURAL SAFEGUARDS FOR SEXUAL OFFENCES: WHAT DO THE NUMBERS SAY?

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ABSTRACT

Rape, sexual assault and insult to modesty cases are an extremely important concern in the country. In total, 71,142 cases were registered under rape, sexual assault and insult to modesty cases in 2021 and 1,83,306 cases were pending investigation. Sexual offences have played an immensely important role in the reform of procedural criminal law. Three legislations are particularly important in this regard- the Code of Criminal Procedure (Amendment) Act, 2005, the Criminal Law (Amendment) Act, 2013 and the Criminal Law (Amendment) Act, 2018. These three legislations have significantly altered the legal landscape when it comes to sexual offences law. This paper analyses whether these legislations have succeeded in achieving procedural justice for victims of sexual offences and tests the ability of institutions to comply with procedural justice requirements with a particular focus on the Code of Criminal Procedure, 1973. Almost 30 years of data from

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1993-2021 has been culled from the National Crime Records Bureau's annual Crime in India Reports. This data has then been analysed to evaluate the effectiveness of statutory intervention in achieving greater procedural justice. Three aspects of justice have been analysed- Access to Justice, Speed of Justice and Grant of Justice. The data discussed here raise significant concerns about how statutory reforms translate to real-world implementation in the context of sexual offences and whether or not they succeed in justice delivery. Among the various concerns are the sustainability and scope of positive change and potential regression in certain areas.

Keywords: *Rape, Sexual Assault, Insult to Modesty, Access to Justice, Speed of Justice, Grant of Justice*

I. INTRODUCTION

As per the data from the National Crime Records Bureau, a total of 31,677 cases of rape were registered in 2021.¹ Combined with cases pending from the previous year, this amounted to 46,127 cases, i.e., 0.79% of all registered cognizable offences in the country. Further,

¹National Crime Records Bureau, 'Crime in India Reports, 2021' Volume I <<https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1696831798CII2021Volume1.pdf>> accessed 31 August 2023.

89,200 cases of sexual assault² were registered in 2021, taking the total number of cases pending for investigation to 1,24,206 cases . This amounted to 2.1% of total cognizable offences. Similarly, 12,973 cases of insult to the modesty of women were pending in 2021, i.e., 0.2% of total cognizable crimes. Though rape, sexual assault and insult to modesty cases may not constitute a very large proportion of total crimes in the country, they are an extremely important concern when viewed in absolute numbers. In totality, 71,142 cases were registered under these provisions in 2021. Including cases pending from previous years, 1,83,306 cases were pending investigation. More importantly, their heinousness, their impact on victims and their reflection on the *gender based violence* entrenched in the Indian society have made them a crucial part of the public discourse on legal reform.

In fact, in recent times, the most significant reforms in criminal law have stemmed from an effort to effectively prevent, investigate and try sexual offences. Three legislations are particularly important in this regard- the Code of Criminal Procedure (Amendment) Act, 2005, the Criminal Law (Amendment) Act, 2013 and the Criminal Law (Amendment) Act, 2018. Each of these legislations was a partly political and a partly legal response to the issues raised by serious cases of rape that were then in the public limelight. Together, these legislations have brought sweeping changes to sexual offences law in India. This paper analyses the success of these legislations in achieving procedural justice with a focus on the amendment made to the Code of Criminal Procedure, 1973 (“**CrPC**”).

²“Sexual Assault” has been defined here as including offences under Sections 354, 354A, 354B, 354C and 354D of the Indian Penal Code, 1860. Please refer to the Methodology Section.

Total Number of Pending Cases			
	Total No. of Rape Cases	Total No. of Sexual Assault Cases	Total No. of Insult to Modesty Cases
1993	17179	NA	NA
1994	18299	NA	NA
1995	18914	29584	4836
1996	19963	32479	5879
1997	20736	34937	6131
1998	20864	35594	8578
1999	21349	37617	9552
2000	22129	37701	12317
2001	21757	39303	10784
2002	21910	38899	11194
2003	21515	37847	13046
2004	24627	39836	10762
2005	25953	39636	11042
2006	27321	42850	11076
2007	29664	45936	12381
2008	30933	48572	13875
2009	31743	48727	13010

2010	33436	50768	11807
2011	36156	54378	10443
2012	38144	57096	11196
2013	47457	84318	15184
2014	51787	101164	12970
2015	50679	107104	12556
2016	55071	114922	11927
2017	46984	116655	11811
2018	47139	121258	11781
2019	45536	122190	11413
2020	43196	120700	11563
2021	46127	124206	12973
Table 1: Total Number of Pending Cases under Rape, Sexual Assault and Insult to the Modesty of Women³			

Different theories of justice have classified the types and aspects of justice in different ways. Typologies include conservative versus ideal justice, corrective versus distributive justice, procedural versus substantive justice and comparative versus non-comparative justice. Of these, procedural and substantive justice is of particular relevance for this paper. Different theoretical approaches have given varying degrees of importance to the justice of processes and the justice of outcomes in

³National Crime Records Bureau, 'Crime in India Reports, 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

relation to each other. Though the two are intrinsically linked, procedural justice is distinct from substantive justice. The essential difference is that while substantive justice focuses on outcomes, procedural justice focuses on the process.⁴

The central tenet of procedural justice theories is that the fairness of procedures takes precedence over outcomes. They suggest that *fair, respectful and legal behaviour on the part of justice officials is not only ethically desirable, but is a prerequisite for effective justice.*⁵ Sociological studies have revealed that people's trust in a system, including the justice system, is predicated more on their perception of being *treated fairly* rather than the actual outcome.⁶ Further, it has been argued that justice institutions should prioritise "fair and respectful" processes over outcomes in order to build trust in justice, institutional legitimacy and compliance with the law.⁷

Modern research on procedural justice focuses on conducting surveys to gauge public perception of the fairness of criminal justice institutions.⁸ Crucial elements of procedural justice that are analysed include- respectful treatment of individuals, providing reasons for decisions and actions, allowing individuals to have a "voice" in the

⁴David Miller, 'Justice' Stanford Encyclopaedia of Philosophy (Fall 2023 edn, Edward N Zalta and Uri Nodelman eds) <<https://plato.stanford.edu/entries/justice/#ProcVersSubsJust>> accessed 31 August, 2023.

⁵Mike Hough and Julian V Roberts, 'Public Opinion, Crime and Criminal Justice' in Alison Liebling, Shadd Maruna and Lesley McAra (eds) *The Oxford Handbook of Criminology* (6th edn, OUP 2012).

⁶E Allan Lind and Tom R Tyler, *The Social Psychology of Procedural Justice* (New York and London: Plenum Press 1998).

⁷Tom R Tyler, *Why People Co-operate: The Role of Social Motivations* (Princeton University Press 2011).

⁸A Bottoms and J Tankebe, 'Beyond Procedural Justice: A dialogical approach to Legitimacy in Criminal Justice' (2012) *Journal of Criminal Law and Criminology* 119. This method is able to capture public perception rather than an institutional one but suffers from limitations such as difficulty in accounting for the subtleties of public and individual attitudes and formulation of sensitive survey questions.

process and adherence to laws and rules.⁹ It is this last aspect, that is, adherence to laws and rules, that this paper analyses. However, the author's approach differs from most research as it focuses, not on public perception, but a macro-level analysis of criminal justice institutions' own statistical data.

Keeping in line with this approach, a more pragmatic and functional conceptualisation of procedural justice is adopted in this paper, which comprehensively reflects ongoing concerns about the functioning of the Indian criminal justice system. The author defines this version of procedural justice as having three components-

Access to Justice: Access to Justice has been defined here as the ease and openness of the victim's access to the criminal justice mechanisms for the purpose of investigating and trying sexual offence cases.

Speed of Justice: This refers to the promptness and efficiency with which the investigative and trial mechanisms proceed after their initiation.

Grant of Justice: This refers to the impact of procedural changes on the final decision of the case after due investigation and trial. It is also here that procedural justice links most clearly with outcome justice. In order to achieve the goals of this paper, the author analyses data on the investigation and trial of sexual offences provided by the National Crime Records Bureau ("NCRB"). This is because NCRB data has formed an important part of public and legal discourse on sexual offences. For instance, the sheer number of sexual offence cases, difficulties in the registration of FIRs and low conviction rates per the NCRB data have been a crucial part of the arguments made by women's groups in favour of a radical criminal law reform. The release of the annual NCRB data is followed rapidly by a plethora of news

⁹Mike Hough and Julian V Roberts, 'Public Opinion, Crime and Criminal Justice' in Alison Liebling, Shadd Maruna and Lesley McAra (eds) *The Oxford Handbook of Criminology* (6th edn, OUP 2012) 254.

reports that emphasise the continued lack of improvement in the investigation and trial of sexual offences, at least in terms of numbers. In other words, numbers play a huge role in how the public perceives the functioning of the criminal justice system and the degree of trust they vest in the system. Further, these numbers present us with a macro-view of the operation of the criminal justice system within which to situate studies of public perception of procedural justice, and illustrates the links and gaps between public perception and institutional operation. Different metrics have been employed to measure the success of the 2005, 2013 and 2018 amendments in achieving the three components of procedural justice. Some of the changes analysed here include the imposition of a *statutory time limit* for the completion of investigations¹⁰ and trial¹¹ of all rape offences, the recording of FIRs in rape cases by women police officers as well as additional measures relating to liberalisation of FIR registration,¹² etc.

The first part of the paper provides a brief background of the process of procedural law reform with regard to sexual offences that has occurred till now. The second part of the paper outlines the methodology followed for this paper. The third part discusses the success of procedural law reform in achieving access to justice. The fourth part discusses the success of procedural law reform in achieving speed of justice and the fifth part, the grant of justice. Lastly, the paper concludes with a discussion of overall trends.

II. PROCEDURAL LAW REFORM

Procedural law reform with regard to sexual offences is situated within a larger conversation on sexual offences in the country and broad reform efforts in substantive, procedural and evidentiary laws. These laws on sexual offences in India have evolved through a complex

¹⁰The Code of Criminal Procedure, 1973 (2 of 1974) s 173(1A).

¹¹The Code of Criminal Procedure, 1973 (2 of 1974) s 309(1).

¹²The Code of Criminal Procedure, 1973 (2 of 1974) s 154(1).

interaction of civil society activism, case law and statutory amendments. Public conversation on rape laws first began with the Mathura Rape Case¹³ and the following campaign by women's groups for the enactment of better rape laws.¹⁴ Though the Law Commission of India had made serious recommendations in its 1980 report on rape and allied offences, little progress had been made in their implementation.¹⁵ The process of reform was precipitated in 1997 with the filing of the writ petition in *Sakshi v. Union of India*¹⁶ ("*Sakshi Case*"). Through the course of the case, multiple references were made to the Law Commission of India which resulted in the 156th Report of the Law Commission of India¹⁷ and when this proved insufficient, the 172nd Law Commission Report. It was the 172nd Report, submitted in 2000, that recommended significant changes to both substantive¹⁸ and procedural criminal law to deal with rape cases. With regard to procedural law, the Commission relied on the 84th and 154th Law Commission Reports and on recommendations made by Sakshi and other non-governmental organisations. It recommended the following-

- Amendment of Section 161 of the CrPC to allow for the statement of a victim against whom an offence under Sections 354, 375, 376, 376A, 376B, 376C, 376D, 376E or 509 of the IPC has been committed, to be recorded by a woman police officer or, in the

¹³*Tukaram & Anr. v State of Maharashtra* (1978) Cr.LJ. 1864 SC.

¹⁴Saumya Uma, 'Law Reform on Sexual and Gender-Based Crimes in Mass Violence' in Vahida Nair and Saumya Uma (eds) *Pursuing Elusive Justice: Mass Crimes in India and Relevance of International Standards* (OUP 2013).

¹⁵Law Commission of India, 'Eighty Fourth Report on Rape and Allied Offences: Some Questions of Substantive Law, Procedure and Evidence' (1980) <<https://cdnbbsr.s3.waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080544.pdf>>.

¹⁶*Sakshi v Union of India* AIR 2004 SC 3566.

¹⁷Law Commission of India, 'One Hundred and Fifty Sixth Report on the Indian Penal Code' (1997).

¹⁸*Inter alia*, it recommended widening the scope of Section 375, IPC and making it gender neutral, amending Sections 376 to 376D, insertion of a new Section 376F dealing with unlawful sexual contact, deletion of Section 377 and enhancement of the punishment under Section 509, IPC.

absence of the same, a woman government officer or, if no such officer is available, a woman authorised by an organisation interested in the welfare of women and children;

- Amendment of Section 160(1) of the CrPC to allow the presence of a support person;
- Insertion of Section 164A into the CrPC to regulate medical examinations of victims of rape; and
- Insertion of Section 53A into the CrPC to regulate medical examinations of those accused of rape.¹⁹

Subsequently, in 2004, the Supreme Court passed its judgment in the *Sakshi Case*²⁰ and directed that the provisions of Section 327(2), which deals with *in camera* trials of rape cases, should extend to trials of offences under Sections 354 and Section 377 of the Indian Penal Code, 1860 (“IPC”). The Court further directed that, in trials of rape and child sexual abuse cases-

- Screens or other arrangements should be made to ensure that the victim does not see the body or face of the accused;
- Questions to be put to the victim/witness on behalf of the accused during the cross-examination, in so far as they relate directly to the incident, should be handed to the presiding officer of the court who would then put them in language that is *clear and not embarrassing*; and,
- Victims should be allowed sufficient breaks while giving testimony.

¹⁹Law Commission of India, ‘One Hundred and Seventy Second Report on Review of Rape Laws’ (2000) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082487.pdf>>.

²⁰*Sakshi v Union of India* AIR 2004 SC 3566.

The judgment and the Law Commission Reports culminated in the Criminal Procedure (Amendment) Act, 2005. This legislation made two crucial changes to the CrPC, the insertion of Section 53A for the medical examination of the accused in rape cases and Section 164A for the medical examination of victims of rape. These amendments were intended to improve the quality of investigation in rape cases and to ensure their better prosecution.

The second round of procedural law reform occurred in 2013. Following the *Nirbhaya Rape Case*,²¹ the Committee on Amendments to Criminal Law, known as the Justice Verma Committee, was constituted by the government in 2012. The Committee gave its report in 2013 and recommended sweeping changes, both statutory and institutional, to the system of prevention and investigation of sexual offences. The Report emphasised the implications of rape and sexual assault cases for rule of law and the Indian democracy; the importance of the *credibility* of law enforcement agencies, speedy justice, judicial and police reforms and the need for change in societal attitudes. Based on these considerations, the Justice Verma Committee made several recommendations such as the creation of new offences like stalking and voyeurism; prompt and proper medico-legal examination of victims; penalties for officers who fail to register FIRs; special procedures for the protection of victims with disabilities; the implementation of police reforms in line with the *Prakash Singh Case*;²² proactive action on the part of Courts; proper recording of figures on missing children; reform of juvenile homes; the creation of a new constitutional authority in respect of women and children, and the reform of the Representation of People Act, 1951 to deal with criminalisation of politics. The

²¹*Mukesh & Anr. v State for NCT of Delhi & Ors.* (2017) 6 SCC 1.

²²*Prakash Singh & Ors. v Union Of India & Ors.* (SC, 13 March 2019) (Non-Reportable)

<https://main.sci.gov.in/supremecourt/1996/79972/79972_1996_Judgement_13-Mar-2019.pdf>.

Committee also recommended practical reforms such as better street lighting.²³

Based on the recommendations of the Justice Verma Committee, the landmark Criminal Law (Amendment) Act, 2013 was enacted. This law made sweeping changes to the IPC, CrPC and the Indian Evidence Act, 1872 (“**IEA**”) and the Protection of Children from Sexual Offences Act, 2012 (“**POCSO**”).²⁴ With regard to the CrPC, the changes made, *inter alia*, included-

- The amendment of Sections 54A, 154 and 164 to provide for protections for the person identifying in case of physical or mental disability;
- The amendment of Section 161 to provide for the recording of the statement of the victim by a woman police officer or any woman officer;
- The amendment of Section 164 to provide for prompt recording of the victim’s statements by a Judicial Magistrate;
- Amendment of Section 197 to remove the requirement of a sanction for prosecution in cases of certain sexual offences;
- Amendment of Section 273 to provide for appropriate measures to be taken to prevent the victim from being confronted by the accused where the victim is less than 18 years of age; and,
- Amendment of Section 309 to provide for the completion of the trial of sexual offences within a period of two months; etc.

²³Chairman Justice JS Verma (Retd), ‘Report of the Committee on Amendments to Criminal Law’ (2013) <https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf>.

²⁴*Mukesh & Anr. v State for NCT of Delhi & Ors.* (2017) 6 SCC 1.

The 2013 Amendment was followed by a third round of reform in 2018 through the Criminal Law (Amendment) Act, 2018. Significant changes in the CrPC brought in by the 2018 Amendment, *inter alia*, included-

- Amendment of Section 173 to provide for the completion of investigations in all sexual offences within a period of two months;
- Amendment of Section 197 to remove the requirement of sanction for prosecution for all sexual offences²⁵;
- Amendment of Sections 374 and 377 to provide for the disposal of appeals in sexual offence cases within a period of six months;
- Amendment of Section 438 to restrict anticipatory bail in rape cases; and,
- Amendment of Section 439 to provide for notice to the Public Prosecutor and the presence of the victim/ informant in bail hearings.

At present, a new *Bhartiya Nagarik Suraksha Sanhita*, 2023 has been proposed to replace the current CrPC. The new legislation largely keeps the existing procedural framework intact. One significant and worrying exception to this is the introduction of a *preliminary inquiry* before the registration of the FIR for offences punishable with imprisonment for three years or more, but less than seven years.²⁶ In its present form, this new provision would include a large number of sexual assault cases, particularly sexual harassment,²⁷ assault or use of criminal force to woman with intent to disrobe,²⁸ voyeurism,²⁹ etc. This

²⁵Except Section 509.

²⁶The *Bharatiya Nagarik Suraksha Sanhita* Bill, 2023 (122 of 2023) s 173.

²⁷The Indian Penal Code, 1860 (45 of 1860) s 354A.

²⁸The Indian Penal Code, 1860 (45 of 1860) s 354B.

²⁹The Indian Penal Code, 1860 (45 of 1860) s 354C.

will reverse the momentum gained in ensuring the FIRs in sexual offence cases are mandatorily registered by the police.

III. METHODOLOGY

This paper aims to analyse the success of procedural law reform initiated through the 2005, 2013 and 2018 amendments in achieving both procedural and substantive justice in cases of sexual offences.

A. Analytical measures employed

The following measures have been employed in this paper-

Access to justice:

- Number of cases registered per year

Speed of justice:

- Pendency rates of cases under investigation
- Time taken for investigation to commence
- Time taken for submission of chargesheets
- Pendency rates of cases under trial
- Time taken for commencement of trial

Grant of justice:

- Chargesheet rates
- False cases
- Conviction rates

B. Sexual offences studied

The above-mentioned analysis has been conducted concerning three types of sexual offences-

1. *Rape*: This includes offences of rape, custodial rape and gang rape as defined under Sections 375-376E of the IPC.
2. *Sexual assault*: This includes offences of assault on women with intent to outrage her modesty under Section 354, sexual harassment under Section 354A, assault with intent to disrobe under Section 354B, voyeurism under Section 354C and stalking under Section 354D of the IPC. Sexual assault is not a statutory term in the IPC. However, since these offences are being considered as a group for the purposes of this paper, sexual assault is being used as a common term for these offences.
3. *Insult to the modesty of a woman*: This includes the offence of word, gesture or act intended to insult the modesty of a woman as defined in Section 509 of the IPC. Due to paucity of space, other sexual offences such as trafficking have not been included.

C. NCRB data

For the purpose of this paper, data released by the National Crime Records Bureau in its annual Crime in India Reports have been analysed. The period for which data has been analysed is from 1993 to 2021. All calculations have been conducted through Microsoft Excel.

IV. ACCESS TO JUSTICE

The registration of a First Information Report is the first point of access to justice for victims of sexual offences. Section 154 of the CrPC mandates that when a victim/complainant approaches the police, an FIR must mandatorily be registered. However, as is common knowledge, the registration of FIRs was often refused by the police in sexual offences largely due to the patriarchal attitudes of police and judicial officers that minimised the experience of violence by women.³⁰

³⁰Report of the Special Rapporteur, 'Violence Against Women, its Causes and Consequences, Mission to India, A/HRC/26/38/Add.1 16 (2014).

A further issue was the difficulty women experienced in communicating their trauma to largely male officers.³¹

As a result, a number of statutory and other interventions were made to ensure that Section 154 is implemented to the fullest. Firstly, access to police help was liberalised, particularly for marginalised women such as differently-abled women. In 2013, Section 154 was amended to ensure that the FIR in cases of sexual offences was registered by a *woman police officer* or other *woman officer*. Additional measures were taken for the benefit of women suffering from mental and physical disabilities such as the recording of their statement at their residence, the presence of an interpreter/ special educator, etc.

Secondly, efforts were made to ensure that the mandate of Section 154 pertaining to compulsory registration of FIRs was effectively implemented. This included executive efforts such as the formulation of a Standard Operating Procedure by the Bureau of Police Research and Development. The stated aim of this SOP was to *improve the quality of investigation and secure investigation* rather than any idea of procedural or substantive justice. Nevertheless, many of the recommendations made, if implemented correctly, would go a long way in achieving justice for victims of sexual offences. With regard to the registration of FIRs, the SOP recommended that FIRs should mandatorily be registered in accordance with Section 154 of the CrPC and should be recorded by a woman police officer or a woman officer. The SOP also exhorted officers to ensure that the FIR should be recorded with *the greatest care and caution* and should include all material facts. Several recommendations were also made which liberalised access, such as providing for the registration of zero-FIRs, provision of a copy of the FIR to the victim/ informant and recording

³¹Law Commission of India, 'Eighty Fourth Report on Rape and Allied Offences: Some Questions of Substantive Law, Procedure and Evidence' (1980) <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080544.pdf>>.

of FIRs in regional language, where necessary.³² Efforts were also made at the state and central levels to ensure that FIRs were registered properly through the issuance of several notifications and advisories.³³

The success of these interventions in ensuring that FIRs in cases of sexual offences are mandatorily registered is discussed in this section.

A. Rape

Between 1993 and 2003, an average of 15,213 cases of rape were being registered every year. While the number of cases being registered every year was increasing, the pace at which they were increasing gradually slowed down from 6.5% in 1993 to 3.7% in 2000. Between 2000 and 2003, the number of cases being registered every year decreased by a small margin. In 2004, however, with a renewed emphasis on sexual offences, there was an uptick in the number of cases being registered. As opposed to 15,837 cases in 2003, 18,233 new cases were registered in 2004, an increase of 15.1%. Levels remained steady in 2005 and

³²Bureau of Police Research and Development, 'Standard Operating Procedure (SOP) for Investigation and Prosecution of Rape Against Women' <<https://www.mha.gov.in/sites/default/files/2022-12/SOPBPRDInvestigationofRapeCases%5B1%5D.pdf>>.

³³Delhi Police, 'Guidelines to be followed by the Police while Investigating Cases of Rape, Standing Order 303/ 2010' <https://delhipolice.gov.in/Images/HTMLfiles/1-Standing%20Order%20No_%20303-2010%20Regarding%20Guidelines%20to%20be%20followed%20by%20the%20Po-lice%20while%20investigating%20cases%20of%20Rape.pdf> accessed 31 August 2023; Office of the Commissioner of Police, 'Circular No. 01/2012' (2012) <[https://delhipolice.gov.in/Images/HTMLfiles/2-Circular%20No_%2001-2012%20Regarding%20Instructions%20with%20respect%20to%20victims%20of%20sexual%20offences-Rape%20etc_\(1\).pdf](https://delhipolice.gov.in/Images/HTMLfiles/2-Circular%20No_%2001-2012%20Regarding%20Instructions%20with%20respect%20to%20victims%20of%20sexual%20offences-Rape%20etc_(1).pdf)> accessed 31 August 2023; Office of the Director General of Police, 'Guidelines for Registration and Investigation of Rape Cases' (2015) <[https://police.andaman.gov.in/images/stories/pdf/standing-order/guidelines-for-rape-cases\(jan-2015\).pdf](https://police.andaman.gov.in/images/stories/pdf/standing-order/guidelines-for-rape-cases(jan-2015).pdf)> accessed 31 August 2023.

between 2005 and 2012, the number of fresh cases being registered grew at an average of 4%.³⁴

The Nirbhaya Act seems to have had a particularly serious impact in this regard. In 2013, there was a sharp increase of 35.5% in the number of rape cases being registered with a total of 33,762 cases being registered in this year.³⁵ However, since then, the number of cases being registered every year has fluctuated between an increase of 12.4% in 2016 to a decrease of 16.4% in 2017.³⁶ A similar trend has continued between 2018 and 2021. In fact, the COVID-19 pandemic has had a chilling effect on the registration of new cases with a net zero increase after 2019.³⁷

³⁴Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

³⁵Calculations based on National Crime Records Bureau, 'Crime in India Reports 2012 & 2013' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

³⁶Calculations based on National Crime Records Bureau, 'Crime in India Reports 2014-2017' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

³⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports 2018-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

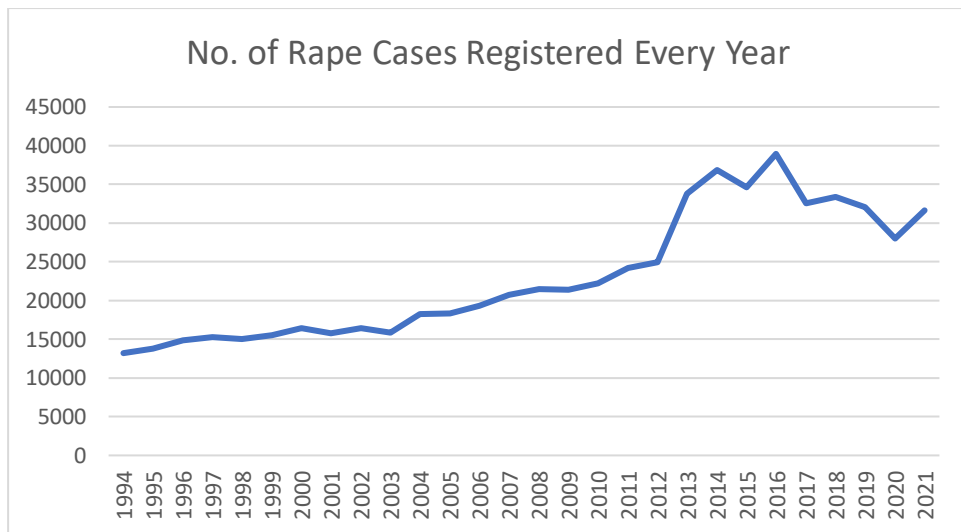


Figure 1: Rape Cases Registered Every Year³⁸

B. Sexual assault

The impact of the 2013 amendments can be felt most deeply in sexual assault cases. With the creation of new offences under this category and the increasing emphasis on mandatory registration of FIRs, the number of cases being registered has more than tripled since 1996³⁹ to 2021. Cases increased at a steady pace between 1996 and 2012 from 29,064 to 45,352.⁴⁰ However, in 2013, there is a sudden increase of 56% between 2012 (45,352 cases) and 2013 (70,765 cases). Since then,

³⁸National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

³⁹Data prior to this unavailable.

⁴⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 1996-2012' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

with the exception of a dip in 2020, the number of cases has been increasing at a steady pace and has reached 89,200 in 2021.⁴¹

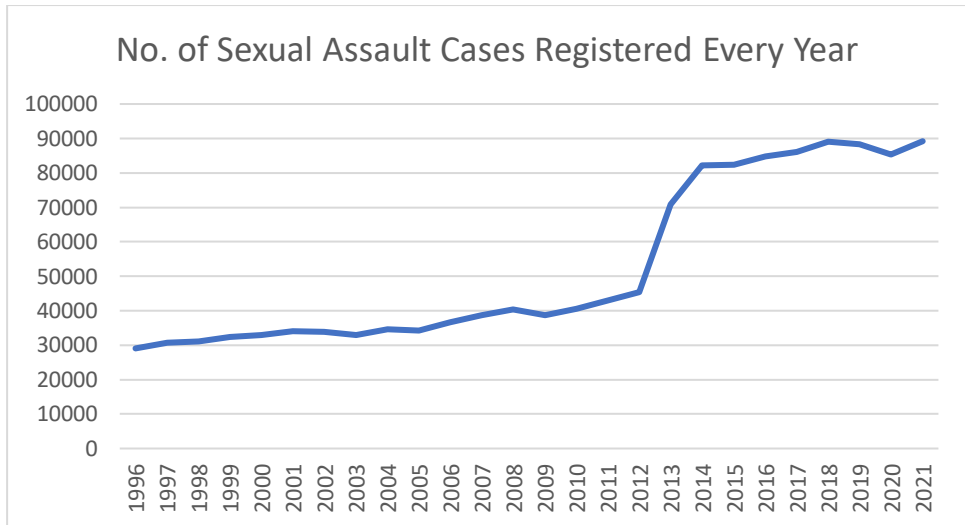


Figure 2: Sexual Assault Cases Registered Per Year⁴²

C. *Insult to the modesty of women*

Between 1996 and 2004, the average number of insult to modesty cases being registered was 9,076. However, the number of cases fluctuated quite a lot, ranging from 5,672 in 1996 to 12,298 in 2003 and even falling in certain years.⁴³ These fluctuations in numbers continued during the 2005-2012 time period with the lowest being 8,568 in 2011

⁴¹Calculations based on National Crime Records Bureau, 'Crime in India Reports 2012-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁴²National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁴³Calculations based on National Crime Records Bureau, 'Crime in India Reports 1996-2004' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

and the highest being 12,213 in 2008.⁴⁴ In 2013, coinciding with the 2013 amendments, the number of cases being registered every year reached an all-time high of 12,589, an increase of 26% over the previous year.⁴⁵ Post-2013, however, the number of cases has steadily fallen from 9,735 in 2014 to 7,788 in 2021. In fact, in 2019, cases dropped to 6,939, close to the 1997 level.⁴⁶ However, at least some of this drop may be attributed to the diversion of cases to the newly created sexual assault offences, i.e., sexual harassment, stalking, voyeurism, etc.

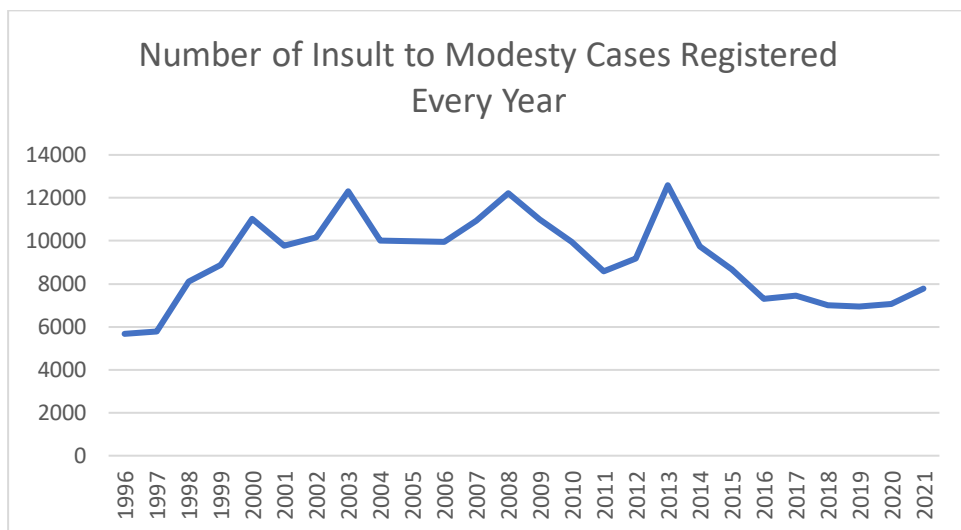


Figure 3: Insult to Modesty Cases Registered Per Year⁴⁷

⁴⁴Calculations based on National Crime Records Bureau, 'Crime in India Reports 2005-2012' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁴⁵Calculations based on National Crime Records Bureau, 'Crime in India Reports 2012 & 2013' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁴⁶Calculations based on National Crime Records Bureau, 'Crime in India Reports 2013-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁴⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

As can be seen from the data discussed above, the initiation of criminal procedure reform through legislative interventions does lead to an increase in the registration of FIRs, lending credence to the statement that sexual offence cases are significantly under-reported. What is of concern, however, is that this change does not seem to be sustainable. For example, in rape cases, after a dramatic increase in cases in 2013, the number of cases being registered decreased again by 16.4% in 2017 and had a net zero increase after 2019. While figures tabling out after a sharp increase is to be expected, a sharp decrease in cases seems to indicate a return to the cavalier attitude of the pre-reform era wherein FIRs were often not registered in sexual offence cases. This is corroborated by a 2020 study conducted by the Commonwealth Human Rights Initiative on the experiences of fourteen rape survivors in Uttar Pradesh in accessing justice. The Report found that FIRs were registered only in eleven of the fourteen cases and in all of these eleven cases, FIRs were registered only after intervention by senior police officials or by the courts.⁴⁸ The exception to this, of course, is sexual assault cases which have continued to increase till 2021.

This indicates that the impact of reforms is, in and of itself, limited and is just as much a product of the socio-political context at the time as of the word of the law. One can almost imagine a flurry of FIRs being registered in police stations across the country as pressures from the public and the government increase (as was the case in 2013) followed by a drop, as these pressures shift (as was the case post-2017).

An argument that needs to be addressed here is that the increase or decrease in numbers is a result of increased crime itself rather than an increase in the reporting of crime. While this is an important and valid argument, it is belied by the very significant disruption in crime trends in the years in which these reforms were introduced. For instance, as

⁴⁸Commonwealth Human Rights Initiative and AALI, 'Barriers in Accessing Justice: The Experiences of 14 Rape Survivors in Uttar Pradesh, India' <<https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barriers%20in%20accessing%20justice%20English.pdf>>.

discussed above, a trend of falling rape cases prior to 2004 was reversed in 2004. Similarly, the average annual increase in the number of rape cases between 2005 and 2012 was 4%, whereas in 2013, there was an increase of as much as 35.5%. Such a significant disruption in statistical trends cannot be explained as a progressive increase without a triggering event. In this case, the 2013 amendments can be identified as such a triggering event.

It must be noted here that once an FIR has been registered, investigations are rarely, if ever, refused. While before 2013, the investigation was occasionally refused in rape cases (the maximum number of cases was 51 in 1993 and the minimum number was 12 in 2006), this has tapered off to negligible levels since then. Post 2013, the maximum number of rape cases in which investigation was refused was 4 in 2015. The same is true for sexual assault cases. For insult to modesty cases, the investigation has not been refused in any case since 2011.⁴⁹

V. SPEED OF JUSTICE

As the common adage goes, “justice delayed is justice denied.” This has often been the case with sexual offences with mounting pendency rates and delays of years before investigation even commences. Several efforts have been made on the part of the executive and the judiciary to address the issue of delay. In 2016, the Chief Justice Conference passed a resolution to focus on the expeditious disposal of cases of crimes against women.⁵⁰ In 2019, the Department of Justice launched the *Fast Track Special Courts Scheme* to ensure speedy disposal of rape and POCSO cases. Under this scheme, 763 Special Courts are currently

⁴⁹National Crime Records Bureau, ‘Crime in India Reports 1993-2021’ <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁵⁰Resolutions Adopted in the Chief Justices Conference, 2016 (22 and 23 April 2016) <<https://main.sci.gov.in/pdf/sciconf/Resolutions%20adopted%20in%20the%20Chief%20Justices%27%20Conference,%202016.pdf>> accessed 31 August 2023.

operating across the country.⁵¹ At the same time, in 2019, the Supreme Court set up a two-member committee to examine the issue of speedy disposal of rape cases.⁵²

The “speed of justice” for victims of sexual offences is discussed here using the following measures-

- A. Pendency rates- Investigation
- B. Time taken for investigation to commence
- C. Time taken for submission of chargesheets
- D. Pendency rates- Trial
- E. Time taken for commencement of trial

A. Pendency rates- Investigation

a) Rape

Between 1993 and 2004, the average pendency rate of rape cases for a given year was 27.8%.⁵³ Between 2005 and 2012, however, the average pendency rate increased significantly to 34.1% with the highest pendency rate being recorded for the year 2011 at 36.6%. The overall trend was for pendency rates to steadily increase from 29.6% in 1993 (5,091 cases) to 35.9% in 2012 (13,695 cases).⁵⁴

⁵¹‘Fast Track Special Courts’ (*Department of Justice*) <<https://doj.gov.in/fast-track-special-court-fts/cs/>> accessed 31 August 2023.

⁵²PTI, ‘Supreme Court Forms Committee on Expeditious Disposal of Rape Cases Across Country’ *The Hindu* (New Delhi, 17 December 2019) <<https://www.thehindu.com/news/national/supreme-court-forms-committee-on-expeditious-disposal-of-rape-cases-across-country/article61606041.ece>> accessed 31 August 2023.

⁵³Calculations based on National Crime Records Bureau, ‘Crime in India Reports 1993-2004’ <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁵⁴Calculations based on National Crime Records Bureau, ‘Crime in India Reports 2005-2012’ <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

However, with the 2013 amendments coming into effect, the average pendency rate dropped to 30.8% between 2013 to 2017. Since 2013, pendency rates have slowly dropped from 31.5% to 29.3% in 2021.⁵⁵ This indicates that the efforts made through the 2013 amendments to increase the speed and efficiency of investigations have been able to reverse the trend of increasing pendency rates. Nevertheless, pendency rates have merely returned to 1993 levels and there has been no progress in reducing them beyond that.

b) Sexual assault

With regard to sexual assault cases, pendency rates have steadily increased since 1995⁵⁶ and have more than doubled since then, from 11.5% to 25.8%.⁵⁷ Since the 2005 amendments focused on the investigation of rape cases, they failed to have any impact on the pendency rates of sexual assault cases. Even the 2013 amendments, which included sexual assault offences in crucial sections of the CrPC (such as Section 154 and Section 161), failed to stem the tide. In fact, with the introduction of a number of new offences under this category, they seem to have had the opposite effect. Post-2013, pendency rates continued to rise to 28.7% in 2020 (34,587). However, there has been a decrease to 25.8% in 2021.⁵⁸ Nevertheless, pendency rates remain higher than pre-2013 levels.

c) Insult to the modesty of women

Analysing the data for insult to modesty cases presents a stark picture of the neglect of supposedly less serious offences during the investigation. The pendency of cases have increased by approximately

⁵⁵Calculations based on National Crime Records Bureau, 'Crime in India Reports 2013-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁵⁶Data for 1993 and 1994 is unavailable.

⁵⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁵⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports 2013-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

10 times from 4.3% in 1995⁵⁹ (207 cases) to 40.1% in 2021 (5,205).⁶⁰ Even the 2013 amendments, which included Section 509, IPC in crucial investigation provisions such as Sections 154 and 161 of the CrPC did not result in any decrease. In fact, between 2013 and 2014, pendency rates increased by 8.2%.⁶¹ To take another perspective, while pre-2013 pendency rates grew by 18.9% over the course of 18 years (1995-2012), post-2013 pendency rates increased by a comparable 18.3% within nine years (2013-2021), i.e., half the time.⁶²

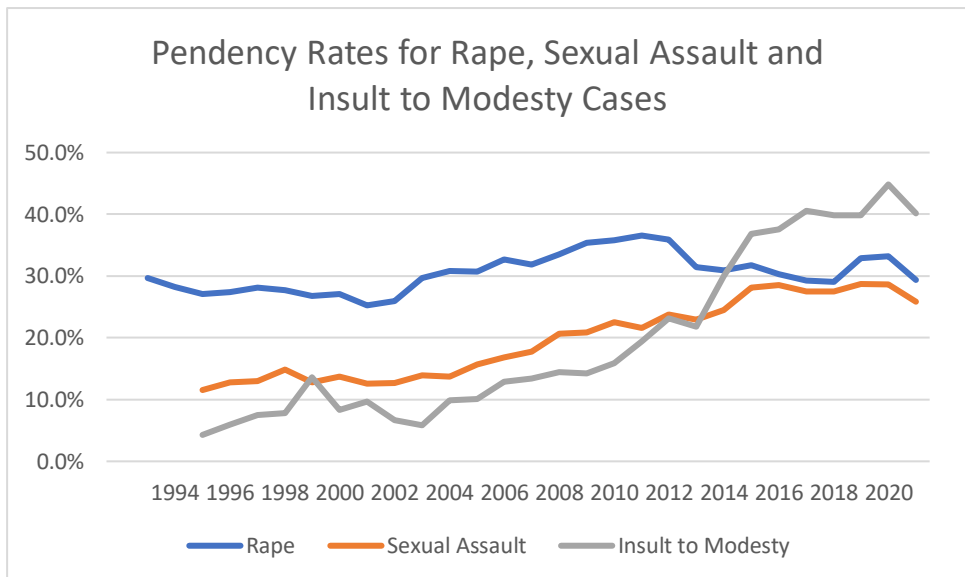


Figure 4: Pendency Rates- Investigation⁶³

⁵⁹Data for 1993 and 1994 is unavailable.

⁶⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁶¹Calculations based on National Crime Records Bureau, 'Crime in India Reports 2013 & 2014' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

⁶²Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁶³Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

*B. Time taken for investigation to commence*⁶⁴*a) Rape*

On average, 39.5% of cases remain pending for up to 6 months before the investigation commences, 32.5% remain pending for 6 months to 1 year, 22.9% remain pending for 1 to 3 years and 5.2% remain pending for more than 3 years. Thus, on average, more than half the cases (60.6%) remain pending for more than 6 months before the investigation even commences. As of 2021, 8,374, i.e., 61.% cases, had remained pending for more than 6 months.⁶⁵

A deeper examination of the figures from 2017 to 2021 reveals a worrying trend. The proportion of cases in which an investigation was commenced within 6 months while fluctuating, has largely stayed between 41.2% in 2019 and 38.1% in 2021. However, the proportion of cases which take 6 months to one year for investigation to commence has reduced from 37.3% in 2017 to 31.2% in 2018. In turn, those cases in which one to three years is taken for investigation to commence have increased from 19% in 2017 to 25.4% in 2021, indicating a shift of cases from the former to the latter category.⁶⁶ This was not the result of a gradual decrease over the years, but a sudden change in numbers in 2018, the year in which the two months' time limit for submitting chargesheets was imposed. The imposition of this time limit seems to have shifted focus to the investigation of more recent cases while those that have been pending for more than 6 months are left untouched for even longer durations.

⁶⁴Data for the time taken for investigations to commence is available starting from the year 2017.

⁶⁵Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁶⁶Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

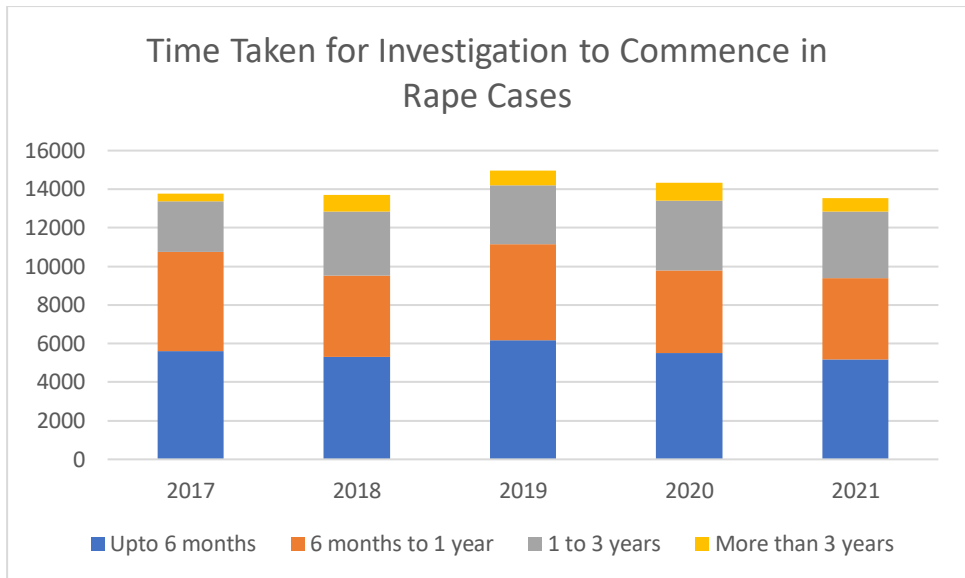


Figure 5: Time Taken for Investigation to Commence- Rape⁶⁷

b) Sexual assault

In sexual assault cases, an average of 43.6% of cases take up to 6 months for the investigation to commence, 35.6% take between 6 months and 1 year, 17.7% take 1 to 3 years and 3.1% take more than 3 years.⁶⁸ Contrary to rape cases, the figures reveal an encouraging trend. Between 2017 and 2021, the proportion of cases that remain pending up to 6 months has increased steadily from 40.9% in 2017 (13,120 cases) to 46% in 2021 (14,761 cases). Thus, a greater proportion of cases remain pending investigation for a shorter duration. However, this shift has happened only within cases pending for less than 1 year, i.e., the increase in cases in the up to six months category has been due to the shift of cases from the 6 months to 1 year category to the upto 6 months category. The proportion of cases in which an investigation is

⁶⁷National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁶⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

pending between 6 months and 1 year has reduced from 38.9% in 2017 (12,467 cases) to 30.8% in 2021 (9,870 cases), thereby offsetting the increase in the up to six months category.⁶⁹

On the other hand, the proportion of cases pending for more than 1 year has not been significantly affected by the 2018 amendment and has marginally increased from 20.2% in 2017 to 23.2% in 2021.⁷⁰ Here again, there is an emphasis on investigating more recent cases as opposed to those that have been pending for longer durations.

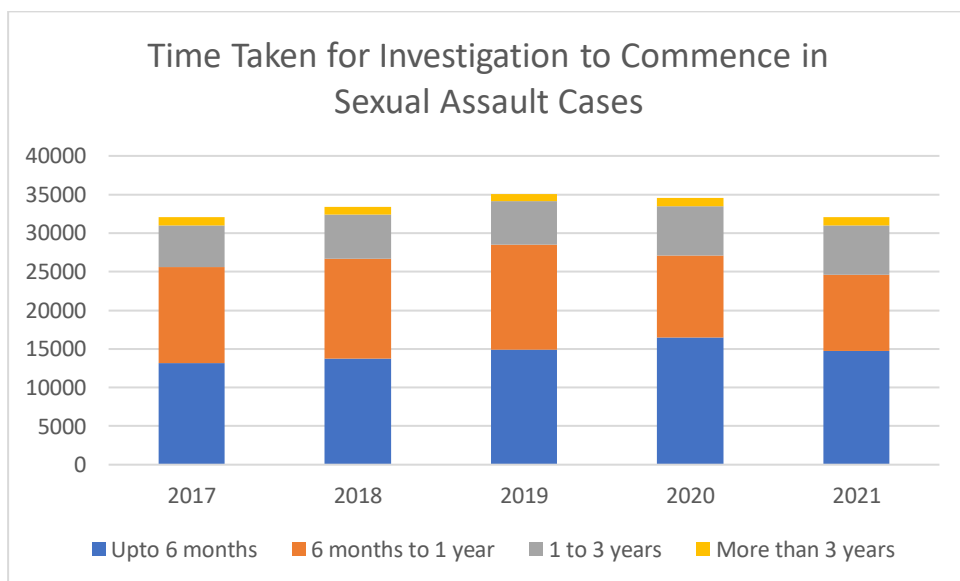


Figure 6: Time Taken for Investigation to Commence- Sexual Assault⁷¹

c) *Insult to the modesty of women*

In insult to the modesty of women cases, an average of 39.5% of cases remain pending investigation for up to six months, 35.4% remain

⁶⁹Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁷⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁷¹National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

pending for between 6 months and 1 year, 22% remain pending for 1 to 3 years and 3% remain pending for more than 3 years.⁷² A pattern similar to sexual assault cases emerges as well, this time between the categories of 6 months to 1 year and 1 to 3 years.

Cases where up to 6 months are taken for investigation to commence have fluctuated from 36.6% in 2018 (1,720 cases) to 41.9% in 2020 (2,173 cases). However, cases where investigation has not commenced for 6 months to 1 year have reduced from 37.9% in 2017 (1,813 cases) to 30.7% in 2021 (1,597 cases). This decrease is offset by an increase in the proportion of cases in the 1 to 3 years category with cases in this category increasing from 21.3% in 2017 (1,022 cases) to 27.5% in 2021 (1,431 cases).⁷³ Thus, while cases pending for investigation for up to 6 months are being investigated at a steady rate, more and more older cases are being shifted to the back pile.

⁷²Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁷³Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

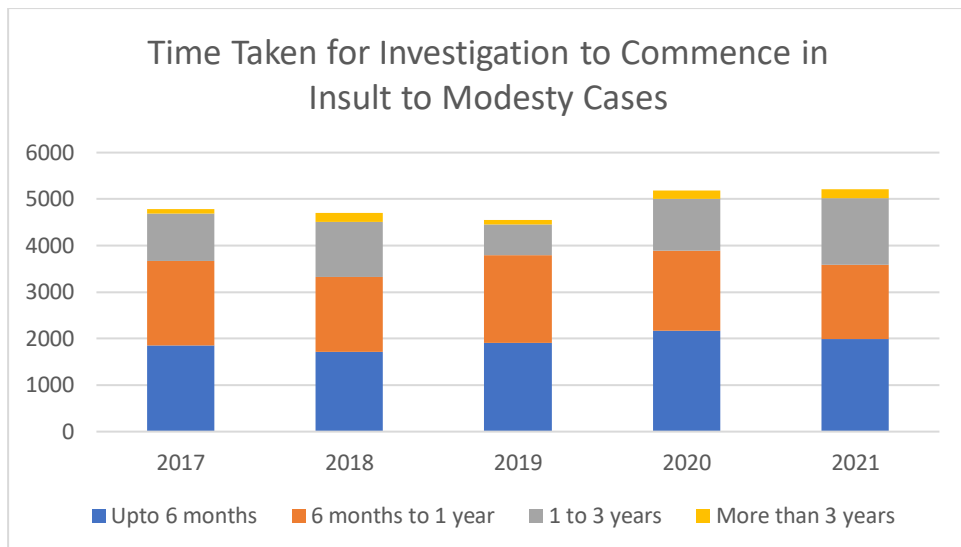


Figure 7: Time Taken for Investigation to Commence- Insult to Modesty⁷⁴

C. Time taken for submission of chargesheets⁷⁵

a) Rape

The statutory standard in rape cases is that the chargesheet has to be submitted within 2 months of the registration of the FIR.⁷⁶ This standard was introduced by the 2018 amendment. However, the data from 2017 to 2021 reveals that the chargesheet is submitted within 2 months only in an average of 26.9% of the total cases pending investigation. A further 29.1% are submitted within 2 to 3 months, 20.3% are submitted within 3 to 6 months, 14.4% are submitted within 6 to 12 months, 8.2% within 1 to 2 years and 1.2% after 2 years. Despite this, the data reveals an encouraging trend- the proportion of cases in which the chargesheet is submitted within 2 months has increased

⁷⁴National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁷⁵Data for the time taken for submission of chargesheets is available starting from the year 2017.

⁷⁶The Code of Criminal Procedure, 1973 (2 of 1974) s173(1).

steadily from 23.6% in 2017 (6,793 cases) to 31.8% in 2021 (8,310 cases). This increase is offset by small decreases in all other categories. For example, cases in the 3 to 6 months category have reduced from 22.2% in 2017 (6,386 cases) to 18.7% in 2021 (4,892 cases). Similarly, cases in the 6 to 12 months category have reduced from 15.3% in 2017 (4,385 cases) to 11.2% in 2021 (2,918 cases).⁷⁷ Thus, the imposition of a statutory time limit seems to have had a limited impact on disposal speed.

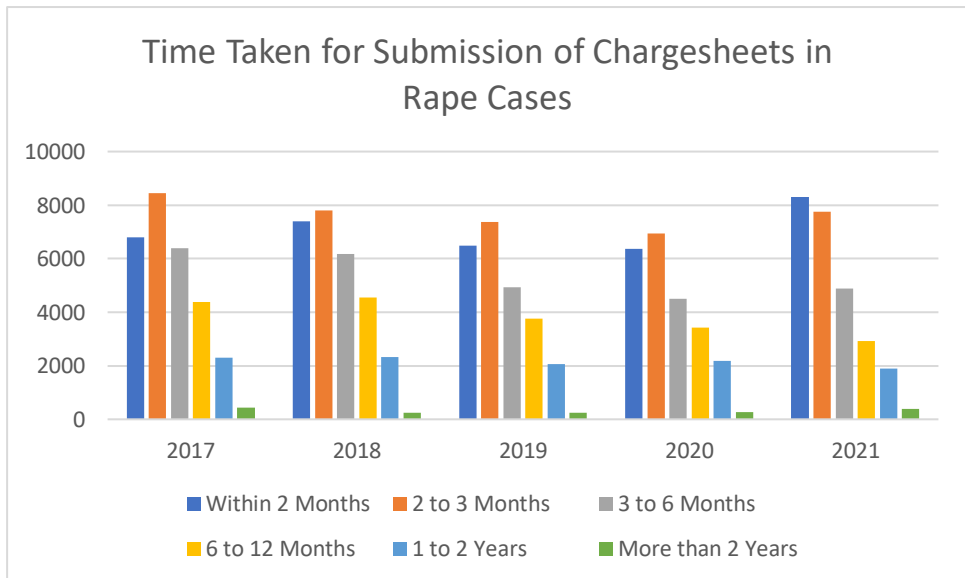


Figure 8: Time Taken for Submission of Chargesheets- Rape⁷⁸

b) Sexual assault

Unlike rape cases, there is no defined statutory standard for the completion of an investigation in sexual assault cases. Nevertheless, the pattern of average distribution of cases between different ranges is similar to that of rape cases. On an average, chargesheets are submitted

⁷⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁷⁸National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

within 2 months in 26.9% cases, within 2 to 3 months in 32.9% cases, within 3 to 6 months in 20.5% cases, within 6 to 12 months in 13.1% cases, within 1 to 2 years in 5.9% cases and in more than 2 years in 0.9% cases.⁷⁹ Here again, the proportion of cases in which chargesheets are submitted within 2 months has increased. However, potentially, due to the absence of a statutory time limit, this increase has been marginal. While cases in which chargesheets were submitted within 2 months increased by 8.2% between 2017 and 2021 for rape cases, they only increased by 2.2% for sexual assault cases (from 26.6% in 2017 to 28.8% in 2021).⁸⁰ As of 2021, only 22,187 cases out of 77,168 cases had their chargesheets submitted within 2 months.⁸¹

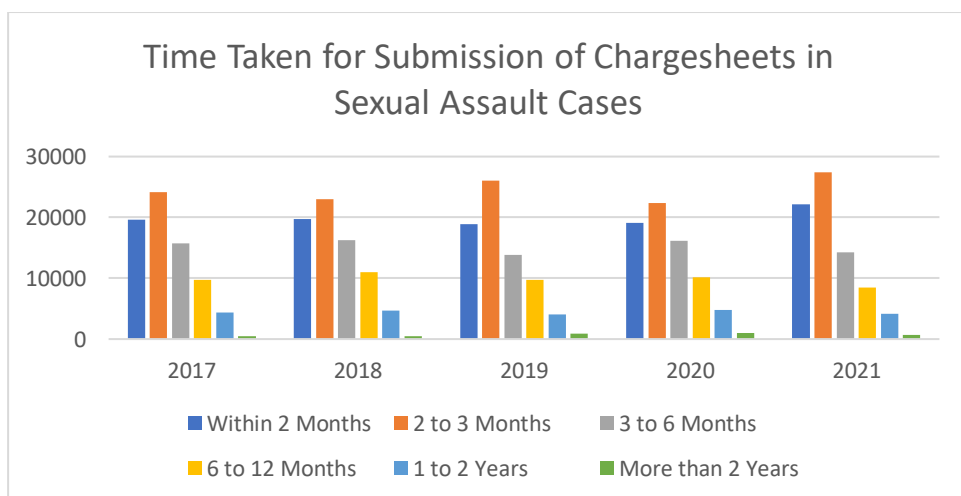


Figure 9: Time Taken for Submission of Chargesheets- Sexual Assault⁸²

⁷⁹Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

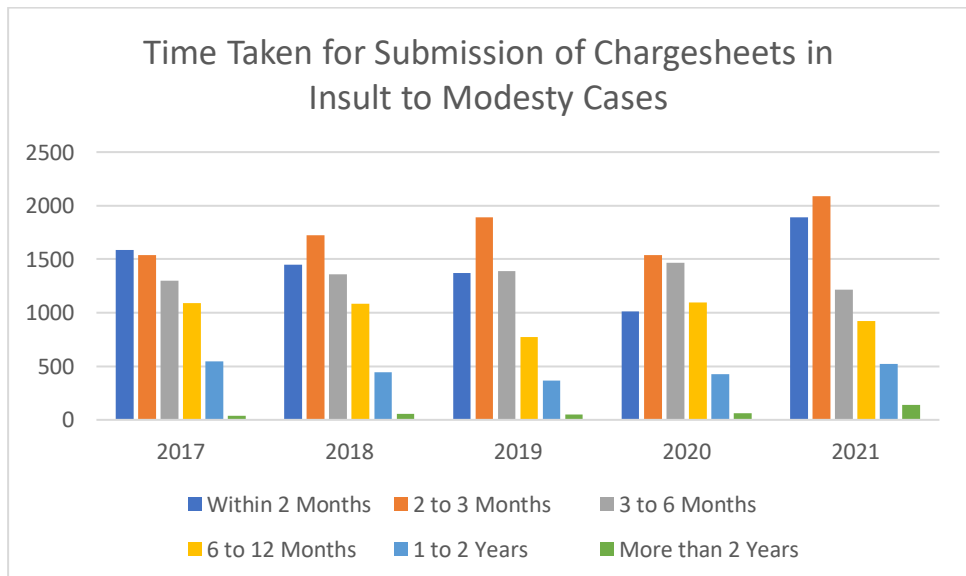
⁸⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁸¹National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁸²National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

c) *Insult to the modesty of women*

With regard to insult to modesty cases, there is, again, no statutory time limit. On an average, chargesheets are filed within 2 months in 23.8% of cases, within 2 to 3 months in 28.8% of cases, in 3 to 6 months in 22.3% of cases, 6 to 12 months in 16.4% of cases, 1 to 2 years in 7.6% cases and in more than 2 years in 1% cases. On closer inspection, the proportion of cases in which chargesheets were being filed within 2 months decreased drastically between 2017 and 2020 from 26.1% (1588 cases) to 18% (1010 cases). In 2021, there was a sudden increase in numbers and the proportion of cases in which chargesheets were being filed within 2 months increased to 27.9% (1891 cases). However, as the country recovered from the pandemic and the proportions of cognizable crimes returned to normal, the proportion of cases in which chargesheets were being filed within 2 months returned to 2017 levels and even surpassed them.⁸³ The sustainability of this increase, however, will have to be studied over the next few years.



⁸³Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

Figure 10: Time Taken for Submission of Chargesheet- Insult to Modesty⁸⁴

D. Pendency rates- Trials

a) Rape

In 1993, 31,748 cases were pending at the end of the year.⁸⁵ In 2021, this increased to 1,73,716 cases,⁸⁶ an increase of 447%. In terms of percentages, pendency rates increased from 83.2% in 1993 to 93.5% in 2021. This increase in pendency rates can be traced to 2013. Prior to this, pendency rates largely fluctuated between 81% and 83.2%.⁸⁷ However, since 2013, pendency rates steadily increased to 89.5% in 2019. In 2020, as a result of the impact of COVID-19, pendency rates jumped to 94.2% in 2020 and have only marginally fallen to 93.5% in 2021.⁸⁸

b) Sexual assault

In 1995,⁸⁹ the number of cases pending at the end of the year was 63,380 amounting to a pendency rate of 81.6%.⁹⁰ By 2021, however, the number of pending cases had increased by 654.1% to 4,77,958 cases. This raised the pendency rate to 95%. Unlike rape cases, the increase in pendency rates in sexual assault cases can be traced back to

⁸⁴National Crime Records Bureau, 'Crime in India Reports 2017- 2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁸⁵National Crime Records Bureau, 'Crime in India Report, 1993' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1993&keyword=>>> accessed 31 August 2023.

⁸⁶National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>>> accessed 31 August 2023.

⁸⁷One exception to this is 2004 when pendency rates fell to 79.4%.

⁸⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁸⁹Data prior to this is unavailable.

⁹⁰National Crime Records Bureau, 'Crime in India Reports, 1995' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1995&keyword=>>> accessed 31 August 2023.

2005 itself. In the 10 years prior to this, pendency rates stayed within 77.7% at the lowest (in 1997) and 81.7% at the highest (in 2003). 2005 onwards, however, pendency rates began to slowly and steadily increase and had reached 85.7% by 2013. Subsequently, they increased further by another 9.3% to 95% in 2021. This increase was further escalated by the pandemic with there being an increase of 4.9% in 2020 itself.⁹¹

c) *Insult to the modesty of women*

With regard to insult to modesty cases, the number of cases pending trial has increased by 39.7% from 31,861 in 2017 to 44,523 in 2021. This reflects an increase in pendency rates from 71.4% in 1995 to 95.2% in 2021.⁹²

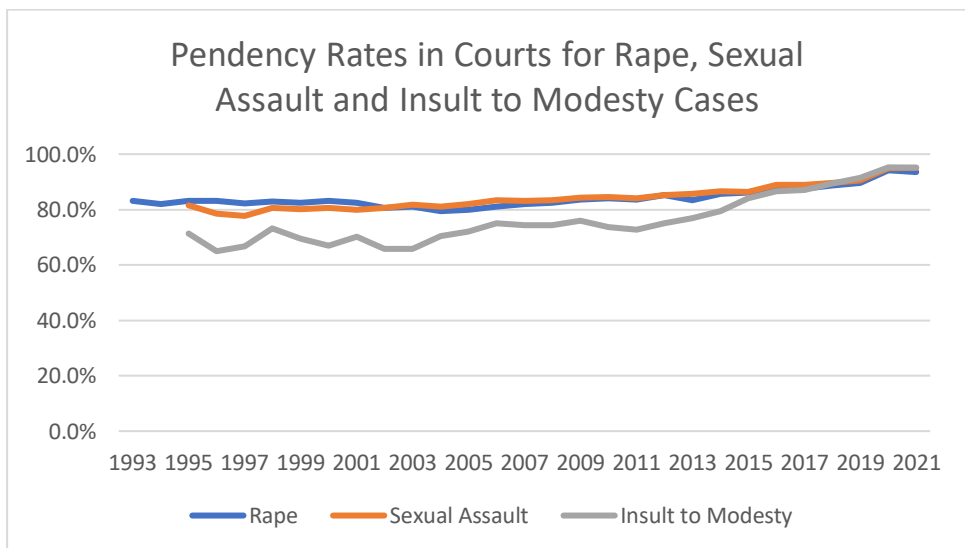


Figure 11: Pendency Rates in Courts⁹³

⁹¹Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁹²Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁹³Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

*E. Time taken for commencement of trial⁹⁴**a) Rape*

Section 309 of the CrPC imposes a time limit of 2 months from the date of the filing of the chargesheet for the completion of trials pertaining to rape cases. Despite this statutory standard, all cases remain pending for at least 3 months, i.e., trial does not even commence in less than 3 months. In fact, less than 2 months is not even a category that the NCRB records.

On average, from 2017 to 2021,⁹⁵ 10.6% of cases were pending trial for 3 to 6 months, 18.8% for 6 to 12 months, 39.4% for 1 to 3 years, 21% for 3 to 5 years, 8.2% for 5 to 10 years and 2% for more than 10 years. Thus, about 70.6% of cases remain pending for more than 1 year. It must be noted, however, that the proportion of cases which remain pending for 3 to 6 months has increased steadily from 9.7% in 2017 (12,429 cases) to 11.2% in 2021 (19,401 cases), thereby indicating a move towards shorter pendency periods. This small increase, however, has failed to stem the tide of pending cases which continue to increase at a fast pace from 1,27,868 in 2017 to 1,73,716 in 2021.⁹⁶

⁹⁴Data for the time taken for trials to commence is available starting from the year 2017.

⁹⁵Data for this metric is available only from 2017 onwards.

⁹⁶Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

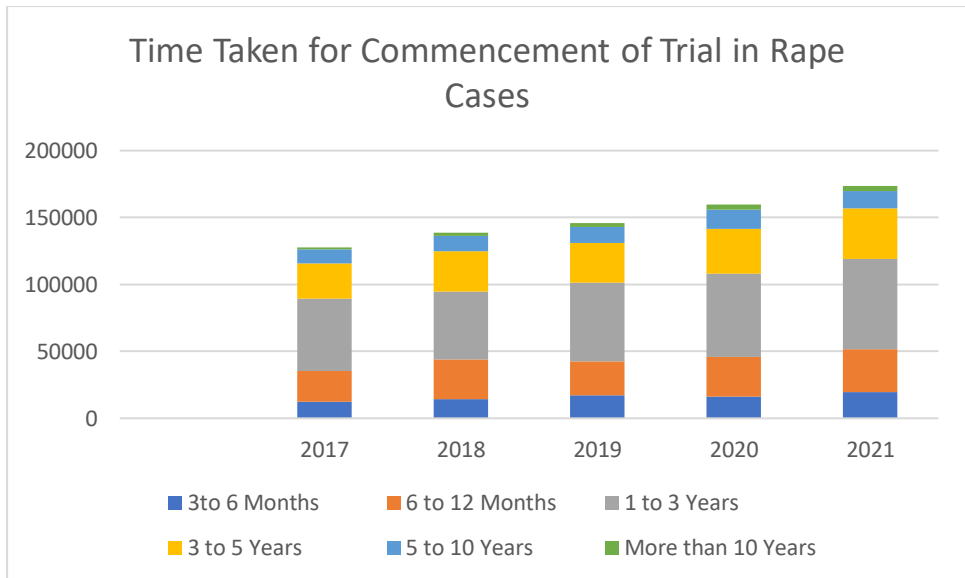


Figure 12: Time Taken for Commencement of Trial- Rape⁹⁷

b) Sexual assault

Of the total number of sexual assault cases pending trial, approximately 12.1% remain pending for 3 to 6 months, 21.2% for 6 to 12 months, 40.7% for 1 to 3 years, 18.4% for 3 to 5 years, 6.3% for 5 to 10 years and 1.4% for more than 10 years. Thus, an average of 66.8% of cases remain pending for more than 1 year. Here again, there is a small indication of shorter pendency periods as the proportion of cases which remain pending for only 3 to 6 months has jumped from 11.2% in 2020 (34,601 cases) to 14.8% in 2021 (70,734 cases).⁹⁸ This, however, is insufficient for coping with the drastic increase in pendency numbers.

⁹⁷National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

⁹⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

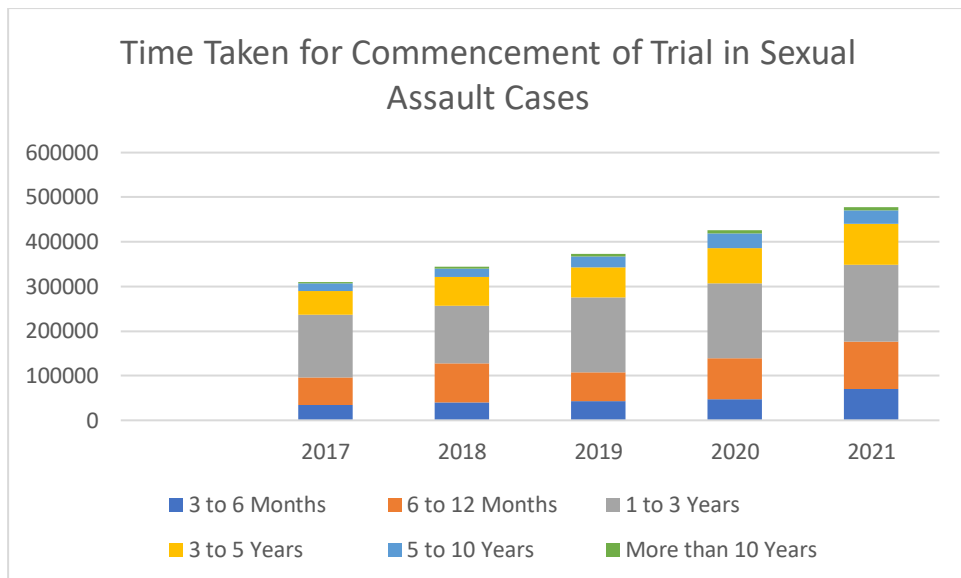


Figure 13: Time Taken for Commencement of Trial- Sexual Assault⁹⁹

c) *Insult to the modesty of women*

On an average, 10.7% of the total number of insult to modesty cases pending trial remain pending for 3 to 6 months, 17.7% remain pending for 6 to 12 months, 41.1% for 1 to 3 years, 20.9% for 3 to 5 years, 7.2% for 5 to 10 years and 2.3% for more than 10 years. Thus, approximately 71.5% of cases remain pending for more than 1 year. The proportion of cases which are pending for only 3 to 6 months has remained largely static ranging from 10.7% in 2017 to 11.6% in 2021, a range of less than 1%. However, this proportion dipped to 9.2% in 2020, potentially due to the impact of the pandemic on court operations.¹⁰⁰

⁹⁹National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹⁰⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

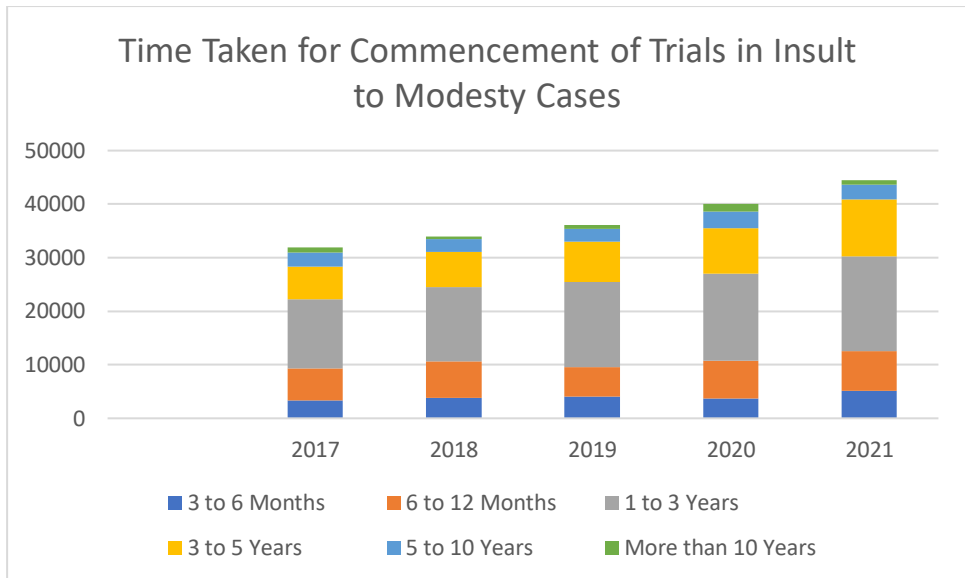


Figure 14: Time Taken for Commencement of Trial- Insult to Modesty¹⁰¹

To summarise, little overall progress has been made in reducing pendency rates at both the investigation and trial stages with investigation pendency rates returning to 1990's levels and trial pendency rates actually increasing. As regards statutory time limits, these too seem to have had limited overall success. They are being adhered to in recently registered cases, but not in older cases. Statutory limits in the cases of submission of chargesheets and commencement of trials, however, seem to have had a limited impact.

VI. GRANT OF JUSTICE

Access and speed mean little if justice is not finally granted at the end. Issues such as low conviction rates lead to a lack of redress for victims

¹⁰¹National Crime Records Bureau, 'Crime in India Reports 2017-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

subjected to sexual offences,¹⁰² and to impunity on the part of perpetrators. This section discusses this aspect of the investigation and trial of sexual offences on the following measures-

- A. Submission of chargesheets
- B. “False” cases
- C. Conviction rates

A. Submission of chargesheets

The previous section discussed the time taken to submit chargesheets. What is just as important, however, is the proportion of cases in which chargesheets are successfully submitted. Chargesheet rates are located at the cross-roads between procedural and substantive justice and are a long-established metric for the measurement of justice delivery by criminal justice systems.¹⁰³ Chargesheet rates can be calculated in multiple ways. The first is to calculate chargesheeted cases as a percentage of the total number of registered cases. The second is to calculate chargesheeted cases as a percentage of the total number of cases disposed off. This is the method followed by the NCRB. Neither of these methods, however, accurately indicate whether justice has been done in these cases. For instance, chargesheets may be filed in certain cases where investigation has not been conducted properly resulting in either a false conviction or a false acquittal. Nor do these numbers provide any information about the quality of the investigation.

The author has, therefore, adopted a third method. Here, chargesheet rates are calculated on the total number of cases found to be true. The total number of cases found to be true is the sum of cases in which

¹⁰²Report of the Special Rapporteur, ‘Violence Against Women, its Causes and Consequences, Mission to India, A/HRC/26/38/Add.1 16 (2014).

¹⁰³Anton Maslov, ‘Measuring the Performance of the Police: The Perspective of the Public’ (*Public Safety Canada*, 2016) <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r034/2015-r034-en.pdf>> accessed 1 December 2023.

chargesheets have been filed and cases in which a *True Final Report* has been filed. This metric allows one to analyse the number of cases deemed to be true, which end in a chargesheet¹⁰⁴ and provides information about the quality of investigation, i.e., the ability of the police to gather sufficient evidence to bring before the court.

a) *Rape*

Commensurate with the increase in total number of registered cases, the number of cases which have been found to be true, i.e., cases in which a chargesheet or a true final report has been filed, has been steadily increasing. In 1993, the total number of cases found true was 11,075 with chargesheets being submitted in 10,334 cases and true final reports being submitted in 741 cases.¹⁰⁵ In 2021, the total number of cases found true is 27,519 with chargesheets being submitted in 26164 cases and true FRs being submitted in 1,355 cases.¹⁰⁶ Average chargesheet rates for rape cases have gone through a small increase during the period studied. Between 1993 and 2004, the average chargesheet rate was 93.7%.¹⁰⁷ With the introduction of the 2005 amendment, which focused on better procedures for medical examination of victims and accused, the average chargesheet rate increased to 94.6%.¹⁰⁸ Between 2013 and 2021, with further improvements in investigative procedures being made by the 2013

¹⁰⁴This method operates on the assumption that a finding of truth or falsehood with regard to these cases on the part of the police is accurate. In real terms, allowance would have to be made for cases which have been wrongly classified as true or false.

¹⁰⁵National Crime Records Bureau, 'Crime in India Report, 1993' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1993&keyword=>> accessed 31 August 2023.

¹⁰⁶National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

¹⁰⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1993-2004' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹⁰⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports, 2005-2012' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

amendment (such as the amendment of Section 161 to provide for the recording of the victim/informant's statement by a woman officer and the amendment of Section 164 to provide for the prompt recording of the victim/informant's statement by a Magistrate), the average chargesheet rate increased to 95.8%.¹⁰⁹ As of 2021, chargesheets were filed in 26,164 cases out of 27,519 true cases, i.e., 95.1% cases.¹¹⁰

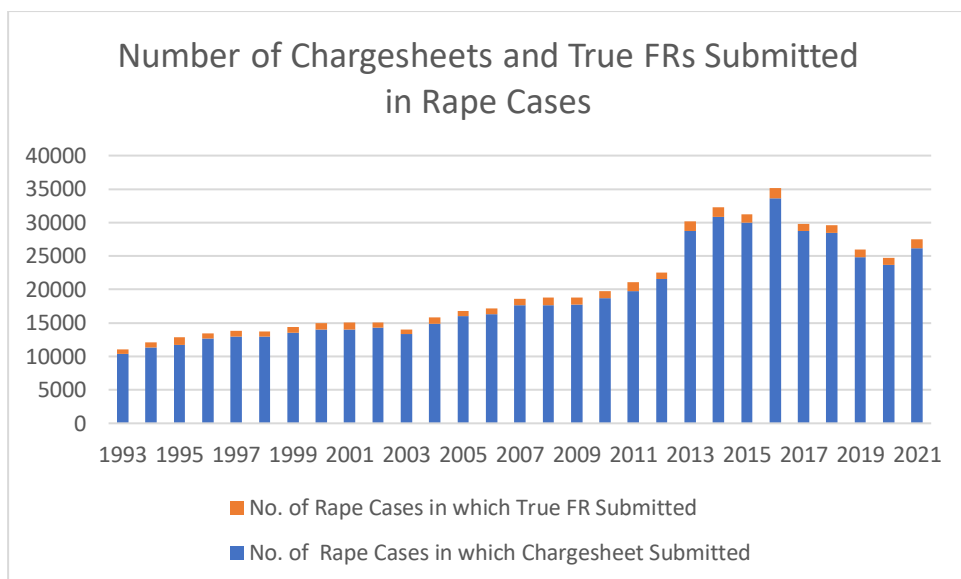


Figure 15: Number of Chargesheets and True FRs Submitted- Rape¹¹¹

b) *Sexual assault*

For sexual assault cases, in 1993, the total number of cases found true was 24,601 with 23,615 cases in which a chargesheet was submitted

¹⁰⁹Calculations based on National Crime Records Bureau, 'Crime in India Report, 2013-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹¹⁰Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>>> accessed 31 August 2023.

¹¹¹National Crime Records Bureau, 'Crime in India Reports, 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

and 986 cases in which a true FIR was submitted.¹¹² In 2021, the total number of cases found true was 81,739 with 77,618 cases in which a chargesheet was submitted and 4,121 cases in which a true FR was submitted.¹¹³ While most of the increase has been gradual, there was a significant jump in numbers in 2013.

Chargesheet rates have been fairly high throughout the course of the period studied. Between 1995 and 2012, chargesheet rates remained between 96% and 97%¹¹⁴ with an average of 96.4%. Somewhat counterintuitively, despite the efforts made to improve the quality of investigation, chargesheet rates have fallen post-2013 to an average of 94.7%. As of 2021, a chargesheet was filed in 77,618 cases out of 81,739 cases amounting to a chargesheet rate of 95%.¹¹⁵

¹¹²Calculations based on National Crime Records Bureau, 'Crime in India Report, 1993' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1993&keyword=>> accessed 31 August 2023.

¹¹³Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

¹¹⁴The only exception to this was 2009 when the chargesheet rate fell to 95.8%.

¹¹⁵Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

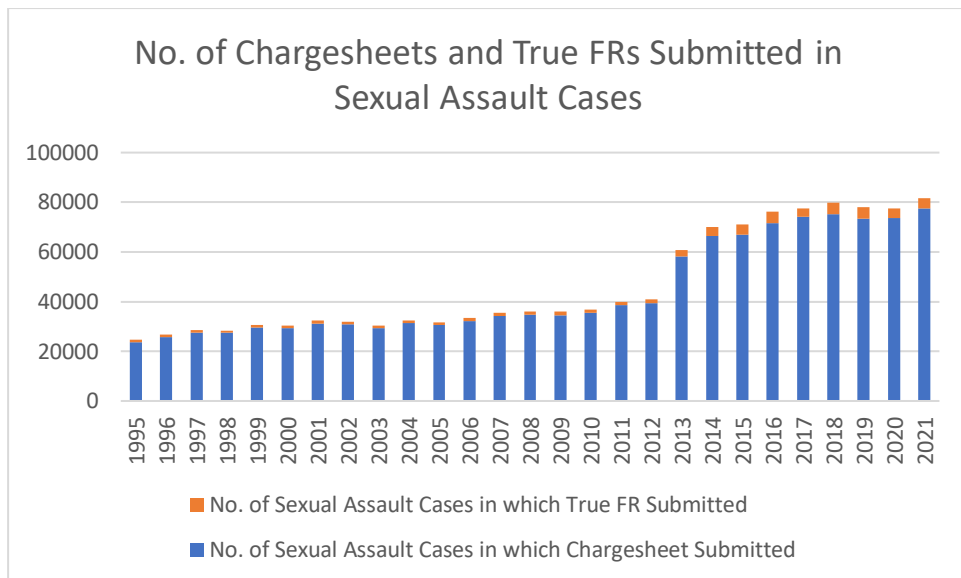


Figure 16: Number of Chargesheets and True FRs Submitted- Sexual Assault¹¹⁶

c) *Insult to the modesty of women*

As in the case of sexual assault cases, chargesheet rates in insult to modesty cases have fallen. However, in the case of insult to modesty cases, this decrease can be traced back to 2005 itself. From 1995 to 2004, the average chargesheet rate was fairly high at 97.6%. However, from 2005 to 2012, the average rate fell to 95.8%. Post-2013, the average chargesheet rate reduced further to 94.2%. As of 2021, a chargesheet was filed in 6,780 cases out of 7,214 true cases, i.e., in 94% cases.¹¹⁷

¹¹⁶National Crime Records Bureau, 'Crime in India Reports, 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹¹⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

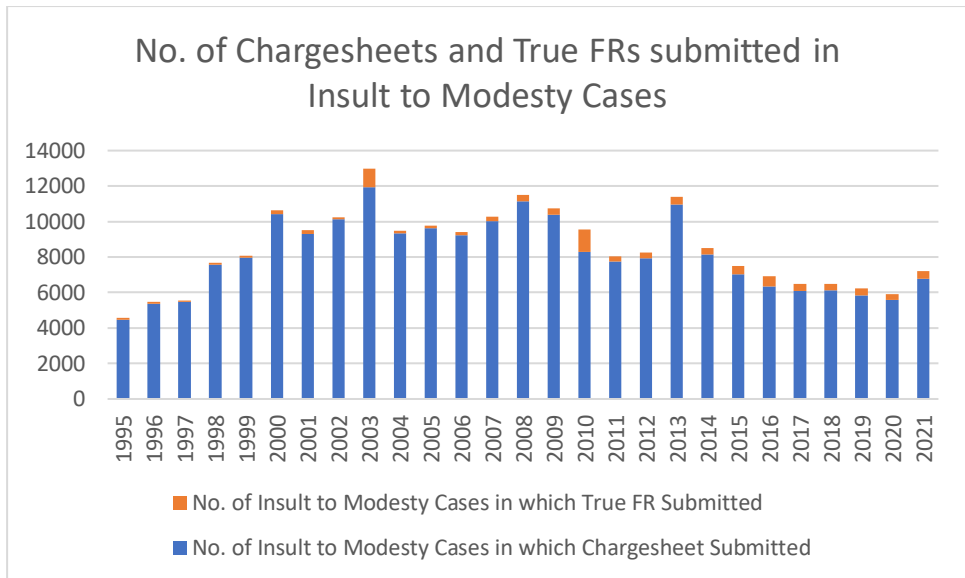


Figure 17: Number of Chargesheets and True FRs Submitted- Insult to Modesty¹¹⁸

B. False cases

Every year, a certain proportion of cases is disposed of as false, mistake of fact, mistake of law, etc. As is discussed in this section, the proportion of these cases has increased over the years.

a) Rape

In rape cases, from 1993 to 2013, the proportion of cases disposed of as false, mistake of fact or law, etc. lay between 4% and 6% (with the minimum being 4.3% in 2006 and the maximum being 6.1% in 1998). The average for this time period is 5.2%.¹¹⁹ However, post-2013, the proportion of cases disposed of as false, mistake of fact or law, etc.

¹¹⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹¹⁹Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2013' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

began to increase. From 2014 to 2017, the average rate increased to 6.1% from the previous 5.2%, an increase of less than 1%. However, since 2018, the average rate of cases disposed of as false, mistake of fact or law, etc. has increased drastically to 9.3%, reaching a high of 10.6% in 2021 (4,901 cases).¹²⁰

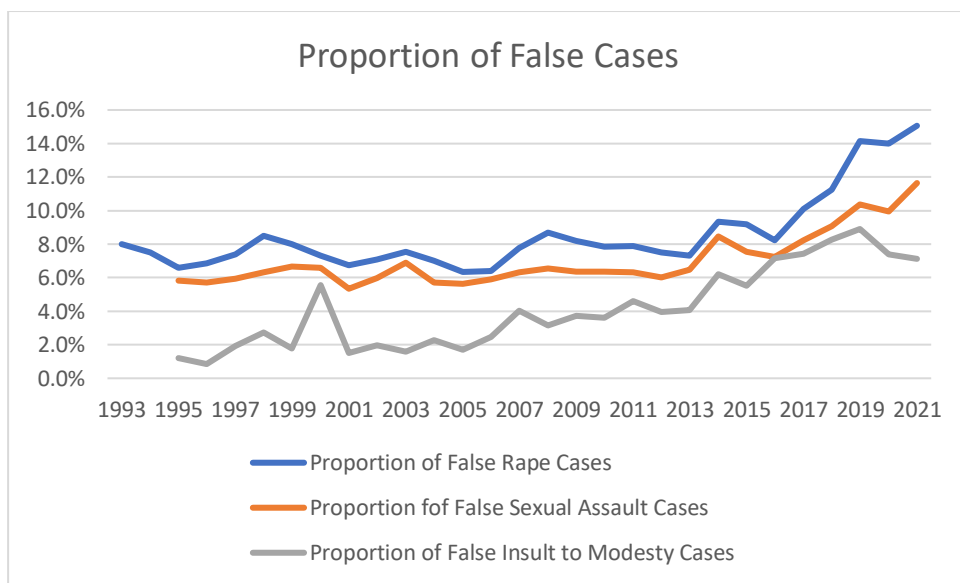


Figure 18: Proportion of False Cases- Rape, Sexual Assault and Insult to Modesty Cases¹²¹

b) Sexual assault

From 1993 to 2013, the proportion of sexual assault cases disposed of as false, mistake of fact or law, etc. lay between 5% and 7% with the lowest being 5.3% in 2001 (1,828 cases) and the highest being 6.9% (2,238 cases) in 2003.¹²² From 2014 to 2017, the average rate increased

¹²⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports, 2014-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹²¹Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹²²Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2014' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

to 7.6%.¹²³ Post-2018, however, average rates of cases disposed of as false, mistake of fact or law, etc. increased to 10.3%. Thus, as occurred with rape cases, the average rate increased by a small amount from 2014 to 2017 and then increased drastically after 2018. In 2021, 11.6% of cases, i.e., 10,720 cases were found to be false, mistake of fact or law, etc.¹²⁴

c) *Insult to the modesty of women*

As regards insult to modesty cases, the increase in the proportion of cases disposed of as false, mistake of fact or law, etc. began in 2005 itself. Between 1994 and 2004, an average of 2.1% of cases were disposed of as false, mistake of fact or law, etc. Between 2005 and 2012, however, this increased to 3.4%. In subsequent years, the average rate has more than doubled, reaching 6.1% for 2013-2017 and 7.9% for 2018-2021. In 2021, 7.1% of cases, i.e., 553 cases were found false.¹²⁵ This increase in the number of cases disposed of as false, mistake of fact or law, etc. has often been cited as proof that more and more false cases are being filed by women against men and that this has become an unsavoury “trend”.¹²⁶

However, it is important to note that these cases have only been *disposed of* as false, mistakes, etc. and that there is no way to verify whether these cases were really false. Further, the context in which this increase has occurred is equally important. To take the example of rape cases, from 1993 to 2013, over the course of 20 years, the percentage

¹²³Calculations based on National Crime Records Bureau, ‘Crime in India Reports, 2014-2017’ <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹²⁴Calculations based on National Crime Records Bureau, ‘Crime in India Reports, 2017-2021’ <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹²⁵Calculations based on National Crime Records Bureau, ‘Crime in India Reports 1993-2021’ <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹²⁶Soibam Rocky Singh, ‘Delhi High Court Expresses Worry Over “Alarming Increase” of False Rape Cases’ *The Hindu* (New Delhi, 22 August 2021) <<https://www.thehindu.com/news/national/delhi-high-court-expresses-worry-over-alarming-increase-of-false-rape-cases/article36042093.ece>>.

of cases disposed of as false, mistake of fact or law, etc. did not fluctuate beyond 4% to 6% and subsequently, only increased by less than 1% till 2017. However, since 2018, the average rate increased to 9.3%. 2018 is the same year in which the statutory time limit of 2 months for the completion of investigations was imposed through an amendment to Section 173. It is hard to believe that the proportion of cases disposed of as false, mistake of fact or law, etc. remained static for more than 20 years through socio-economic changes, political changes and changes in statutes and legal standards, but increased suddenly in 2018 simply because of women wanting to file false cases.

On the contrary, the author would argue that it is a result of the institutional pressure to reduce pendency rates and to complete investigations within shorter time periods that more and more cases are being summarily disposed of as false, mistake of fact or law, etc. Similarly, for sexual assault and insult to modesty cases, increases in the average rate were very small prior to 2018 but shot up rapidly post-2018. This is despite the fact that a statutory limitation of 2 months has not been imposed in these cases though institutional pressures with regard to sexual offences remain the same for these cases. A 2021 study by the Kailash Satyarthi Children's Foundation has found similar patterns in POCSO cases wherein the percentage of cases being disposed off on grounds of insufficient evidence, mistake of law or fact, etc. had increased between 2017 and 2019. However, admittedly, verifying this hypothesis will require further field investigation.

C. Conviction rates

Conviction rates for sexual offences are notoriously low and have been at the centre of conversations on sexual offences for decades. Nevertheless, the situation has failed to significantly improve.

a) Rape

In 1993, of the total 6,430 rape cases disposed of, 1,907 resulted in a conviction, amounting to a conviction rate of 29.7%. In 2021, 12,120

cases were disposed of and 3,368 resulted in a conviction.¹²⁷ This amounted to a conviction rate of 27.8%.¹²⁸ While on the surface conviction rates seem to have fallen marginally, a deeper analysis reveals a complex situation. Over the course of the period studied, with a few exceptions,¹²⁹ conviction rates have largely stayed between 25% and 30%.¹³⁰ Nevertheless, a phase-by-phase analysis shows that the average conviction rate had fallen much more through the years before recovering. Between the period of 1993 and 2004, the average conviction rate was 27.2%. Between 2005 and 2012, the average conviction rate dropped to 25.9%.¹³¹ Between 2013 and 2017, the average conviction rate increased to 28.1%.¹³² Between 2018 and 2021, the average conviction rate increased to 30%. However, this increase is a result of a single large spike in 2020 when the conviction rate increased to 38.5%. If the figures for 2020 are set aside as an exception, the average conviction rate post-2018 drops to 27.2%.¹³³ This is roughly at the same level as the 1990s. Thus, while conviction rates have recovered from the drop in the 2005 to 2012 period, there has been no improvement beyond that.

¹²⁷National Crime Records Bureau, 'Crime in India Report, 1993' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1993&keyword=>> accessed 31 August 2023.

¹²⁸Calculations based on National Crime Records Bureau, 'Crime in India Report, 1993' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1993&keyword=>> accessed 31 August 2023.

¹²⁹31.8% in 2017 and 38.5% in 2020.

¹³⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹³¹Calculations based on National Crime Records Bureau, 'Crime in India Reports 1993-2004' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹³²Calculations based on National Crime Records Bureau, 'Crime in India Reports 2005-2012' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹³³Calculations based on National Crime Records Bureau, 'Crime in India Reports 2018-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

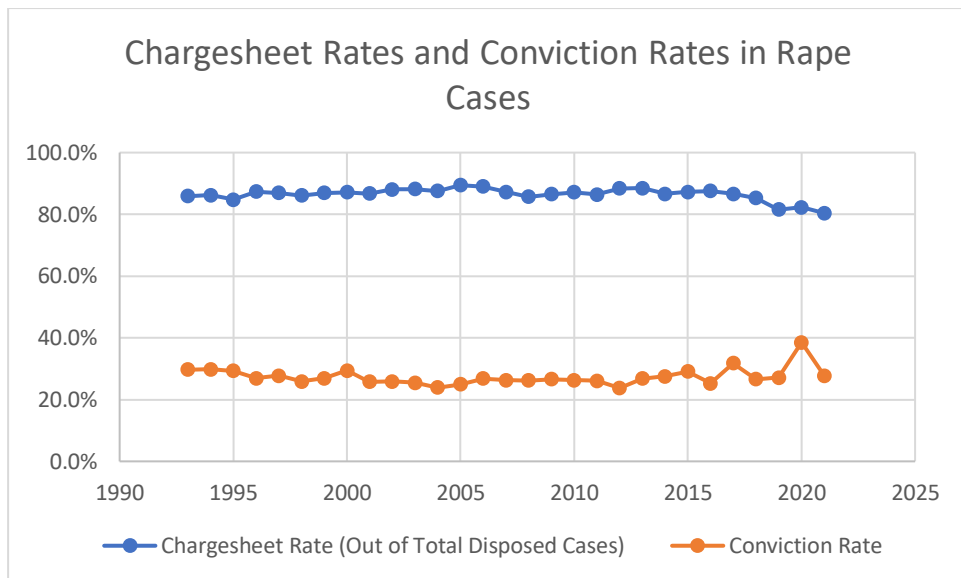


Figure 19: Chargesheet and Conviction Rates- Rape¹³⁴

b) Sexual assault

In 1995, of the total 14,337 sexual assault cases that were disposed of, 3,898 resulted in a conviction,¹³⁵ i.e., a conviction rate of 27.2%.¹³⁶ In 2021, of the total 24,980 cases disposed of, 6,502 resulted in a conviction¹³⁷ amounting to a conviction rate of 26%.¹³⁸ The trend for sexual assault cases is similar to that of rape cases. Conviction rates

¹³⁴Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1993-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹³⁵National Crime Records Bureau, 'Crime in India Report, 1995' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1995&keyword=>>> accessed 31 August 2023.

¹³⁶Calculations based on National Crime Records Bureau, 'Crime in India Report, 1995' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1995&keyword=>>> accessed 31 August 2023.

¹³⁷National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>>> accessed 31 August 2023.

¹³⁸Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>>> accessed 31 August 2023.

have largely stayed between 21.8% and 26%. Between 1993 and 2004, the average conviction rate was 24.2% with two highs of 28.3% and 27.2% in 1997 and 1995 respectively.¹³⁹ Between 2005 and 2012, the average conviction rate was 23%.¹⁴⁰ Between 2013 and 2017, the average conviction rate was 22%.¹⁴¹ For 2018 and 2019, the average conviction rate was 22.8%. It is only since 2020 that conviction rates have risen again with 2020 having a conviction rate of 24.4% and 2021 having a conviction rate of 26%.¹⁴²

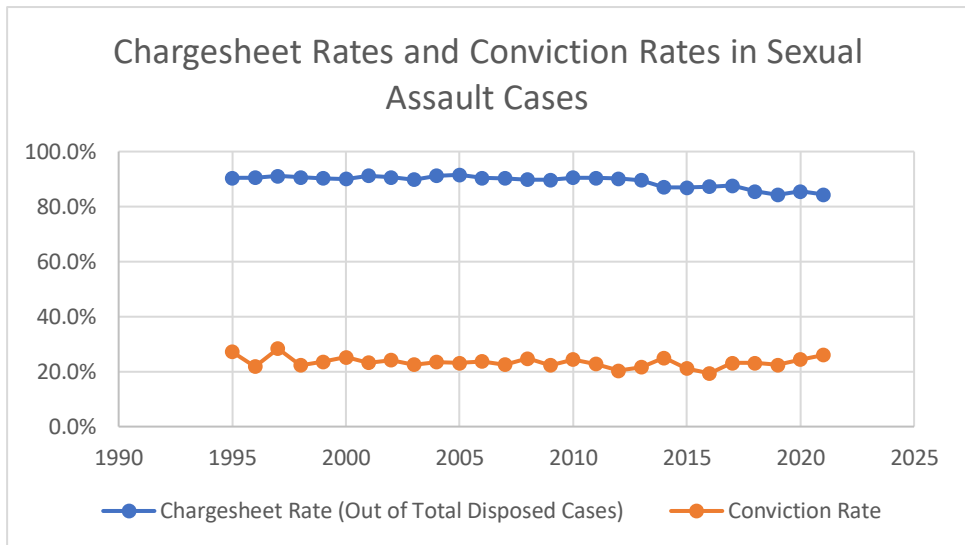


Figure 20: Chargesheet and Conviction Rates- Sexual Assault¹⁴³

¹³⁹Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1993-2004' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹⁴⁰Calculations based on National Crime Records Bureau, 'Crime in India Reports, 2005-2012' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹⁴¹Calculations based on National Crime Records Bureau, 'Crime in India Reports, 2013-2017' <<https://ncrb.gov.in/crime-in-india-all-previous-publications.html>> accessed 31 August 2023.

¹⁴²Calculations based on National Crime Records Bureau, 'Crime in India Reports, 2018-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹⁴³Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

c) *Insult to the modesty of women*

In 1995, of the total cases disposed of, 2031 cases,¹⁴⁴ i.e., 64.7%¹⁴⁵ resulted in a conviction. However, since then, conviction rates have fallen steeply to 11.2% in 2021.¹⁴⁶ The turning point for this sharp fall seems to be the year 2013. From 1995-2004 and 2005-2012, the average conviction rate was 59.2% and 42.5% respectively. However, the average conviction rate fell to 17.2% between 2013 and 2017 and to 13% between 2018 and 2021.¹⁴⁷

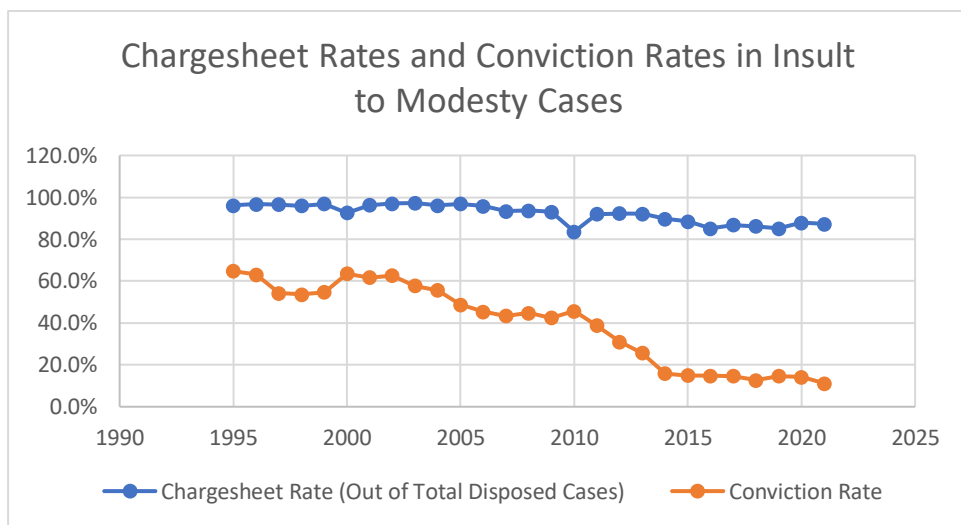


Figure 21: Chargesheet and Conviction Rates- Insult to Modesty¹⁴⁸

¹⁴⁴National Crime Records Bureau, 'Crime in India Report, 1995' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1995&keyword=>> accessed 31 August 2023.

¹⁴⁵Calculations based on National Crime Records Bureau, 'Crime in India Report, 1995' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=1995&keyword=>> accessed 31 August 2023.

¹⁴⁶Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

¹⁴⁷Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

¹⁴⁸Calculations based on National Crime Records Bureau, 'Crime in India Reports, 1995-2021' <<https://ncrb.gov.in/crime-in-india.html>> accessed 31 August 2023.

This analysis is done with the understanding that conviction rates do not, by themselves, reveal much about the grant or the miscarriage of justice. However, when conviction rates are put in context by comparing them to chargesheet rates, it reveals a disturbing picture. In 2021, for instance, out of the total 32,542 rape cases disposed of by the police, 26,164, i.e., 80.4% ended in the submission of a chargesheet. However, out of the total 12,120 rape cases disposed of by Courts, only 3368, i.e., 27.8% ended in a conviction. Similarly, in sexual assault cases in 2021, out of the total 92,069 sexual assault cases disposed of by the police, chargesheets were submitted in 77,168, i.e., 83.8%, of cases. However, out of the total 24,980 sexual assault cases disposed of by Courts, only 6,502, i.e., 26% resulted in a conviction.¹⁴⁹ This large discrepancy reflects a fundamental disjoint between the process of investigation and the process of trial of sexual offences resulting in poor conviction rates.

VII. OBSERVATIONS

The data discussed here raise significant concerns about how statutory reforms translate to real-world implementation in the context of sexual offences and whether or not they succeed in justice delivery. Among the various concerns are the sustainability and scope of positive change and potential regression in certain areas.

Firstly, questions have been raised about how sustainable positive changes are in the long run. As discussed above, the requirement of mandatory filing of FIRs is a prime example of this. The rapid decrease since 2017 in registered cases under rape and insult to modesty reveals the short-lived nature of certain reforms. This necessitates a further study into the causes of why data tends to return to pre-reform levels in most cases.

¹⁴⁹Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

Secondly, the analysis conducted here shows that improvements, where they exist, are quite small in scale. With regard to the time taken to submit chargesheets for example, the proportion of rape cases in which chargesheets are submitted within two months has increased from 23.6% in 2017 to 31.8% in 2021,¹⁵⁰ but remains at less than a third of the total number of cases. Again, the data for commencement of rape and sexual assault trials indicates a move towards shorter pendency periods, but also reveals that the number of pending cases continues to increase. Alternatively, improvements merely succeed in reversing the negative trends of preceding years and do not show significant progress beyond that. For instance, the pendency rates of rape cases at the investigation stage have returned to 1993 levels post-statutory intervention, but have not decreased any further. Only a reversal of previous negative trends has been achieved.

Thirdly, the data reveal that certain areas of the criminal justice process are not only lacking but have actually regressed. A stark example of this is the pendency rate of rape trials which has significantly increased over the years and has reached 93.5% in 2021 from 83.2% in 1993. This has resulted in the pendency of as many as 1,73,716 cases.¹⁵¹ Similarly, in sexual assault cases, the number of pending cases has increased by 654.1% to 4,77,958. Another example is the pendency rate of the investigation of insult to modesty cases which has increased from 4.3% in 1995 to 40.1% in 2021.¹⁵²

Fourthly, there is a focus on the speedy disposal of newer cases and old cases are left pending for longer and longer periods. This is particularly

¹⁵⁰Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

¹⁵¹National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

¹⁵²Calculations based on National Crime Records Bureau, 'Crime in India Report, 2021' <<https://ncrb.gov.in/crime-in-india-year-wise.html?year=2021&keyword=>> accessed 31 August 2023.

true of the time taken to commence investigation where sexual offence cases in which cases are pending for less than 6 months fluctuate within a set range, but older cases gradually shift to older time ranges. Fifthly, many safeguards are restricted to rape cases and do not include sexual assault and insult to the modesty of women. For instance, there is no statutory time limit for the submission of chargesheets in sexual assault and insult to modesty cases. These offences, though technically classified as being of less seriousness, can lead to significant trauma for the victim. There is just as much a need to take these offences seriously and provide safeguards that ensure the dignity of the victim and effective and efficient investigation.

Sixthly, there is a fundamental disjoint between the police and the court system which affects the ability of the criminal justice system as a whole to dispose of cases in a just manner. This becomes most clear in the contrast between chargesheet rates and conviction rates. In 2021, for instance, the chargesheet rate in rape cases was 95.1% while the conviction rate was 27.8%.

VIII. CONCLUSION

The performance of the criminal justice system in achieving the three aspects of justice, i.e., *access to justice*, *speed of justice* and *grant of justice* is thus, a mixed bag with no clear indication of progress or improvement. The sustainability of positive changes, the small scale of improvement where it exists, regression in crucial metrics, lack of prioritisation of older cases and lack of co-ordination between the police and the courts are important issues that have been revealed through this analysis of statistical data. As mentioned at the outset, while sexual offences constitute a small percentage of overall crimes in the country, they become a significant concern in terms of absolute number which makes these issues particularly concerning. What must always be remembered is that these issues affect justice delivery in 1,83,306 cases, a significant number by any measure.

Understanding the causes behind these trends requires a much deeper study of causality than is possible in this paper. This article was written with the hope that the analysis of available data on the impact of statutory intervention on justice delivery in the case of sexual offences would reveal the strengths and weaknesses of the system and provide focal points for future research as well as targeted intervention that can improve different justice metrics. This analysis, thus, can serve as a benchmark on which to base further analyses and interventions, and contribute to the creation of a criminal justice system that better responds to the needs of victims of sexual offences.