

**POLICE ACCOUNTABILITY AND REPORTING OF
SEXUAL VIOLENCE CRIMES AGAINST WOMEN IN
DELHI, INDIA**

By

Jaesica Chandan

Submitted to

Central European University

School of Public Policy

In partial fulfillment of the requirements for the degree of MA in Public Policy

Supervisor: Violetta Zentai

Budapest, Hungary

2019

Author's Declaration

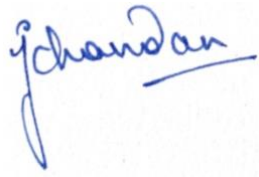
I, the undersigned Jaesica Chandan hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where the acknowledgement has been made. This thesis contains no material which has been accepted as part of any other academic degree or non-degree program in English or any other language.

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Name (printed letters)Jaesica Chandan.....

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ABSTRACT

This study attempts to explore the various factors which influence police officers' response to victim-complainants of sexual violence crimes in Delhi, and in turn contribute to encouraging or discouraging women from reporting such crimes. Given that no prior research has been conducted in this field in Delhi, I have adopted the framework of an exploratory case study, and relied on one-on-one in-depth interviews with female investigating officers who are in-charge of cases related to crimes against women.

The findings suggest that the legal and normative environment of Delhi Police has undergone considerable changes since 2012, and encouraged more women to report sexual violence crimes. Despite this, the reporting rates are still a very tiny fraction of the total sexual violence crimes committed in the city. A discursive analysis of the 'Rape Law' reveals that laws related to sexual violence are far from just. Instead of defining sexual violence as the absence of consent, rape and sexual harassment are defined as actions which outrage the modesty of a woman. This legal definition along with patriarchal constructs perpetuate officers' rape myth attitudes and beliefs, and negatively affect officers' judgements about the victim's credibility and authenticity of the crime.

ACKNOWLEDGEMENTS

I may be the sole author of this thesis but it is not my work alone. It is a joint effort of all the people who supported me throughout the process, and gave their honest feedback, so it looks the way it does today.

I would like to express my gratitude towards my Supervisor Professor Violetta Zentai, who supported me through every stage from brainstorming the ideas to giving invaluable feedback on the drafts. I would have been lost without your guidance and reassurances.

Sincere thanks to Professor Caitlin Brown for her advice during the initial stages of the research, and her support in non-thesis related matters, which helped me keep my sanity for the thesis.

I would like to thank my friend Arnav and my sister Udantika, for accompanying me on all the field visits and tirelessly taking interview notes on my behalf. I could not have produced the analysis I did, without those notes. And thank you for making this process memorable and enjoyable.

I would also like to thank my friends Kata, Hera and Ain for lending an ear to my anxious thoughts and rants, and reassuring me that I could do this.

Last but not the least, I would like to thank all the investigating officers, especially women sub-inspectors, who took out time from their extremely busy schedules, just days before the national elections, to talk to me. I am grateful to them for trusting me enough to share their experiences with me.

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Introduction

The World Health Organization (2002) defines sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”. Out of the total crimes committed against women in India, Delhi alone accounts for 4.1%. However, only 1.5% of the women in India live in Delhi (Sirnate and Nagarathinam 2015). A recent survey by Thomson Reuters (2018) revealed that Delhi is considered to be the most dangerous city for women when it comes to sexual violence and harassment. Given the alarming statistics, and perception, it's not surprising that Delhi is known as the rape capital of India.

When the gang-rape of a 23-year-old woman in Delhi in 2012 led to a huge public outrage and media backlash in the country (NDTV 2018), the Indian government introduced new laws and policies to ensure safety and security of the women in the country in general, and Delhi in particular. While the Criminal Law (Amendment) Act (2013) broadened the definition of rape and SV crimes, stricter enforcement of rules made it mandatory for police officers in Delhi to register SV related complaints. As the debate on sexual assault and rape gained public attention, Delhi witnessed a 23% increase in reporting in 2012, and a more than 100% increase in 2013, compared to the previous year's (Sirnate and Nagarathinam 2015). However, Bhatnagar et al. (2018) show this increase was primarily due to a greater willingness of the survivors to report than any institutional changes in the justice system. In fact, according to a recent analysis of the National Demographic and Health Survey, an estimated 99% of the sexual violence crimes in India still go unreported (Mcdougal et al. 2018).

The first step towards justice starts with reporting the crime. However, given the high proportions of SV crimes which are never reported, justice remains but a distant dream. While

some survivors normalize their experience and thus dismiss any need to report (Kahn et al. 2003), others refrain due the stigma attached and the fear of re-victimization by the police officers (Johnson 2007). This is especially true for India, where survivors' complaints are met with apathy and indifference by the police. Victim-blaming and mental harassment of complainants and their families by the police further desist the survivors from reporting SV cases (Human Rights Watch 2017; P. Sharma, Unnikrishnan, and Sharma 2015). There is an urgent need to design and implement policies which encourage more and more survivors of sexual violence to come forward with their complaints. Notwithstanding the social justice aspect of reporting SV, research from high income countries indicates a positive correlation between survivors' mental health and their reporting of SV crimes (Mcdougal et al. 2018). However, this is only possible when the survivors are provided an enabling and responsive environment which encourages them to share their experiences (Broman-Fulks et al. 2007; Jacques-Tiura et al. 2010; Ruggiero et al. 2004).

Since police are the “gatekeepers” of the criminal justice system (Kerstetter 1990) it is crucial to understand how their response to a victim-complainant affects reporting of sexual violence crimes (Maier 2014). (Larsen and Guggisberg 2009) found that cases of sexual violence, especially intimate partner violence, are highly gendered and police response should be reflective of it. While several research studies have been conducted on police officers' response to survivors of sexual violence, almost all of them have exclusively focused on the Global North (Sleath and Bull 2017a; DuMont, Miller, and Myhr 2003; Hine and Murphy 2019). However, none of the studies have examined the link between officers' response and the reporting rates. Moreover, there is very little research exploring officers' response to victims of sexual violence in India. If policies are to be designed to improve the responsiveness and accountability of police officers for sexual violence crimes, it is important to understand if the survivors' perception of police officers are consistent with bureaucratic accounts. If it is, then

why do they behave the way they do? I have attempted to bridge this gap with an exploratory case study of the police force in Delhi. I hope that the results will form the base for subsequent studies which can be undertaken to identify the causal factors linking police response to reporting of sexual violence crimes.

The following sections of the research have been divided into four chapters. Chapter 1 introduces the theoretical approach and provides an overview of the existing literature on gender attitudes of law enforcement officers, focusing particularly on their acceptance of rape myth attitudes, beliefs about victim-credibility and rape authenticity. Chapter 2 discusses the research methodology and its limitations in details. Chapter 3 delineates the bureaucratic structure of Delhi Police and the laws that govern its officers. It highlights the gap between citizen perceptions and bureaucratic accounts. In Chapter 3, I undertake a discursive analysis of the Criminal Law (Amendment) Act (2013) which was introduced after the 2012 gang-rape. Chapter 4 offers a detailed analysis of the institutional and personal factors which affect an officer's response to a complaint of SV crimes. This thesis ends with a conclusion, summarizing the salient points of the research, and discusses policy implications of the results and the scope for further research in the Indian context.

Chapter 1

Theoretical Approach

The primary focus of this research study is to understand how gender attitudes of police officers influence their response towards survivor-complainants of sexual violence in Delhi. However, gender attitudes do not exist in a vacuum. They are informed by the officers' legal, bureaucratic and socio-cultural environment.

Although the issue of sexual violence and assault has gained considerable interest for researchers, most of the research has been conducted in high-income countries. Various studies document the gendered responses of police officers to survivors of sexual violence in the USA, UK and Australia. However, there is very little research on the response of police officers in India (Thomas 2016), and none on Delhi. While some legal scholars in India have analyzed the criminal laws regarding rape and Sexual Violence (SV), they have not studied the impact of such laws on officers' beliefs regarding rape and SV, and how it affects their decisions regarding an SV case. In the absence of prior research linking different aspects of the officers' institutional and social environment to their gender attitudes, I have drawn on documents and literature from various disciplines to paint a holistic picture of the factors influencing officers' response to SV survivors.

I have adopted the concept of rape myths developed by Brownmiller (1975), and expanded by Horvath, Brown (2009) and Bohner (1998) to understand the gender attitudes of police officers in Delhi. While this has allowed me understand officers' attitudes, a discursive analysis of the criminal law on rape and sexual harassment has allowed me to understand how the legal framework informs officers perceptions of what constitutes as rape and sexual violence. Given that the police force in Delhi is still governed by a colonial act (State and Territory 2002; *The Delhi Police Act, 1978* 1978), I have analyzed its role on officers' decision making process in

a post-colonial context. This in turn has permitted me to compare citizens perception of the police with bureaucratic accounts, and develop a better understanding of the research topic

1.1 Acceptance of Rape Myths Among Police Officers: Literature Review

Police officers, as part of a social structure, internalize, reproduce and engage in behaviors and practices which are reflective of the society. The patriarchal and sexist organization of the social order is reflected through their gender beliefs and reproduced by their behaviors.

For a complainant, police officers are the first point of contact with the justice system. An officer's response influences how the victim experiences the investigation process and how she responds to the officers (DuMont, Miller, and Myhr 2003; Lonsway, Welch, and Fitzgerald 2001). This in turn affects her perception of the police and the possibility of future interaction with them (Common Cause and Societies) 2018). Gender attitudes and beliefs of police officers play a crucial role in determining how they respond to a victim or complainant of a sexual violence crime. Various studies documenting women's experiences with law enforcement (Wolf et al. 2003; Gracia, García, and Lila 2011; Campbell et al. 2001) show that a large proportion of them are subjected to negatively gendered responses ranging from character judgements to victim blaming to officers questioning the authenticity of the crime (Sleath and Bull 2017a; Muram, Hellman, and Cassinello 1995; Mennicke et al. 2014; Hine and Murphy 2017). 18% of the women surveyed did not report a crime because they felt that the police stations are unsafe. Fear of harassment, re-victimization by the police also deterred many women from reporting sexual crimes to the police (Common Cause and Societies) 2018). Given that negative attitudes of police officers towards the victims are partly responsible for high rates of attrition and lower conviction rates (Hohl and Stanko 2015; Horvath and Brown 2009),

a number of research studies have tried to measure the impact of these negative gender attitudes on victim experience as well as the impact on the investigation process (Campbell et al. 2001; Alderden and Ullman 2012).

These gender attitudes and beliefs can be understood as the officers' tendency to accept or reject rape myths. Initially defined as "attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women" (Brownmiller 1975, p. 12), the definition of rape myths has been expanded to "descriptive or prescriptive beliefs about rape (i.e. about its causes, context, consequences, perpetrators, victims and their interactions) that serve to deny, downplay or justify sexual violence that men commit against women" (Horvath and Brown 2009; Bohner 1998). While beliefs about men's inability to control themselves when aroused and lack of resistance from the victim may serve to justify the causes of rape, contextual factors like victim's clothing and her alcohol intake at the time of rape absolve men of the crime and lay blame on the women for failing to prevent it (Hine and Murphy 2019). Character judgements are made about the victim and her credibility is also established on the basis of her clothes, intoxication level, and her relationship with the perpetrator (Goodman-Delahunty and Graham 2011). An officer with a rape myth attitude is likely to lay blame on the complainant if she is inebriated and wearing revealing clothes (Norris and Cubbins 1992; Richardson and Campbell 1982). Supporting the rape myths are the beliefs about 'real rape' which are stereotypes that rapes are committed by strangers, usually at night and the victims try to resist their perpetrators but the physical strength of their assailants overpowers them (Estrich 1987; Frohmann 1991). People who have a lower sexual knowledge, believe in traditional gender roles, and hold stereotypical views about women are more likely to accept rape myths (Aronowitz, Lambert, and Davidoff 2012). A case diverging from this stereotype is likely to be viewed with suspicion by the police, may result in negative assessments of the victim and thereby affect her credibility. For instance, if the

victim knows the perpetrator (Felson and Pare 2008), and has a non-stereotypical emotional response to the rape (Ask and Landström 2010; Bollingmo et al. 2008; Maddox, Lee, and Barker 2011), the case does not fit into the category of a ‘real rape stereotype’, and thus becomes less credible for the police officers (Hine and Murphy 2019).

Thus, The rape myths, by indirectly influencing officers’ judgements on the victim’s credibility and rape authenticity, affect the manner in which they investigate the case and make decisions (Hine and Murphy 2019; Sleath and Bull 2017b).

Chapter 2

Research Methodology

Delhi has been my home for the past two decades. Given my association with the city and its reputation as the ‘rape capital’ of India, I have chosen the case of Delhi for understanding the abysmally low reporting of sexual violence crimes to the police in India.

Due to lack of existing research on the link between police response and reporting rates of sexual violence crimes, it is difficult to anticipate if and how police response affects a survivor’s decision to report the crime. In addition, we do not know what factors influence an officer’s response to a complainant. Given this lack of clarity, it is difficult to develop a theory on which variables of the police system impact a survivor’s decision to report the crime. Hence, I have chosen the framework of an exploratory case study to understand the phenomenon in the Indian context. Robert Yin defines an exploratory case study as “a means to define the necessary questions and hypotheses for developing consecutive studies” (Mills, Durepos, and Wiebe 2010; Yin and Campbell 2018). An exploratory study is particularly useful when the absence of preliminary research on a contemporary phenomenon, such as the topic of this research, prevents researchers from generating hypotheses and testing them to discover the causal mechanisms behind the phenomenon (Mills, Durepos, and Wiebe 2010; Yin and Campbell 2018). An exploratory study, is thus, the first step in understanding which variables could possibly be influencing the phenomenon under study. Likewise, with this case study, I have attempted to identify the plausible variables which could influence the response of police officers and in turn affect a survivor’s decision to report a sexual violence crime.

This study tries to unpack police response by closely examining the organizational and legal factors of the police force, and personal beliefs of the investigating officers. While legal factors are comprised of the existing laws on rape and sexual violence, organizational factors include

hierarchical structure of the police force, bureaucratic rules and procedures, degree of autonomy and discretionary power with the investigating officers and the role of bureaucratic norms within the force. I have divided the research into three parts.

First, I analyze the legal and normative environment of police work by examining the role of a colonial policing law (Delhi Police Act, 1978) in a post-colonial contemporary Delhi. This allows me to compare citizens perceptions of the police with the prevalent bureaucratic accounts, and provide the legal and institutional context to the reader. Next, I borrow from Akshay Mangla's research on bureaucratic norms in the public education system in India (2015), look at the role of organizational structure and culture in enabling or inhibiting the reporting process for survivors. His research finds how bureaucratic norms, defined as "unwritten rules that guide public officials", influence government delivery of public services for the poor. Using his concept of bureaucratic norms, I replace state governments with state police, public services with justice and poor with survivors in the analysis model, to understand the role of bureaucratic rules and norms on the response of police officers to SV complainants.

Second, I undertake a discursive analysis of sections 375 and 354 of the Criminal Law (Amendment Act) 2013 to understand how the socio-cultural factors inform the justice system's understanding of sexual violence.

Third, I explore the rape myth attitudes of police officers working on SV cases. I adopt a gender lens to understand the personal beliefs of officers. Using Horvarth and Brown (2009) and Bohner's (1998) concept of rape myth attitudes, I find how these attitudes and beliefs influence officers' judgement of victim-credibility and rape authenticity.

Since it is a new area of research in India, and relatively little is known about the officers' gender attitudes, I conducted one-on-one in-depth interviews (IDI) with female investigating officers and one group discussion with four men to understand their perceptions of SV cases. I

chose different methods of enquiry for the two genders because it is primarily female officers who deal with SV cases (Delhi Police 2010). Male officers on the other hand, rarely work on SV cases, and when they do, can only assist their female colleagues in the investigation process. However, since they sometimes take part in the investigation process, it was important to understand their perceptions of the cases as well. Given the relatively smaller role of male officers in SV cases, and the time constraints, a focus group worked well.

The semi-structured nature of IDIs allowed me to explore the different attitudes and perceptions of female officers (Guest, Namey, and Mitchell 2013). The conversational and open-ended style of the interview allowed the participants, that is, the officers to freely share their beliefs and opinions with me.

The findings from the research are used to discuss the policy implications that emerge from the research findings and suggests avenues for further research. Given the exploratory nature of the research the results must be interpreted with caution. The next section highlights the limitations of the methodology chosen for this research.

2.1 Limitations

Since this research was an exploratory study, and relied on in-depth interviews of a very small sample of the police officers specializing in sexual violence, it is difficult to draw causal relationships between reporting rates and officers' response to SV victim-complainants. While this research is a good starting point to understand rape myth attitudes of police officers, one should be careful that it does not prove or disprove any hypothesis. Instead, it allows future researchers to develop their hypotheses and test them in the Indian context.

Chapter 3

Legal and Normative Environment of Police Work

The behavior and action of an employee is guided by the rules and norms of the organization which employs them. Similarly, the police officers in Delhi are required to take decisions in adherence to the Delhi Police Act (1978). I start by critically examining the functions and duties of police officers as defined in the Act (1978) and thus, provide the legal context within which they operate. In the subsequent sections I compare the citizens' perceptions of the police force with bureaucratic accounts. Using the legal contextual framework, I discuss the role of bureaucratic roles and norms on officers' judgements about sexual violence cases, and attempt to explain the discrepancy between citizens' perception and bureaucratic accounts.

3.1 Delhi Police Act (1978)

The Indian constitution delineates law and order as a subject matter for the state government. The duties and powers of Delhi police are determined by the Delhi Police Act (1978). The act also functions as a handbook for its regulation. It contains provisions for organizing the force, exercising control over it, through recruitment and dismissal of police officers, and appointing the appropriate authority for discharge of duties to the officers.

As per the act, the primary function of the police is to maintain law and order in the state by preventing occurrence of crimes and investigating crimes which have already been committed. In addition, the police officers are also mandated to gather intelligence, regulate traffic and perform any other duties that may be required by law. To perform their duties effectively, the state has granted the police exclusive rights to exercise violence. The act bestows them with

powers like the right to enter public places, detain or arrest suspects, search persons and property and the right to carry arms.

3.1.1 Criticism of the Delhi Police Act

While the act was formulated three decades after Independence, its inspiration remains rooted in the Indian Police Act (IPA) 1861. Implemented by the British colonial government, the act was brought into force following the armed rebellion in 1857. The primary purpose of the 1861 Act was to consolidate British control over its Indian subjects. Characterized by a rigid hierarchy wherein power rested with British executives at the top, it was established as a surveillance measure to anticipate future uprisings and crush them. While the subordinate ranks were occupied by the Indians, the executive positions were held by the British who exercised complete control over the actions of their subordinates. In fact, subordinate ranks occupied by the natives were mentioned as “inferior officers” in the act. Surprisingly, Delhi is not the only state to follow the IPA. Despite the fact that it was meant as a medium of oppressing and dominating the Indians, most of the states still follow the archaic and colonial provisions of the Indian Police Act of 1861. Thus, in a post-colonial nation, heralded as the largest democracy in the world, the Act (1978) not only goes against the spirit of democracy but continues to protect Delhi government’s monopoly on violence from any sort of citizen accountability.

A police officer at the same rank as an Additional Deputy Commissioner has the power to award punishments to an officer of the sub-ordinate rank. They can dismiss, demote, fine or suspend a sub-ordinate officer. Although the act restricts the police from arresting persons without a warrant, it empowers them to search any property without it. The Commissioner of Police has special powers to expel anyone deemed dangerous, from the state. However, the act does not define what constitutes as dangerous. This grants the commissioner control not only

over his/her subordinates but over citizens as well. In case of riots or disturbance in an area, the Commissioner can also appoint ordinary male citizens, above eighteen years of age, as special officers if she feels that the regular police force is not sufficient to manage the situation. Concentration of power in the hands of a few opens up the possibility of engaging in corruption. The commissioner can abuse the act to dismiss officers (s)he doesn't agree with and appoint relatives and close associates as special officers, loyal to the her/him.

3.2 Perception of the Police

Owing to its colonial roots, the 1971 Act lacks transparency in governance procedures. Officers at the lower ranks can be dismissed or transferred at the order of a high-ranking officer. There is no internal process overseeing the actions of high ranking police officers. In addition to these unchecked powers, organization of the police force has ensured that the investigating officers are held accountable to their superiors and not the citizens who wish to file a complaint.

In the absence of external accountability mechanisms it's unsurprising that the Indian police is considered the second most corrupt institution in the country (Transparency International 2012). In a survey conducted by Common Cause and Lokniti (2018), 34.6% of the respondents who had interacted with the police in Delhi, reported that they were 'fully dissatisfied' with the police. While a part of it can be attributed to personal experiences with the police, part of it can also be attributed to the common perception that the police are apathetic, unresponsive and corrupt.

Despite a high proportion of respondents reporting dissatisfaction with the police, at least 70% of the respondents said that, if required, they will contact the police in future. What's even

more interesting is that the majority of people who admitted paying bribes to the police reported high levels of trust in the force (Common Cause and CSDS 2018).

Respondents with lower literacy levels reported lower levels of trust. When the responses were disaggregated by gender, women were more likely to distrust the police than men. Fear of re-victimization and harassment by the police, especially in the absence of female officers, prevented at least 37% of the respondents from registering their SV complaints with the police. However, survey results indicate a positive relation between literacy levels and trust in the police. Reporting rates for women with secondary or higher education tended to be higher than reporting rates for women with primary or no education (Palermo, Bleck, and Peterman 2014).

3.2.1 Facts and Figures

Maintenance of law and order is considered a non-productive activity, and hence receive lesser funding in comparison to other productive activities of the state like education and healthcare (Rao and Tiwari 2016). However, compared to other Indian states, Delhi has the best police infrastructure. It spends more on police training, utilizes a greater proportion of its grants for modernizing the police force and has a higher ratio of police personnel per hundred thousand people. Despite this, the lived experiences of police officers are regularly marked by inadequate resources – financial as well as human – and unreal expectations. Post 2012, each police station in Delhi is required to have at least one female police officer present at the station at all times. However, women make up only 7.3% of the police force in Delhi (Common Cause and CSDS 2018). Most of the stations I visited had only one female officer during the day time and none at night-time. This meant that many female officers, in addition to their day shifts, were required to attend emergency calls at night. In fact, the staff shortage was so evidently acute that some police stations did not even have a single male sub-inspector, let alone a female sub-

inspector. In such situations, some female officers were tasked with not only investigating the cases at their own stations but also of nearby police stations which did not have any female officers.

Hence, most of the police officers, both male and female, find themselves buried under a heavy workload. Scarcity of resources and work overload in street-level workers is significantly correlated with poor mental health (Margolis, Kroes, and Quinn 1974). This is especially true for Delhi, where 167 police personnel committed suicide in India in the year 2015 (Common Cause and CSDS 2018). However, this is not unique to Delhi Police. According to Lipsky (2010), this widespread among most types of street-level bureaucrats, be it in education, defense or administration.

Disposal of cases by the police includes charge-sheets filed and cases investigated. And disposal of cases by the court includes convictions and cases tried. The high levels of trust correspond to the high rate of filing charge-sheets. Despite this, Delhi is one of the worst performing states in disposal of cases by police and courts. Less than half the cases charge-sheeted by the police resulted in convictions by the court. It means that even if the police have diligently investigated a case and filed a charge-sheet, there is a 50% probability that the case will not result in a conviction. This in turn is likely to lower the citizens' trust in the judicial system, and can partly explain the low reporting rates for crimes against women.

3.3 Role of Bureaucratic rules and norms: Results from the Interviews

All the officers interviewed confirmed that following the public and media outcry regarding the 2012 gang rape of a woman in Delhi, changes were made to the Criminal Laws Act to deliver speedy justice to victims of sexual violence acts. Investigation of cases related to crimes

against women and children can only be handled by a female investigating officer. Male officers can only assist the female IOs in their investigation, they cannot take charge of the process. In addition to this, the police officers also stated that it was mandatory for them to register sexual violence complaints. Contrary to the narrative produced by the media (India Today 2018), mandatory case registrations, stricter monitoring, and fear of penalization made it nearly impossible for the police officers to refuse registration of complaints. Two police officers also said that citizens' awareness of their rights also played an important role in ensuring that complaints were registered. Thus, the hypothesis that corruption within the police force and lack of accountability leads to a lower registration of sexual violence crimes does not hold true. In fact, organizational hierarchy and accountability play a positive role in encouraging higher reporting of sexual violence crimes. Sub-inspectors are expected to be empathetic to the victims. Once a complaint is made and a First Information Report (FIR) registered, the investigating officer in-charge is required to file a charge-sheet within the time period of 20 days (K. Sharma 2016).

Although, all the officers complained about the shortage of human and capital resources, and the heavy workload which resulted from the scarcity of these resources. According to the female sub-inspectors interviewed, investigating officers working on crimes against women and children are supposed to be assigned at least one constable who assists them with the cases, however, none of the officers I spoke with had any constable permanently assigned to them. Shortage of female investigating officers meant that the complainants sometimes had to wait for the officer to reach the police station and register their case. The officers also preferred to take the complainant for a medical examination before registering the case. They admitted that although this process often takes at least 3-4 hours and considerably delays registration of the case, attaching the medico-legal certificate with the FIR strengthens the case in favor of the victim. It's possible that this preference for a medical examination before the FIR and the

resultant delay in reporting the case is perceived as police apathy and insensitivity towards the victim, which is then highlighted by the media and feeds into popular perception of people towards the police. In addition, a mandatory counselling session of the complainant is conducted to help them with the trauma of reliving the violence while recording their statement. Since this session is usually conducted before filing the FIR, it introduced further delays in the registration process. However, the officers clarified that capacity constraints of the organisation did not prevent them from investigating the cases. Enforcement of the standing order for filing a charge-sheet within 20 days of the crime ensured that case investigations were not delayed due to a heavy workload. Four out of the five female officers interviewed also said that they felt their seniors expected them to favor the victims in their investigations which prevented them from conducting the investigations objectively and without any bias.

Thus, the assumption that organizational culture, hierarchical structure, corruption and lack of accountability lead to lower reporting of sexual violence crimes against women fails to hold true. However, what was clear from the interviews was that the investigating officers were accountable to their seniors but not to the citizens. This meant that if an officer judged a case to be fake, there was little a complainant could do, apart from seeking legal recourse by filing a case against the investigating officer. However, this option too entailed a cumbersome process which most complainants prefer not exercise. This implies that lack of accountability towards the citizens and the community affected the way in which they exercised their discretionary power to take decisions and make judgements about the legitimacy of the crimes.

Chapter 4

‘Rape Law’: A Discursive Analysis

In response to a nation-wide protest, following the gruesome gang-rape of 23-year-old woman, the Indian government passed The Criminal Amendment Law (2013). In this chapter, I analyze the 2013 amendment using a discursive approach. The analysis underscores the fact that even though it is considered as an ‘objective’ piece of text, representing a fair and just set of rules, it is tainted by the social, cultural and historical narratives prevalent at the time of its drafting. Also known as the Rape Law, it cannot be viewed in isolation from the religious, social and patriarchal constructs of the society within which it operates.

The Criminal Amendment Law (2013) forms a part of the Indian Penal Code (1860), which was written by Lord Thomas Macaulay during the British Raj period and was enforced in 1862. I will analyze sections 375 (Criminal Amendment Law 2013, 5-7), 354A and 354B (Criminal Amendment Law 2013, 3) of the Act to develop my argument and highlight the role played by heteropatriarchy and social constructions of gender in society.

As per section 375 of the act, the definition of rape is limited to physical violence in the form of penetration. Any other act of sexual violence that does not meet the above criteria will fail to be acknowledged as a rape crime. Given that the law does not define sexual violence, and rather chooses to focus only on rape, this decision suggests that the difference between rape and sexual violence has been bracketed by the law. It assumes that sexual violence can only occur through penetration or oral sex, disregarding all other kinds of sexual activities, which when forced upon an individual can be classified as sexual assault, or even rape in some cases.

Section 354 on the other hand, Section 354 of Criminal Amendment Law differentiates sexual harassment from rape. Considering the punishments determined for each crime, in the eyes of

the law, 'sexual harassment', is a relatively milder offence than 'rape'. However, by labelling the above actions as 'harassment' instead of violence, it is difficult to tell if the legislators have implicitly accentuated the difference between the two or bracketed them. The law states that for an act to be considered as sexual harassment, it must involve the use of force by the perpetrator. However, such a situation can only occur when a woman is forced to act against her will. It does not recognize the role of consent, and how its absence can still lead to sexual harassment. While section 375 clearly mentions that "that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity", the section on sexual harassment is conspicuously silent on the matter of physical resistance. This definition thus, assumes that sexual harassment is limited to situations where a woman is physically overpowered by a man. In addition, the choice of the word 'harassment' limits the sexual violence to aggression or intimidation. It excludes manifestations of sexual violence which lie on the spectrum between rape and harassment. For instance, protection against sexual abuse by family members, friends or acquaintances, which does not involve penetration or oral sex is excluded from the purview of the law.

The term 'modesty' assumes all women are modest by nature, and a person who "outrage(s) her modesty" commits a crime. In section 354B (pp. 3), 'outraging her modesty' is replaced with 'disrobing or compelling her to be naked', implying that a woman's modesty lies in covering her body, especially the genitalia. As per the religious text Manusmriti this modesty is closely associated with chastity and purity of a woman (Usha Tandon 2016). She is to be honored if she indulges in sexual relations with no one but her husband. The section thus assumes that nudity, is associated with shame and embarrassment, and no woman would ever indulge in it willingly. The use of terms like "physical contact", "assaulting or using force", "with the intention of disrobing or compelling her to be naked", "penetrates", "inserts", "manipulates any part" and "applies his mouth", paint a picture of rape as a physical act. The analysis of the

two sections of the Criminal Amendment Law Act (2013), shows that sexual harassment or rape is violation of women's physical space, not the social and psychological effects that follow it.

The patriarchal mindsets still dominate the legal discourse on rape and sexual violence, as can be seen by the impunity granted to husbands by the law in cases of marital rape. Although the amendment laws are a huge improvement over the earlier sections on rape and sexual harassment, there is still a long way to go before the 'Rape Law' can be regarded as just, fair and neutral.

Chapter 5

High Levels of Rape Myth Acceptance

The gendered division of labour within the police force speaks volumes about the gender attitudes of the system. Although the law requires sexual violence cases to be led by women, it does not assign them exclusively to such cases. However, lack of resources and gender beliefs have created a system where all types of cases except crimes against women and children are handled by men whereas women officers are only assigned cases pertaining to the latter. The decision was implemented with the assumption that women are able to relate and empathies with other women better than men, and thereby making it easier for victims to approach the police. While it's true that female officers are less likely to harass the complainant physically or sexually, it does not imply that they will be more empathetic towards the complainant.

Almost all officers exhibited some level of rape myth acceptance. Their judgements about the authenticity of rape were influenced by their past experiences, general perception of other officers regarding rape, contextual factors surrounding the case, credibility of the complainant, victim-perpetrator relationship and their acceptance of real rape stereotypes.

When the officers were asked about their opinions on the cases they have worked on, four out of 5 female sub-inspectors, and all four male officers said that at least 70% of the complaints filed are fake. While seven officers cited property disputes as the most common reason, one officer said that the financial compensation of Rs 25000, awarded by the Delhi government, was the primary motivation behind the large proportion of fake cases being registered. They felt that the historical reputation of the police as a violent and corrupt institution was being used by women and their family members to register fake cases, and intimidate the accused and his family to resolve personal disputes. According to them, increased citizen awareness

and monetary compensation for victims of rape and sexual assault further incentivized women to file fake cases.

While it's possible that registration of fake cases has increased over the past five years due to increased awareness among people (Jolly 2017), and stricter rules, it begs the question why these factors have not been relevant for increasing reporting rates for legitimate rape cases. One plausible explanation for it is that complainants do not feel safe and comfortable in reporting SV crimes to the police, due to the gender attitudes and rape myths beliefs of the officers. The next sections explore gender attitudes of police officers by looking at their acceptance of rape myths related to victim credibility and victim-blaming tendencies, which in turn affect their judgements about the authenticity of SV crimes. In cases where the victim's account did not fit rape stereotypes, the officers were more likely to doubt the credibility of the victim. In cases where the officers acknowledged the incidence of a sexual activity, they were more likely to blame the victim for it. The next sections explain each of the two components of rape myths among police officers and their impact of judgements regarding case authenticity.

5.1 Victim Credibility

It is interesting to note that all the officers who reported the percentage of fake cases to be higher than the percentage of real cases, had reached the conclusion by merely talking to the complainant. The analysis showed that victim credibility is the primary criterion for evaluating the authenticity of a sexual violence. Based on these judgements about the legitimacy of the case, they conduct investigations and collect evidence. This finding suggests that victim credibility and the decisions taken regarding the case investigation and evidence collection.

When asked about their opinion regarding the abysmally low rates of reporting, an officer said that "real cases never come out because people fear the shame and stigma that comes attached

with it.” As per Indian culture, rape brings shame and social stigma to the victim and her family. To avoid disgrace to her family, a woman would choose not to register a complaint. However, a woman with an ongoing dispute with the family would have no reservations about compromising her family’s honor and would thus be willing to file a complaint, especially if it gives her an edge in the dispute. Thus, I believe this statement reveals her prejudice against those who decide to register a complaint and fight for justice. Due to the perception that only those women who do not care for their family’s honor and dignity real victims of sexual violence never register a case due to the fear of social shame and stigma, the officers were likely to question the authenticity of such cases.

Beliefs about the victim’s character, her relationship with the perpetrator, circumstances of the case give rise to rape myths. The analysis showed that when a case does not fit into the idea of a real rape stereotype, credibility of the victim is immediately placed under suspicion. By extension, police officers also question the authenticity of the case. There are four factors which negatively affect the complainant’s credibility – victim perpetrator relationship, evidence of physical violence or its absence, victim’s emotional response to the violence, and officer’s ideas on what constitutes as sexual violence and rape. In the following sections I will discuss each of these factors in detail.

5.1.1 Victim-Perpetrator Relationship

When a complainant’s account diverged from the real rape stereotype, the officers were less likely to believe her. Variations from the stereotype, especially those pertaining to the victim-perpetrator relationship and the point of resistance negatively affected officer’s judgements about the case and the victim. If the perpetrator was not a stranger, victim credibility reduced and negatively affected the officers’ perception. This suggests that acceptance of rape myths is higher when the victim knows the perpetrator.

Four out of five female sub-inspectors reported that most of the cases assigned to them were fake. When asked to give an example of a fake case, nearly all of them stated a case in which the complainant was in a sexual partnership with the accused or he was a relative, a friend or an acquaintance. The only officer who believed that most of the cases were real mentioned that most of the cases involved rape by acquaintances friends and family members. This suggests that the relationship of the complainant with the accused is a critical factor for officers while assessing the authenticity of a case.

It is interesting to note that while most sub-inspectors I interviewed agreed that most rapes are committed by friends, family and acquaintances, they also believed that most of the sexual violence cases where the victim knew the perpetrator were false. However, the reasons doubting the authenticity of each case differed on the basis of the complainant's relationship with the accused.

Two of the officers interviewed gave me similar examples of cases wherein the complainant had filed a rape case against her partner. In the words of one officer it was "If she was living with the guy for four years, it is impossible that the accused had forced her to stay with him." The officers reasoned that it is impossible to be in a sexual and romantic relationship with someone and not be aware of their propensity to engage in acts of sexual violence. The fact that the accused had threatened the complainant with violence and public shaming by revealing her sexual choices, did not explain the complainant's reluctance to approach the police sooner. Both the officers stated that the complainant should have come forward sooner. The fact that she chose to wait for four years, diminished the credibility of her account. This suggests that lack of knowledge about the power imbalances which prevent women from resisting vehemently, in conjunction with internalized misogyny which manifests itself as victim-

blaming (BBC News 2010) may be essential factor in the high acceptance of rape myths regarding victim-perpetrator relationships.

Legal factors also play an important role in influencing the officer's concept of rape. As per Exception 2 of section 375 (p 6), sexual intercourse in the absence of consent will not be considered rape in the case of "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age". The statement is closely tied to the notion of property and entitlement. In the Indian society, women are treated as property of the male members of the household. Upon marriage, the woman becomes the property of the man and is duty-bound to serve him, including giving and receiving sexual pleasure, regardless of her consent or desires. "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape" contradicts the circumstance wherein sexual intercourse will be considered rape "with or without her consent, when she is under eighteen years of age". It reflects the idea of sexual intercourse as the right of a husband, while disregarding the bodily autonomy of a woman. An unmarried woman below eighteen years of age does not have the ability to decide for herself, and thus her consent will not be considered valid. However, a woman who is under fifteen years of age, but married loses her right to bodily autonomy when it comes to sexual intercourse with her husband. This exception along with definition of rape as a physical violation in section 375 (2013), further reflects the social belief that rape is problematic for not for violating the dignity of the woman but for violating someone's property.

It is possible that the notions of property and entitlement are reflected through the officer's understanding of consent. Married women and women in sexual partnerships are assumed to have given their consent to their male partners for every present and future sexual engagement.

This flawed understanding of consent and the rights of a woman to her own body lead to biased judgements by officers, where rape cases are dismissed as fake.

On the other hand, in a majority of the cases filed against family members or relatives, it was the complainant who turned hostile during the investigations or at the time of judicial trials. Although the officers could not tell why or how this happened, it is likely that their past experience of working on such cases influenced the officers' judgements. Given that many of the examples provided by the officers were registered following a dispute in the family, officers expressed their reservations about the veracity of the complainant's account. While it's possible that some women misuse the law to threaten their adversary's reputation and coerce them into submission, the analysis suggests that fake cases lend legitimacy to officers' rape myth attitudes especially those concerning victim-credibility in acquaintance rape and assault. This is likely to create a vicious cycle where women are reluctant to report SV, fearing police apathy or worse re-victimization and harassment. As a result, most of the cases which end up being reported are fake, and legitimate cases have a higher chance of being clubbed together with fake cases by the officers.

5.1.2 Evidence for use of force and physical injuries

According to the real rape stereotypes a woman's account of sexual violence is more likely to be credible to police officers if there is evidence regarding the use of physical force and the victim has physical injuries (DuMont, Miller, and Myhr 2003). The perception that a legitimate rape is committed by an aggressive person and fervently resisted by the victim, thereby resulting in physical injuries (Stringer 2013), disregards sexual violence instances where the victim does not resist her perpetrator. However, as mentioned earlier, lack of resistance can be attributed to either power imbalance between the genders (Groth, Burgess, and Holmstrom 1977) or because the victim was intoxicated voluntarily or involuntarily. This mindset of

doubting the victim's credibility in the absence of physical injuries was also seen among the sub-inspectors I interviewed. When asked to give an example of a real case they had managed, all the officers gave examples where the victim had sustained substantial injuries or had been impregnated by the perpetrator. In contrast to this, all the examples of a fake case lacked evidence for use of physical force.

5.1.3 Complainant's emotional response to sexual violence

Studies have shown that complainants who react differently than expected are considered less credible and sometimes more responsible for the rape (Ask and Landström 2010; Bollingmo et al. 2008). Similar evidence was found in my interactions with the police officers. While discussing the evidence from one of her cases, an officer asserted that the complainant could not have been raped because the evidence from the CCTV recordings did not show her emotionally distraught and traumatized. It should be noted that the sub-inspector made this judgement despite being aware of the complainant's testimony which stated that she had been drugged before the rape. Since this reaction did not match the real rape stereotype, it was judged to be a fake case.

5.1.4 Definition of Rape and sexual violence for police officers

Officers' understanding of rape was primarily influenced by legal factors, along with social and cultural factors. Given that the law (2013) recognizes sexual violence when it involves the use of force by the perpetrator, the officer's understanding was limited by this narrow legal conceptualization of the crime. Hence, it's not surprising that police officers too look for evidence which support the definition delineated in the 'Rape Law'. The law also turns the concept of consent over its head with Exception 2 of section 375 which disregards marital-rape as a crime. This has implications for how the officers understand the idea of rape and sexual

violence. SV and rape husbands, and sexual partners by extension, are not considered as rape. This in turn negatively affects their judgement when classifying a case as fake or authentic.

5.2 Victim Blaming

In cases where the officers acknowledged the incidence of sexual acts, instead of categorizing it as a rape case, they engaged in victim-blaming. Three out of five female officers stated that if the complainant knew the perpetrator well, then she should have been aware of his intentions and in cases where she did not know the perpetrator very well, she should have been more cautious. For them it was the complainant's fault because her naivety and/or promiscuous behavior led to the incident. Taking the example of a recent "fake" case, a sub-inspector told me that the complainant could not have been raped because she had chosen to drink alcohol in the company of other men, and had decided to go to a hotel room with one of them. The conclusion drawn by the sub-inspector reveals various assumptions.

First, alcohol consumption and consent to visit an acquaintance in a hotel room were equated with consent to have sex. This implies that women who spend time in the company of men who are not related to them by birth or marriage are 'asking for it'. Second, her character was judged on the basis of her decision to partake in drinking and sharing private spaces with the opposite sex. Third, she believed men by nature are more sexual than women and it is hard for them to control their sexual urges. It would not be wrong to say that her rejection of rape authenticity was accompanied by the conflicting judgement of victim blaming. The officer's statement not only reveals her acceptance of rape myths but also brings out the deep-rooted hold of patriarchy over women's minds and bodies.

Given the narrative of fake cases, it is critical that we look at rape myth attitudes of police officers and examine their response to complainants of sexual violence, which support this narrative. Their responses point to a lack of victim credibility, and/or victim-blaming, which

in turn affects their judgements about the authenticity of the crime, thereby also influencing their investigation and decisions regarding the case.

Conclusions and Policy Implications

Following the 2012 gang-rape case, the Delhi government responded by introducing policies which encouraged women to report sexual violence crimes. Delhi Police partnered with NGOs and mental health organizations to provide counselling to SV victims, during the registration and investigation phase. A standing order was issued which requires police officers to file chargesheet within 20 days of registering an SV complaint. Now, the officers are expected to be empathetic to the victims. Under media and public pressure, the central government amended laws relating to SV and rape. The new definition of rape covers not just vaginal penetration but also oral, anal and other sexual acts, forced upon a woman. These changes in the law and policy, along with greater public awareness saw a substantial hike in the reporting rates in 2013, more than twice the number of cases reported in the previous year. Despite this hike, the proportion of sexual violence cases unreported remains significantly high. This research study was an attempt to find answers to this disturbing trend.

A critical discursive analysis of the Criminal Law (Amendment) Act 2013 shows that legal conceptualization of rape and sexual violence is far from just. It is informed by social and cultural construction of SV in a patriarchal society. On the other hand, the interviews revealed that officers' acceptance of rape myths is highly influenced by the legal framework, as well as their socio-cultural environment. In the absence of criminalization of marital-rape, officers are likely to discredit a complainant's account if she accuses her former or current sexual partners of rape or sexual harassment. In fact, the officers rape myth attitudes are mostly manifested as doubting the victim's credibility and/or victim-blaming. This often results in the officers dismissing a complaint as a fake case.

It also is possible that with the increase in reporting rates, the proportion of fake cases has also increased, and the experience of working on such cases has led to skepticism about the

authenticity of SV cases among the concerned officers. However, it does not justify officers' judgements about a case based on the victim's character, her credibility, alcohol-consumption or sartorial preferences, or her relationship with the accused. Not only is it ethically wrong, but it creates an enabling environment for officers to perpetuate rape myth beliefs, and in turn discourages real SV survivors from reporting them.

The high level of rape myth acceptance among police officers of Delhi, points to a need for advocating changes in the 'Rape Law' which not only criminalize marital rape but also recognize rape and sexual harassment as inherently violent in nature, instead of crimes which 'outrage the modesty of a woman'. In addition, there is a greater sensitization towards victims of SV. Although, numerous changes have been introduced in the way officers interact with the complainants, many officers are still found to doubt the credibility of the victim and the authenticity of such cases. Although intensive gender-sensitization might seem like the obvious answer as can be understood from the experiences of high-income countries like Australia and UK (Lonsway, Welch, and Fitzgerald 2001; Darwinkel, Powell, and Tidmarsh 2013), it should be noted that officers themselves admitted that such trainings have not been very helpful. Thus, before recommending any more trainings, it is crucial that additional research is conducted on the content and format of delivery of gender-sensitization trainings. Moreover, any future trainings should focus on changing the rape-myth attitudes of police officers, and changing their perceptions of victim-credibility, especially in cases of acquaintance rape and assault.

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Appendix (A)

The Criminal Law Amendment Act (section 354 & 375)

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

354A. (I) A man committing any of the following acts –

- (i) Physical contact and advances involving unwelcome and explicit social overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of the woman; or
- (iv) Making sexually coloured remarks

Shall be guilty of the offense of sexual harassment.

354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

375. A man is said to commit “rape” if he –

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or make her to do so with him or any other person;
- (d) Or applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First – against her will

Secondly – without her consent

Thirdly – with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt

Fourthly – With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married

Fifthly – with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly – with or without her consent, when she is under eighteen years of age

Seventhly – when she is unable to communicate consent.

Explanation 1 – For the purposes of this section, “vagina” shall also include labia majora

Explanation 2 – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1 – A medical procedure or intervention shall not constitute rape

Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Appendix (B)

Interview Guide

Demographics

Designation:

Age:

Gender:

Education:

Years in current position:

Previous designation:

Total years in the service:

Questions Guide

1. Can you tell us about your role as an inspector/sub-inspector? (*Probe: What does a typical day look like for you? What tasks/activities do you perform?*)
2. Before applying what kind of work did you expect to do as an inspector/sub-inspector? Is it the same as your expectations now? If not, how is it now?
3. To what extent do you think you are able to perform your role effectively? (0-100 %) (*probe: Can you tell us an instance where you were able/not able – depending on the answer- to perform your role effectively*)
 - a. (If less than 30) I want to understand, why would you rate yourself closer to zero? (*Probe: Can you tell us about the challenges you face that affect your work?*)
 - b. (Regardless of rating) I want to understand what would it take for you to rate yourself a 100? (*Probe: What needs to change for you to perform your goal more effectively?*)
4. I would like to understand the hierarchical structure in a police station. Could you help me with it? (*Probe: Who do you report to? And who reports to you?*)

5. What are the kind of decisions that you can take without permission from your senior and which kind of decisions require permissions?
6. Who is responsible for registering an FIR?
7. Can you walk me through the process of filing an FIR, in cases of sexual violence? (*probe: imagine I am a victim of sexual violence who has come to the police station. I see you and come to you asking for guidance. What would happen next? What are the steps?*)
8. In your experience how often is the procedure followed?
 - If **not**, then what according to you is the main reason? (*probe: the procedure is flawed? Or the responsible person doesn't have the time? Or the superiors do not prioritise it?*)
 - What should be done to encourage more women to report sexual violence crimes?
9. How frequently do you come across fake cases?
10. Can you give some example of fake cases that you have worked on? And some examples of a fake case?
11. What did you do when you had to work on fake cases? What decisions did you take?