

Attrition in Indian rape cases that fail to reach a verdict: going beyond 'conviction' and 'acquittal'

Arushi Garg

Background

The term 'attrition' as used in criminological literature generally refers to the process by which criminal cases fail to reach, or progress through the criminal justice system. For sexual offences, there are many points of attrition in the life cycle of the case before, during, or after the trial. For instance, under-reporting on account of the victim's unwillingness to identify her experience as sexual assault is one kind of attrition; so is the reversal of a conviction on appeal.

The vast discrepancy between the number of incidents of and convictions for rape has been subject to extensive academic analysis. In India, much of the focus has been on understanding the factors influencing relatively high acquittal (and low conviction) rates in rape cases, including this researcher's own doctoral work. Less attention has been paid to attrition that follows the complaint, but where there is neither conviction, nor acquittal.

Following complaint to the police, there are 5 ways the case can be concluded or suspended without reaching a verdict:

- a) Quashing of the First Information Report (FIR) – Section 154 of the Code of Criminal Procedure 1973 (CrPC) deals with informing the police about the commission of a cognisable offence, or an offence

for which the police can make warrantless arrests. This information is referred to as the 'FIR'. Under Section 482 of the CrPC, appellate courts are empowered to quash FIRs to 'prevent abuse of the process of any Court or otherwise to secure the ends of justice.' The accused in a rape case could approach the High Court requesting that the FIR be quashed.

- b) Accepting a Cancellation Report filed by the Police – Police investigation reports are forwarded to the relevant judicial officer (Section 173, CrPC) who must 'take cognisance' of the offence if the case is to proceed (Section 190, CrPC). In the event that the police determine that the evidence does not disclose the commission of an offence, they can file a 'cancellation report' or 'closure report' before the Magistrate, and release the accused if he is in custody (Section 169, CrPC). If the Magistrate accepts a closure report, and refuses to take cognisance of the offence (see *Abhinandan Jha v Dinesh Mishra* 1967 SCR (3) 668) this will terminate proceedings against the accused.

- c) **Discharging the Accused** – Once cognisance is taken of the offence, a Sessions Judge must frame charges against the accused (Section 228, CrPC). However, if after perusing the record, the judge finds that a criminal case is not made out, she is bound to discharge the accused (Section 227, CrPC) thereby bringing an end to any criminal proceedings.
- d) **Withdrawal of Prosecution**– At any point before the judgment is pronounced, the prosecution may, with the consent of the court, withdraw the prosecution against the accused (S 321, CrPC).
- e) **Unavailability of the Accused**– In the event of the accused's death, the criminal case against him terminates. In other cases, the accused may deliberately abscond to avoid the execution of a warrant against him. In such cases, the court can declare the accused to be a 'proclaimed offender.' When this happens, the case file is consigned to the Record Room, though legal proceedings can be revived if the accused is found.

Notably, it is a punishable offence for the police to refuse the filing of an FIR in a rape case (Section 166A, CrPC). Further, there is no way for the victim to withdraw the complaint once she has intimated the commission of a rape offence to the

police. While some offences can be settled out of court or 'compromised', rape is not one of them (Section 320, CrPC). Thus, once the complainant is in contact with the criminal justice system, the above five ways remain the only routes for attrition.

Research Question

This study will seek to identify the factors associated with attrition in criminal cases that fail to reach a verdict following the reporting of an incident to the police in India.

Methodology

Following an exhaustive literature review, the inquiry will be narrowed down to a single state within India, for which case files in rape cases will be sought from the relevant High Court. These files typically contain all the relevant evidence in the case, along with orders describing the progress of the case through the criminal justice system. Further, semi-structured interviews will be conducted with 10-15 people in the following categories to solicit their views on attrition: prosecutors, defence counsels, victims' counsels, judges and police officers.

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