

How India Fails Its Rape Survivors

[Puja Changoiwala](#) Tuesday, Sept. 24, 2019



Indian women hold candles and posters during a protest against two recently reported rape cases, in Ahmadabad, India, April 16, 2018 (AP photo by Ajit Solanki).

MUMBAI, India—In December 2012, in a case that generated international headlines, a 23-year-old physical therapy student was [gang-raped by six men on a bus in New Delhi](#). After 45 minutes of torture, the woman—dubbed Nirbhaya, or fearless, by the Indian press, which is prohibited by law from naming victims of sexual

assault—was thrown off the bus. Found in critical condition, [she died of her injuries](#) in a Singapore hospital less than two weeks later.

The tragedy brought national and international attention to the issue of sexual violence in India. Following Nirbhaya's death, [then-Prime Minister Manmohan Singh declared](#), “While she may have lost her battle for life, it is up to us all to ensure that her death will not be in vain.” He hoped that “the entire political class and civil society will set aside narrow sectional interests and agenda to help us all reach the end that we all desire—making India a demonstrably better and safer place for women to live in.”

The case prompted enormous [protests across the country](#). Millions mourned, and thousands took to the streets demanding justice for the victim, concrete reforms in the criminal justice system and strengthened legislation against sexual violence. In response, the government promised to bring about laws and steps that would ensure that “no other person, no other citizen of this country, has to go through or undergo the same kind of trauma” that Nirbhaya did, [as then-Home Minister Sushilkumar Shinde put it](#).

Four of the men who raped and murdered Nirbhaya were ultimately convicted and sentenced to death, in a high-profile trial that also generated international headlines. Their conviction was appealed all the way to India's Supreme Court, which [upheld the death sentences in 2017](#).

But despite their conviction and the Indian government's promises to tackle rampant sexual violence, seven years after a crime that shocked the nation and the world, little has changed. Yet another case of sexual assault, this time followed by a series of injustices and violence against the victim and her family, has once again provoked outrage across the country.

The case dates back to August 2017, when a teenage rape survivor in Unnao, a city in the northern Indian state of Uttar Pradesh, approached the police to report that she had been raped earlier

that summer by [Kuldeep Singh Sengar](#), an influential state legislator from Unnao and a member of the ruling Bharatiya Janata Party, or BJP. When the police refused to register the crime, the victim's family did not back down. For 10 months, they [pushed the police and local lawmakers](#) to investigate the case.

Instead, the police retaliated against the family, arresting her father on [false charges of possessing firearms](#) in early April 2018. To protest the lack of police action and her father's arrest, the victim attempted to burn herself to death in front of the home of Uttar Pradesh's chief minister in Lucknow, the state capital. Although she survived, [her father died in prison](#) the next day after sustaining multiple injuries.

After the survivor's self-immolation attempt and her father's death attracted national headlines, India's Central Bureau of Investigation arrested the accused state legislator, Sengar, for rape, criminal intimidation and abduction. He also [faces additional charges](#) because the victim was a minor at the time of the assault. He has [been in custody](#) ever since. Sengar and nine other suspects have also been charged with fabricating the case against the survivor's father and [carrying out his murder](#).

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But Sengar's arrest and imprisonment didn't put an end to the victim's suffering. This past summer, in late July, a suspicious car accident outside Lucknow killed one of the victim's aunts and a family friend, while leaving the victim, who is now 19 years old, and her lawyer seriously injured. Police suspected Sengar's involvement in the accident from behind bars, and are investigating him [for murder and criminal conspiracy](#).

Both the victim and her lawyer are still recovering from the accident in a New Delhi hospital, where she [recorded a video deposition](#) for Sengar's trial, which began on Sept. 11.

Rape is rampant in India. [According to a June 2018 poll](#) by the Thomson Reuters Foundation, India is the most dangerous country in the world for women. The most recent data from [India's National Crime Records Bureau](#) reveals that 38,947 cases of rape were registered in India in 2016—marking a 12.4 percent increase from the previous year. At that rate, a woman is raped in India about every 15 minutes.

But even those figures might be underestimating the extent of the problem. Sexual assault survivors in India face innumerable hurdles in seeking justice, from stigma and abuse when trying to register cases with the police to trial delays and violence against witnesses. Often, this process itself serves to traumatize the victims again, dissuading many from reporting the crime in the first place. According to one study, based on the Indian government's National Family Health Survey, an [estimated 99 percent](#) of rape cases in India go unreported.

Too Many Laws, Too Little Justice

The 2012 Nirbhaya case triggered a host of legal and policy reforms. In 2013, Parliament passed a new anti-rape act, which amended four major laws to make provisions relating to violence against women more stringent. Among other things, the [new laws expand the definition of rape](#); add stalking, spying and acid attacks to a list of specific crimes against women; and require jail time for police who fail to register assaults or who commit them themselves. They also require health care providers to provide free medical care and examinations to victims of sexual assault, and include a legal provision for survivors to receive some form of financial reparation. In March 2014, the [Ministry of Health and Family Welfare issued guidelines](#) to standardize medical and legal protocols for victims of sexual assault.

But five years after these policy changes, experts point to gaps in the fair implementation of legal reforms and guidelines for attending to survivors of sexual violence. A [report](#) in the Indian Journal of Medical Ethics concluded that “poor utilisation of funds, misguided focus on technologies in place of strengthening of institutions, and contradictions in the legal provisions” still pose challenges for addressing sexual assault in India.

“The implementation has not been as envisioned by the government,” Lakshmi Lingam, a professor at the Mumbai-based Tata Institute of Social Sciences and co-author of the report, told World Politics Review. “For example, the guidelines, which are in line with the [World Health Organization] guidelines, have clear instructions on medical evidence-gathering, and the kind of trauma-related support that should be extended to a victim when she approaches state entities. But we don’t see these being followed.”



Indians place candles at a vigil for a woman who was brutally raped and murdered in 2012, who

became known as Nirbhaya, or 'fearless,' in Hindi, in New Delhi, Dec. 13, 2013 (AP photo by Ajit Solanki).

The guidelines, Lingam added, strictly prohibit use of the controversial “two-finger test” to determine and establish an instance of sexual violence, which India’s Supreme Court has said “constitutes an arbitrary and unlawful interference with the survivor’s reputation,” [according to Human Rights Watch](#). They also prohibit examiners from commenting on victims’ past sexual experience or anatomy, a practice used to torment and humiliate rape victims in India, according to Lingam. Yet these practices continue. “This means that though the reforms are in place, authorities haven’t conducted the requisite training,” Lingam said.

Majeed Memon, a leading criminal defense lawyer and a member of Parliament, says that there is no lack of laws to prevent sexual crimes against women, or to ensure justice for survivors. “The problem is, there are too many laws, and too little justice.”

Challenges to Reporting Rape

The difficulty that sexual assault survivors face in registering police complaints is the first of many obstacles to holding perpetrators accountable in India. In 2013, Neha Awasthi, a 35-year-old transgender woman in Mumbai whose name has been changed to protect her identity, was abducted and held in captivity for two years. Confined to a dark room, she was regularly raped and gang-raped by 15 men. One night in 2015, she managed to flee the apartment where she was being held and found her way home. Within a few months of her escape, the same men once again abducted and raped her, she said in an interview.

“They were angry because I fled, and I knew they’d do it again, whenever they felt like it,” Awasthi told me. “I wanted to end my life. I was frustrated with my helplessness, with the ease with which they were able to get away with the crime.” Still, she said, “Approaching the police wasn’t an option. My parents believed that registering a complaint would only bring shame upon the family.”

Looking for support, Awasthi approached a Mumbai-based transgender rights NGO, the Kinnar Maa Trust, and told them what had happened. The activists encouraged her to go to the police to register a complaint.

But when Awasthi reported the incident, the police mocked her and turned her away. “I’d visit the police station regularly, begging cops to register my complaint, but they wouldn’t listen,” she recalled. “I was a joke to them.” After Awasthi sought out the National Human Rights Commission of India, the police were forced to record her complaint—two years after the 2015 assault. “It was too little, too late,” she said. “With the intervening time, medical evidence of my gang rape had been lost.”

Usha Vishwakarma helps run Red Brigade Lucknow, a women’s rights NGO based in Lucknow, and says she has encountered many instances where the police were reluctant to register rapes. In some cases, like that of the survivor in Unnao who tried to self-immolate to protest police inaction, the accused person is influential and can threaten or bribe investigators. Sometimes apathetic police just want to avoid cumbersome paperwork and are not committed to investigating and detecting crimes. Some police officers, according to Vishwakarma, make negative assumptions about the survivor’s character.

Vishwakarma named several cases of police officers not believing or discrediting rape claims: “A 13-year-old girl was raped in Lucknow, but the cops refused to register a complaint, saying that the rapist could be her boyfriend as she was a teenager. In another case, a six-year-old girl was raped by a 30-year-old man, who was living as a tenant in her house. But the cops did not record a complaint. And in a third case, six men gang-raped a woman, and yet, the perpetrators roamed about freely.”

“In each of these cases from Lucknow,” she added, “we had to organize protest marches, [and] approach the highest police authorities to get a complaint registered.”

In a 2017 report, [Human Rights Watch noted](#) that the Indian police do not always follow protocol when responding to rape allegations. Police have been known to “resist filing the First Information Report (FIR), the first step to initiating a police investigation, especially if the victim is from an economically or socially marginalized community. Police sometimes pressure the victim’s family to ‘settle’ or ‘compromise,’ especially if the perpetrator is from a powerful community.”

And according to Vyjayanti Vasanta Mogli, a transgender rights activist based in the southern city of Hyderabad, police are sometimes the perpetrators of violence themselves. Mogli recounted a case from four years ago, when a few police officers in Hyderabad detained a 32-year-old sex worker in a bid to rape her. When the police got the sex worker to the police station, they touched her inappropriately, Mogli said. When she protested, they assaulted her.

“The woman told the cops that she was HIV-positive. It was only then that they let her go,” Mogli said. “The following day, she tried registering a complaint against those cops, but in vain. Such cases, especially those against influential accused like police officers, hardly get registered. Survivors shy from it because they know it can get extremely dangerous for them.”

In many cases, investigations are also deliberately derailed. Ranjana Gavande, a lawyer and activist from the western state of Maharashtra, cited the case of a 45-year-old woman who approached a self-styled guru in the state’s Londh district. The woman’s husband had abandoned her, and she’d hoped the guru’s prayers would bring him back. Instead, the guru took her to a room in his ashram and raped her. The woman approached Gavande, who helped her register a complaint.

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women, the police are at times the actual perpetrators of rape.

“But even after the official complaint, they wouldn’t arrest the man,” Gavande said. “I had to approach the senior-most officers in the district to enable action against the 55-year-old accused.” Days later, according to Gavande, the police put him behind bars. But the investigation was riddled with irregularities. The police failed to record statements of key witnesses, nor did they put the woman’s medical reports on record. “They were trying to weaken the prosecution’s case against the accused,” said Gavande, “and they were successful. The courts acquitted the man for want of evidence.”

Legal Rights Flouted

In addition to often failing to effectively pursue cases of sexual violence against women, the police are at times the actual perpetrators of rape. During a pilgrimage in the northern state of Rajasthan in June 2014, Khushi, a transgender woman, and her seven friends were stopped by a policeman at the entrance to a shrine. He allegedly asked for a bribe to let them pass. Khushi, whose full name is being withheld to protect her identity, said in an interview that when she refused, the policeman grabbed her breast, asking her if it was real. An argument ensued, and the group was piled into a police van and driven to the Dargah police station in the city of Ajmer.

Khushi said that while the group was held in detention later than night, the same policeman dragged her from the cell to another room, where three of his colleagues were waiting. Three of them then took turns raping her, while the fourth filmed the attack on his phone.

“My cries for mercy did not move them,” Khushi told me. “They stopped only when one of their female colleagues rushed to my rescue upon hearing my wails.”

For the next four days, Khushi was kept confined to the cell with no medical assistance. When she was let out on bail six days after the ordeal, she managed to register the crime with help from influential LGBT activists. However, for five years, no legal action followed, while Khushi faced threats for having reported it in the first place.

Khushi knows now that her lawyer had been compromised. “My lawyer kept telling me that I needn’t appear for the hearings,” she said. “Since I live in Mumbai, I was relieved because I cannot afford the travel expenses. But policemen kept turning up at my home, threatening to kill me if I didn’t withdraw the case.”

In May of this year, Khushi was arrested when she went back to Ajmer to check on the status of her case. “They said I had disrespected the court by missing the summons issued in my name,” she recalled. “I realized my lawyer never passed these summons on to me.” In fact, the court responsible for trying the case had dismissed it over a year ago, Khushi said, “without any protest from my lawyer, or appeals against the judgement. My rapists have gone scot-free.”

Khushi’s case reflects the difficulty that rape survivors have in finding proper legal assistance. The 2017 Human Rights Watch report found that in none of the 21 cases they documented “did the police inform the victim of their right to legal assistance or offer legal aid.” The report went on to say that “all too often, Indian trial procedures have perpetuated harmful stereotypes. Biased and derogatory language toward sexual assault survivors is still too often used in courtrooms not only by judges but by defense lawyers. Effective legal assistance for survivors could help to address such bias.”

The Unnao survivor, for example, is the key witness in her rape case, and [yet her assigned bodyguard was not present](#) at the time of the July car crash that nearly killed her. Her family reports they have [filed 35 complaints](#) with the police in recent months, stating they feared for their lives, even allegedly sharing videos of Sengar's henchmen threatening them. However, local police declared their fears "unfounded," stating that they "lacked merit."

Memon, the criminal defense lawyer and Parliament member, stated that intimidating and threatening witnesses is a "common fact" in India, ranging from direct threats to witness-tampering. "I have contributed to reports as well as raised questions about the efficacy of our witness protection schemes," he said. "There's nobody to care for victims or eyewitnesses. The whole system is a farce."

Yogesh Pratap Singh, a former senior officer with the Indian Police Services who is now a lawyer, added that "even though provisions exist for witness protection in India, they are ineffective."

"It is very easy for powerful accused to trace witnesses, and then intimidate or attack them," he said. "The only way to overcome these constraints is to have a quick trial, maybe which would conclude within a week."

Delayed Trials and Impunity

Indian criminal law currently requires trials for rape cases to be [completed within two months](#). After the Nirbhaya case in 2012, the Delhi High Court directed the state government to establish [six fast-track courts](#) to speed up trials in sexual assault cases.

Despite the law and the additional courts, however, rape trials are known to drag on for years. The delays are because the court infrastructure is "completely inadequate" to handle the workload, according to Singh. India has just [19 judges per 1 million people](#). "In general, our legal system is such that trials take several years, even several decades to conclude," Singh said. "We do have fast-track courts, yet legal pretexts are created to prolong the trial. The

constraints are overwhelming in nature, and a quick resolution does not seem possible.”

Another issue is the low rate of conviction in rape trials. According to data from the National Crime Records Bureau from 2016, India has a [conviction rate of 25.5 percent](#), compared to [34.5 percent](#) in the United States in 2017. India’s conviction rate is still higher than some other large developing countries; South Africa has a [conviction rate of 8 percent](#) in rape cases, while Bangladesh’s conviction rate is [just 2 percent](#).

Memon pointed to several reasons for the low conviction rate, from corrupt or poorly conducted investigations to reluctance by the victim to testify due to social stigma. Trials are also undermined by prosecutorial and investigatory bias, witnesses being bought or threatened, and carelessness on the part of trial judges. In other cases, the victim and the alleged perpetrator come to an informal compromise, financial or otherwise, which also undermines the trial process.

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Corruption of the judiciary also helps explain the poor conviction rate, said Satish Maneshinde, a leading criminal defense lawyer in India. “Prosecution agencies ignore the rights of victims, and even the judiciary plays its part in their nefarious activities.”

But at other times, Maneshinde added, victims simply give up. Many young survivors simply want to move on from the past. For others, their families do not support them in their fight for justice, for fear of stigma—another reason why so few cases are even reported in the first place. “Even victims give up on their fights,” he said. “They lose courage. The rape trial is more humiliating than rape itself.”

It was in this context that Nirbhaya's parents [publicly revealed their daughter's name](#), despite what the law says. "We want the world to know her real name," her father told a British tabloid in 2013, because he believed revealing it would "give courage to other women who have survived these attacks." Her [mother told a demonstration](#) in New Delhi in 2015, three years to the day of the rape, "I feel no shame in naming my daughter... It is the perpetrators of heinous crimes who must feel ashamed of themselves."

Khushi is not yet willing to give up on her fight. She has hired another lawyer to pursue a bribery complaint against the officer who arrested and later gang-raped her. Along with the rape complaint, Khushi has registered another police report that the officer who raped her also took more than \$500 from her purse.

"Even today, when I think of that day, I can hear my cries for help," Khushi said. "People keep telling me to withdraw the complaint, but I will not do that. No man should be able to get away with such a heinous crime this easily."

Puja Changoiwala is an award-winning independent journalist and author based in Mumbai. She writes about the intersections of gender, crime, social justice, development and human rights in India.