

Challenges in Securing Convictions in Rape Cases in Khyber Pakhtunkhwa

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ABSTRACT

This thesis examines why rape prosecutions in Khyber Pakhtunkhwa (KP) result in convictions in only about 15% of reported cases, despite the existence of substantive criminal laws and recent reforms such as the Anti-Rape (Investigation and Trial) Act 2021. Using a qualitative, doctrinal and socio-legal approach, it analyzes police records, case law, policy documents, and secondary literature to identify the systemic, cultural, and scientific barriers that undermine rape prosecutions. The study develops a “Triple-Helix” framework of failure: (i) the formal justice barrier, where delayed reporting, weak investigation, poor challans, and stringent evidentiary standards create an acquittal-friendly environment; (ii) the cultural barrier, in which Jirga-based settlements, honor (ghairat), stigma, and threats of retaliation displace cases from the formal justice system and produce coerced compromises; and (iii) the scientific barrier, marked by the absence of local DNA facilities, medico-legal incompetence, broken chains of custody, and lack of digital forensic capacity. Integrating these strands, the thesis argues that acquittals are structurally produced rather than incidental. Building on this diagnosis, it proposes a Triple-Helix Reform Framework comprising: institutional reforms (district-level Rape Crisis Units, forensic sovereignty with a 48-hour DNA turnaround, Digital Evidence Units); legal-judicial reforms (penalizing Jirga interference in non-compoundable offences, mandatory judicial sensitization, and realistic standards of corroboration); and social-cultural interventions (victim protection, “safe passage” reporting mechanisms, and honor-reframing awareness campaigns).

Keywords: rape convictions; Khyber Pakhtunkhwa; Jirga and honor; forensic evidence; criminal justice reform

INTRODUCTION

The Khyber Pakhtunkhwa justice system is not very successful in convicting rape cases since it only manages to do so in 15% of the cases (Ali, 2023). The awareness of these problems can help us to create more efficient ways of preventing rape cases and protecting the rights of the victims. The greatest problem with the reaction to rape cases is that the victims take excessively long to report (Patterson, 2011). The latency in reporting is an issue since official investigations require physical evidence and forensic materials to develop effective legal arguments. In one rape case in Abbottabad, the court released the defendant after three years, since the authorities took six days to record the crime, and evidence might have been destroyed. Community-based traditional dispute groups often endorse settlements between victims and offenders that lead to the dismissal of cases. In one of the court cases in the Buner district, the defendant was released after being mediated by a Jirga, even

though their crime did not qualify to be resolved in such a manner (Ali, 2023). Such practices are detrimental to the justice system and enable criminals to go free.

The social beliefs of people have a great influence on the frequency of rape cases that are not reported. Victims are subjected to strict cultural regulations and social pressure by society, and this is why they do not report sexual assault. Studies indicate that the actual rape cases in KP are ten times more than the records, since most victims are not aware of how to report their cases. Failure to report rape cases by the victims conceals the real scenario and denies them the justice they deserve. There are those cases that are closed because of poor investigation. We cannot investigate cases because there is no DNA testing facility in the province, said Additional IG Investigation Feroz Shah (A. Khan, 2020b). The necessity of rapid forensic examination prior to the destruction of evidence is significant in the development of a solid criminal case and the conviction of criminals. The criminal justice system operates under significant challenges. The criminal justice system is ineffective due to unprofessional prosecutors. The systems to ensure the safety of victims are few, and the decisions of the courts are affected by the expectations of the community. This usually leads to many defendants being released. According to the statistics provided by the Home Department of KP, 494 out of 581 accused were acquitted, and only 87 were convicted, which means that the conviction rate is about 14.97% (Ali, 2023). This conviction rate is low and indicates systemic problems in the legal system and its application (See Figure 1).

I believe that we should pay much attention to addressing these issues. We should establish effective mechanisms through which victims can express their cases in order to receive assistance without social stigmatization. Local DNA testing facilities allow police departments to handle evidence promptly and minimize the use of external laboratories. Victims are threatened by the community and criminals, and we need to develop safety measures to protect them. Education of police officers on the investigation techniques of rape cases and appropriate professional behavior results in better outcomes. Awareness campaigns in the community demonstrate to people how to assist the victims. This provides the victims with an environment where they feel safer.

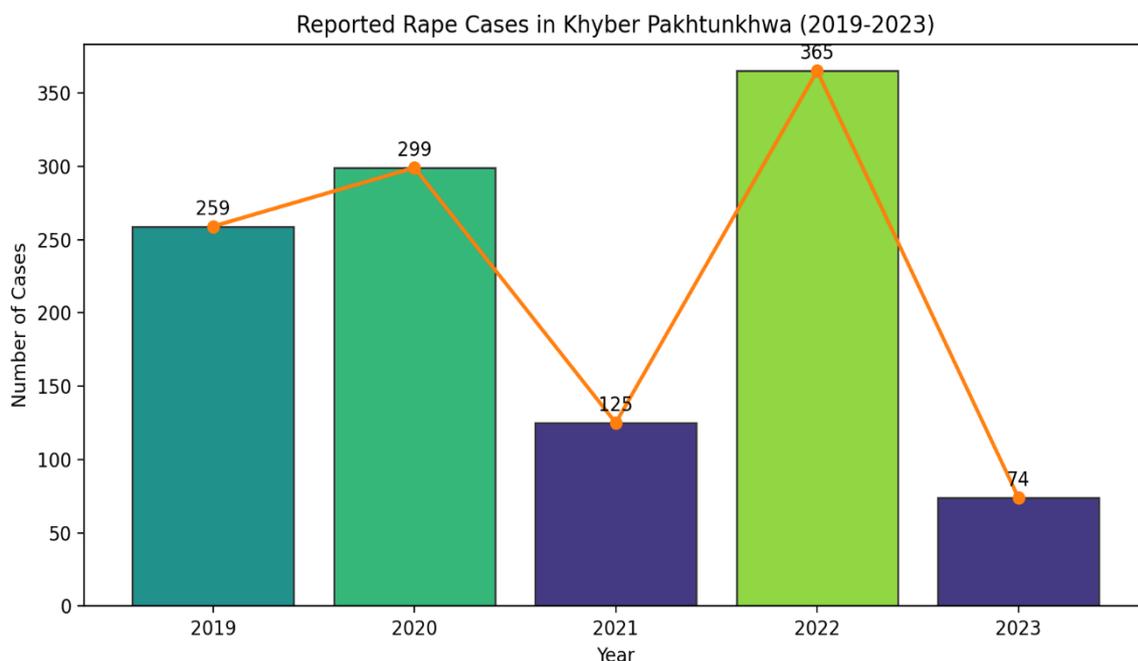


Figure 1 shows the reported rape cases in Khyber Pakhtunkhwa from 2019 to 2023.

The study is important as it assists in addressing significant issues that Khyber Pakhtunkhwa (KP) encounters in dealing with rape cases. KP finds it hard to deliver justice to rape victims since crucial

legal and cultural frameworks are hard to alter. Cases of rape are not solved because of many factors, such as late reporting of rape cases and poor forensic tests, but primarily because society pressures the officers to drop such cases during investigations. The fact that Jirga traditional settlements are used undermines the legal processes since they enable cases to be resolved outside the formal justice system. This study will examine the challenges that make the legal system unable to deal with rape cases appropriately by examining their specifics. The study will develop practical solutions through enhancing victim assistance networks, enhancing forensic services, and amending obsolete legal practices. The outcomes of the research will show the legal system issues faced by KP to propose how to modernize it and enhance the investigation of rape cases, and make the justice system work in favor of victims.

LITERATURE REVIEW

In Pakistan, unfortunately, there is a capitulated rape justice system. Maqbool (2022) concentrated on religious, social, and legal approaches to rape and found pitfalls and flaws in the existing rape legislation in Pakistan. Due to the increasing number of minors committing serious crimes like rape, factors such as age, predisposition, and intent should all be considered, rather than just setting a minimum age for the accused to prevent false rape accusations (See Figure 2 for the overall position of Pakistan in Rape Cases). The PPC may also invoke the Qadhf law. The long-term remedy is to transform the attitude towards women by educating and making concerted efforts to create gender awareness (Maqbool, 2022).

Human Rights Commission of Pakistan (HRCP) examined 22,000 rape cases reported in 2015-2021, and 11 new cases were reported every day. According to Cheema and Mustafa (2008) the Hudood Ordinance was the first law to acknowledge rape as a crime, and later laws were based on it. To overcome the shortcomings of the previous laws against rape, the Government of Pakistan acted by enacting the Anti-Rape (Investigation and Trial) Act 2021. Although the Act is the best way to protect rape victims, it has significant implementation issues and legal flaws. Among the issues with the Act, there is the lack of police force and prosecution training, the absence of Anti-Rape Crisis Cells and Special Investigation Units (Abida Abdul KHALIQ & Hammad Raza SULTAN, 2022).

Rape remains a grave issue in the whole of Pakistan, and in Khyber Pakhtunkhwa in particular. The government is unable to prosecute the offenders. The justice system in KP struggles to convict rape cases despite the presence of strong laws and institutions that are committed to the cause. These numbers alone require the criminal justice system in this province to overcome significant challenges in the state. The fight against rape cases has not resolved the current issues in the legal system to deliver justice to the victims. According to police records of KP, rape cases have been increasing steadily from 2015 to 2019, with 900 cases reported (A. Khan, 2020b).

Most of the victims do not report their rape cases due to fear of being judged and retaliated by the society. Activists estimate that KP police get 1/10th of the real rape reports due to the fear of social stigma and retaliation by the victims (Ali, 2023). The real figure of rape is not known since the victims are not ready to report their experiences, which misrepresents the actual effects on the victims and society. Law enforcement agencies find it difficult to present their case when they lose important evidence, and criminals are free to go on with their criminal activities.

Jirgas are traditional dispute-resolution councils that significantly influence the resolution of rape cases (Ahmed et al., 2024). These local community councils act as intermediaries between victims and perpetrators to seek solutions that undermine formal legal actions. (Röder & Shinwari, 2015a) talked about how the Jirgas compel victims to take monetary compensation from the offenders rather than seek legal justice. Moreover, Hanan and Shah (2017) indicate that the Jirga dispute-resolution system in KP does not align with the legal process, which completely complicates the conviction of rape victims to the fullest. Victims are unable to seek legal assistance because they do not know about support services, and the institutions simply will not come to their rescue. In KP, rape stigma prevents

victims of rape from receiving justice, and hence, sexual violence continues to occur. The trials are lengthy and cause victims to lose faith in the justice system, primarily due to the fact that they have to send samples to external labs. We must be smarter about this. We ought to react in a more tactical manner. The victims should be provided with means of reporting their cases safely without the fear of being criticized or other adverse responses in society.

Local DNA testing facilities enable police to process forensic evidence quickly and maintain the reliability of results in investigations. During the legal process, victims require special protection programs that are effective as they undergo the process. The police officers are supposed to be trained on how to deal with rape cases and treat the victims with respect (Sleath and Bull, 2002). The entire system response would require legal reforms, improved forensic equipment, increased victim support services, and community education on sexual abuse. KP needs to develop a comprehensive strategy that will unite legal and community resources to safeguard the survivors and win more cases.

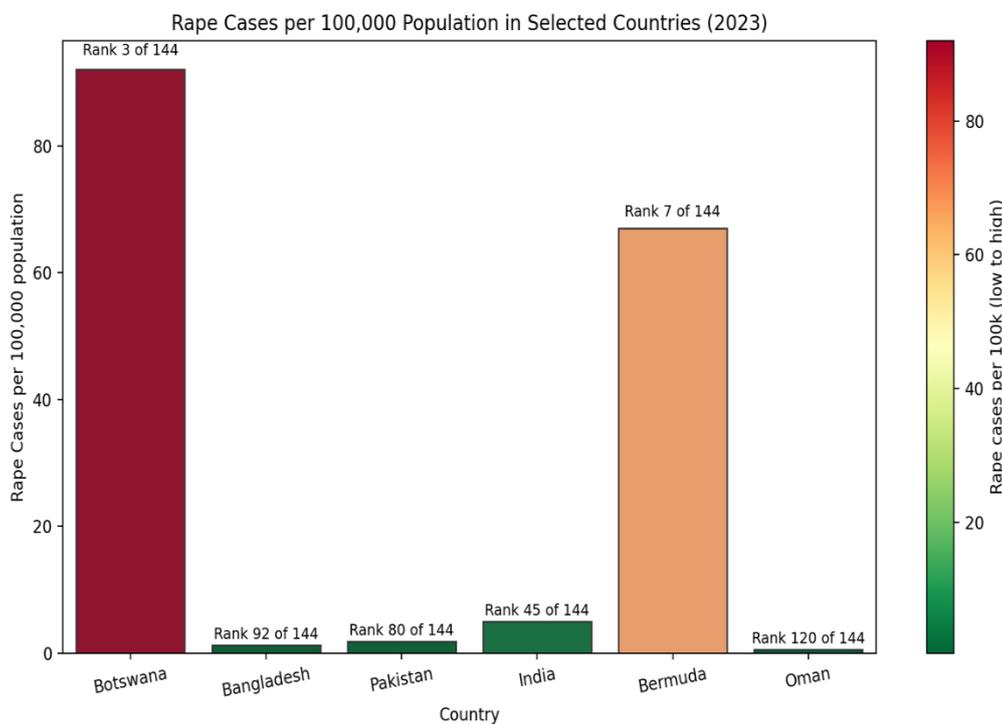


Figure 2 shows the Rape Cases per 100,000 Population in selected Countries (2023).

Source: (Ali, 2023).

RESEARCH METHODOLOGY

The study will use a qualitative approach to investigate the reasons behind low conviction rates of rape cases in Khyber Pakhtunkhwa (KP). The study is descriptive and novel, as it is aimed at the detailed examination of legal and procedural issues in the justice system of KP. The research will involve an in-depth analysis of crime records submitted by the Home Department of KP about the results and legal actions of rape cases. The purpose of this study is to define and outline the scope of the problem and to outline the current legal issues in the justice system. We shall begin by looking at the existing laws and previous studies to identify loopholes that weaken rape convictions. We conduct a qualitative analysis, DNA testing, and review of the forensic operations of KP to determine the effect of service delays on the outcome of rape trials. By examining individual case studies, we explore the effects of late reporting, societal norms, and poor forensic services on acquittals. Through digging deep, we transform our knowledge into tangible solutions to legal processes, forensic

upgrades, victim support, and encouraging early reporting of crime. Through qualitative research, we identify the systemic weaknesses of prosecuting rape and map out the possible changes that can be made to the legal system of KP.

The Investigation Crisis: Late Reporting and Evidence Decay

The police investigation is the most important step when a case of sexual assault is reported. It is the time when the physical evidence is obtained, the witness testimonies are documented, and the legal basis of the prosecution is established. In Khyber Pakhtunkhwa (KP), however, this initial move is not a solid base but a procedural sinkhole. As we have seen the statistics in Chapter 1, which indicate that among 581 accused who were prosecuted since 2019, 494 were acquitted, which means that the overall conviction rate is only 14.97% (see Figure 3). This catastrophic failure is not mainly because of the court ruling on the character of a victim, but a direct consequence of poor cases presented by the police. The lack of modern forensic and legal equipment, delays in the investigation process, and suspicion are some of the reasons that lead to such poor cases. The biggest factor that leads to the shocking reality of 85% of cases being buried is the investigation crisis (Ali, 2023).

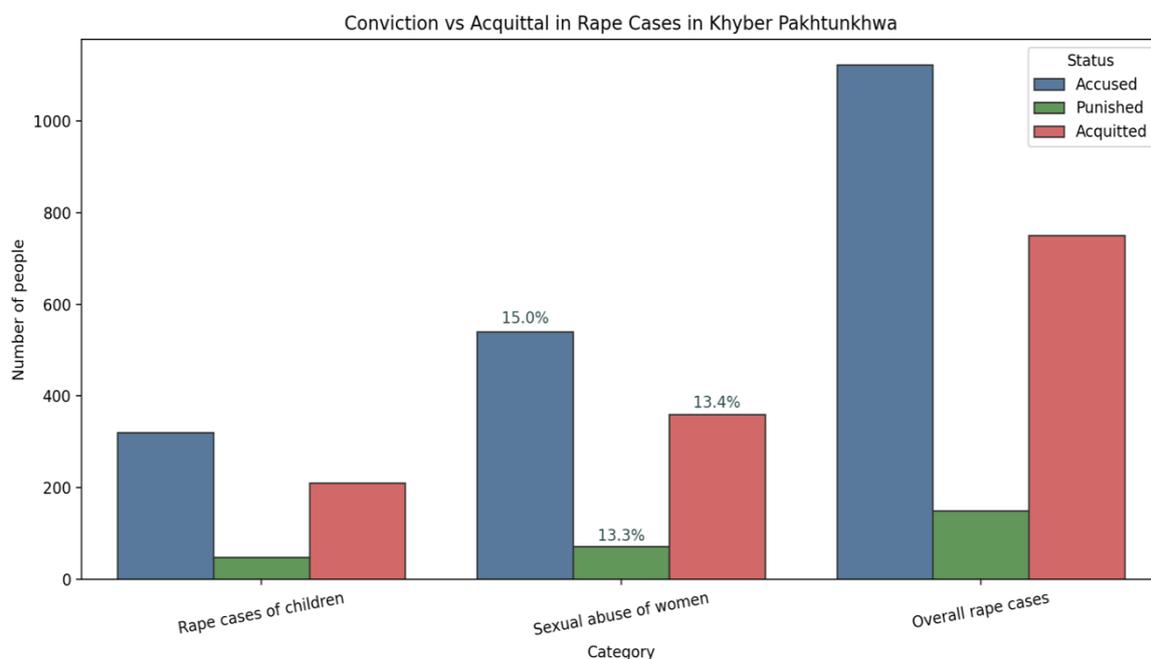


Figure 3 shows the Conviction v. Acquittal in Rape Cases in Khyber Pakhtunkhwa.

Weaponizing Promptness: The Making of Reasonable Doubt

This is where the law turns against the survivor. The legal system is based on the principle that the accused is innocent until proven guilty and the prosecution must demonstrate guilt beyond a reasonable doubt. Defense attorneys do not have to demonstrate that the accused is innocent—they just have to raise a reasonable doubt that the prosecution’s narrative is believable (Vesna Trajanovska & Natasha Peovska, 2017). In case of the FIR being delayed, the defense counsel can technically present the following to the court:

1. Fabrication: What was the reason why the complainant took six days? They must have used that time to come up with a fake narrative to frame the accused to seek revenge or gain something.

2. **Compromise Attempts:** The delay indicates that the family was attempting to make a deal with the accused (a compromise) and did not file the case until the negotiations collapsed. The case is not genuine, *per se*. This is directly related to the Jirga issue, which we will discuss later.
3. **Contamination of Evidence:** The evidence is contaminated since the victim was not under the legal chain of custody for six days. Any evidence gathered at this point is invalid.

The court in the case of Shabnam acquitted the accused after three years, specifically due to the fact that the FIR was filed six days later. This is a tragic irony— the hesitation, which is brought about by fear, shame, and social pressure (the very factors that make victims silent), is legally construed as an indication of dishonesty, and acquittal is required, and the social barrier that the victim has is turned into the legal advantage of the accused (Ali, 2023).

Poor Training, Poor Challans, Guaranteed Failure

This is unprofessional training that is dangerous to the case. Senior lawyer Shabbir Hussain Gigyani points out that in KP, a conviction is not possible because of the poor investigation of the police.

Take into account the key steps that were overlooked:

1. **Obsolete Methods:** Shah Saud notes that investigators still measure distances at crime scenes by counting steps instead of using modern tools like video cameras. This leads to poorly recorded crime scenes and disputable spatial relationships.
2. **Lost Evidence:** Lawyer Uzma Sattar emphasizes that since there are no witnesses to rape cases, high training is necessary to gather evidence on the scene. An untrained officer will overlook trace evidence (hair, fibers, soil, fluids) that might have been gathered, which will further undermine the case once it gets to court.
3. **Low-Quality Challans:** The document presented by the police to the court is called the challan (charge sheet)—it is the whole case brief of the prosecution. The poor investigation is a flaw, *per se*. The following situation can happen:
 - a) Omission of important medical or forensic information.
 - b) Referring mistakenly to the secondary accused alongside the primary accused, as PHC lawyer Abdul Wahab Tarkalani points out, complicates the case and increases the likelihood of acquitting all of them.
 - c) It has internal contradictions or procedural flaws that can be easily picked apart by the defense lawyer.

This weak challan is inherited by the prosecution team. This poor quality of investigation, as confirmed by Deputy Public Prosecutor Shah Saud, translates to a poor prosecution effort as well (Ali, 2023).

Judicial Discretion and Evidentiary Standards: The Final Barrier to Justice

If the police investigation (as discussed in Section 2.1) represents the first point of procedural failure in a rape case, the courtroom is the last—where the prosecution's weak case is systematically dismantled by judicial discretion and entrenched evidentiary biases. This section moves from police mistakes to the problems within the court system. It argues that courts often keep injustice going not

by breaking the law, but by using evidence rules and judges' opinions shaped by outdated morals and culture, making courtrooms unwelcoming for survivors.

The Critical Delay: Absence of Local DNA Testing Facilities

The rate of conviction in Khyber Pakhtunkhwa (KP) is low, and this means that there is a structural failure of the criminal justice process (Gul & Ali, 2018a); (Ullah & Daraz, 2024). Each level, including investigation, prosecution, and judgment, has failures. The police fail to investigate the cases properly, the communities fail to help the victims, and the courts fail to deliver justice by convicting the offenders. All these problems have a single large and unattended root cause, namely, the absence of modern and accessible forensic science infrastructure. The acquittal rate of nearly 85% is not just a statistic, but a failure of belief in the justice system. Since the legal system is struggling to work, the lack of a reputable DNA testing facility adds a scientific dimension to this crisis. In modern rape cases, where there are virtually no eyewitnesses and the victims are under immense social pressure and stigma, DNA evidence may be the only objective and unbiased evidence that a victim can rely on (Forr et al., 2018). Without timely and accurate forensic testing, the prosecution's case is weak and unsound, and the judges are left with no choice but to revert to the old and discriminatory ways of ensuring that the statement of the victim is corroborated. This is worsened by the fact that it is time-consuming to carry biological samples to other laboratories in other cities, such as Islamabad or provinces such as Punjab. These delays not only postpone the investigation process but also have the tendency to break the chain of custody, leading to contamination, degradation, or loss of valuable evidence. By the time the report is handed back, the evidence may not be up to the standards that are required in court. This makes it extremely difficult to convict even where the facts are clear.

Simply put, the failure to establish a functioning, adequately outfitted forensic facility in KP is not a minor administrative misjudgment—it is the nature of the scientific explanation of why the province has low conviction rates. The justice system will not be able to deliver justice to the victims, and criminals will not be punished without the application of forensic science in the justice system.

Summary of Findings and Conclusion

Having examined the legal, cultural, and scientific context in Khyber Pakhtunkhwa, we are now able to complete this thesis. The question that we asked at the beginning was easy but significant: why does the formal justice system in KP continue to fail in convicting people in rape cases? (Gul & Ali, 2018c). The solution is not straightforward, as we have demonstrated in previous chapters. It is a tale of a stagnant system. The police, courts, community, and forensic institutions are all problematic, and justice does not work in favor of the survivor. The KP crisis is not a mere failure of law enforcement. It also demonstrates that the state is not able to regulate physical evidence or social practices. This concluding chapter recaps the key causes, reiterates the key issue, and preconditions the Triple-Helix Reform Framework (Chapter 5.2). That framework aims to establish a powerful, combined, victim-centered route to justice.

Restatement of the Core Problem: The 15% Acquittal Anomaly

The most alarming statistic from this research is that only 15% of people accused of rape in Khyber Pakhtunkhwa since 2019 have been convicted by the courts. Contrary to this, 85% walk free. This "Acquittal Anomaly" is more than just a number—it is a direct measurement of the justice system's structural failure to meet its most fundamental duty. Considering social activists believe the real number of incidents could be ten times higher than reported, the 15% conviction rate is highly misleading. It means that for every 100 cases that occur, the state successfully prosecutes and convicts an offender in perhaps one or two. The other 98 or 99 cases are silently dismissed, compromised, or even not reported at all. The origin of this anomaly was found in one, toxic, judicial expectation—the requirement for corroboration. Because the court operates under the maxim *In dubio pro reo* (in doubt, rule for the accused), the entire system is structured to look for doubt, rather than certainty (Yustitia,

2021). The defense's main, and highly effective, defense is to manufacture this doubt. The great tragedy is that the framework of the investigation in KP, which is still in the framework of "90-year-old and 'rotten' police rules", is cooperating unknowingly with the defense. By neglecting to secure non-perishable evidence, by allowing delays, and by submitting flawed challans (charge sheets), the formal state apparatus gives the defense the precise procedural ammunition it needs to dismember the survivor's testimony and to secure acquittal. This vicious cycle is the main point of the thesis.

Synthesis of Primary Barriers: The Interlocking System for Failure

The analysis done in Chapters 2, 3, and 4 showed that the high acquittal rate of 85% is not due to a single problem. Rather, it is the predictable result of three different, but mutually reinforcing, barriers that must be dealt with simultaneously if any reform is to succeed. These barriers create a systemic gridlock, so that failure in one area is a sure sign of failure in all others.

Barrier 1: Procedural & Legal Flaws (Chapter 2) - The Collapse of the State Timeline

Chapter 2 revealed the internal structural flaws in the formal justice timeline, i.e., the areas where the police and judiciary ruin their own cases. The most important finding here was the "Time Gap Trap." The delay of the First Information Report (FIR), which is frequently filed after six days or more due to social intimidation, is immediately weaponized by the defense counsel. This delay is not just an administrative problem—it is a biological deadline. As the example of the 16-year-old student, Shabnam, demonstrated, a six-day delay is virtually a guarantee of the loss of critical, perishable biological evidence, making the medical report useless and rendering the only objective witness the prosecution may have. Furthermore, the research found that there is a Challan Quality Crisis. Due to poor training and a severe shortage of prosecutors (a vacancy rate of 172 positions was noted), police investigations are based on old methods (e.g., of measuring distances in "steps" instead of using videography) and submit weak, contradictory challans. Judges, based on the burden of proof, are left with conflicting or wrong case files, and they are forced to give the benefit of the doubt. The net effect is that the police system, by incompetence and lack of resources, offers the necessary legal loophole for the acquittal of the accused (Ali, 2023).

Barrier 2: Parallel Justice & Socio-Cultural Resistance (Chapter 3) - The Coercion Engine

Chapter 3 gave the context needed to understand why victims and their families do not participate fully in the state timeline established in Chapter 2. The finding here is that the weakness of the state is exploited by a powerful and parallel legal system—the Jirga. We concluded that the Jirga is a Case Displacement Engine. While the formal court process is slow, stigmatizing, and offers an 85% chance of failure, the Jirga is an immediate—if morally corrosive—solution. By playing on the deep-rooted cultural emphasis on 'Honour' (Ghairat) and fear of social ostracism (as experienced by the Kohat family who had to give up their life), the Jirga forces the victims to accept Diyat (compensation) or marriage (M. Khan, 2016). This barrier is so powerful that it makes the legal definitions of the state meaningless. When the Peshawar High Court accepted a compromise and marriage certificate in the Shagufta case, it showed that the social pressure cooked by the Jirga can legally nullify the non-compoundable nature of rape. The reason that the legal system fails is not because the crime is complicated, but because the victim's social and economic vulnerability leaves her open to pressure outside of the courtroom, and this pressure manifests itself inside the courtroom, in the form of a retraction or change of testimony, making her acquittal mandatory. The Jirga does not have to defeat the law—it only has to defeat the will of the witness.

Barrier 3: Scientific & Forensic Gap (Chapter 4) – The Scientific Vacuum

Chapter 4 laid the foundation of the underlying scientific deficiency that was the basis for the entire failure mechanism, the systematic Absence of Objectivity in evidence collection and analysis. The investigation proved that the absence of a local, dedicated KP Provincial DNA/Forensic Center is a

catastrophic bottleneck. By being forced to send biological samples to distant labs, the investigation breaks the Chain of Custody in a systematic way. This long journey exposes the sample to the risk of contamination and biological decay, and provides an easy avenue for defense lawyers to introduce "reasonable doubt." The contamination is not the act of a criminal; it is the inevitable consequence of a failed logistical process. Furthermore, the resulting Forensic Backlog (waiting months or years for a report) allows for Barrier 2. This delay is exploited by the community of the accused, as the extended social ruin of the victim's family leaves them extremely susceptible to Jirga compromise. The novelty here is the essential change—since biological evidence is so easily destroyed by time and poor medico-legal training, the system needs to prioritize persistent evidence. The integration of a Digital Evidence Unit (DEU) with a focus on mobile phone data, CCTV, and digital communications provides the opportunity to secure time-stamped, non-perishable corroboration that is immune to social stigma and physical decay (Nguyen, 2020). This digital evidence is the most effective antidote to the systemic failure of biological evidence collection.

Synthesis: The Ticking Clock of Systemic Paralysis (Novelty Conclusion)

The main conclusion of this thesis is that the low conviction rate is not because suspects aren't guilty, but because doubt is created by the combined effect of these three barriers:

1. Barrier 1 (Procedural Failure): The Time Gap that destroys perishable evidence is created by procedural failure.
2. Barrier 2 (Socio-Cultural Resistance): It uses the Time Gap and the Backlog to create maximum social pressure to push the case out of the formal state system into the informal Jirga system, to get acquittal by retraction rather than by judicial verdict.
3. Barrier 3 (Scientific Gap): It makes sure that even if the evidence is found, the Chain of Custody is so poor that the evidence is legally inadmissible, and the resulting Backlog prolongs the victim's suffering.

This cycle of failure feeding failure shows that a piecemeal approach to reform—such as hiring more prosecutors or banning the Jirga will not work. The solution needs to be as integrated, multi-dimensional as the problem. Only by simultaneously focusing on the Institutional capacity (fixing the police and the timeline), the Legal/Judicial mandate (protecting the witness and punishing compromise), and the Social/Cultural architecture (empowering reporting and countering stigma) can the state successfully dismantle the 85% acquittal anomaly.

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