

Legal Framework on Sexual Violence in Sri Lanka



Women and Media Collective
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Norwegian Embassy
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Policy Brief

BRIEFING NOTE

LEGAL FRAMEWORK ON SEXUAL VIOLENCE IN SRI LANKA: THE NEED FOR REFORMS

Police Statistics from Sri Lanka show that the conviction rates in cases of rape remain alarmingly low. On the ground, this translates to virtual impunity with regard to rape. Impunity enables sexual offenders to perpetrate sexual violence repeatedly with no fear of consequences, and prevents victims of sexual violence coming forward to report the crimes.

provided a useful explanation of 'consent'. While the Penal Code provision on 'Rape' does not cover rape when committed against a man, s.365B under which such a crime falls, does not provide men and boys the equivalent protection provided for women in cases of rape.

	2016 ¹			2017 ²			2018 ³		
	Cases recorded	Total disposed	Convictions	Cases recorded	Total disposed	Convictions	Cases recorded	Total disposed	Convictions
Rape	346	9	0	290	9	0	339	5	0
Statutory rape with consent	1394	11	0	1204	7	0	1199	10	0
Statutory Rape without consent	291	4	0	232	3	0	248	4	0

In Sri Lanka, the laws relating to sexual violence is contained primarily in the Penal Code which was enacted in 1883. Provisions in the Penal Code relating to sexual violence were amended in 1995, 1998, and in 2006. However, several concerns remain: The non-recognition of marital rape as a crime, the absence of a definition of 'consent' which is central to the understanding of sexual violence, and the inadequacy of protection for men in cases of rape, warrant substantive reforms to law. Marital rape of a woman has been recognized as an offence in Nepal, Bhutan, and Maldives in the South Asia region. The amendments to Indian Penal Code in 2013 which expanded the definition of rape to cover a broad range of acts of sexual violence,

In Sri Lanka, the evidentiary rule contained in s.155 of the Evidence Ordinance which permits the sexual history of a victim of rape to be brought up in the court, institutionalizes victim blaming. Victim blaming contributes to the impunity enjoyed by sexual offenders. As the victim's character is not a matter of question with regard to any other criminal offence, but only where rape has been committed against a woman, this law discriminates on the basis of sex.

An examination of decided cases show that judicial discretion has been used to circumvent the mandatory minimum sentence imposed in cases of statutory rape even where the perpetrator was over 18 years of age.

An inspection of the language in the judgements of decided cases show that gender-based stereotypes which are courtrooms⁴. This demands extensive judicial training to challenge gender-based stereotypes and reforms to legal education.

Another key concern with regard to the Sri Lankan law on sexual violence is the continued validity of the outdated law which criminalizes consensual sexual activity between same sex partners.

In 2018, the Indian Supreme Court read down the provision of the Indian Penal Code which criminalized sex between same sex partners⁵. The Indian Penal Code was also enacted during the British rule, similar to the Penal Code of Sri Lanka. The British Parliament decriminalized same sex sexual activity in private in 1967. Sex between same-sex partners has also been decriminalized in Nepal. The process to reform the law has commenced in Bhutan.

In a recent case, Justice Aluwihare noted that, *'The contemporary thinking, that consensual sex between adults should not be policed by the state nor should it be grounds for criminalization appears to have developed over the years and may*

"History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that homosexuality is a completely natural condition, part of a range of human sexuality".

be the rationale that led to repealing of the offence of gross indecency and buggery in England⁶. Examining the scientific facts which affirm that whether one's sexual orientation is determined by genetic, hormonal, developmental, social and/or cultural influences, or a combination thereof, LGBT people experience little or no choice about their sexual orientation the Indian Supreme Court stated the following:⁷

In view of the above, following reforms are recommended to substantive law and procedure.

- Expand the definition of rape to include rape using an object or part of a body of the perpetrator or another person. Recognize consent as an informed choice and develop a definition of rape based on the absence of consent
- Criminalize marital rape
- Address discrepancy in law and practice with regard to statutory rape
- Amend s.155 of Evidence Ordinance to render sexual history of women victims of rape inadmissible in cases of rape
- Repeal s.365 and s.365A to decriminalize sex between same sex partners
- Enhance protection for men and boys with regard to sexual violence including rape
- Address gender-based stereotypes and biases through judicial training and reforms to legal education

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3. Grave Crimes Abstract for the year 2018 (2019 Sri Lanka Police) Available at https://www.police.lk/images/crime/2019/disposal_of_grave_crime_policedivision.pdf
4. Sandani Yapa Abeywardene, 'Images, myths and Stereotypes: A Critical Discourse Analysis of the Construction of the 'female' in Judicial Pronouncements on Rape in Sri Lanka', 37-44, LST Review: Queering the Law, <https://www.forum-asia.org/uploads/wp/2017/03/LST-Review-Queering-the-Law-Dec-2016.pdf>
5. *Navtej Singh Johar & others vs. Union of India* (2018) W.P. (Cri) No 76 of 2016 Available at https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf
6. *OIC Maradana v. Galabada Payagalage Sanath Wimalasiri*, SC Appeal No 32/2011, 11-12 Available at http://www.supremecourt.lk/images/documents/sc_appeal_32_11.pdf
7. At page 50

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