



FROM SILENCE TO SUICIDE: ADDRESSING THE PROCEDURAL FAILURE IN THE CRIMINAL JUSTICE FRAMEWORK IN PROTECTING RAPE VICTIMS AND ENSURING CULPABILITY OF PERPETRATORS IN SRI LANKA

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In recent time, sexual violence remains a deeply rooted problem in Sri Lanka, with an alarming rise in rape cases with disturbing increase in suicides among victims. Despite the stringent statutory penalties for rape, these measures have not translated into effective deterrence or justice for survivors. This research critically examines the factual and legal barriers in Sri Lankan criminal justice framework that hinder the establishment of perpetrator culpability and successful prosecution of rape cases. This research identified key challenges including the rigid evidential standards, the adversarial nature of victim testimony, and the frequent use of aggressive cross-examination which may contribute to secondary victimization. Additionally, procedural delays and inadequate investigative capacities compromise the delay in justice and further discourage victims from speak-out about the offence. This research article analyses the main issues in criminal justice procedure. This research reviews the existing legal framework in Sri Lanka (for the purposes of this research, discussions on marital rape and statutory rape are excluded) and analyse the necessary reforms by referring to Indian jurisdiction, chosen due to its common law foundation and similar socio-legal context, where legislative and procedural innovations like rape shield laws, presumptions regarding consent, and specialized fast-track courts have improved conviction rates and enhanced victim protection. Further this research argues that Sri Lanka must adopt a holistic approach that encompasses trauma-informed legal practices, streamlined trial processes and the modernization of evidentiary rules to place greater emphasis on victim testimony without compromising fairness to the accused. Further, this research article discusses the critical importance of integration of psychological support services and witness protection strategy into the legal process to address the hidden social and emotional dimensions of rape. By doing so, our justice system can move beyond punitive responses and work toward preventing the tragic indirect outcomes of silence and suicide among victims. This research aims to inform legal professionals, policymakers and human rights advocates about necessary reforms to create a more effective, just and compassionate legal environment for survivors of rape in Sri Lanka.

Keywords: perpetrator culpability, prosecution of suspects, procedural reforms, rape victims

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INTRODUCTION

There is a growing rape issues in Sri Lanka, as shown by the rising number of recorded cases. On the other hand, there is tragic impact on survivors, such as a suicide case.

Even if there are laws that impose severe punishments on sexual offenders, the continued occurrence of these crimes highlights the issue of the extent to which the existing judicial system addresses the justice. The issue extends beyond statutory laws to embrace structural deficiencies that inhibit the establishment of culpability of the perpetrators, delay in justice, and also fail to adequately protect the victims from further traumatising during investigations and trials. This research aims to discuss these systemic shortcomings by analysing the statutory legal and procedural obstacles that prevent effective prosecution of rape cases and contribute to victims' silence and despair. By exploring these challenges, this article intends to highlight the urgent need for comprehensive legal reforms that address procedural efficiency, evidentiary standards, and victim protection mechanisms in the post-victim stage to foster a more effective and just legal system.

LITERATURE REVIEW

Sri Lankan statutory framework governing rape is primarily derived from laws of colonial-era, notably both the Penal Code and the Evidence Ordinance have been criticized for their outdated and inadequate response to the need of modern era. Scholars such as Prof. Savitri Goonesekere have argued that 'the Sri Lankan legal system continues to reflect patriarchal assumptions about female sexuality and credibility, particularly in its treatment of victim testimony and corroboration requirements'.¹ Further, the judicial expectation for evidence in rape cases (both medical or physical evidence) is not only unrealistic but also undermines the credibility of victims whose experiences fall outside such narrow evidentiary standards.²

1 Savitri Goonesekere, '*Violence, Law and Women's Rights in South Asia*' (SAGE Publications, 2004) 128 < <https://www.jstor.org/stable/41260831> > accessed 01 April 2025.

2 Nandini Gunewardena, 'Sexual Violence in Sri Lanka: Law, Attitudes and Reform' (2017) *Sri Lanka Journal of Social Sciences*, Vol. 40, No. 2, pp. 87–95 < <https://sljss.sljol.info/search?q=attitude> > accessed 01 April 2025.



Legal scholars have also highlighted the issue of secondary victimization, where victims are re-traumatized through aggressive cross-examination, lack of privacy in courtrooms and delays in justice.³ Reports by Women In Need (WIN) and the United Nations Population Fund (UNFPA) have revealed that many victims withdraw complaints or suffer psychological harm due to the confrontational nature of the legal process.⁴ Furthermore, the lack of a rape shield law unlike in India (Section 146 of the Indian Evidence Act)⁵ or the UK (Youth Justice and Criminal Evidence Act 1999)⁶ means that the social and sexual history of victim can still be weaponized to discredit her by damaging her character in Sri Lankan courts. While some academic works recommend the establishment of specialized courts for sexual violence cases including rape matters few provide detailed proposals on reviewing the evidentiary laws to support victim testimony while preserving fairness to the accused.⁷

Most existing literature focuses on systemic delay but does not offer an integrated legal reform which modernize evidentiary standards and embedding a practical mechanism for victim protection. This research article not only aims to bridge that gap by analysing how Sri Lanka's current evidential framework contributes to legal failures in rape cases but also propose victim centric protection mechanism by proposing reforms informed by comparative jurisprudence.

METHODOLOGY

This research article adopts a qualitative, doctrinal methodology, which is particularly suited for examining legal procedures and statutory frameworks. By analysing Sri Lankan statutes, including the Penal Code, Evidence Ordinance and Judicature Act, along with relevant case laws, this research identifies how existing legal provisions contribute to procedural failures in rape cases, such as delays, evidentiary challenges, or gaps in victim protection. Moreover, a comparative study of Indian jurisdiction highlights alternative procedural mechanisms and judicial practices that could inform improvements in Sri Lanka.

Additionally, academic journals, legal reports, legal commentaries and international human rights documents provide critical insights into the real world impact of procedural shortcomings on victims, conviction rates, and social concerns. These

3 Wijeyadasa Rajapakse, *Criminal Procedure and Sentencing in Sri Lanka* (Stamford Lake, 2016) 201.

4 UNFPA and WIN, *Justice for Victims of Sexual Violence: Gaps and Challenges* (Colombo, 2021) 15–18 < <https://srilanka.unfpa.org/en/topics/gender-based-violence-22> > accessed 02 April 2025.

5 Section 146, Indian Evidence Act, No. 1 of 1872 (as amended).

6 Section 41-43, Youth Justice and Criminal Evidence Act 1999 (UK) < <https://www.legislation.gov.uk/ukpga/1999/23/contents> > accessed 02 April 2025.

7 Women and Media Collective, *Beyond Law: Access to Justice for Survivors of Rape in Sri Lanka* (Colombo, 2019) 34. < <https://womenandmedia.org/wp-content/uploads/2021/11/Laws-relating-to-rape-in-South-Asia-A-comparative-analysis-English.pdf> > accessed 02 April 2025.



sources ensure this research not only identifies legal deficiencies but also contextualizes them within broader realistic social concerns.

BRIEF OVERVIEW OF THE OFFENCE OF ‘RAPE’

The current social structure is centered on an archaic patriarchal ideology which has been a cause of oppression of womankind in Sri Lanka.⁸ Sri Lankan law defines rape under Section 363 of the *Penal Code*, focusing on non-consensual sexual intercourse by a man with a woman under specific conditions.⁹ According to this section, rape involves intercourse “without her consent”¹⁰ or obtained by coercion through fear of death or hurt. Further, the law covers circumstances where consent is procured under a mistaken belief about lawful marriage or when the woman is mentally incapacitated or severely intoxicated, rendering her incapable of consenting.¹¹ Thus, it is obvious that this section demonstrates the importance of ‘voluntary consent’.

Further, sentence for rape is provide under section 364 of Penal Code. Accordingly, whoever commits rape shall be punished with rigorous Imprisonment for a term not less than seven years and not exceeding twenty years and with fine and shall in addition be ordered to pay compensation of an amount determined by court, to the person in respect of whom the offence was committed for the injuries caused to each person.¹²

DISCUSSION AND RESULTS

The increasing cases of rape in Sri Lanka, despite the existence of codified statutory laws such as Sections 363–365 of the Penal Code, underscores the inadequacy of the current procedural legal framework in delivering justice to victims. Although statutory provisions prescribe severe sentences for perpetrators, which may extend up to 20 years of rigorous imprisonment and fines, these measures alone have failed to deter rape cases in Sri Lanka. This sheds the light not merely a legislative gap, but a systemic failure in the administration of justice.

Procedural delays embedded within the judicial system is one of the major barriers to effective rape prosecution. The average rape trial in Sri Lanka can extend to several years, discouraging victims from pursuing justice. The delays are combined by lack of forensic and medical infrastructure, leading to compromised evidence.

8 Muthukuda Niriella, ‘Inadequacy of Legal Protection for Rape Victims: Analysis of High Court Cases in Negombo Division of Sri Lanka’
<https://www.researchgate.net/publication/342623471_Inadequacy_of_Legal_Protection_for_Rape_Victims_Analysis_of_High_Court_Cases_in_Negombo_Division_of_Sri_Lanka> accessed 05 April 2025.

9 Section 363, Penal Code Sri Lanka, No. 2 of 1883 (as amended).

10 Ibid.

11 Ibid.

12 Ibid, section 364.



Consequently, this causes a weakened prosecutorial case. The evidentiary burden (burden of proving) is often unfairly placed on the victim, requiring corroborative evidence or physical injuries,¹³ despite global recognition that lack of physical injury does not invalidate a rape case.

Further, the secondary victimisation of surviving victims during police investigations and cross examination proceedings remains a significant concern. Victims are often subjected to discrediting character, humiliating cross-examinations, and exposure to their perpetrator in open courtrooms without adequate protective mechanisms. Although the Judicature (Amendment) Act No. 9 of 2018 introduced High Courts-at-Bar and special procedures for expediting certain trials, such provisions are rarely applied in rape cases, leaving survivors vulnerable.¹⁴

Another hidden issue is the absence of a victim-centric procedural framework. Although Sri Lanka is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the domestic implementation of principles of CEDAW, particularly regarding the safety and dignity of victims during legal proceedings,¹⁵ is not properly executed. There are limited proper counselling services, no national victim protection mechanism specifically for sexual offences, and negligible coordination between legal and medical support services.

The research reveals that these practical issues regarding structural and procedural deficiencies contribute directly to victim to remain silent and even to commit suicide. The social stigma attached to post rape stage, combined with the fear of legal procedures, compels many surviving rape victims to intentionally avoid or abandon the pursuit of justice. This contributes to a culture of impunity, and this may also emboldens perpetrators.

Despite these procedural and systematic challenges, recent case law suggests a growing awareness. In *Attorney General v H. M. Nandana*,¹⁶ the court emphasised the fact that there is a need to treat victims with due dignity and proper care during proceedings.¹⁷ Further, in *Premasiri v. Attorney General*¹⁸ the Court held that while corroboration is not required before convicting in a rape case, the judge must consider it as a matter of caution. Thus, this can illustrate as a progressive judgment which is framing towards the correct path but, has yet to be converted as a consistent judicial practice.

On the other hand, in India, rape shield laws have been established to prevent the introduction of a victim's sexual history during trial proceedings, aiming to protect

13 *Wimalasena v The State* [2002] 1 SLR 50.

14 Judicature (Amendment) Act No. 9 of 2018.

15 UN CEDAW Committee, Concluding Observations on Sri Lanka (2017), CEDAW/C/LKA/CO/8.

16 *Attorney General v H. M. Nandana*, HC Colombo Case No. 292/2017.

17 *Ibid.*

18 *Premasiri v. Attorney General*, [2006] 3 Sri L.R. 107.



the victim's dignity and ensure a fair trial.¹⁹ Sections 53A and 146 of the Indian Evidence Act prohibit the use of a victim's previous sexual experiences to challenge their credibility or consent in cases of sexual offences.²⁰ These provisions were reinforced following the 2012 Delhi gang rape case, leading to the enactment of the Criminal Law (Amendment) Act, 2013, which introduced additional safeguards for victims.²¹

CONCLUSION AND RECOMMENDATION

In conclusion, the findings of this research emphasize that the rape epidemic in Sri Lanka is not solely a consequence of moral aspects in social communities or individual criminality, but of a systematic failure in our justice system which fails to function as a safe and reliable system for victims. Addressing this issue, requires more than punitive legislations; it demands comprehensive reforms to enhance the procedural efficiency, standards of evidence, victim protection. Therefore, as a first step, author proposes that Sri Lanka needs to adopt rape shield laws. Without such reforms, the law will continue to fail to protect the victims it is meant to protect, and we as Sri Lanka will lose women's voice against offenders and the justice will never hear the silent battles of the victims.

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