

Why Accessing Justice is Challenging for Victims of Sexual and Gender Based Violence?



**WOMEN
IN NEED**
2019



Women In Need

Women In Need (WIN) is a local, non-profit and non-governmental organisation dedicated to addressing issues of Gender Based Violence (GBV) faced by women and girls in Sri Lanka. WIN has come a long way since its inception in 1987 gradually and steadily increasing its services, and expanding target locations to be able to ensure the safety of women and girls thereby contributing to the creation of a violence-free society that values and respects women's rights.

WIN is located in six districts in the country. WIN currently has six crisis centres, eight help desks in police stations and in hospitals. WIN's centres are located in Anuradhapura, Colombo, Badulla, Batticaloa, Jaffna, and Matara.

WIN has a team of 15 lawyers and 24 counsellors, who specialise in the field of gender based violence and deal with thousands of GBV, specifically domestic violence, cases every year.

Our team is driven by the passion to strengthen and protect victims dealing with violence and abuse, ensuring strict confidentiality of identity; while also striving to ensure that the violence is not repeated, and the victims' rights are protected.

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**Compiled by Women In Need
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Acknowledgement

This report is compiled by Women In Need (WIN) based on the experiences and ‘on the job study’ of WIN’s cases. WIN possesses an extensive history of experience in handling sexual and genderbased violence cases (SGBV) over a long period of time.

This report covers the experiences of SGBV victims and survivors in the justice seeking process. It also includes some of the challenges they face in accessing justice, as well as the positive practices of the formal justice sector in dealing with SGBV cases.

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Contents

INTRODUCTION6

KEY FINDINGS7

Victim survivors’ experiences prior to accessing the formal justice system7

 Most of the abusers, the husbands, were alcohol addicts7

Victim survivors’ experiences during court proceedings10

 Behavior and Response of Judges10

 Behavior and Response of Lawyers11

 Behavior and Response of Court Staff12

Victim survivors’ experiences following court proceedings13

RECOMMENDATIONS14

INTRODUCTION

Violence against women is widespread in Sri Lanka. The grave and brutal nature and the extent of harm and trauma caused to women by such violence in the recent past is alarming. An examination of the reported incidents of sexual and gender-based violence against women reveal that sexual harassment, rape, cyber violence and domestic violence are on the increase within the family unit and in the community at large.

Violence against women or the threat of violence, are means of maintaining and re-enforcing women's subordination. Prevailing patriarchal norms, gender stereotypes and individual negative attitudes influence and re-enforce gender-based violence. Unequal power relations, a lack of awareness, insensitivities and negative attitudinal perceptions of law enforcement authorities are the main contributors to the present status quo. These factors prevent many victims from reporting such violence or even seeking medical, psycho-social or legal assistance.

The Constitution of Sri Lanka endorses that men and women are equal before law and does not permit discrimination based on sex. The domestic legal framework provides both constitutional and other mechanisms that identify rights of women and mechanisms for redresses when these rights are violated. However, questions arise on the actual implementation of these nondiscriminatory provisions when considering the daily reports of various forms of violence committed against women and girls.

Sri Lanka is also signatory to many of the international treaties which govern the rights of women. These call for states to take measures to ensure substantive equality and ensure that all individuals can access competent and impartial judicial and adjudicatory mechanisms equally without discrimination. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) further recognizes that women's access to justice is key to the realization of all rights. Although Sri Lanka is signatory to this Convention, it has failed, in instances, to fully comply with the obligations contained therein.

Women In Need (WIN) Sri Lanka has been providing counselling and legal services to women victim survivors of sexual and gender-based violence for over three decades. This vast experience has shown that there are many social, cultural and economic barriers that prevent women victim survivors from disclosing the abuse they face or in seeking assistance and justice. Victim survivors of gender-based violence tend to seek traditional and informal mechanisms of redress rather than formal legal redress mechanisms, which is only looked at as a last resort. In addition to this, institutional barriers including long delays in completing cases, lack of adequate courts, lack of adequate legal aid services and lack of empathy by those administering formal justice have also caused victim survivors to lose faith in seeking formal legal redress.

This report documents and compiles victim survivors' experiences of their interactions with formal legal redress mechanisms. Moreover, some of the key observations carried out by WIN lawyers and few private lawyers pertaining to the level of gender sensitivity among the formal justice sector comprising of the judiciary, prosecutors and lawyers, in selected courts of law including Colombo, Matara, Galle, Jaffna and Mullaitivu also are compiled here. WIN intends to stress the importance and responsibility of the formal justice system and its actors to ensure fair and equitable justice to women and girl victim survivors of SGBV, and to highlight the role the formal justice system must play in ensuring institutional and attitudinal reform in the formal justice system to address issues of SGBV against women and girl victim survivors.

KEY FINDINGS

Victim survivors' experiences prior to accessing the formal justice system

Women and girl victim survivors of sexual and gender-based violence (SGBV) in Sri Lanka face many challenges before they make the decision to seek legal redress for their grievances. The following points have been compiled through the countless cases that come to WIN each year and help understand the challenges and issues faced by these victims.

1. Most of the cases observed were domestic violence cases which showed severe forms of physical harassment, inhuman treatment, emotional violence and sexual violence caused by husbands towards the victims.
2. Most of the abusers, the husbands, were alcohol addicts.
3. Many victims who approached WIN for services stated that sexual violence also included marital rape, but that they have no way of getting redress, legal or otherwise, especially as marital rape is not recognized as a criminal offence in Sri Lanka.
4. It was found that severe forms of domestic violence are experienced by women in Jaffna and Mullaitivu for long periods. Notable in Jaffna and Mullaitivu districts is that such violence was committed not only by the husbands but also by close relatives.
5. Pregnancies in unmarried women and teenage pregnancies are common in Jaffna and Mullaitivu, with increasing cases of rape, incest and illegal abortions being reported to WIN.
6. Prevalence of SGBV against women and girls in the North and East has a close link to the civil war which lasted for three decades. Whilst all people in the Northern and Eastern

Provinces of Sri Lanka were badly affected due to the consequences of the war, the grievances of women and girls take special nature.

7. Around the country, most victims suffer from domestic and sexual violence for long periods of time, some for more than 10 years, before they seek help. They seek legal relief only as the last option.
8. Where severe injuries were reported, victims were usually referred to WIN by hospitals.
9. When victims approach organizations such as WIN, they make every effort to have the issue settled and are reluctant to proceed to relief through legal means. They do so, only when other informal ways (through religious institutions, through elders in the family and community and through the counsellors) have failed them.
10. Victims have insufficient knowledge on the available laws and remedies for their grievances. They are not aware of their rights nor of the legal remedy available for the violation of their rights.
11. Many women are also not aware that there are organizations which provide free services including counselling, shelter and legal services.
12. They also have no experience in accessing the police or courts.
13. Through the work of WIN over the years, it was identified that victims of violence are reluctant to seek redress from the formal justice sector due to numerous factors. These are briefly discussed below:
 - Women victim survivors face many *internal fears* they must deal with prior to making the decision to seek legal redress.
 - ✓ Many women fear that it will destabilize their lives and the lives of their children. They also fear breaking down the marriage and family and losing custody of the children if legal relief is sought.
 - ✓ Fear of losing their place of abode and the lack of alternate facilities is also a concern for some. Many victims also have negative perceptions of the law, courts and legal mechanisms and fear going to the court houses themselves or standing in the witness box.
 - Some victim survivors also fear returning home after seeking relief from the police or any other authority due to *possible retaliation from the perpetrator* if he gets to know that the victims have sought relief.

- ✓ They fear for their lives as the violence can exacerbate after a complaint through further threats, intimidation, assault and other forms of aggravated behaviour.
 - ✓ Political contacts and affiliations of the perpetrator with the police also aggravate the situation and victims along with their children were subjected to many forms of continuous violence due to this factor.
- Social factors including *social stigma and victim blaming* are some of the predominant factors for women not seeking a legal remedy outside the home.
 - ✓ Different myths and misconceptions such as “*gedera gini pitata geniyanna epa* (don’t take family disputes to the outside world);
 - ✓ *gedera randu batha idenkal vitarai* (family disputes are until the rice is cooked);
 - ✓ *gaanuunama ewasanna oona* (women should learn how to be patient)
 - ✓ *Pirimiunama ohoma thamai* (boys will be boys). There is also a myth in society that going to a court house brings dishonor to the family. Society often places blame on the woman if a marriage breaks down and many women fear the social repercussions of seeking legal redress.
- *Economic dependency* on the perpetrator, which in most instances is the husband, is another key factor for not leaving the abusive home environment. This happens very often when there are children involved and when the victim has no source of income of her own to maintain the family without the support from the husband.
 - ✓ The lack of economic resources to access lawyers and courts is also a factor preventing victims from seeking legal redress.
 - ✓ Working women are not generally provided free legal aid from the Legal Aid Commission unless their income is below Rs. 25,000 and this is substantiated by a testimony from the *Grama Niladhari* and Government Agent. Thus, some of the working women who still earn meagre salaries would have to retain lawyers from the private bar, who are expensive.
- *Lack of adequate and accessible services*. This was specially seen due to the specific issues faced by women in **Jaffna** and **Mullaitivu** due to the aftermath of the war where accessing justice is extremely difficult.
 - ✓ There are insufficient service providers in the districts to address the concerns of women and there is a dire requirement to establish

organisations both national and non-governmental to address the issues of women.

- ✓ The language barrier in Jaffna is a major concern where there are very few Tamil speaking officers in law enforcement authorities including police. There are few Tamil speaking women police constables in the Northern and Eastern Provinces and women making complaints of SGBV are uncomfortable and reluctant to do so in front of these male officers.

□ *Delays in the justice process*

This has been one of the main concerns of victims/survivors who seek judicial remedies. Delay in the entire process commencing from making a police complaint till obtaining an order, has caused victims/survivors losing faith in the judicial system. They express concerns over repeating the same story over and over again adding more trauma.

14. Victims who build up the courage despite the abovementioned challenges are faced with more challenges at the level of law enforcement, including the police, which is the first point of contact with the formal redressal process for most victims.

WIN has learned that many police officers including women officers, have patriarchal and outdated views where they do not believe the accounts of abuse given by victims, think such stories are fabricated, do not recognize domestic violence as a violation of rights and often treat domestic violence complaints as an issue which should be settled in the private domain. Due to these beliefs, they send the victims back home to their hostile environment.

Victim survivors' experiences during court proceedings

The experience of going to court is a frightening and daunting one for most women and girl victims of domestic and sexual violence. Therefore, each interaction they have with those who form the formal court process from judges, to lawyers and other court staff, have a lasting impression on them and form the basis of their experience with the justice process. The following points highlight some examples of the behavior and responses of those within the justice sector towards victim survivors of SGBV. This section has been compiled through the observation of such cases handled by WIN and through feedback and experiences of clients and legal offices at WIN.

Behavior and Response of Judges

- Most judges presiding over domestic and SGBV related cases gave the victim adequate time to relate her case, an opportunity to speak in her mother tongue, did not use legal

jargon without explanation, showed a friendly tone when dealing with cases and were not harsh, which seemed to put the victims at ease.

- In many cases, the victims felt that both parties were given a fair hearing, and appreciated instances where judges advised the victims on what/how to get copies of Interim Protection Orders from the Court Registry, or advised victims to inform court forthwith if the conditions were breached by the respondent.
- Some Judges take special measures to secure the privacy of the victims and hold trials in chambers or by clearing the courtroom of irrelevant parties. Judges have also instructed parties and lawyers not to bring children to court during school hours and deprive them of their education and therefore, hear all child related cases in the afternoon. Effort is made to take evidence from children in one day to limit their court visits.
- However, some victims had negative experiences, such as in cases where the judges found fault with the women who sought relief and made comments in open courts that private matters should not be brought to courts to resolve.
- Despite the severe injuries and unbearable nature of physical abuse seen at the onset that needed immediate intervention of the court, some judges referred such cases to the family counsellor, which in some cases may have placed the victim in a further vulnerable situation.
- Some judges also adopted a practice of summoning the defendant which is a condition precedent to granting interim relief. It is found that these judges are not inclined to give effect to provisions in the Prevention of Domestic Violence Act of 2005 (PDVA) and grant interim relief without the presence of perpetrator, defeating the very purpose of the PDVA that provides that upon receipt of an application for a protection order, the court is given the power to issue a protection order. In determining the need for issuing a protection order, the Judge is expected to consider the safety of the aggrieved person and need to prevent any further commission of such acts. Under the provisions of PDVA, a Magistrate is empowered to issue an interim protection order without the case being proved by the aggrieved party which would be valid for 14 days. It can be extended for 12 months upon the evidence produced by the aggrieved party in courts. This section clearly reflects the intention of the legislature towards the safety of the victims affected by domestic violence. The legislature has empowered the Magistrate to take all possible steps to ensure the safety of the aggrieved persons.

Behavior and Response of Lawyers

- It was observed that lawyers for the victim/plaintiff were able to articulate their cases effectively. Their tone towards the victim was friendly, kind and attentive in most cases and no legal jargon was used without explanation and they assist victims to present their case.
- The interest of judges towards such cases also contributed for the lawyers to take special interest in cases they deal with.

- It was found out that there are lawyers who are committed in providing better services to victim survivors of SGBV. For instance, some lawyers provide their services to victims of SGBV free of charge or for a minimal fee.
- It was also noted that mostly very young lawyers appear for domestic violence cases and they are not able to articulate their cases in convincing manner and found it difficult to represent the interest of the victims effectively in courts.
- Most of them were unable to attract the empathy of the judges by submitting sufficient oral and written evidence due to incompetence and lack of required knowledge.
- There were negative observations with regard to the capacity and the knowledge of the current junior lawyers. They are not updated with the new laws, amendments to laws, new case laws with latest developments and judicial precedents.
- It was also noted that many lawyers do not prepare for their cases.
- It was noted that the current lawyers are concerned about the fees from the clients but do not offer good services.
- Defense lawyers show no sympathy towards the victims even when there are severe forms of physical abuses and imminent danger to their lives. Their tone is very harsh and intimidating.
- They make submissions that women victims often make up stories and that they are famous for fabricating such stories.
- Mostly, judges usually do not intervene when the defense counsel is harsh and insults victims. It was also found that for cases where the judges were insensitive towards the victims, that the defense counsels' attitude towards the plaintiff/victim too were insulting and intimidating.
- However, there have been few judges intervening when defense counsels were harsh towards the victims.

Behavior and Response of Court Staff

Court Staff: Court staff within the court include the Court Mudaliyar and the stenographer. It was observed that if the judge showed special attention to the victim and her case, the court staff also took cue and followed the same approach. However, court staff also showed empathy and kindness towards victim survivors of severe physical harassments even when the judges were insensitive towards the victims.

Family Counsellors: Mostly, family counsellors are attached to courts.

- There is a concern that the family counsellor does not play a neutral role and is always biased towards the male.
- Many of the family counsellors in the court houses are not sympathetic towards victim survivors of SGBV and they too have patriarchal and familial ideologies which are negative towards women.

- They make efforts to settle the dispute forcefully despite the existing evidence of severe violence against the victim and send the victims to the abusive environment.
- They are very harsh and rude towards the victims. There have been instances where the abusive husband has become friends with the family counsellors and thus cause prejudice towards the victims.

Court Registrar:

- The court registrar is required to send a copy of the interim relief to the relevant police station, but this is not always practiced in an efficient manner by the registrar.
- It was also noticed that the court staff make deliberate delays in sending notices and summons to the respondents/defendants/accused.
- It was also found out that the cases of SGBV are not being sent to the court room on time and counsel appearing for the victim has to keep reminding the court staff to send the files on time.
- Lawyers also raised concern that when interim reliefs are granted by the courts, the registrar of the court does not send the notice of interim reliefs to the defendant and that this takes a long time which defeats the prime objective of issuing interim relief.

Victim survivors' experiences following court proceedings

It was discussed that different social, legal, cultural and economic causes have contributed to keeping away the victimized women and girls of SGBV from courts. Victims who seek legal assistance do so only when they feel there is no end to their misery or no alternate course of action. However, despite the existence of certain insensitivities of the law enforcement authorities and some lacunas in the law itself, victims of violence who seek legal redress have received some sort of justice for their grievances.

Of the cases observed, most of the domestic violence cases were settled following the court cases. Certain victims prefer to settle the dispute and it was found that family counselling has assisted to settle some disputes. However, some cases also show that victims have been denied justice due to the prejudices and behavior of those within the justice system itself, causing some victims to give up on their cases.

With regards to the implementation and execution of the IPO and PO in domestic violence cases, the court registrar who is required to send such notices to the respondents does not attend to it promptly. A copy of these notices also has to be sent to the relevant police which is not in practice.

There are no proper mechanisms or processes in place to monitor the progress of the protection orders granted by the court. There is also lack of proper coordination of court staff and other inefficiencies in the system, and due to this, many victim survivors are continuously harassed despite the issuance of the IPO or PO by the court. For example, there have been instances where long after settling the case, the parties are called for family counselling.

Victim survivors were of the view that the justice system should be more empathetic towards those victims that do come forward and give them a fair hearing and protect their inalienable right to live an abuse free life without casting the blame on them and revictimizing them in the process of seeking justice. They believe that if perpetrators get strict punitive punishment along with some restorative justice for the victims, that would leave perpetrators accountable to the wrongful acts they are engaged in. This would in turn, make the justice sector accountable in identifying such wrongful acts and being accountable for the victims who seek redresses for their grievances. They feel that it is important that the justice sector understands that women come to courts for protection and security and to get the protection for their rights when it becomes impossible to continue in their abusive situation.

RECOMMENDATIONS

Conduct community awareness programs: WIN has found that many women do not have awareness and understanding of their rights and the remedies available to them if these rights are violated. Therefore, it is important to conduct programs targeting women, men and youth about the rights available for women and women victims of violence as well as in the available remedies. Highlighting positive practices of the justice sector including at the level of the judges would also help in building faith in victim survivors of SGBV to resort to legal remedies. Community programs could also be conducted to counter and challenge cultural inhibitions in reporting and seeking redress for SGBV. Empowering women to fight against sexual exploitation, harassment, abandonment and household violence through community awareness programs and strengthening the services of community-based organizations are also particularly important.

Invest in justice sector education and sensitization: Another significant finding of WIN was that many of those in the formal justice sector including judges, lawyers, court staff, the police and family counsellors are not sensitized to the unique issues faced by women victim survivors of SGBV. It is therefore important to conduct sensitization programs for such law enforcement authorities, and court staff including family counsellors. Conducting awareness programs for lawyers is also necessary especially for lawyers who appear for the victims to have an in-depth knowledge about the applicable laws and prepare for the case in advance. Conducting continuous


programs through the Bar Association of Sri Lanka targeting junior lawyers and other practicing lawyers would also be a sustainable strategy to educate the lawyers on new laws, amendments to the laws, leading of evidence, articulating a case in an effective manner, procedural laws and ethics in the profession.

Create a safe court environment for victim survivors: Findings show that many victim survivors who access the justice process are afraid and intimidated by the process of attending court itself. Therefore, it is important to take measures to ensure the dignity of women in the court rooms. This could include sensitizing judges on the measures they could take, enabling measures to ensure privacy in the court room for SGBV cases (such as by clearing the court room or by hearing such cases in the judge's chambers). There is also a need to establish a proper monitoring mechanism and ensure that the police take adequate action if IPOs are breached in domestic violence cases and strengthen the arrest warrant procedure where there is a violation of IPOs by the respondents.

Strengthen the capacity of service providers: There is a range of service providers that provide psycho-social, legal and shelter services for victim survivors of SGBV. However, as many of these needs strengthening, it is important to take measures to improve such services including legal services, legal aid, and the provision of information to the public in all local languages. It is also useful to increase support for civil and civic organizations to carry out social mobilization and awareness programs. This could include various topics to address location specific issues such as to address the triggers of violence such as the consumption of alcohol and drugs, prevention of such additions and the rehabilitation of current addicts. Criteria for free legal assistance should also be looked into as the fact that a victim is employed should not deny her the opportunity for free legal advice, but the criteria should be based on affordability irrespective of employment status.


Improve legal redress services in lagging regions: It was found that Jaffna and Mullaitivu have several resource constraints in the redress process for cases related to SGBV. Therefore, these practical issues need to be addressed prior to encouraging women victim survivors of SGBV to safely access the legal redress process. Some areas to be considered especially for these districts include increasing women police constables in police stations and ensuring that women police officers are present when women victims make complaints; increasing Tamil speaking police officers; strengthening communication mechanisms and addressing shortfalls of the 119 service; and establishing a proper mechanism to enter woman's name in identification documents including Samurdhi card.


Make legal redress more accessible in rural areas: One of the challenges identified in the districts in the Northern and Eastern Provinces that were severely affected by the war was that people from remote areas face hardships to travel to and access courts. A solution for this concern has emerged in Mullaitivu through the introduction of a Circuit Court in Thunukkai for two days a month where the same Magistrate, lawyers and court staff move to Thunukkai during the said days to serve the people from remote areas. Such practical solutions could be applied to other remote areas in Jaffna and Mullaitivu as well.


 Break the Silence - WIN against violence

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WIN Crisis Centre

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Anuradhapura	24, Harischandra Mawatha, 1st stage, Anuradhapura	025-2225708
Jaffna	35A Somasundaram Avenue, Chundikuli, Jaffna	021-2229671
Matara	33A, Udyana Mawatha, Uyanwaththa, Matara	041 -2233760
Batticaloa	32/3 Covington Road, Batticaloa.	065-2228388
Badulla	25B, Kailagoda Road, Badulla	055-2224395

Counseling Desk

De Soyza Hospital	077-2260503
Kirulapone Police Centre	011-3071122
Children & Women's Bureau (CWB)	011-3071121
Medawachchiya Police Centre	077-7307894
Waligama Police Centre	077-3560282
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