

Inadequacy of Legal Protection for Rape Victims: Analysis of High Court Cases in Negombo Division of Sri Lanka

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Abstract:

The current social structure is centered on an archaic patriarchal ideology which has been a cause of oppression of womankind in Sri Lanka. This is clearly reflected in the increasing number of crime incidents against women. Rape is one such crime which causes physical and mental injury. Justice for the victims demands legal protection and assistance to them from the criminal justice administration. The question arises whether rape victims in fact receive true justice. The objective of the study is to ascertain whether the existing rape law adequately provides the legal protection for the victims of rape. To achieve this goal, High Court cases which were concluded in 2018 pertaining to rape in Negombo were analyzed. The data was analyzed to understand the vulnerability young girls for the offence of rape, the relationship between the accused and victim, delays in concluding the case, inappropriate punishment and inadequate compensation to prove the inadequacy of legal protection for rape victims in Sri Lanka. This study includes a total of 14 rape cases which were disposed (disposed pronouncing the judgment) by Negombo High Court in the year 2018.

Keywords: *oppression, womankind, victim, justice, rape, Negombo, punishment*

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INTRODUCTION

Sex related offences take place in every society. Sri Lanka is not an exemption. As Mazumdar Tulip, Global Health Reporter, said to BBC one out of ten of Sri Lankan males who have been surveyed said that they have penetrated a woman including their wives without consent which is amount to rape (Mazumdar 2013). According to World Population Review 2019 (acceded the web

document on 03rd November 2019), approximately 35% of women worldwide were subjected to any form of sexual offence in their life time. World Population Review 2019 further stated that Sri Lanka recorded its rape rate as 7.3 against 21,323,733 total population as at the beginning of 2019. Police Department statistics reveal that the number of reported rape incidents increased by 30% during the period from 2000 to 2007

(Perera and Edirisinghe 2008). It is important to note many rape incidents remained unreported and is higher than the number of the reported incidents (Edirisinghe, Wijewardena et al 2014).

Rape is regarded as a form of violence – sexual violence. As some scholars say women are more vulnerable to sexual offences especially rape than men. Women are more susceptible for sexual offences including rape than the other criminal offences (Jewkes, Sen, Garcia-Moreno 2002). As a direct harm of rape, a victim suffers both physical and mental grievances. On some occasions, as a result of rape victim has to undergo rigorous as well as irreversible nature of bodily and mental harm/injury. In many instances rape victims must undergo social stigma, and other socio-economic issues. Often, they do not receive justice and must suffer secondary victimization whilst they interacting with officials of the criminal justice system (Sanders 2002; Uli Orth 2002; Bednarova 2011). As the Supreme Court (V R Krishna Iyer) of India pointed out in *RattanSing vs State of Punjab* (1979 4 SCC 719), victims of crime do not attract the proper and adequate attention of the Indian law is a weakness of Criminal Law jurisprudence and that deficiency in the system should be rectified by the legislature. This is equally applicable to Sri Lankan Criminal Law jurisprudence as well.

As some scholars' state, rape is not merely a criminal offence which is committed against (woman) human body it has escalated to a situation of social and health problem in the society and this issue has seriously affected developing countries. Though there was not an island wide survey conducted to

understand the consequences of rape in Sri Lanka it is well a known fact that the rape victim has to experience both short and long term issues such as physical, mental, sexual and reproductive health problems as a result of rape (Tara, Catherine, Marcum 2015).

Sri Lanka is a country has a man centered traditional culture. Unlike other criminal offences, rape has several ill consequences which negatively affect on a woman physically, psychologically, socially as well as economically. Therefore, bringing perpetrator before the justice and punishing him is essential. The punishment should be sufficient to repair the harm experienced by the victim which done through a speedy proceeding.

1. Objectives of the research

The research was conducted to explore/investigate whether the existing rape law is adequately providing the legal protection for the victims of rape.

2. Method and Observations

This study was conducted on the rape cases concluded by the High Court in Negombo in 2018. Only 14 rape cases were concluded by pronouncing the judgment in 2018. The relationship between offender and victim, vulnerability of underage females who were victims of rape, the time period between the incident took place and served the indictment at the High Court, the time period between serving the indictment and concluding the case (delay in proceedings), pattern of sentencing and pattern of awarding compensation order were analyzed to reached the above said goal. Rape incidents reported to the police in Negombo and Island wide from 2010 to 2017 were considered to endorse the increase of rape incidents.

Table 1: Figures of Island wide all types of crime incidents against rape cases from 2010 to 2017*

Year	Total number of crime incidents reported	Total number of rape incidents reported	Rape incidents as a percentage of the total number of crime
2010	57,560	1854	3.22%
2011	54,357	1870	3.44%
2012**	13,209	460	3.48%
2013	55,349	2181	3.94%
2014	50,962	2008	3.94%
2015	40,188	2033	5.05%
2016	36,930	2036	5.51%
2017	35,978	2732	7.59%

Source: Statistics of grave crimes issued by the Department of Police in Sri Lanka.

* 2018 statistics not available to the public and it is still under processing.

**statistics available only in the first quarter

Total number of rape incidents reported

***100 = Rape incidents as a percentage of the total number of crime**

Total number of crime incidents reported

The figures in the table 1 reveal that rape incidents as a percentage of the total number of crime has been increased from 2010 to 2017. The percentage increase was 4.37 (7.59-3.22=4.37). Therefore, one may state the incidents of rape have increased over the past years. It calls legal protection to rape victims are imperative.

Table 2: Figures of Island wide rape cases against rape cases in Negombo Police Division from 2010 to 2017

Year	Island wide Rape Cases	Rape Matters complained to Negombo Police Crime Branch	Percentage (Negombo against Island wide
2010	1854	40	2.1%
2011	1870	29	1.5%
2012**	460	09	1.9%
2013	2181	46	2.1%
2014	2008	59	2.9%
2015	2033	64	3.1%
2016	2036	Data is not available	***
2017	2732	72	2.6%

Source: Statistics of the distribution of grave crimes issued by the Department of Police in Sri Lanka.

* 2018 statistics not available to the public and it is still under processing.

**statistics available only in the first quarter

*** percentage could not be calculated due to the unavailability of data of rape matters which were complained to Negombo police division (crime branch) in 2016.

Percentage was calculated as follows

**Total rape incidents in Negombo *100 =
Rape incidents in Negombo aa percentage
Total rape Island wide**

The data reveals that there was a decrease of rape cases in Negombo in 2011 compared with year 2010. On the contrary, there was a slight raise in rape complaints in same period. Reported rape cases in Negombo have been gradually

increased from 2013 to 2017. However, the percentage decreased from year 2015 to 2017. When summarizing the data in this table, one may conclude that there was an increase of the rape incidents in the country.

Year	Total crime incidents in Negombo	Total rape cases in Negombo	N%
2010	1925	40	2.07%
2011	1837	29	1.57%
2012**	409	09	2.20%
2013	1917	46	2.39%
2014	1839	59	3.20%
2015	1246	64	5.13%
2016	477	Data is not available	***
2017	1275	72	5.60%

Source: Statistics of the distribution of grave crimes issued by the Department of Police in Sri Lanka.

Total number of rape incidents reported in Negombo*100= Rape incidents as a percentage of the total number of crime in Negombo (N%) Total number of crime incidents reported in Negombo

The data in table 3 demonstrates that in Negombo area rape cases have been raised as a percentage (N%) of the total crime incidents from 2010 to 2017 except in 2011.

When summarizing the data in 1, 2 and 3, one may state that rape cases in the country and in the Negombo division is increased annually.

Table 4: The time taken to conclude the case

Case Reference Number	The date of the offence committed	Serving date of the indictment	The date of the judgment given by the High Court	Approximately the time taken from the incident date and the indictment serving date	Approximately the time taken or the High Court proceedings	Approximately the time taken to conclude the case
				Y: M:	Y: M:	Y: M:
HC57/2014	08.03.2004	02.01.2016	12.02.2018	11 10	02 01	13 11
HC383/2016	07.03.2010	12.10.2016	07.03.2018	06 07	01 05	08 00
HC154/17	10.02.2013	17.03.2017	02.04.2018	04 01	01 01	05 02
HC320/2017	14.12.2010	12.06.2017	11.06.2018	06 06	01 00	07 06
HC578/17	10.01.2011	17.11.2017	08.05.2018	06 10	00 06	07 04
HC423/17	9.11.2012	14.07.2017	12.06.2018	04 08	00 11	05 07
HC 404/10	12.11.2007	10.12.2010	03.09.2018	03 01	07 09	10 10
HC129/17	17.03.2012	24.03.2017	05.09.2018	05 00	01 06	06 06
HC120/17	27.04.2007	13.03.2017	16.10.2018	09 11	01 07	11 06

In respect of the total duration was taken to conclude the case, data in the above table demonstrates that the minimum period between the incident took place and the judgment pronounced by the High Court was 05 years. Out of the 14 cases there were 3 such cases. 10 cases were concluded by pronouncing the judgment within 10 years period from the date of the incident took

place. 03 cases were concluded between 15 years from the date of the incident. Only in 01 case the total case pending period was 19 years.

It was observed that the minimum period between the date of incident and the date of serving the

indictment was 03years and the maximum was 11 years. In 02 cases this period was more than 10 years. In 08 cases, it was from 3 to 6 years. The rest of the cases (4 cases) State was able to indict against the accused between 6 and 9 years from the date of the incitement took place.

The period for Court proceedings in the High Court was ranged from (minimum) 6 months to 14 years (the maximum). Only 2 cases were concluded in a time duration which was less than 1 year. In 7 cases the High Court concluded the court case between 1 and 2 years. 3 cases were disposed within 2 - 3years. In 2 cases period for the court proceedings was more than 5 years. In those 2 cases the High Court took 7 and 14 years respectively to conclude the court proceedings.

Table 5: Relationship between the offender (rapist) and rape victim

Case Reference Number	The correlation of the offender to the victim
HC57/2014	Boy Friend
HC383/2016	Step Father
HC154/17	Boy friend
HC320/2017	Relative

HC578/17	Boy friend
HC423/17	Father
HC 404/10	Unknown person
HC129/17	(former) Boy friend
HC120/17	Friend
HC79/2017	Relative
HC348/16	Friend
HC119/2016	Friend
HC50/2014	Boy friend
HC332/04	Known person

According to the data in this table, in 4 cases the perpetrator was the boy friend. In 1 case the former boy friend was accused for the offence of rape. In 1 case the step father has raped the victim. Father of the victim was accused in 1 case. In 2 cases the relative of the victim, in 3 cases, friend of the victim and in 1 case a known person (neighbor) was alleged to have committed the offence of rape. Only in 1 case the victim was raped by an unknown person. The data revealed that except 1 case, all the other cases, the perpetrator was known to the victim.

Table 6 : The age of the victim and offender

Case Reference Number	Age of the offender	Age of the victim
HC57/2014	Above 18	Below 16 (15 years)
HC383/2016	Above 18	Below 16 (11 years)
HC154/17	Below 18 (16 years)	Below 16 (15 years)
HC320/2017	Below 18	Below 16

	(16 years)	(8 years)
HC578/17	Above 18 (19 years)	Between 18 and 16 (16 years)
HC423/17	Above 18	Below 16 (13 years)
HC 404/10	Above 18	Above 18
HC129/17	Above 18	Above 18
HC120/17	Above 18 (23 years)	Between 16 and 18 (16 years)
HC79/2017	Above 18	Above 18
HC348/16	Above 18	Below 16 (13 years)
HC119/2016	Above 18	Above 18
HC50/2014	Above 18 (34 years)	Below 16 years (15 years)
HC332/04	Above 18	Between 16 and 18 (17 years)

HC383/2016	Convicted	Suspended sentence
HC154/17	Convicted	Suspended sentence
HC320/2017	Convicted	Suspended sentence
HC578/17	Convicted	Suspended sentence
HC423/17	Convicted	Jail sentence
HC 404/10	Convicted	Jail sentence
HC129/17	Acquitted	N/A
HC120/17	Convicted	Suspended sentence
HC79/2017	Acquitted	N/A
HC348/16	Acquitted	N/A
HC119/2016	Acquitted	N/A
HC50/2014	Convicted	Suspended sentence
HC332/04	Acquitted	N/A

According to the data in this table, 7 victims were below 16 years, 3 victims were between 16 and 18 and 4 victims were above 18 years who can be considered as adult. The data further reveals that only 2 offenders were below 18 who are children. Only 1 offender is a youthful offender who was between age 18 and 22 years. Rest of the offenders was adults

Table 7: Pattern of punishment

Case Reference Number	Convicted / Acquitted	Sentence
HC57/2014	Acquitted	N/A

Case Reference Number	Who paid the compensation Offender /State	Amount
HC57/2014	N/A	N/A
HC383/2016	Offender	Rs. 50,000/-
HC154/17	Offender	Rs. 50,000/-

HC320/2017	Offender	Rs. 50,000/-
HC578/17	Offender	Rs. 50,000/-
HC423/17	Offender	Rs. 50,000/-
HC 404/10	compensation was not awarded	N/A
HC129/17	N/A	N/A
HC120/17	Offender	Rs. 50,000/-
HC79/2017	N/A	N/A
HC348/16	N/A	N/A
HC119/2016	N/A	N/A
HC50/2014	Offender	Rs. 100,000/-
HC332/04	N/ A	N/A

From the total 14 cases, 8 resulted in the accused being convicted. Out of the 8 convictions 6 offenders were imposed with suspended sentencing. Jail sentences were imposed only on 2 offenders. The common punishment for rape is a suspended sentence. Compensation was imposed only on the offender. None of the case awarded State compensation order. Compensation award was not issued in the event of the offender was acquitted. The most common amount of the compensation was Rs. 50000/- and in 6 cases the amount of compensation was Rs. 50,000/- . Only in 1 case the Court ordered the offender to pay Rs.100,000/- to the victim.

3. Discussion

4.1. Rape Law

Rape is a form of sexual violence. As stated earlier, rape has become a common social problem in every jurisdiction including Sri Lanka. In Sri Lanka the term 'crime' is defined neither in the Penal Code No 2 of 1883 as amended (the major penal statute) nor any other specific penal statute. However, the term 'offence' has been defined in section 38 of the Penal Code. Accordingly the term 'offence' refers to an action or illegal omission which is made punishable by the Penal Code any other statute providing for a criminal offence (*Cadiravelu vs Suppaiya* (1904) 8 NLR 74; *Don Thomas vs Dn Girigoris* (1912) 1 CAC 76; *Rosa vs Tissera* (1916) 3CWR 46; *Perera vs Munaweera* (1954) 56 NLR 433; *Khan vs Ariyadasa* (1965) 67 NLR 145). In Sri Lanka 'criminal offence' is a gender neutral human behaviour unless it is specifically stated in a penal statute. Nonetheless, rape is the only criminal offence which can be considered as a gender specific criminal offence committed only against women. The Penal Code provides a similar meaning to the offence of rape which is used in common parlance. In common knowledge rape means 'a sexual intercourse committed by a man with a woman without her consent' which is similar to the dictionary meaning in Webster Comprehensive Dictionary (Markwordt, Cassidy and Mc Millan 1958). The provisions in the Penal Code relating to rape were substantially amended in 1995 by enacting the amendment, Penal Code Amendment, No. 22 of 1995. It was further amended in 1998 by passing Penal Code Amendment, No 29 of 1998. The above said two amendments were introduced by the law maker having the aim of guarantee the legal protection of both women and children from sexual offences

including rape. By enacting the aforementioned amendments some changes were introduced to the law relating to rape.

They are ..

Incest, gang rape, custodial rape, (a woman who is raped while she is in custody of any administrative officer or in custody of any institution), non-custodial rape (a woman who is raped while she is not in lawful custody but in custody of a person either a friend or another known person) and marital rape (with some conditions) were included in to the rape law provisions;

The age considered for statutory rape was raised from 12 year to 16 years;

Mandatory minimum sentencing rule was incorporated to then existed rape law; and

Compensation for victim was made mandatory to the victim as penal redress.

In 2015, the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015 was enacted with the aim of protecting crime victims and witnesses from secondary victimization when they interact with the justice system as victims and witnesses. Section 3 refers to the rights of the crime victim while section 4 denotes to the entitlements of victim of crime. Sections 28, 29 and 30 set out the law in respect of compensation for the victim of crime. Among all other developments in this Act, introducing the 'State compensation' is the most significant.

4.2 The drawbacks in the system

The increase of number of rape incidents suggests the necessity of robust legal protection for rape victims in the legal system of the country.

4.2.i. Delay in concluding the case

Rape is an indictable offence (First Schedule of the Code of Criminal Procedure Act, No. 15 of 1979 – Cr.P.C). Only High Court can exercise the jurisdiction of the first instance to hear a rape case. The particular law does not have any provision regarding minimum or maximum period to be taken to hear a case. Only section 120 (1) Cr.P.C. states that the investigation should be completed without any unnecessary delay. There is an opinion among the general public, that victims should be awaiting for a long period from reporting the first information until starting the court proceedings (hearing)- laws delay. It made the victim to wait for the long period to give evidence at the trial. In this study it was found, from 2010 to 2017, 319 rape incidents were reported to the Negombo police (see Table 3). In the 14 cases, the most recent rape matters which were concluded by the High court took place in 2013. There were only 3 such cases. In this study it was observed that at least 5 years were taken to conclude a rape case. The study further observed that rest (11 cases) took more than 5 years to conclude case and it was ranged from 5 years to 19 years (see Table 4). It acquaints with us the laws a delay in rape cases.

4.2.ii. Vulnerability for statutory rape

In a rape case, it is the duty of the prosecution to prove the case beyond any reasonable doubt of all the elements of the offences. More importantly prosecution should prove that the victim did not consent to the perpetrator for the sexual intercourse (section 363 a) and it is not for the defendant to prove that the victim has consented to the intercourse (*The King vs. Balakiriya* (1945) 46 NLR 83; *Savinda vs. Republic of Sri*

Lanka(2010) 1SLR 32). The consent should be voluntary consent which means the woman should freely agree to submit herself with out any force, threat, fraud etc. (*Inoka Gallage vs Kamal Addararachchi* (2002) 1 SLR 307). When a man has a penetration (sexual intercourse) with a female child who is below 16 years, it is considered as statutory rape. According the present law relating to statutory rape, it is not necessary to prove the consent of the victim as it is immaterial. This is subjected to the exception of a woman –girl child who has entered a legal marriage bond – child marriage (section 363. e). The question arises when a victim is a girl who is between age 16 and 18. This being whether the prosecution should prove beyond a reasonable doubt that the perpetrator has engaged in penetration with the women without her consent. In this study it was found, that in 8 cases the victim was a girl child who was below 16 year (Table 6). In the 2 cases, where the victim was between age 16 and 18 years (Table 6), the prosecution had to prove both *actus reus* and *mens rea* (the fault element) beyond any reasonable doubt. It shows that female children between age 16 and 18 were not given the status of child.

According to the data in Table 5, in all statutory rape matters (where the victim is below age 16) the defendant was a known person. In most instances the accused was her boy friend. In 2 cases father and step father was the accused to have been committed the offence. Therefore, it may state, girl children, below 16 years are the most vulnerable to rape. There is no mechanism established in Sri Lanka to support the rape victims to overcome the physical, mental, health and social issues that they have to suffer as a result of rape.

4.2.iii Inappropriate punishment and compensation

Due to the consideration of rehabilitation and other merciful factors, the offender often, receives a lenient sentence, many instances the offender receives suspended sentence. (Table 7). By 1995 Penal Code amendment the mandatory sentencing principle was introduced against the sexual crimes. In the case HC Anuradhapura Case No 333/2004 SCM 15.10.2008, the Supreme Court held that section 362(2)(e) of the Penal Code which refers to minimum mandatory sentence is a conflict with Articles 4.a, 11 and 12 of the Constitution of 1978, the Supreme Law in the country. Section 362 (2) (e) of the Penal Code cannot remove the discretionary power given to the trial Judge (who heard the case) - by the Article 125 of the Constitution -, to impose the most appropriate punishment on the offender. Indirectly the Supreme Court's pronouncement was section 362(2) (e) is unconstitutional. As a result of this decision, in all most all the rape cases offender receive suspended sentence for such a heinous crime (Table 7). In this study it was found, 34 year old defendant was convicted and suspended sentence was imposed on him (Table 7 - case reference HC50/2014). Therefore, it may state that the lesser punishment which is inflicted on the offender is another aspect in the criminal justice process that the rape victim must suffer injustice form.

Part seven of the No 4 of 2015 Act describes the victims' entitlement for the compensation. Thus the convicted person should pay an amount not exceeding one million rupees as compensation to the victim of Crime or a sum of money not exceeding 20% of the maximum fine payable for that

offence, or both the compensation and the sum of money referred above. Section 29 of the Act further recognizes that there should be a 'protection fund' to assist the victims, dependent family members or next of kin. It demonstrates the acknowledgment of the responsibility of the State to pay the compensation in the event of the convicted person is not in a capacity to pay the compensation. In this study it was observed (Table 8), most cases Rs. 50000/- was awarded as compensation. In only 1 case, the Court ordered the offender to pay Rs. 100,000/- to the victim as compensation. It was also observed that there was no single case found where the victim impact statement was submitted by the victim party. Furthermore, no single case found where the Court ordered the State to pay compensation. It is also important to state there is no compensation mechanism/scheme available in Act, No. 4 of 2015. As a result, the court has the discretion to decide any amount in accordance with the Act, No. 4 of 2015. The ambiguity of this negatively affects on rape victims.

4. Conclusion

Based on the above observations and discussion the study may conclude that 53% of the victims of rape are children below 16 years, 13% convicted, 0% State compensation, the time taken to conclude the case ranged from 5 years to 19 years and 75% offenders were punished with suspended sentence, 42% the Court ordered Rs. 50000 /- as compensation, there is delay in law in rape cases, inappropriate punishment (suspended sentence) imposed with inappropriate compensation and State compensation was not considered at all in any case.

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