



SEXUAL VIOLENCE IN SOUTH ASIA: LEGAL AND OTHER BARRIERS TO JUSTICE FOR SURVIVORS

Image: Srimathi Jayaprakash / Unsplash

Countries in South Asia report alarmingly high rates of sexual violence against women and girls. [UNICEF estimates](#) that 64% of the world's children who experience severe violence are in South Asia. Despite this, women and girls face significant barriers to justice, including high stigma, lack of legal awareness, and fear of repercussions. Additionally, the non-implementation of sexual violence laws and protection gaps further hinder justice.

KEY FINDINGS FROM THE REPORT

The report [Sexual Violence in South Asia: Legal and Other Barriers to Justice](#), co-authored by Equality Now and Dignity Alliance International in 2021, analysed gaps in laws and policies on sexual violence in six countries: Bangladesh, Bhutan, Nepal, Maldives, India, and Sri Lanka. It recommended a survivor-centric approach to improve access to justice.

Inadequate Laws

Despite the prevalence of sexual violence, rape laws across the six South Asian countries studied effectively deny justice to survivors of sexual violence due to protection gaps in the laws particularly on:

- 1 Limited Definitions:** Laws often do not cover all forms of sexual penetration or recognise various coercive circumstances where consent cannot be voluntary, including situations where the victim is incapable of giving consent.
- 2 Marital Rape:** Criminalised in only two (Bhutan & Nepal) of the six countries studied, and even then it carries lower penalties compared to other forms of rape.
- 3 Discriminatory Evidence Requirements:** Burdensome requirements obstruct access to justice.

Implementation Failures

There are severe barriers to accessing justice and implementation gaps within the criminal justice system, including:

- 1 Police Inaction:** Police often fail to register rape cases promptly in Bangladesh, India, Nepal, and Sri Lanka.
- 2 Long Delays:** Delays in investigation, medical examination, prosecution, and adjudication are common, with perpetrators often out on bail. The failure to keep survivors informed of the progress of the case is part of this barrier.
- 3 Overburdened Fast-Track Courts:** Fast-track courts and special tribunals in India and Bangladesh follow the same legal process as normal courts and handle numerous cases, including various forms of violence against women. Due to insufficient government investment in appointing additional judges and improving infrastructure, these courts do not deliver speedier justice as intended.
- 4 Intrusive Medical Examinations:** There is evidence that in India, Nepal, and Sri Lanka, practices like the two-finger test persist.
- 5 Extralegal Settlements:** Survivors frequently face pressure to settle cases outside the legal system, particularly in Bangladesh, India, and Nepal.
- 6 Low Conviction Rates:** Among the six countries studied, Bhutan has the highest conviction rate for rape cases at 64%, although this is based on an extremely low reporting base. Conversely, Sri Lanka and Bangladesh report abysmally low conviction rates at 3.8% and 3%, respectively. In India, the conviction rate is 27.12%, and in Nepal, it is 34.8%, both of which are fairly low. This widespread issue results in impunity for perpetrators of rape across the region. To address this, long-term structural changes in the criminal justice system are necessary to ensure that more cases are successfully reported, investigated, tried, and convicted.
- 7 Bribery and Corruption:** Survivors and stakeholders across four countries (Bangladesh, India, Nepal, and Sri Lanka) highlighted that the susceptibility of justice system officials, including police, medical officers, and public prosecutors, to bribery and corruption was a severe challenge to accessing justice in rape cases.
- 8 Lack of Support Services:** In all countries studied, the victim/witness protection schemes were poorly implemented. Shelters, safe houses, and psychosocial care are often inadequate.
- 9 Compensation Issues:** Only two countries (India and Sri Lanka) have schemes for payment of compensation by the government to rape survivors including eligibility for interim compensation immediately after filing the police complaint. Even where provisions for payment of compensation exist, practical barriers often make compensation inaccessible for survivors.
- 10 Intersectional Discrimination:** Survivors of sexual violence from socially excluded communities face additional barriers based on caste, tribal, ethnic, or religious identities.



Image: lisa_marie_theck / Unsplash

INTERNATIONAL HUMAN RIGHTS STANDARDS

International legal human rights frameworks guarantee the right of all women and girls to live a life free from violence, including sexual violence.

All six countries studied have ratified the Convention on the Elimination of all Forms of Discrimination Against Women ([CEDAW](#)). This requires states to repeal discriminatory laws and ensure effective access to justice for gender-based violence survivors. This principle also applies to repealing any discriminatory definitions of rape and other forms of sexual violence, as well as to the laws based on which sexual violence is prosecuted and punished. Meeting these obligations is crucial for achieving the United Nations 2030 Agenda for Sustainable Development Goals (SDGs), particularly Goal 5 (Gender Equality) and Goal 16 (Peace, Justice, and Strong Institutions).

With regard to the definition of sexual violence, [General Recommendation 35](#) and the jurisprudence of the CEDAW Committee stipulate that the definition of sexual crimes, including rape, should be based on the absence of freely given consent and consider coercive circumstances. In addition to having comprehensive and non-discriminatory legislation on sexual violence, states are required to “ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex-officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties.” The CEDAW Committee has identified six components necessary to ensure access to justice: justiciability, availability, accessibility, good quality, provision of remedies for victims, and accountability of justice systems. The United Nations has also provided guidance on drafting effective legislation on sexual violence through the [UN Women Virtual Knowledge Centre to End Violence Against Women and Girls](#).

SURVIVORS’ PERSPECTIVE ON JUSTICE

Numerous conversations with survivors of sexual violence in South Asia revealed that they view justice as:

- Speedy trials
- Sensitivity and accountability from the system
- Timely procedures
- Societal and community attitude change
- Conviction of perpetrators

RECOMMENDATIONS FROM THE REPORT

1

Address Legal Protection

Gaps: Ensure comprehensive and inclusive definitions of sexual violence.

2

Improve Police Responses: Prompt and sensitive handling of cases.

3

Conduct Survivor-Friendly Medical Examinations: Eliminate intrusive practices.

4

Enhance Prosecution Procedures: Speed up trials and improve judicial processes.

5

Fund Holistic Interventions: Provide support services, including shelters and psychosocial care.

COUNTRY	REPORTED CHANGES SINCE 2021
Bangladesh	● A significant change in 2022 is the repeal of the legal provision that allowed a rape victim's character/past sexual history to be admitted as evidence in a rape trial. ● In Bangladesh in 2023, the full verdict of the High Court banning the two-finger test method in the medical examination of rape victims was released. Previously, the Court had issued eight directives to halt this practice.
Bhutan	● No change has occurred over the past three years.
India	● There has been no change yet as of the date of this publication. However, a set of three new laws is slated to come into force in July 2024. They will replace the Indian Penal Code, 1860, the Criminal Procedure Act, 1898 and the Indian Evidence Act, 1872 respectively, which deal with sexual violence provisions. ● In 2022, the Supreme Court of India reiterated its opposition to the use of the two-finger test in rape and sexual assault cases. The bench also directed the Union and state governments to make efforts to remove mentions of the test from the medical curriculum. It stated that doctors found to be conducting the test would be held guilty of misconduct.
Maldives	● In November 2021, the Sexual Offences Act was amended to repeal the provision that allowed marital rape in limited circumstances. It also removed specific discriminatory evidence requirements for proving rape, made the use of rape kits mandatory for collecting evidence and emphasised the use of victim-centred, trauma-informed approaches for investigating cases of rape.
Nepal	● Over the past three years, the statute of limitations for bringing a rape prosecution has been extended to two years for adults and up to three years for children, women with disabilities, and senior citizens.
Sri Lanka	● No change has occurred over the past three years.

In January 2023, South Asian organisations dedicated to ending sexual violence united to establish a collaborative platform aimed at sharing knowledge and advocating for changes to sexual violence laws and their implementation in South Asia. This initiative led to the formation of the South Asian Movement for Accessing Justice (SAMAJ). Currently, SAMAJ comprises 18 organisations and individuals from Bangladesh, India, Nepal, Sri Lanka, and the Maldives, all working together to improve access to justice for survivors of sexual violence.



For further information, please visit: www.equalitynow.org/samaj

If your organisation is involved in efforts to end sexual violence in South Asia, or if you are an independent advocate interested in joining SAMAJ, please contact us at samaj@equalitynow.org.

 equalitynow.org

 [@equalitynoworg](https://www.instagram.com/equalitynoworg)

 info@equalitynow.org

 [@equalitynow](https://twitter.com/equalitynow)

 [@equalitynoworg](https://www.facebook.com/equalitynoworg)

 [@equality-now](https://www.linkedin.com/company/equality-now)

 **Equality Now**
A just world for women and girls.