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***A COMPARATIVE STUDY ABOUT OFFENCE AGAINST WOMEN BETWEEN  
CHINA AND SRILANKA***

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## **1.1 INTRODUCTION**

The legal regulation of sexual behaviour is astonishingly resistant to change and rational analysis, firmly established in the arbitrary no man's land between crime and sin. This is most likely why so many attempts to alter sex laws over the last century have failed. Despite the 1960s' so-called sexual revolution, progress in bringing sex laws into the twenty-first century has been slow. This is due to a failure to recognise which values are threatened and which are safeguarded by penal code amendments<sup>1</sup>. Every legal system in the world has its own approach to the administration of justice process. Varied national legal systems have different ideas about how many occurrences are necessary to resolve a dispute. In some nations, all conflicts are resolved by general jurisdiction courts, whereas in others, specialised courts, such as family courts, administrative courts, and constitutional courts, are available. In this chapter, the procedures of justice administration are referred to as the Legislative system of justice administration. As a result, in order to comprehend specific aspects of sexual assault and associated legal measures, it is first required to have an overall picture of different countries. This chapter examines the laws of England and Wales, Kenya, China, and India.

**1.2 ENGLAND AND WALES :** Before 1956, there was no law in England and Wales that made rape or sexual offences illegal. The common law, however, was applied. Under common law, rape and sexual assaults were punishable by death. The Sexual Offences Act of 1956 was passed by parliament in 1956. This Act codified the existing common law of sexual offences in 1956. Following that, administrations and parliaments endeavoured to address issues connected to sexual offences as they appeared in the public consciousness, and several revisions to the 1956 Act were enacted throughout time, but this piecemeal approach to reform resulted in some legal ambiguity. In addition, the law was obsolete in many aspects (with some elements dating back to the 19th century) and probably discriminatory to the point where some critics thought it might be in violation of the UK's international human rights commitments. A study of the legal framework for sexual offences in the United Kingdom began in 1999 and resulted in the passage of the Sexual Offences Act 2003, which superseded the 1956 Act and went into effect in May 2004<sup>2</sup>. However, the criticisms of rape law in England and Wales raised by feminist scholars and activists are comparable to those raised in other nations with adversarial legal systems. The difficulty in demonstrating non-consent; cross-examination; rape myths; the use of sexual history evidence in court; and the 1976 Morgan case<sup>3</sup> judgement that a "incorrect" but "honest" belief in consent should result in

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<sup>1</sup> Cyril Greenland, Sex Law Reform in an International Perspective, 309 (Bull Am Acad Psychiatry Law, Pubmed Med Journals), Vol. 11, No. 4, 1983)

<sup>2</sup> Nicole Westmarland, Rape Law Reform in England and Wales, 1 & 3 (School for Policy Studies Working Paper Series, Paper Number 7, April 2004)

<sup>3</sup> Morgan v. DPP [1976] AC 182



an acquittal even if the belief is not "rational." As a result, the majority of rape victims who report the crime to the police will never see their case go to court, let alone have the perpetrator convicted of rape. In England and Wales, government authorities have acknowledged and identified rape myths, as well as contrasting them with the evidence. Some of the myths are identified in a 2006 report by the Home Office, which highlights that they are contradictory with evidence, such as<sup>4</sup>:

- Myth: Strangers are the perpetrators of rape.
- Myth: There are always injuries.

Evidence from research: It is mostly committed by men known to the victim.

Evidence: Only a small percentage of reported rapes result in serious exterior or interior injuries.

- Myth: Anyone who is threatened with rape will fight back.

Evidence: Many people resist, many people freeze in terror or shock, or many people determine that resistance is fruitless or dangerous.

- Myth: When a rape victim is raped, they will immediately report it.

Evidence from research: The vast majority of rapes go unreported, and many victims wait to speak with a close friend before reporting.

### **1.2.1 Aims and Rationale of the Sexual Offences Act, 2003**

According to the legislative history and law reform procedures that led to the enactment of the 2003 bill, it serves seven purposes<sup>5</sup>:

- 1) To reform and put the legislation on sexual offences more in line with contemporary ideas;
- 2) To introduce gender-neutral offences (other than rape) in order to assure equal protection and prosecution;
- 3) To bring more clarity to this area of the law
- 4) To make the law on consent more clear
- 5) To ensure adequate protection for the vulnerable, particularly children and people with mental illnesses
- 6) To impose suitable penalties commensurate with the gravity of the crimes committed
- 7) To lower the attrition rate in rape cases and assists in convicting the guilty.

Parts 1 and 2 make up the Sexual Offences Act of 2003. Sections 1–79 of Part 1 deal with sexual offences. Part 2 is about notifications and orders<sup>6</sup>. The offences in Sections 1-4 of Part

<sup>4</sup> Kelly. L. et al, Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials, 2 (Home Office Online Report 20/06/2006).

<sup>5</sup> A. Ashworth & J. Horder, Principles of Criminal Law, 340-341 (Oxford University Press, 7th Ed, 2009, UK).



1 are all predicated on a lack of permission. Consent is not required for the remaining Part 1 offences; in general, the word used is "sexual action" rather than "sexual assault." This could indicate that an act has been performed against a vulnerable individual, such as a kid or someone in one's care.

### **1.2.2 Key Groups of Offences in Part 1 of the Sexual Offences Act, 2003**

Sections 1–3 define rape, assault by penetration, and sexual assault as crimes. The offence of rape is defined in Section 1 as follows:

1. A person (A) commits a crime if he or she

He uses his penis to purposefully penetrate the vagina, anus, or mouth of another person B,

- The other person B does not consent to the penetration, and
- The other person B does not consent to the penetration.
- A does not have a reasonable expectation that B will assent.

2. The reasonableness of a belief must be considered in light of all the circumstances, including any actions taken by A to determine if B consents.
3. An offence under this section is covered by sections 75 and 76.
4. A person who violates this provision is subject to life imprisonment if convicted on an indictment.
5. Assault by penetration is defined in Section 2 as-

1. A person (A) is guilty of a crime if—

- He purposefully penetrates another person's vagina or anus
- With a part of his body or anything else, (b) the penetration is sexual,
- A refuses to allow the penetration, and
- B does not have a reasonable expectation that B will assent.

2. The reasonableness of a belief must be considered in light of all the circumstances, including any actions taken by A to determine if B consents.
3. An offence under this section is subject to Sections 75 and 76.
4. A person who violates this provision is subject to life imprisonment if convicted on an indictment.

Sexual assault is defined in Section 3 as:

1. A person (A) is guilty of a crime if—

- He makes an intentional contact with another person (B)

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<sup>6</sup>TheSexualOffences Act,2003.



- The touching is sexual in nature.
  - B doesn't want to be touched, and
  - A does not have a reasonable expectation that B will assent.
2. The reasonableness of a belief must be considered in light of all the circumstances, including any actions taken by A to determine if B consents.
  3. An offence under this section is covered by sections 75 and 76.
  4. A person who commits an offence under this section faces the following penalties:
    - on summary conviction, to a period of imprisonment of not more than 6 months or a fine of not more than the statutory maximum, or both;
    - On indictment, to a term of imprisonment of not more than 10 years

### **1.2.3 The Meaning of Consent under the Act, 2003**

The Sexual Offences Act of 2003 defines consent as "a person consents if he agrees by choice and has the freedom and competence to make that choice." (All references to 'he' in the Act should be read as 'he or she'.) As a result, permission requires careful evaluation. It must be considered in the context of sexual violence offences, and the 2003 Act contains crucial rules concerning legal presumptions of consent that apply in criminal cases.

According to government figures from 2013, almost 90% of victims of the most serious sexual offences knew the perpetrator the previous year, compared to less than half of victims of other sexual offences. A spouse or partner was the most typically reported victim-offender relationship among victims of the most serious offence types (56 per cent)<sup>7</sup>. Consent or belief in consent is often the most contested and controversial issue in courtrooms, and a serious obstacle to successful prosecutions, because most defendants and victims are well-known to each other, and because the nature of sexual offences means that those crimes often take place in private, with only a victim and a perpetrator able to give first-hand evidence<sup>8</sup>.

Sections 75 and 76 of the Act establish a framework of presumptions that apply to a variety of situations. Whether the victim consented or not, or whether the defendant thought the victim consented?

The Act's Section 75 addresses situations in which the victim's lack of consent and the defendant's lack of reasonable belief in consent are not immediately apparent. It states that if any of the following circumstances existed and the defendant was aware of them, it will be assumed that the victim was not consenting and that the defendant did not have a reasonable belief that the victim was consenting. Importantly, facts can disprove or refute those assumptions. The general definition of consent (in Section 74) will apply once the presumption is displaced, and consent questions will be decided based on the evidence. The victim was afraid of violence being used against them or another person, or such violence had

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<sup>7</sup>Ministry of Justice, Home Office and Office of National Statistics, *An Overview of Sexual Offending in England and Wales*,6(2013).

<sup>8</sup> Crime Report 2015-2016, Violence Against Women and Girls, (Crown Prosecution Service).



been used immediately prior to the act, or the victim was unlawfully detained, or the victim was asleep or unconscious, had a physical disability that affected their ability to communicate, or had been drugged so that they could be overpowered, according to Section 75.

The Act's Section 76 addresses situations in which the defendant has misled the victim. For example, the defendant misled the complainant into believing that penetration was a required medical procedure when it was not, or the defendant pretended to be the complainant's husband. In these cases, there will be a presumption that the victim was not consenting, and that the offender did not have reasonable grounds to believe the victim was consenting. Unlike in the case of Section 75, however, the assumption will be conclusive. That is, the presumption cannot be overturned or refuted by proof, and the elements of the crime are presumed to be proven.

It has long been thought in English law that an offender should not be allowed to avoid criminal culpability simply because he or she was inebriated. The House of Lords stated in *DPP v. Majewski*<sup>9</sup> that "leaving the citizen legally unprotected from unprovoked violence where such violence is the result of drink or drugs having obliterated the perpetrator's capacity to know what he was doing or what the consequences were" would not provide adequate protection to the community. (Clearly, part of the choice is based on policy - it would be improper, the argument goes, for a person to willfully become inebriated and then avoid the effects of their inebriation on their judgement or behaviour.) In this instance, it was decided that self-intoxication was not a defence to a criminal allegation of "basic intent" (that is, a crime where no specific intent must be proved).<sup>12</sup> Although Marital Rape is not mentioned in the Sexual Offences Act of 2003, the problem of rape in marriage is worth mentioning. A husband could not be found guilty of raping his wife under common law. The marital rape exemption was removed in England and Wales in 1991, following a judgement by the House of Lords Appellate Committee in *R. v. R.*<sup>13</sup> Since then, English and Welsh law has acknowledged that rape can occur inside the confines of a marriage and that marriage does not imply irrevocable consent.

### **1.3 SENTENCING SEXUAL OFFENCES**

If the activities entail penetration, causing sexual activity has a potential term of life in prison; if they do not, it carries a maximum sentence of ten years. The law in England and Wales recognises the seriousness of the offence at the sentencing stage. The guidelines of the Sentencing Council are quite clear and must be examined in order to understand how they work and all of the variables.

### **1.4 YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT, 1999**

Except with the Court's approval, Section 41 of the Youth Justice and Criminal Evidence Act, 1999 bans evidence or cross-examination about the sexual behavior of a victim of a sexual offence. The Court can only grant authorization if the defendant submits an application. Part 36 of the Criminal Procedure Rules is used to file an application. Part 36 provides for

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<sup>9</sup>[1977] AC 443, 495.



questions concerning a victim's previous sexual history to be asked, as well as proof of earlier sexual behaviour to be presented. A defendant must show the court that the conditions and exceptions in Section 41 of the Youth Justice and Criminal Evidence Act, 1999 are met in order to succeed in a Part 36 application. In order to understand the circumstances and exclusions, examine Section 41.

In *R. v. A.15*, the House of Lords concluded that there must be some exclusion that allows questions to be asked; otherwise, the defendant's right to a fair trial would be violated. In this perspective, Section 41 is understood. Shortly after *R. v. A.*, the Court of Appeal provides a very interesting exposition of the meaning and restrictions of Section 41. The Prosecutors' Pledge compels prosecutors to "protect victims from unreasonable or irrelevant attacks on their character and may seek the Court's involvement where cross examination is regarded to be inappropriate or oppressive" in cases involving witnesses and victims. Is Section 41 having the desired effect? In 2006, the Home Office conducted a study of the law's implementation and found various flaws, including the fact that prior sexual history data was not as restricted as the Act would seem to suggest. The Criminal Procedure Rules were not being followed, which was one of the issues<sup>10</sup>.

## CHINA

Since 1950, when the revolutionary Marriage Law prohibited feudal traditions like concubinage and forced marriage, Chinese law has protected women's rights.

Despite the rules in place, China's communist party has long been a proponent of women's equality<sup>11</sup>.

The Chinese government has consistently prioritised the preservation of women's and children's legitimate rights and interests, notably the rights of girls.

The People's Republic of China's Constitution states unequivocally that men and women are equal, that the state defends women's rights and interests, and that maltreatment of women and children are prohibited<sup>12</sup>.

China has also produced special legislation to give special protection for women, such as the Law of the People's Republic of China on the Protection of Women's Rights and Interests and the Law of the People's Republic of China on the Protection of Minors. For particularly serious crimes that violate the life and well-being, the right to personal liberty and personal dignity of women, such as intentional killing and injuring women, and the rape, abduction, and organizing of women for the purpose of prostitution resulting in severe injury or death of women, the Criminal Code of the People's Republic of China establishes penalties that are harsh or even result in the death penalty. As a tool to combat discrimination and marital and

<sup>10</sup> L. Kelly et al, Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials, 2 (Home Office Online Report 20/06 /2006).

<sup>11</sup> Open for Interpretation: Sexual Harassment in the Chinese Work Place (Sep. 14, 2012) Available at: <http://www.echinacities.com/expat-corner/Open-For-Interpretation-Sexual-Harassment-in-the-Chinese-Workplace>

<sup>12</sup>Article 4, 48. Constitution of the People's Republic of China, Dec. 4, 1982.



domestic abuse against women, the Criminal Code criminalises crimes such as forcibly violating the freedom of marriage, bigamy, and the maltreatment and abandonment of women<sup>13</sup>.

### **1.5 PUNISHMENTS UNDER CRIMINAL LAW OF PEOPLE'S REPUBLIC OF CHINA**

The sanctions are dealt with the Criminal Law of the People's Republic of China, which was published in 1997. The law divides punishments into two categories: primary and secondary<sup>14</sup>. It also specifies the sorts of punishments, which are as follows: -

1. Control
2. Detention for criminal offences
3. Imprisonment for a set period of time
4. Life in prison as well as
5. The death penalty is an option.

Although the Chinese Criminal Law provides for the death sentence in cases of rape, it also states that the death penalty should only be used to criminals who commit the most heinous crimes. If immediate execution is not required for a criminal element sentenced to death, a two-year suspension of execution may be proclaimed at the same time the death sentence is given. All death sentences must be presented to the Supreme People's Court for approval, with the exception of those rendered by the Supreme People's Court in accordance with the legislation. A high people's Court can decide or approve death sentences with a moratorium on execution<sup>15</sup>. The death sentence, however, is not to be applied to anyone under the age of eighteen at the time of the offence or to women who are pregnant at the time of adjudication<sup>16</sup>.

Women and kids are also better protected by the 2015 Amendment. Engaging in the prostitution of an underage girl is no longer a separate offence; instead, it will be prosecuted as rape, with enhanced penalties. In Chinese litigation, manufactured evidence can also be a concern, and the Amendment stipulates that a plaintiff who initiates a civil claim based on fabricated facts may be imprisoned to up to seven years in prison<sup>17</sup>.

### **1.6 SRILANKA**

Sri Lanka, formally the Democratic Socialist Republic of Sri Lanka, is a small island nation off the coast of India in South Asia. To the northwest, Sri Lanka shares marine boundaries with India, while to the southwest; it shares maritime borders with the Maldives. Sri Lanka,

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Experience and Practice of China in Investigating and Indicting Crimes of Gender Killing, Available at: [https://www.unodc.org/documents/justice-and-prison-reform/IEGM\\_GRK\\_BKK/China\\_reply\\_English.pdf](https://www.unodc.org/documents/justice-and-prison-reform/IEGM_GRK_BKK/China_reply_English.pdf).

<sup>14</sup> Article 32, Criminal Law of People's Republic of China, 1997.

<sup>15</sup> Article 48, Criminal Law of People's Republic of China, 1997

<sup>16</sup> Article 49, Criminal Law of People's Republic of China, 1997.

<sup>17</sup> Steptoe & Johnson LLP, China Promulgates the Ninth Amendment to the PRC Criminal Law, (China, Sep. 10, 2015).



like India and many other nations throughout the world, continues to have high rates of sexual violence against women, as proven by police figures, media reports, documentation, and research conducted by both government and non-government organizations. The following crime statistics for the year 2020 are available on the Sri Lanka Police website for the entire island<sup>18</sup>.

**Table:1.1**

<b>Sr.No</b>	<b>Crime</b>	<b>CaseRecorded</b>
1.	Abduction	738
2.	Kidnapping	297
3.	Rapeofwomen over16yr ofAge	350
4.	StatutoryRapeofWomenunder16yearof Age,withconsent	1394
5.	StatutoryRapeofWomenunder16 yearofAge,without consent	292
6.	Unnatural &gravesexualabuse	716
7.	Sexualexploitationofchildren's	49
8.	Trafficking	26
	<b>Total</b>	<b>3862</b>

## **1.7CONSTITUTIONOFSRI LANKA**

As previously stated, Sri Lanka is a Democratic Socialist Republic, just like India. As a result, having a written constitution provides additional security against violence. No one shall be subjected to harassment, inhuman and cruel treatment or punishment, according to Article 11 of the Sri Lankan Constitution.

Article 12 stipulates that all people are equal in front of the law and have the same right to equal protection under the law. No citizen shall be discriminated against on the basis of race,

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<sup>18</sup> Sri Lankan Police, Grave Crime Abstract for the Year 2016 for Whole Island. Available at: <http://www.police.lk/index.php/crime-trends>(LastRetrievedon:3<sup>rd</sup>March,2017).





religion, language, caste, sex, political opinion, or birthplace, or any combination of these factors<sup>19</sup>.

## **1.8 THE LEGAL FRAMEWORK FOR SEXUAL OFFENCES**

The Penal Code of 1895, as revised in 1995, governs sexual violence against women in Sri Lanka, with the Criminal Procedure Code (CPC) and Evidence Act laying out the procedure and court system for prosecutions and punishment. Sri Lanka amended the Penal Code sections dealing to violence against women in 1995, adding new offences, increasing penalties, and changing the definition of rape. The most important criminal law statute in Sri Lanka is the Penal Code, which was adopted as Ordinance No. 2 of 1883. Since Sri Lanka's independence in 1948, the government has revised the Ordinance 30 times. Article 363 of the Sri Lankan penal code defines rape. Rape is defined in Article 363 of the Penal Code as sexual intercourse with a woman in five scenarios:

1. Sexual intercourse without consent;
2. Sexual intercourse with or without consent when the woman is in lawful or unlawful detention or consent is obtained through intimidation, threat, or force;
3. Sexual intercourse with or without consent when the woman is of unsound mind or intoxication administered to her by the man or another person;
4. Sexual intercourse with or without consent when the woman believes she is married to the man;
5. Sexual intercourse with or without consent when the woman is of unsound mind or in a state of intoxication administered to her by the man or

For the purposes of Article 363, penetrating is considered sexual intercourse<sup>20</sup>. In Sri Lankan law, assault with the intent to commit rape is one of the few instances where the right of defence extends to killing the assailant<sup>21</sup>.

## **1.9 MARITAL RAPE**

In Sri Lanka, unless a judge has ordered a spousal separation, marital rape is not a crime. Some protection is provided under the Prevention of Domestic Violence Act (PDVA) of 2005. Domestic abuse victims (including rape and sexual assault) can seek a protection order from a Magistrate's Court to limit contact between the perpetrator and the victim under the PDVA<sup>22</sup>. The domestic violence subtopic delves into the Prevention of Domestic Violence Act in depth.

## **1.10 CUSTODIAL RAPE AND GANG RAPE**

<sup>19</sup> Constitution of Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May, 2015) Revised Edition – 2015, Published by the Parliament Secretariat

<sup>20</sup> Penal Code Explanation of Article 363(i) (Sri Lanka).

<sup>21</sup> Penal Code Article 93 (Sri Lanka).

<sup>22</sup> The Prevention of Domestic Violence Act No. 34 of 2005 (2005) Article 2(1) (Sri Lanka).



Custodial rape and gang rape are recognized as graver kinds of rape in Sri Lanka's Penal Code, Section 364(2)<sup>23</sup>. Gang rape and jail rape are included as aggravating circumstances in the Penal Code.

### **1.11 CUSTODIAL RAPE**

For custodial rape, the Penal Code specifies three scenarios:

- Acts committed by public officers or persons in positions of authority against women in official custody or who have been wrongfully restrained;
- Acts committed by a person on the management or staff of a home or other place of custody established by law against women inmates;

Acts committed by a person on the management or staff of a hospital against a woman in the hospital, a pregnant woman in the hospital, or a woman under the age of 18 years in the hospital President Chandrika Kumaratunga issued a directive in 1995 to combat torture<sup>24</sup>, kidnappings, and sexual abuse in detention centres. The instruction permits women and children under the age of 12 to bring a person of their choosing to be questioned by the police or security forces<sup>25</sup>. Despite an upsurge in reports of prison rape by armed forces personnel and police during the war, there have been few prosecutions for custodial rape in Sri Lanka<sup>26</sup>. The regulation does not apply to everyone. On the basis of a false claim that she was a member of the Liberation Tigers of Tamil Eelam (LTTE) suicide bomb squad, police tortured and raped Vijitha Yogalingum in 2000<sup>27</sup>. Yogalingum filed a basic rights petition with the Supreme Court in 2001, and the Supreme Court determined in August 2002 that seven defendants had breached her fundamental rights under Article 11 of Sri Lanka's Constitution. The Supreme Court ordered that each respondent give the victim compensation, and the judges encouraged the Attorney General to take action against the culprits.

### **1.11 PENAL CODE OF SRILANKA, 1998 AMENDMENT: NEW OFFENCES**

The most recent revisions, which were passed in 1995 and 1998, make several significant adjustments to the elements and penalties for sex-based offences<sup>28</sup>. Sexual harassment<sup>29</sup>, grave sexual abuse<sup>30</sup>, and statutory grave sexual abuse are among the other charges (for minors under 16 years old)<sup>31</sup>, incest<sup>32</sup>, obscene publication<sup>33</sup>, sexual exploitation of

<sup>23</sup>Penal Code Article 364(2) (Sri Lanka).

<sup>24</sup>Penal Code Article 364(2) (Sri Lanka).

<sup>25</sup>Establishment of the Human Rights Task Force Regulation, Regulation 8 No. 1, 1995 (Sri Lanka).

<sup>26</sup>Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, 41 (July 2010).

<sup>27</sup>Yogalingum Vijitha v. Wijesekara and 8 Others, Supreme Court Application No. 186/2001 (Aug. 28, 2002).

<sup>28</sup>Penal Code Article 363(B) (Sri Lanka).

<sup>29</sup>Penal Code Article 345 (Sri Lanka).

<sup>30</sup>Penal Code Article 365(B) (Sri Lanka).

<sup>31</sup>Penal Code Article 365 (B)(1) (a) (aa) (Sri Lanka).

<sup>32</sup>Penal Code Article 364 (a) (Sri Lanka).

<sup>33</sup>Penal Code Article 286 (a) (Sri Lanka).



children<sup>34</sup>, trafficking<sup>35</sup>, hiring or employing children as procurers for sexual intercourse<sup>36</sup>, non-reporting by photographers/filmmakers who discover obscene or indecent photographs of children<sup>37</sup>, and publication of materials about certain sexual offences<sup>38</sup>

## 1.12 Conclusion

Regardless of the foregoing, the first step in obtaining formal justice for a woman who has been sexually attacked, raped, harassed, or abused is for the police to record the woman's story as a First Information Report (FIR). The police inquiry will be based on this information. Police officers (mainly men) are notoriously prejudiced against women. As previously stated, they tend to downplay cases of violence against women and fail to follow the law's due process. Furthermore, if the woman does not speak the same language as the police officer, the language in which the (FIR) is written becomes an issue. A number of groups have brought our attention to the problem that police stations in the North and East lack officers who know Tamil and can document the FIR in that language. The testimony of the woman is frequently translated into Sinhala, and the FIR is also printed in Sinhala. She is eventually forced to sign a declaration that she is unable to read. This has an influence on the case when it comes up several years later since she is unable to read and recall what was written in the initial statement. It is also impossible for her to make a written statement in her native tongue.

Sri Lanka's Evidence Ordinance, which was introduced by the British during the colonial period and is adversarial in character, contains the gender bias of the time. The necessity that the prosecution prove sexual intercourse without permission beyond a reasonable doubt leads to rigorous cross-examination of victims. It also permits the defence to cross-examine the victim, and it is frequently used to incorporate the victim's past sexual history into evidence in order to cast doubt on her trustworthiness. This helps to re-victimize the victim by introducing all kinds of gender bias and stereotyping, and it frequently discourages women from pursuing legal remedy for sexual violence crimes. Furthermore, the adversarial form of court procedure is used in all criminal cases in Sri Lanka, which is not at all victim-friendly. For a victim-survivor of violence, especially a victim-survivor of sexual abuse, going to court can be a terrifying, embarrassing, stressful, traumatic, and painful process. Cross examination is frequently aggressive and demeaning, and it undermines the complainant's self-confidence. Courts are frequently viewed as completely alienating and unjust<sup>39</sup>.

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<sup>34</sup> Penal Code Article 360(B) (Sri Lanka).

<sup>35</sup> PenalCodeArticle360(C)(SriLanka).

<sup>36</sup> Penal Code Article 288(A) (Sri Lanka).

<sup>37</sup> Penal Code Article 286 (A) (Sri Lanka).

<sup>38</sup> Penal Code Article 365(C) (Sri Lanka).

<sup>39</sup> Report of Leader of the Opposition, Prevention of Violence against Women and Girl Child, 24 (Dec., 2014).



<sup>1</sup> Morgan v. DPP [1976] AC 182

<sup>1</sup> Kelly. L. et al, Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials, 2 (Home Office Online Report 20/06/2006).

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<sup>1</sup> R.V. Devonald, (2008) All ER (D) 241 (FEB)

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<sup>1</sup> Crime Report 2015-2016, Violence Against Women and Girls, (Crown Prosecution Service).

<sup>1</sup>[1977] AC 443, 495.

<sup>1</sup> L. Kelly et al, Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials, 2 (Home Office Online Report 20/06 /2006).

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<sup>1</sup>Article 4, 48. Constitution of the People's Republic of China, Dec. 4, 1982.

<sup>1</sup> Experience and Practice of China in Investigating and Indicting Crimes of Gender Killing, Available at: [https://www.unodc.org/documents/justice-and-prison-reform/IEGM\\_GRK\\_BKK/China\\_reply\\_English.pdf](https://www.unodc.org/documents/justice-and-prison-reform/IEGM_GRK_BKK/China_reply_English.pdf).

<sup>1</sup> Article 32, Criminal Law of People's Republic of China, 1997.

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<sup>1</sup> SriLankan Police, Grave Crime Abstract for the Year 2016 for Whole Island. Available at: <http://www.police.lk/index.php/crime-trends>(LastRetrievedon: 3rdMarch,2017).

<sup>1</sup> Constitution of Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May, 2015) Revised Edition – 2015, Published by the Parliament Secretariat

<sup>1</sup>PenalCodeExplanationof Article363(i)(SriLanka).

<sup>1</sup>Penal Code Article 93 (Sri Lanka).

<sup>1</sup> The Prevention of Domestic Violence Act No. 34 of 2005 (2005) Article 2(1) (Sri Lanka).

<sup>1</sup>Penal Code Article 364(2) (Sri Lanka).

<sup>1</sup>PenalCodeArticle364(2)(SriLanka).

<sup>1</sup>Establishment of the Human Rights Task Force Regulation, Regulation 8 No. 1, 1995 (Sri Lanka).

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<sup>1</sup> Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, 41 (July 2010).

<sup>1</sup>YogalingumVijitha v. Wijesekara and 8 Others, Supreme Court Application No. 186/2001 (Aug. 28, 2002).

<sup>1</sup> Penal Code Article 363(B) (Sri Lanka).

<sup>1</sup>Penal Code Article 345 (Sri Lanka).

<sup>1</sup> Penal Code Article 365(B) (Sri Lanka).

<sup>1</sup> Penal Code Article 365 (B)(1) (a) (aa) (Sri Lanka).

<sup>1</sup>Penal Code Article 364 (a) (Sri Lanka).

<sup>1</sup>Penal Code Article 286 (a) (Sri Lanka).

<sup>1</sup> Penal Code Article 360(B) (Sri Lanka).

<sup>1</sup> PenalCodeArticle360(C)(SriLanka).

<sup>1</sup> Penal Code Article 288(A) (Sri Lanka).

<sup>1</sup>Penal Code Article 286 (A) (Sri Lanka).

<sup>1</sup> Penal Code Article 365(C) (Sri Lanka).

<sup>1</sup> Report of Leader of the Opposition, Prevention of Violence against Women and Girl Child, 24 (Dec., 2014).