

Advocacy Paper
On
ESTABLISHING A SPECIAL JUDICIAL PROCESS
FOR SEXUAL VIOLATIONS

SUBMITTED BY
Trincomalee District Women Network (TDWN)
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1. PURPOSE OF THE ADVOCACY PAPER

To recommend and advocate with the Ministry of Justice, Attorney General's Department and other relevant stakeholders to establish a special judicial process for sexual violations.

2. INTRODUCTION

Sexual Gender Based Violence ¹ is a hidden practice around the world. Most incidents go unreported and go unpunished when the perpetrators roam around the community without fear. As far as violence is concerned, the acts are directly confined to women and young girls. This is concerned as most prevalent human rights violation. SGBV has no social, economic, or even national boundaries. One in Three women will experience physical or sexual abuse in her lifetime. This violence undermines the health, dignity, security and autonomy of its victims, yet it remains shrouded in a culture of silence².

One-third of woman all over the world suffers from domestic violence by their intimate partners. This is considered as a hidden problem in most women as they do not reveal their sufferings due to reasons such as culture, fear of reprisal, concern over children, shame and internalizing the violence. It is also an ever-increasing burden to the health care services, social and economy of the country.³ Violence in one generation can influence the next generation's behavior through a learned behavioral process. Especially in domestic violence, when children are exposed to a violent situation that happened between their parents, boys learn violence as a way to achieve control and turn to become as

¹ SGBV - Sexual Gender Based Violence

² What We do: Gender Based Violence: <https://srilanka.unfpa.org/en/topics/gender-based-violence-13>

³ Domestic violence from intimate partner: Demographic and Health Survey Report -2016-Chapter 13.PDF:<http://www.statistics.gov.lk/Resource/en/Health/DemographicAndHealthSurveyReport-2016-Chapter13.pdf>

perpetrators. On the other hand, the girls learned to accept the violence and remain silent which makes them become survivors.

In Sri Lanka, SGBV rate is slightly high whereas the different ethnic communities represent different moral, cultural, and religious values. The national Women's Wellbeing survey conducted in 2019 shows that 1 in 5 (20.4%) women in Sri Lanka have experienced sexual and/or physical violence by an intimate partner in their lifetime; and **one in four women have been subjected to physical or sexual violence at some point in their lives**, a figure expected to rise as incomes dwindle and tensions at home mount.

According to the Grave Crimes Abstract published by the Sri Lanka Police, 300 incidents of rape and 1292 incidents of statutory rape were reported to the Police in 2020⁴. There have also been several reports of conflict-related sexual violence⁵. However, research on sexual violence indicates that the actual incidence of SGBV in Sri Lanka is markedly higher than those reported. While there are many reasons for non-reporting, research and discussions with victim-survivors highlight gaps in the practical procedures where the victim could not understand the system and procedures to access to justice. Also, the existing laws to prevent violence Victim-Survivor⁶ has to follow, and lack of awareness regarding these procedures among the victims and at the community level. Even though the Penal Code, Prevention of Domestic Violence Act, and other laws describe any type of violence such as physical, mental, and emotional as criminal activities, these laws are not adequate to minimize those incidents at the community level.

In the situation of COVID - 19 there has been an increase in SGBV cases across the world. This situation is more strengthened by the economic crisis situation

⁴ 2021. Sri Lanka Police: Performance Report 2020. Presented to the Sri Lanka Parliament in December 2021.

⁵ Woodworth, A., & Fonseka, B. 2016. Accountability and Reparations for Victims of Conflict Related Sexual Violence in Sri Lanka. Centre for Policy Alternatives.
<https://www.cpalanka.org/wpcontent/uploads/2016/07/CSV-paper-June-2016.pdf>.

⁶ Victim-Survivor - VS

where the family structures started cracking due to undue pressure of carrying an extra burden on earnings and spending for personal needs. This situation increased the pressure and tension among the family members, and it is turn out into violence against the marginalized, and vulnerable in the families. Especially women, elders, young girls, and differently-abled members.

There has been no inclusive national socioeconomic strategy focused on Women Headed Households (WHHs) to enhance and strengthen their economic status. Many governmental and non-governmental organizations worked in the past. Those are not successive and the situation on the economic strength of WHH is escalated where they are unable to face the present economic crisis. Trincomalee district highly affected by war and the poverty level did not change after 14 years of war ended. Women face a double burden on their shoulders to work as caretakers at home and employees to earn money to run a family without any hindrances. Women are struggling to ensure the well-being of their children due to obstacles to education, domestic violence, and inefficient and unjust systems of maintenance payments to WHHs. Frustrations and fears of uncertainty, hunger, and the lack of basic comforts often transfer into violence directed at women and children at home. The limited existing services to address such violence are further stunted due to the pandemic and now the economic crisis⁷. Lack of sustainable planning, implementation and monitoring are not existing/developed which is the major contributory factor.

In light of this information, TDWN would like to share the findings and experiences on SGBV and present why steps to be taken for the prevention of SGBV and enhance the dialogue about SGBV among different layers of the community, including the youths. It is most important to understand the present

⁷ Urgent plea by Sri Lankan feminists to address the unfolding humanitarian crisis caused by the economic collapse in Sri Lanka by Collective - 6 April 2022 - <https://www.cadtm.org/Urgent-plea-by-Sri-Lankan-feminists-to-address-the-unfolding-humanitarian>

situation in Trincomalee, where in Trincomalee all three communities live in that district, whereas the reporting cases of GBV are still high in the eastern province.

3. RATIONALE

Trincomalee District Women Network⁸ is actively involved in the promotion and protection of women's rights which are enshrined in the CEDAW convention⁹ and its recommendations and in creating awareness of various challenging issues faced by women in the Trincomalee district. The organization is working in this district since 2009. TDWN is working in different layers at the community level such as village/GND¹⁰, 07 Divisional, and District levels in order to help women to strengthen and build their capacity to advocate for their rights, prioritize needs, and intervene in different stakeholder institutions to make changes in decision making.

TDWN gradually formed more than 100 grassroots women's Community-Based Networks in those 7 Divisional Secretariat areas around Trincomalee District. Presently there are more than 1000 women became active members. These CBOs are functioning as basic forums grass root for women to engage and introduce to each other, develop support networks, advocate for their rights and needs, and work collaboratively to request durable solutions from the government. This request includes maintaining law enforcement on violence against women by the police as well.

TDWN also support the members of the women's groups by providing legal support and assistance to mitigating disputes, addressing domestic and gender-based violence, or helping victim -Survivors to relocate themselves in safe houses to

⁸ Trincomalee District women Network - TDWN GA 00251051 under the Companies Act No.07 of 2007

⁹ Convention on the Elimination of all forms of Discrimination Against Women 1979

¹⁰ Grama Niladhari Divisions - GND

ensure their safety and build their confidence to face the upcoming challenges. The transition and support services to the victim-survivors are provided in a highly confidential manner.

The current economic crisis has caused a significant increase in demand for their services, especially SGBV due to the loss of income, jobs, and increased alcoholism and drug usage among men in the Trincomalee district. These root causes affect victim-survivors in different ways, such as high stress, consumption of drugs, and social stigma which are identified through field interviews conducted among local officials and women at the community level. The identified factors keep contributing to the crackdown among the families and community cohesion.

The situation mainly affects women-headed households, where women work in garment factories, offices, shops, and working in Middle East countries. Also, this situation affects differently-abled women and unskilled women employees. In November and December of 2022, 50 incidents were identified and reported to the TDWN network from Muthur, Town and Gravets, Kuchchaveli, Thampalakamam, Serunuwara, Kinniya and Kandalai. The High number of incidents were reported in the Kuchchaveli area.

As per the database that Trincomalee District Women Network maintained, during the past 6 months, out of 51 cases they dealt with, 18 are related to domestic violence, 4 were under-age marriage, and 6 are related to VAW/Sexual abuse cases.

4. IDENTIFIED KEY ISSUES ON SEXUAL GENDER-BASED VIOLENCE IN TRINCOMALEE DISTRICT

i. Why TDWN wants to focus on these issues?

All women have the duty to protect their own members of their community. Women from grass root level are not coming forward to bring/talk about the issues on GBV that they face in the public or private sphere. The remaining silence from affected women is giving more chances to the perpetrators to move around in the community without any fear or hindrances. Whereas the affected victim survivors carry the burden of shame on the name of culture and traditions which remains in the community. This situation creates women more vulnerable and they keep facing violence in different ways such as verbal, physical, mental, and economical without any solutions.

As a result of this, more women and children are affected and they are not in a position to handle their family and personal life activities. This greatly/severely affects the future life of the victims and their direct family members. This situation encourages childhood marriages of girl children and increases suicidal attempts among the victim-survivors. This is not only affecting the victim-survivors but also affects the future generation as well. As an organization that has a strong network and field presence in the Trincomalee district, TDWN would like to raise these issues in the regional and national level with the relevant stakeholders to take appropriate steps to prevent and protect the life of the victim-survivors and the future generations.

ii. Who are the perpetrators?

The identified perpetrators are always the person who has the authority and power to have control on victims within their limits of their custody. The level

of the power dynamic of the perpetrators varies from government to non-governmental/private sectors. The identified perpetrators from TDWN field experiences are:

- Family members especially by the intimate partners
- School principals
- Bus drivers and conductors
- Doctors
- Higher Officials from government departments
- Police officers
- Garments factories
- Private sectors
- Civil Society Organizations

When perpetrators have more power and control over victim-survivors, the victim-survivors remain silent and they never raise their voices against the violence and injustice that they are facing in different platforms in the community. Power and Authority contribute more to this situation and create confidence for perpetrators. The majority of the victim-survivors more depend on perpetrators on livelihood and where they remain silence due to lack of poverty and the household responsibilities what they have in their own shoulders. Lack of peer support and sharing among co-workers strengthen this situation and strengthen the role of perpetrators.

When victims raise their voices against violence such as harassment, abuse, intimidation, sexual favors, or requested sexual relationships in their work environment, the high-ranking officers take revenge through terminate them from employment, shaming the victims among the other co-workers, tarnishing their names, create gossips/fake stories about victim's behaviors and/or threaten victims by way of posting posts/fake photography pictures. Fearing dignity and cultural values, the victim-survivors do not want to come forward to take action or are reluctant to talk about these incidents in an open platform.

iii. How community affected by GBV issues?

Given the situation where women are not allowed to live their life alone with dignity at the community level. Especially, Trincomalee districts have multi-cultural and traditions among the community members. Whereas, different communities have different traditions and practices which limits the level of prevention of SGBV matters. Therefore, victims are forced to get married in a young age. When their husbands abandon them with children, that affects not only the women but also the children¹¹.

The increase of Women Headed House and victims have forced them to live alone in the communities. This increase strengthens the exploitation of women as they have very limited security. Trincomalee is one of the districts which is severely affected by four decades of war. The eastern province itself have 89,000 of Women Headed Households living in three districts and among that 17,500 WHHs living in Trincomalee District¹². The trauma and scars of war have not healed through reconciliation process. There is a lack in counselling, and phyco-social support systems. Due to that, the women and girls become vulnerable targets in post-war areas. The number of reported GBV violence and the types of reported violence are gradually increasing day by day.

The police always look at community on security perspective and reluctant to address the GBV matters which are reported to them. The bitter truth is that the victims who come forward to report the cases have been intimidated and revictimized at the police station. The law maintaining authorities always look at the matters as private when it comes to family violence. They try to negotiate between the perpetrators and the victim-survivors in order to maintain the family unit. This situation always escalates the tension and insecurity among the victims where the majority of them are reluctant to approach the police or any authorities to access justice or remedy.

¹¹ Many case studies done by TDWN during daily field visit during last year (2021-upto now)

¹² Information obtained from District Secretariate of Trincomalee on 27.02.2023

The lack of efficiency exist in the complaint mechanism contributes more to the increase in violence against women. 119 complaint system exists to make emergency complaints but they are always non-functional or they have issues dealing with languages. The responsive measures taken from the police departments contributes more for lacking on prevention from law maintaining authorities. The intimidation and harassment that take place in the police station, always make the victim to double think to lodge the complaint for remedial/redress process at the relevant police stations. The Women and Child desks are non-equipped and not given specific space to handle the matters with high confidentiality. The majority of the Women and Child Desks situated in the rural police station are not receiving the required resources to attend to the reported cases. In which the officers are unable to address the issues reported to them in an effective manner. Maintaining privacy and confidentiality about Sexual Gender Based Violence is a real challenging factor in their day-to-day work. There is also a shortage of officers who can speak the competent language to record complaint made by the Victim Survivors where the Trincomalee District having a majority population as Tamil speaking¹³.

Victims under 16 - 18 are in very vulnerable situation where they could not neither live with the violation what they have faced nor they could able to take actions against the perpetrators. Police never accept the crime committed against this age category and settled the matter in police station itself. This gives more chances to the perpetrators. The victim survivor of that age category forced to lose their education at their correct age. Also, they are abandoned from social, financial and emotional supports. In Trincomalee district the child abuse, rape and incest are highly taking place where majority of the mothers leave their children behind at home without any safety measures and going to Middle East Countries as migrant workers to strengthen their family's economic

¹³ There are 11 police stations in Trincomalee and 11 Women and Child Desks are available. These police stations have only 2 Women police officers who can speak in Tamil.

status. Therefore, high number of reported cases on abuse or sexual violence cases related to the girl children in those areas. The perpetrators of those reported cases are their own fathers, brothers, uncles, other relatives or neighbors. The recent economic crisis also contributing a lot on increase of sexual violence against girl children as a result of migration of mothers.

Victims also refuse to come forward for legal action where the actions always delayed more than years and years especially when it's come to rape, sexual assault child abuse, and molestation. When the actions are taken against the perpetrators after several years, the victim's social status changes and they have reintegrated themselves with the community and started to live their normal life. Therefore, in general, the Victim Survivors refute and are reluctant to move ahead with legal actions. This always gives chances to the perpetrators to escape from punishments and escape using identified gaps available in the legal system of our Country. Also, lack of monitoring or systematic procedures created among the community on providing legal support is one of the contributing factors. The *pro-Bono* legal service providers are not institutionally monitored and there are no such mechanisms available. Especially the Legal Aid Commission (Semi government organization) located in local areas are always dragging the cases like Maintenance, Domestic Violence, and sexual violence. This shows the non-competence and lack of interest on handling the issues such as sexual and gender-based violence.

Sometimes, the abused women preferred not to seek permanent legal solutions for their problems because of their concerns for their own children, the dignity of their family, and the stigma of separation and divorce. Most women were likely to tolerate the abusive relationship for many years before deciding to seek relief through separation but a proportion of them were reported to request withdrawal of cases after filing.

Lack of service providers for victims' survivors is also one of the problems on prevention. There are many services connected with GBV responses such as emergency support (shelter, medical, food, clothes, and counseling), economical support, psycho-social support, legal support and awareness, protection, and prevention from violence. All support services cannot be provided by Government officers/departments and at this juncture the departments and officials continuously rely on civil society/non-governmental organizations. Which is a high risk of providing support without interruption.

Lack of opportunities on building strength on the economic status of the victim-survivors is also another problem. The women are not allowed to access any services on their own. When they try for that, there comes sexual bribery and exploitation which limits them to building their strength on livelihood to ensure that they stand on their own. There is a lack of support from the government for the victims' survivors of SGBV in order to strengthen them on the economical side. Financial dependency is also one of the root causes of SGBV for women. This is identified by the TDWN through their fieldwork expertise where women who work in garment factories, travel in public transport or work in unskilled labor areas face more violence alike physically, mentally, and emotionally. Affected women remain silent due to the economic difficulties and the family responsibilities they carry on their shoulders.

5. KEY POLICY RECOMMENDATION

Recommending Ministry of Justice and Attorney General's department for an expedited process of charging the perpetrators and conducting trials against them in order to prevent the withdrawal of victim-survivors from cases.

6. OTHER RECOMMENDATIONS

1. Strengthen public institutions to deliver effective services to the public that address sexual and gender-based violence considering the sensitivity (police stations, mediation boards, government departments, courts, and hospitals);
2. Establish a common mechanism to raise awareness on Gender-based violence, support services, legal provisions and remedies, and community services in different levels such as community leaders, government officers, youths, and men.
3. Create community resource centers at the community level which provide relevant information on support services on Sexual and Gender-Based violence, protection, and prevention where that functions in a sustainable manner.
4. Strengthen the existing referral mechanism that supports women and girls for their safety, well-being, and access to justice;
5. Equip women and child desks in each police station to take actions timely and effectively;
6. Ensure the officers at the women and child desk are fluent in the local language in order to address the complaints in an effective manner;
7. Establish special mobile courts or special circuit courts to hear SGBV cases with confidentiality and dignity.
8. Introduce a monitoring system to monitor and oversee the services and roles of the Legal Aid Commission and Human Rights Commission on Sexual and Gender Based Cases. agenda on these cases.
9. Strengthen and equip the law-maintaining authority divisions such as police stations and Attorney General's Department to expedite the actions/further actions on SGBV-related complaints;

10. Strengthen the law and ensure the legal actions on cybercrimes in order to safeguard women, especially girl children;
11. Build a community support system incorporating youth members to show solidarity and support to the victim-survivors in their own communities;
12. Strengthen and support women's organizations especially to provide and ensure services are accessible to the victim-survivors in their hour of need such as shelter, medical treatment, livelihood opportunities and counseling service;

7. CONCLUSION

This advocacy paper seeks to improve the community's trust and confidence in the government support service delivery, and support service system and to create a conducive environment that encourages women, girls, and their families to access the judicial process.

It will also support and strengthen the efforts on mitigating and preventing GBV, and the negative impact it has on families and communities while contributing towards SDG goal 05 in achieving gender equality and empowering women and girls

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