

# A DEADLY DISTRACTION

WHY THE DEATH PENALTY IS NOT THE ANSWER TO RAPE IN SOUTH ASIA



May 2022

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## **A deadly distraction: why the death penalty is not the answer to rape in South Asia**

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## Foreword

The Anti-Death Penalty Asia Network and Eleos Justice have attempted to answer a fundamental question: why is the death penalty not the solution to rape in South Asia? The answer is obvious to experts in the field but the relevant governments' introduction of capital laws for rape suggests this is not the case. The report argues that capital laws for rape constitute a *deadly distraction*: the governments are purporting to represent public demands for justice by introducing the death penalty for rape, while at the same time excluding experts who view such legislative response as avoiding other difficult issues that need to be tackled to end rape. As a child protection and gender justice practitioner who helped build the capacities of hundreds of justice actors to counter rape, explaining why the death penalty is not the solution to rape—or any other forms of sexual violence—has always been a challenge, largely because of the lack of local evidence-based research on this topic. I was therefore not only interested but grateful to see that finally, a substantial effort to generate a rational, evidence-based, local narrative was taking shape. To understand the importance of such an initiative, it is important to recall where we are coming from.

Climate change, fast digitalization, the COVID-19 pandemic, the global security crisis and growing socio-economic inequalities have significantly impacted the world. South Asia has not been immune to those negative effects. In fact, they have exacerbated developmental challenges in the region and often further fed power imbalances and unhealthy coping strategies. In the rest of the world, cases of gender-based violence have exponentially increased and disproportionately affected women and children: this phenomenon was rightly described by the Secretary-General of the United Nations, Antonio Gutierrez, as the 'shadow pandemic'. Additionally, UNICEF raised an alarm on 'the worst crisis for children UNICEF has seen in its 75-year history'. In South Asia, sexual violence, and particularly rape, has been prevalent. As pointed out in this report, in recent years, Bangladesh, India, Pakistan and Sri Lanka have seen an increasing number of reported rape cases, some of those making the headlines at a national, regional, or even international level. Public outcry against sexual violence led to public demand for action by the state to better protect its citizens—especially women and children who are disproportionately affected by rape. Governments have responded by introducing the death penalty and other harsh punishments for convicted rapists, so that 'deterrent effect' would be ensured, and 'justice' served.

However, one cannot help but wonder what the public and victims mean by *justice*. Is it retributive *justice*? Is the death penalty *justice* when it is awarded via a process often marred by blatant dysfunctions? Is the death penalty *justice* when death row is characterized by undignified treatment? Is the death penalty *justice* when the perpetrator suffers from serious mental illness? The report also underlines a fundamental dilemma: even though the legal

frameworks of four South Asian countries prescribe the death penalty as a punishment for rape, there is no evidence whatsoever of its effectiveness in reducing rape in the region. The report quotes some interviewees expressing a serious concern: might the threat of the death penalty fuel the rule of silence by triggering lethal violence against rape victims? Hence, we are bound to ask ourselves: has our response to rape been appropriate so far? What has guided us? What may be the alternatives to the death penalty to counter rape?

In a highly structured manner and based upon thorough desk-based research and a series of interviews with relevant experts from four countries, the research team have studied how legislators, policy makers, media, the criminal justice system, and civil society have addressed the public demand for justice in cases of rape. This factual exploration is an eye-opener and highlights complex dynamics: the response to rape in South Asia has largely been articulated via a victim-centric approach articulated through patriarchal lenses. The alleged 'solution to rape' in South Asia therefore comprises a mixture of progressive and conservative, ill-informed, and biased measures that purport to build a safer and possibly more inclusive society, but without trying to understand the root causes of rape. Hence on the one hand, you see South Asian women and child rights activists and lawmakers fighting against the narrative of victim blaming, pushing for life skill based education in schools and for increased women's representation in the justice sector. On the other hand, you also hear activists arguing for public hanging of sexual offenders, and men asking women and girls to cover themselves to avoid 'provocation' and to limit their mobility to avoid victimization. Such contradictory discourse certainly makes the debate vibrant, but it also highlights our confusion and is highly dangerous: what kind of society are we planning to leave to the next generation? How can these countries reach a sensible and constructive consensus? Much more research is required: large-scale profiling of perpetrators is necessary to better understand the processes and the stories that lead to the commission of sexual violence. What happens before and after the crime is committed? How does one become a sexual offender? What could prevent this from happening in the first place? Why are our societies so reluctant to empower children and women to say no? Why is there so little interest in mental health?

Experts who participated in the interviews insisted on how discriminatory gender norms, socio-economic inequalities, defective rule of law, conflicts, natural disasters, population explosion, regressive religious interpretations, harmful traditional practices, inadequate resource allocation, along with a lack of legal literacy play a crucial role in the prevalence of rape. Meanwhile, several experts also mentioned the encouraging initiatives achieved in Pakistan: there are now two types of pilot courts, one on gender-based violence and one for children; forensic mental health actions; and capacity-building programs to counter sexual and gender-based violence. Yet, we need to be realistic: we are nowhere near even a slight reduction in rape cases in South Asia. This realization alone should constitute proof enough of the dire need to consider new and more effective options.

In my professional experience, I have encountered countless cases of sexual violence. The faces, eyes, names, clothes, even smells of the little—and less little—ones who went through the worst suddenly re-emerge in my dreams and nightmares, when I am delivering a lecture, a training, or like now, when I am writing about rape. I can feel my hand touch a

mother's hand or remember some desperate hugs. There are no words for those emotions. Those are fleeting moments of powerful and cruel life snapshots. Victim/survivors have to live with the trauma. But to those that propose more violence to stop such unbearable violence, I can only humbly, wholeheartedly, and reasonably say the following: as a woman, a mother, a professional and a citizen, I have a sacred and humanistic duty to search for, and promote, a response to rape that does not rely on an emotional erratic reaction, but rather on a rational analysis that serves the best interest of victim/survivors. The transformative change demands a deeper analysis of the forms of abuse, violence and discrimination that feed and intersect with rape. We need more information so that we may come up with adequate and impactful interventions aiming to prevent, protect, rehabilitate, and follow-up.

This research is a precious milestone; it uses facts and logic to remind us that we have a choice: we can perpetuate violence and support a toxic, unequal system that too often constitutes a mockery of justice and generates more perpetrators and victims, or we can engage in creative and scientific initiatives to break an intergenerational cycle of violence, heal together, and increase our chances to end rape.

In my view, this report is a promising contribution to the movement against the death penalty and rape.

Valerie Khan  
May 2022

Valerie Khan is a consultant on gender justice, rule of law and child protection.



## Executive Summary

This report examines the four countries in South Asia that prescribe the death penalty for rape offences: Bangladesh, India, Pakistan, and Sri Lanka. In response to widespread public protests across the region against a string of high-profile rape cases, governments in Bangladesh, India, and Pakistan introduced new capital rape offences and increased the severity of applicable penalties for existing rape offences up to the death penalty. While Sri Lanka appears to have resisted the urge to expand its capital rape law, broader advocacy against the death penalty remains largely absent.

This report does not provide answers on how rape could be reduced. Rather, this report makes a small contribution to the debate surrounding responses to and the prevention of rape, by reiterating the simple—yet important—point that capital punishment is not the solution. Our opposition to the death penalty as a criminal punishment for rape is not intended as a reflection on the gravity of this offence. Rape is a serious wrong that violates a person's sexual autonomy, privacy, physical and mental integrity, and dignity. However, solutions lie elsewhere than in the execution of rapists.

This report challenges the policy decision taken in these four countries, which assumes that the death penalty is the solution—or part of the solution—to endemic rape. We use the concept of penal populism to elucidate the futility of such a policy. By carrying out 14 semi-structured interviews with regional experts on criminal justice and sexual violence, this report summarises the background to the introduction of capital rape laws and how civil society has responded to public demands for justice.

The introduction of capital rape laws in these four countries is a superficial response to a crisis, motivated by a political desire to be seen to be doing something about the perceived impunity of rape perpetrators. Our research found no evidence that the governments of the countries examined in this report were, in expanding capital rape laws, motivated by any serious desire to deliver justice to rape victims or to prevent rape. Rather, the introduction and expansion of capital laws has been justified on the basis that governments had 'listened' to public demands for harsher penalties for rape, with sensationalised media reporting construed as representative of the will of the people.

As of May 2022, the death penalty is a statutory punishment for one or more rape offences in the four countries examined in this report.

- In **India**, the death penalty is available for rape where the victim has died or is in a persistent vegetative state; for rape in instances of repeat offending or where the victim is

under 12 years old; for the aggravated penetrative sexual assault of children below 18 years; and for gang rape where the victim is under 12 years old.

- In **Bangladesh**, the law distinguishes between rape and gang rape, as well as rape resulting in the death of the victim, gang rape resulting in death or injury of the victim and rape followed by attempted murder or harm of the victim—with the death penalty applying in all cases.
- **Sri Lanka** has the narrowest capital rape provision, with the death penalty applying only in instances of rape with the use of a firearm.
- **Pakistan** has the broadest provisions, with both rape and gang rape attracting the death penalty, without any legal distinction by victims' age or degree of injury.

These capital rape laws came into being, in part, through the sidelining of penological experts and practitioners who have argued against such legislative amendments. The following points summarise why the death penalty does very little—beyond the political rhetoric of appearing to respond to public outcry—to deliver justice to rape victims or to prevent rape. They are informed by criminological research on the death penalty and sexual violence and interviews with experts.

- **Lack of deterrent effect:** Research does not exist, either in the four countries under examination or beyond, which shows that the death penalty deterred individuals from committing rape or that the death penalty was more effective in deterring rapists compared to other punishments. The absence of any such deterrent effect contravenes the imposition of the death penalty for rape.
- **Lack of data:** Governments in the four countries have not provided any official data to demonstrate the deterrent effect of the death penalty on rape. In fact, these countries lack even basic official data on the number of individuals on death row convicted of a rape offence or the number of death penalty convictions and executions since the introduction of capital rape laws.
- **Reduced reporting by victims:** research indicates that in the majority of cases, victims are raped by people they know. Victims may be unwilling or pressured not to report, especially when the punishment could result in a family member being executed. The imposition of the death penalty for rape risks further reducing the reporting of rape, which is already low.
- **Poor 'justice' for victims:** While political rhetoric equates justice with the implementation of the death penalty, the pain and anguish felt by victims cannot be healed by an execution. Our review demonstrates that for victims of sexual violence (including rape), the idea of 'justice' does not involve the death penalty: what victims desire is to be able to reclaim 'their dignity and honour', which is not 'necessarily limited to successful convictions', let alone the execution of the rapists.<sup>1</sup> It is 'dangerous and counterproductive to perpetuate the myth that a higher sentence or the death sentence will serve the cause of victims'.<sup>2</sup>

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<sup>1</sup> Equality Now and Dignity Alliance International, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (Report, 2021) 58.

<sup>2</sup> Coalition Against Sexual Violence and the Death Penalty, 'Execution is Not the Solution', *Kractivist* (Web Page, 24 January 2020) <<https://www.kractivist.org/feminist-panel-says-no-to-death-penalty-for-sexual-violence/>> ('Coalition Against Sexual Violence and the Death Penalty').

- **Death penalty as a disappearing punishment:** Countries around the world are moving away from the death penalty. Reasons range from capital punishment being increasingly perceived as, amongst others: an infringement of the right to life; a form of torture or cruel, inhuman, and degrading punishment; a punishment that is irreversible when errors are made; and a punishment that is often applied in a discriminatory manner. Our report identifies problems with the proper functioning of the criminal justice system. Empirical research has shown that the overwhelming majorities of the death row populations in all four countries come from poor, marginalised backgrounds. As such, the last two points—wrongful executions and discrimination—ought to be of concern to the countries in question.

Rather than attempting to control and prevent rape, our research suggests that governments have instead sought to create the (erroneous) impression that they have prioritised the interests of victims in introducing and expanding capital rape laws. This is evident when reviewing the status of the criminal justice system in the four countries. A functioning criminal justice system affords victims access to justice and holds perpetrators to account. However, the criminal justice systems in these countries are beset by issues that often prevent the delivery of justice. These are systems in which barriers are faced by victims in reporting, in obtaining reliable medical examinations, in being legally represented and in securing a fair and dignified trial and conviction of the perpetrator. The introduction of capital laws within a broken criminal justice system means an increased likelihood of miscarriages of justice, leading to an unnecessary loss of life. In this sense, the legislation introduced to represent and deliver ‘justice’ to victims serves as a symbolic denunciation of rape that benefits neither victims nor society. Behind the veneer of capital rape laws, our research reveals governments largely unwilling to do the hard work to address the patriarchal culture and issues of power imbalance and inequality that perpetuate sexual violence.

Finally, our interviews suggest that little has been done to combat pro-death penalty narratives. Rather, efforts have focused on restoring the integrity of the justice system as a whole and changing attitudes towards sexual violence. These are undoubtedly important long-term initiatives that fill the gaps currently left by governments. However, not addressing the use of the death penalty for rape may result in more death sentences and executions, including the risk of wrongful conviction. Some activists have also hinted that the death penalty may actually result in more victims being killed to stop them from reporting, thereby further impeding victims' access to justice and opportunities to overcome trauma and heal. If unchallenged, governments may introduce and expand the use of the death penalty further by applying it for other social problems that they are unwilling to face. We propose that a victim/survivor-centred approach may be a way to find common ground with organisations that currently endorse the capital rape laws. Existing campaigns and initiatives that tackle sexual violence already use this language to improve support for victims and survivors and to restore their dignity. Based on existing research on rape victims as discussed in this report, the narrative against the death penalty is compatible with a victim-centred approach in tackling sexual violence. As long as offender-centric death penalty rhetoric remains the official narrative to tackle rape, it will be a deadly distraction to meaningful and effective victim-centred reform.

# Introduction

While recognising that sexual violence is a pervasive problem around the world, responses to rape vary widely—from the rapist marrying the victim,<sup>3</sup> to being fined, imprisoned, or sentenced to the death penalty. This report focuses on the four countries in South Asia that prescribe the death penalty for rape offences: Bangladesh, India, Pakistan, and Sri Lanka.

Globally, 81 countries retain the death penalty in law or in practice.<sup>4</sup> International human rights law prohibits the application of the death penalty except in instances of ‘intentional killing’;<sup>5</sup> hence, the death penalty for rape offences is prohibited.<sup>6</sup> However, in at least 38 countries, the death penalty is an available punishment for rape offences.<sup>7</sup> Since 2010, persons convicted of rape offences were executed in at least nine countries,<sup>8</sup> including India and Pakistan. Moreover, public protests against rape, which led governments to introduce or reinforce capital rape laws, illustrate the need to shine a spotlight in South Asia.<sup>9</sup>

In India, six men raped and physically assaulted the victim on a bus, before throwing her to the roadside (the *Nirbhaya* case).<sup>10</sup> She later died from her injuries. In the weeks that

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<sup>3</sup> In Bangladesh, a marriage was arranged between the perpetrator and the victim, following the High Court's order on condition of granting bail in a rape case: ‘The rapist got married in jail to get bail’, *Jagonews24.com* (online, 12 April 2022) <<https://www.jagonews24.com/country/news/753658>>.

<sup>4</sup> ‘Database’, *Cornell Center on the Death Penalty Worldwide* (Web Page, n.d.) <<https://deathpenaltyworldwide.org/database/>> (‘Cornell database’).

<sup>5</sup> The International Covenant on Civil and Political Rights does not expressly prohibit the death penalty in all circumstances, instead fixing a ‘most serious crimes’ threshold. However, many death penalty abolitionists take the view that the international community is on an irrevocable path towards complete eradication of the death penalty: *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1965) art 6(2).

<sup>6</sup> United Nations Human Rights Committee, *General Comment No 36: Article 6 of the International Covenant on Civil and Political Rights (Right to Life)*, 124th sess, UN Doc CCPR/C/GC/36 (30 October 2018) para 33.

<sup>7</sup> At least 25 countries prescribe the death penalty for rape offences (e.g., rape; rape resulting in death), while at least 9 countries have rape as an aggravating factor to other offences (e.g., murder/kidnapping/robbery with rape). In at least 10 countries, theoretical scope exists for rape to be prosecuted as *zina* (Sharia law offence, roughly translated as ‘adultery’ or ‘extramarital sex’) or adultery, which carries the death penalty. Cornell database (n 4).

<sup>8</sup> Countries that carried out executions for rape offences since 2010 are: Belarus, China, India, Iran, Jordan, Pakistan, Palestine, Saudi Arabia, and Yemen. Cornell database (n 4).

<sup>9</sup> ‘Hathras case: A woman repeatedly reported rape. Why are police denying it?’ *BBC News* (online, 10 October 2020) <<https://www.bbc.com/news/world-asia-india-54444939>>; ‘South Asia: Justice, Services Can Curb Sexual Violence’ *Human Rights Watch* (online, 17 December 2020) <<https://www.hrw.org/news/2020/12/17/south-asia-justice-services-can-curb-sexual-violence>>; ‘Sri Lankan Tamil rape protest’ *BBC News* (online, 29 June 2001) <[http://news.bbc.co.uk/2/hi/south\\_asia/1414168.stm](http://news.bbc.co.uk/2/hi/south_asia/1414168.stm)>; Salman Ravi, ‘Dalit girl rape and murder: Indians protest over girl’s forced cremation’ *BBC News* (online, 4 August 2021) <<https://www.bbc.com/news/world-asia-india-58083052>>.

<sup>10</sup> ‘Nirbhaya case: Four Indian Men executed for 2012 Delhi Bus Rape and Murder’, *BBC News* (online, 20 March 2020) <<https://www.bbc.com/news/world-asia-india-51969961>>.

followed, thousands of protesters took to the streets calling for stronger criminal justice responses to rape, and by April 2013, India had amended its Penal Code to introduce additional categories of rape offences, carrying penalties ranging up to the death penalty.<sup>11</sup> Later that year, four men were sentenced to death for their alleged involvement in the *Nirbhaya* case. They were executed in March 2020.<sup>12</sup> Endorsing these executions, Indian Prime Minister Narendra Modi claimed that justice had prevailed, and that executions are ‘of utmost importance to ensure dignity and safety of women’.<sup>13</sup>

Bangladesh and Pakistan have also responded in a similar fashion to community outcry by introducing additional rape offences and enacting harsher criminal penalties, including the death penalty. Sri Lanka, on the other hand, appears to have taken a different approach: despite public outcry in response to widespread sexual violence, our research suggests that there has been an absence of political support for the expansion of the death penalty for rape offences beyond the existing capital rape law. The policy decisions taken in these four countries which take for granted that the death penalty is the solution to endemic rape must be challenged.

This report examines how civil society organisations and anti-death penalty advocates in the region have responded to public calls for greater use of the death penalty for those convicted of rape in this difficult context. Through interviews with regional experts working in the criminal justice system and working with survivors of sexual violence, this report summarises the challenges local activists have faced and the strategies they have utilised to challenge pro-death penalty narratives, and identifies advocacy tools and strategies that may be useful for both local and international advocates. This conversation has been ongoing for a long time—many of those we interviewed have been deeply engaged in this work for decades. We hope that bringing the lens of a horizontal regional network to the issue will amplify the existing hard-won advocacy successes and inform the development of a wider strategy to restrict the application of the death penalty for sexual offences in the South Asia region.

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<sup>11</sup> *Criminal Law (Amendment) Act 2013* (India) ss 376A, 376E (*‘Criminal Law (Amendment) Act (India)’*).

<sup>12</sup> ‘Justice for Nirbhaya: 4 Men Convicted for Gang-Rape Hanged 7 Years After Brutal Crime’, *India Today* (online, 20 March 2020) <<https://www.indiatoday.in/india/story/nirbhaya-gang-rape-murder-convicts-executed-hanged-delhi-tihar-jail-1657649-2020-03-20>>.

<sup>13</sup> ‘Nirbhaya Case: Four Indian Men Executed for 2012 Delhi Bus Rape and Murder’ (n 10); @NewsMobileIndia (News Mobile India) (Twitter, 20 March 2020, 4.53PM) <<https://twitter.com/NewsMobileIndia/status/1240879190020198408?s=20&t=K-NAAHGIM5qgZCB4bH25ag>>.



## Methodology

In this report, we focus on the four countries in South Asia<sup>14</sup> that prescribe the death penalty under law for rape offences: Bangladesh, India, Pakistan, and Sri Lanka.<sup>15</sup> In some of these countries, rape alone is a capital offence. In others, the death penalty is applied where rape is committed under certain conditions; for example, ‘rape resulting in death’.

Our focus is on countries that have enacted *codified* laws prescribing the death penalty for rape offences. Accordingly, we exclude countries that sentence individuals to death for rape under uncoded laws (such as the Sharia<sup>16</sup>) or execute individuals accused of rape by convicting them of a non-rape offence. For example, in 2014, Afghanistan sentenced seven men to death for the gang rape of four women, and executed five of those men.<sup>17</sup> It appears that these sentences were imposed by the court in response to widespread protest over the assaults, including from then-President Hamid Karzai, who called for the men to be hanged.<sup>18</sup> The court justified its imposition of the death penalty on the basis of *armed robbery*, which is a capital offence under Afghan law.<sup>19</sup> We have, therefore, excluded Afghanistan from our analysis of South Asian countries because rape does not carry the death penalty under Afghan law.<sup>20</sup>

Reports on sexual violence use terms such as ‘victim’, ‘survivor’, or ‘victim/survivor’ to refer to individuals who have experienced rape, with each term serving a context-dependant purpose.<sup>21</sup> While we recognise the empowering potential of the terms ‘survivor’ and ‘victim/survivor’, within most criminal justice systems, the term ‘victim’ describes a person who has been subjected to a crime:

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<sup>14</sup> By ‘South Asia’, we refer to Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

<sup>15</sup> In South Asia, Bhutan and Nepal have abolished the death penalty: Amnesty International, *Death Sentences and Executions 2020* (Report, 2021) 57. Maldives and Afghanistan retain the death penalty but does not apply the death penalty for rape or rape-related offences - Cornell database (n 4).

<sup>16</sup> Where either rapist or victim are married, theoretical scope exists for rape to be prosecuted as zina (‘adultery’ or ‘extramarital sex’), which carries the death penalty under Sharia law. The existence of this law may deter victims from reporting rape to police, because a failure to subsequently prove their case may be seen as them having confessed to engaging in extramarital sex—a capital offence. Eli Sugarman et al., *An Introduction to the Criminal Law of Afghanistan* (Afghanistan Legal Education Project, Stanford Law School, 2nd ed, 2015) 120-124  
<<https://www-cdn.law.stanford.edu/wp-content/uploads/2015/12/Intro-to-Crim-Law-of-Afg-2d-Ed.pdf>>.

<sup>17</sup> ‘Afghans sentenced to death over gang-rape’, *Al Jazeera* (online, 7 September 2014)

<<https://www.aljazeera.com/news/2014/9/7/afghans-sentenced-to-death-over-gang-rape>>; ‘Afghan executions: five hanged for Paghman gang-rape’, *BBC News* (online, 8 October 2014), <<https://www.bbc.com/news/world-asia-29537738>>.

<sup>18</sup> *Ibid.*

<sup>19</sup> In spite of any laws or jurisprudence that may have previously existed in Afghanistan, the Taliban takeover in 2021 fundamentally uprooted the rule of law in the country, leaving the exact status of Afghanistan’s rape laws unclear.

<sup>20</sup> Article 429 of the *Penal Code 1976* (Afghanistan) provides that ‘a person who, through violence, threat, or deceit, violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years’.

<sup>21</sup> Sexual Assault Kit Initiative, *Victim or Survivor: Terminology from Investigation Through Prosecution* (Factsheet, n.d.)  
<<https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>>.

Within the criminal justice system, the term *victim* describes a person who has been subjected to a crime; the word serves also as a status that provides certain rights under the law. However, the word does not imply weakness, assume guilt, or assign blame.<sup>22</sup>

Given our focus on state responses to rape in law and how each country's respective criminal justice system deals with rape cases, this report uses the term 'victim'. Moreover, as this report extends to instances of rape resulting in death, the term 'survivor' is inappropriate.

This report is a review of publicly available sources. The review covered (capital) rape laws and policies, criminal justice responses to rape including case law, and existing advocacy efforts in this space. Limited academic literature on the topic was supplemented by news articles by local and international media outlets and reports by civil society organisations. We also carried out semi-structured interviews with 14 regional experts on criminal justice and sexual violence, including lawyers, civil society advocates, and academics (see Appendix).<sup>23</sup> Of the 24 people we contacted, 14 agreed to speak with us: 2 from Bangladesh, 3 from India, 5 from Pakistan, and 4 from Sri Lanka.<sup>24</sup> Interviews were conducted using online platforms between October and November 2021, each lasting approximately 1 hour. Each interviewee has been assigned a unique identification number (e.g., I-1), allowing quotes to be attributed to them with anonymity.

This report provides an overview of capital rape laws in the four jurisdictions under examination (Section I), followed by an analysis of how and why these capital laws have been introduced and justified (Section II). We then identify how rape cases are being handled in the criminal justice systems in these jurisdictions (Section III), and summarise existing efforts and strategies used by advocates across the four countries to counter pro-death penalty narratives in response to rape (Section IV). In the final section, we offer recommendations for future advocacy in this space.

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<sup>22</sup> Ibid.

<sup>23</sup> We received approval from the Monash University Human Research Ethics Committee (project ID: 30500) to carry out these interviews.

<sup>24</sup> To identify potential interviewees, we contacted ADPAN member organisations and requested that they refer us to experts working in this space.

## Section I: Country profiles

In each of the four countries examined in this report, the death penalty is a statutory punishment for one or more rape offences (see Table on page 22-23). In all cases, it is available at judicial discretion as an alternative to imprisonment terms of varying degree. Sri Lanka has the narrowest capital rape provision, with the death penalty applying only in instances of rape with the use of a firearm. Pakistan has arguably the broadest provisions, with both rape and gang rape attracting the death penalty, without any legal distinction by victims' age or injury. In Bangladesh, the legislation distinguishes between rape and gang rape, as well as rape resulting in the death of the victim, gang rape resulting in death or injury of the victim and rape followed by the attempted murder or harm of the victim—with the death penalty applying in all cases. Under Indian law, distinction is carved between victims on the basis of age: rape does not attract the death penalty where the victim is 12 years old or above and survives the attack (unless the perpetrator is a repeat offender) but applies in all other instances.

Another point of contrast between the four countries is the extent to which capital rape offences are gendered. A 2020 amendment to Pakistan's *Penal Code 1860* recognised that rape victims may be 'male, female, or transgender'<sup>25</sup>. While this definition appears to exclude non-binary and intersex persons, such persons are in fact caught—albeit erroneously—by the term 'transgender', defined in the *Transgender Persons (Protection of Rights) Act 2018 (Pakistan)* as including intersex persons, eunuchs, and 'any person whose gender identity and/or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth'.<sup>26</sup> The result is that Pakistan's legislative framework is significantly more inclusive than its counterparts. In Bangladesh, India, and Sri Lanka, rape is narrowly defined as an offence perpetrated by a man against a woman. Such a definition is dangerously blind to the victimisation of men and boys and reinforces heteronormative ideas of rape.<sup>27</sup>

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<sup>25</sup> See *Penal Code 1860* (Pakistan) ('Penal Code (Pakistan)') as amended by *Criminal Law (Amendment) Ordinance 2020* (Pakistan) s 2 and then confirmed in December 2021 by the *Criminal Laws (Amendment) Act 2021* (Pakistan) s 2 ('Criminal Laws (Amendment) Act 2021').

<sup>26</sup> *Transgender Persons (Protection of Rights) Act 2018 (Pakistan)* ss 2(n), 2(n)(iii). This Act overrides all other law in Pakistan -s 19.

<sup>27</sup> Emma Fulu et al., *Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific* (UNDP, UNFPA, UN Women and UN Volunteers, 2013) 3.

## Bangladesh

In Bangladesh, the definition of 'rape' is drawn from the *Penal Code 1860 (Bangladesh)*. The offender must be 'a man',<sup>28</sup> and the victim either a 'woman or child',<sup>29</sup> the effect being that Bangladesh law does not recognise the rape of an adult who is not a woman as a criminal offence.



Prior to 1995, rape was punishable by a term of imprisonment ranging between 10 years and life.<sup>30</sup> The *Women and Children Repression Prevention Act (Special Provisions) Act 1995* introduced the discretionary death penalty for rape and gang rape<sup>31</sup>, and the mandatory death penalty for rape and gang rape resulting in death.<sup>32</sup> In 2000, the *Women and Children Repression Prevention Act (Special Provisions) Act 1995* was repealed and replaced with the *Women and Children Repression Prevention Act 2000*<sup>33</sup>. The penalty for rape was a sentence of 'rigorous imprisonment for life' and a fine, while the penalty both gang rape and rape resulting in death was death penalty or 'rigorous life imprisonment' and a fine<sup>34</sup>.

In October 2020, the *Women and Children Repression Prevention Act 2000* was amended to reintroduce the discretionary death penalty for rape.<sup>35</sup> The discretionary death penalty was also introduced for the offence of attempting to cause death or harm after rape.<sup>36</sup>

The October 2020 amendments were precipitated by footage of a young woman being gang raped going viral on Facebook. Thousands of protestors nationwide demanded stricter punishments for rapists and the speeding up of the trial process.<sup>37</sup> The United Nations called for urgent reform of Bangladesh's criminal justice system to support victims, noting that this

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<sup>28</sup> *Women and Children Repression Prevention Act 2000* (Bangladesh) s2(3) ('*Women and Children Repression Prevention Act 2000*'); *Penal Code 1860 (Bangladesh)* s 375 ('*Penal Code (Bangladesh)*').

<sup>29</sup> *Women and Children Repression Prevention Act 2000* (n 28) s 9.

<sup>30</sup> *Penal Code (Bangladesh)* (n 28) ss 375, 376.

<sup>31</sup> *Women and Children Repression Prevention (Special Provisions) Act 1995* (Bangladesh) ss 6(1), (3).

<sup>32</sup> *Ibid* ss 6(2), (4).

<sup>33</sup> Whilst the rape provisions in the *Penal Code (Bangladesh)* (n 28) have not been repealed, s 3 of the *Women and Children Repression Prevention Act 2000* (amended 2020) (Bangladesh) confirms that it is the prevailing Act. For English translation of relevant sections of both legislations see Huda, Taqbir, No justice without reparation (Report, December 2020) 12, 39-40 <<https://www.blast.org.bd/content/publications/No-Justice-without-Reparation.pdf>> ('*Women and Children Repression Prevention Act 2000 (amended 2020)*'). Noting s9(3) of the *Women and Children Repression Prevention Act 2000 (amended 2020)* (Bangladesh) refers to the offence of 'gang rape resulting in death - the authors have consulted with experts who have clarified that this section also includes the offence of 'gang rape'.

<sup>34</sup> *Women and Children Repression Prevention Act 2000* (n 28) ss 9(1), (2), (3). It has been noted that during the five years between 1995 to 2000 when the death penalty was in place for rape and gang rape, there does not appear to be evidence that it was impactful on achieving justice for rape: see Taqbir Huda, 'Why the death penalty will do nothing to end impunity for rape', *The Daily Star* (online, 16 October 2020) <<https://www.thedailystar.net/opinion/justice-practice/news/why-the-death-penalty-will-do-nothing-end-impunity-rape-1978737>>.

<sup>35</sup> *Women and Children Repression Prevention Act 2000* (amended 2020) (n 33) ss 9(1), (3).

<sup>36</sup> *Ibid* s 9(4).

<sup>37</sup> 'Bangladesh's Cabinet Approves Death Penalty in Rape Cases', *The Hindu* (online, 13 October 2020) <<https://www.thehindu.com/news/international/bangladeshs-cabinet-approves-death-penalty-in-rape-cases/article32839867.ece>>.

incident “yet again underlined the state of social, behavioural and structural misogyny that exist”.<sup>38</sup>

Given the absence of accessible official statistics on the constitution of Bangladesh’s death row population, it is difficult to determine the number of individuals on death row for rape offences or the number of executions carried out for individuals convicted of these offences. Media reporting suggests that, as of October 2020, the number of convicted rapists on death row may be as high as 144.<sup>39</sup> While this number is sizeable, a 2020 study suggests that convicted rapists are a minority amongst death row prisoners.<sup>40</sup>

## India

India’s rape laws were overhauled in 2013.<sup>41</sup> ‘Rape’ has since been defined as an offence committed by a man against a woman, involving sexual intercourse against her will, or without her consent, or when she is unable to communicate consent, or regardless of her consent if she is under 18 years of age, or with her consent in circumstances where that consent is deemed void.<sup>42</sup> Rape may be committed by the perpetrator by way of penetration (whether anatomically or with an object) or orally, as well as by compelling the victim to commit such acts on themselves, the perpetrator, or a third person.<sup>43</sup> Rape is punishable by ‘rigorous imprisonment’ (imprisonment with hard labour<sup>44</sup>) of 10 years’ to life, as well as a fine.<sup>45</sup> In aggravating circumstances, such as where the perpetrator is a relative of the victim, or where the rape causes the victim grievous bodily harm, or where the perpetrator repeatedly rapes the same victim, the maximum imprisonment term is increased to ‘the remain of [the perpetrator’s] natural life’.<sup>46</sup> In 2018, a further aggravating circumstance was introduced:<sup>47</sup> rape of a woman under 16 years of age is punishable by rigorous imprisonment of a term of at



<sup>38</sup> ‘UN Concerned over Rape Incidents, Calls for Reforms in Bangladesh’s Criminal Justice System’, *Prothom Alo* (online, 9 October 2020) <<https://en.prothomalo.com/bangladesh/un-recommends-urgent-reform-in-criminal-justice-system-in-bangladesh>>.

<sup>39</sup> Rozina Islam and Naznin Akhter, ‘Dhorshoner Mamla: Ek Jugey Panchjoner Fashi’ (‘Rape Case: Five Hanged in 12 Years’) *Prothom Alo* (online, 16 October 2020) <<https://www.prothomalo.com/bangladesh/crime/এক-যুগে-পাঁচজনের-ফাঁসি>>.

<sup>40</sup> Of 39 men sentenced to death since 2013, five had been sentenced to death for gang rape leading to death and two had been sentenced to death for rape leading to death, while the remaining 23 had been sentenced to death for murder. Muhammad Mahbubur Rahman, *Living Under Sentence of Death: A study on the Profiles, Experiences and Perspectives of Death Row Prisoners in Bangladesh* (Report, December 2020).

<sup>41</sup> *Criminal Law (Amendment) Act (India)* (n 11) s 9.

<sup>42</sup> *Penal Code 1860* (India) s 375 (‘Penal Code (India)’).

<sup>43</sup> *Ibid.* Overall, the successful legislative changes that have taken place in India have been attributed to the long-term involvement and advocacy of the women’s movement in the law making (I-12), but questions remain as to the overall effectiveness of these changes: ‘What we’ve also seen in parallel [to legislative changes] is sentences for every sexual offence getting more and more harsher. And so if I were to sort of give an overall assessment [of the legislative changes], I would overall assess it as a negative, because it’s not like the expansion of the definition of rape has in any way led to those non-penile vaginal penetration cases being registered. That’s not happening.’ (I-12).

<sup>44</sup> *Penal Code (India)* (n 42) s 53.

<sup>45</sup> *Ibid* s 376(1).

<sup>46</sup> *Ibid* s 376(2).

<sup>47</sup> *Criminal Law (Amendment) Act (India)* (n 11) s 4.



least 20 years, with the maximum being the remainder of the perpetrator's life. The law also provides that where the victim is below the age of 16, the fine imposed on the perpetrator must be paid to the victim and must be of an amount just and reasonable to meet her medical expenses and rehabilitation.<sup>48</sup>

Two additional non-capital offences were introduced in 2013. Gang rape of a woman is punishable by imprisonment of a term of between 20 years and the remainder of the perpetrators' natural lives, as well as a fine (in 2018, life imprisonment became<sup>49</sup> the sole punishment for gang rape of a woman under 16 years of age<sup>50</sup>).<sup>51</sup> Marital rape is only criminalised where a man has non-consensual sexual intercourse with his wife while the parties are living apart (punishable by imprisonment between two and seven years, and a fine);<sup>52</sup> in all other circumstances, India's criminal law explicitly states that 'sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape', irrespective of consent.<sup>53</sup> Despite this legislation setting 15 years as the age of consent within marriage, the Supreme Court of India in 2017 struck out that exception, confirming that the age of consent in India is 18 years in all circumstances.<sup>54</sup> At the time of writing, the Delhi High Court was considering a petition for the criminalisation of marital rape.<sup>55</sup>

The 2013 amendments also introduced two capital rape offences: rape resulting in death or persistent vegetative state of the victim,<sup>56</sup> and repeat offending under any of the country's rape provisions.<sup>57</sup> In 2018, two further capital rape offences were introduced:<sup>58</sup> rape of a woman under 12 years of age,<sup>59</sup> and gang rape of a woman under 12 years of age.<sup>60</sup> In all four cases, the death penalty is discretionary: courts may alternatively award terms of imprisonment, ranging from at least twenty years<sup>61</sup> up to the remainder of the perpetrator's life.<sup>62</sup> The 2013 amendments were precipitated by the *Nirbhaya* case, as discussed in the introduction of this report.

In 2021, 48 individuals were sentenced to death upon conviction of rape offences, accounting for 33 per cent of all death sentences passed that year.<sup>63</sup> Death sentences for rape

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<sup>48</sup> *Penal Code (India)* (n 42) s 376(3).

<sup>49</sup> *Criminal Law (Amendment) Act (India)* (n 11) s 6.

<sup>50</sup> *Penal Code (India)* (n 42) s 376DA.

<sup>51</sup> *Ibid* s 376D.

<sup>52</sup> *Ibid* s 376B.

<sup>53</sup> *Ibid* s 375, Exception 2.

<sup>54</sup> *Independent Thought v. Union of India* AIR 2017 SC 494.

<sup>55</sup> Lauren Frayer, 'Marital rape is still legal in India. A court decision could change that', *NPR* (online, 8 February 2022) <<https://www.npr.org/sections/goatsandsoda/2022/02/08/1047588035/marital-rape-india>>.

<sup>56</sup> *Penal Code (India)* (n 42) s 376A.

<sup>57</sup> *Ibid* s 376E.

<sup>58</sup> *Criminal Law (Amendment) Act (India)* (n 11) ss 5, 6.

<sup>59</sup> *Penal Code (India)* (n 42) s 376AB.

<sup>60</sup> *Ibid* s 376DB.

<sup>61</sup> *Ibid* ss 376A, 376AB only.

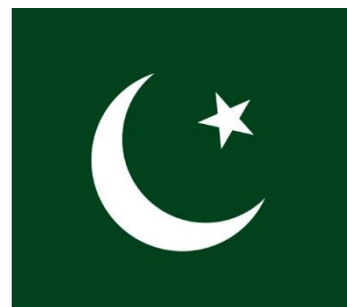
<sup>62</sup> *Ibid* ss 376A, 376E, 376AB, 376DB.

<sup>63</sup> Project 39A, *Death Penalty in India: Annual Statistics Report 2021* (Report, January 2022) 19.

offences have decreased in recent years, peaking at 66 death sentences in 2018, and decreasing to 54 in 2019, and 49 in 2020.<sup>64</sup> Of the 48 people sentenced to death for rape offences in 2021, four were sentenced to death for raping an adult, while the remainder were convicted of raping a minor.<sup>65</sup> As for the victims, 14 were aged between 12 and 18-years-old, while 29 were children below the age of 12.<sup>66</sup> In March 2020, India broke a five-year moratorium on executions, hanging four men for their involvement in the *Nirbhaya* case.<sup>67</sup>

## Pakistan

Under Pakistan law, ‘rape’ was, until 2020, defined as an offence committed by a man against a woman against her will,<sup>68</sup> or without her consent,<sup>69</sup> or regardless of her consent if she is under the age of 16,<sup>70</sup> or with her consent in certain circumstances under which consent is deemed to be vitiated.<sup>71</sup> Following a 2006 amendment to the *Penal Code 1860*,<sup>72</sup> rape became punishable by death or a term of imprisonment (10-25 years for individual offenders; life imprisonment where rape is committed by two or more persons), as well as a fine.<sup>73</sup> The law was revised in 2016,<sup>74</sup> raising the term of imprisonment to life imprisonment for individual offenders convicted of raping a minor or a person with mental or physical disability,<sup>75</sup> or of taking advantage of his position as a public servant (including a police officer, medical officer, or jailor) to commit rape.<sup>76</sup> Unlike India and Sri Lanka, Pakistan does not exclude marital rape from the ambit of its rape laws. In the absence of any express exception carved out with respect to spouses, it would appear that marital rape is criminalised under Pakistan law—not as a separate offence, but within the scope of the country’s general ‘rape’ provision (section 375 of the *Penal Code 1860*).



In 2020, Pakistan made substantial revisions to its rape laws.<sup>77</sup> The definition of rape was degendered, recognising that both perpetrators and victims may be ‘male, female or transgender’ (as discussed above). Rape may be committed by the perpetrator by way of penetration (whether anatomically or with an object) or orally, as well as by compelling the

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<sup>64</sup> Ibid 18-19.

<sup>65</sup> Ibid 20.

<sup>66</sup> These figures account for 47 of the 48 cases; the details of the final case remain unclear. Ibid.

<sup>67</sup> Project 39A, *Death Penalty in India: Annual Statistics Report 2020* (Report, January 2021) 6.

<sup>68</sup> *Penal Code (Pakistan)* (n 25) s 375(i).

<sup>69</sup> Ibid s 375(ii).

<sup>70</sup> Ibid s 375(v).

<sup>71</sup> Ibid ss 375(iii), (iv).

<sup>72</sup> *Protection of Women (Criminal Laws Amendment) Act 2006* s 6.

<sup>73</sup> *Penal Code (Pakistan)* (n 25) ss 376(1), (2).

<sup>74</sup> *Criminal Law (Amendment) (Offences Relating to Rape) Act 2016* (Pakistan) ss 5, 6.

<sup>75</sup> *Penal Code (Pakistan)* (n 25) s 376(3).

<sup>76</sup> Ibid s 376(4).

<sup>77</sup> *Criminal Law (Amendment Ordinance) 2020* (Pakistan) (n 25). In December 2021, the Pakistan Parliament passed further legislation (*Criminal Laws (Amendment) Act 2021* (Pakistan)) (n 25) to the same effect.

victim to commit such acts on themselves, the perpetrator, or a third person.<sup>78</sup> One interviewee praised the move to a gender-neutral definition of rape, stating that ‘the rapist and the victim can be any person now, which is a huge change in our legal framework’ (I-4). Unfortunately, this inclusive definition is not reflected across all legislation: the *Anti-Rape (Investigation and Trial) Act 2021 (Pakistan)*, which creates a number of criminal justice mechanisms to support victims, continues to use the narrow definition of victims as ‘woman or child’<sup>79</sup>, effectively precluding other victims from accessing these mechanisms<sup>80</sup>. The 2020 amendments also expanded the circumstances recognised as rape to include ‘when [the victim] is unable to communicate consent’.<sup>81</sup> Under the revised Act, rape is punishable by death, or imprisonment of between 10 and 25 years, or ‘imprisonment for the remainder period of [the offender’s] natural life’, as well as a fine.<sup>82</sup> The 2020 amendments also created the offence of ‘gang rape’, punishable by death, or imprisonment for life, or ‘imprisonment for the remainder period of [the offender’s] natural life’, as well as a fine.<sup>83</sup>

The 2020 amendments were motivated by nationwide protests following the rape and robbery of a woman by two men in front of her two children on a highway near Lahore at night.<sup>84</sup> In March 2021, the two offenders convicted of the ‘highway rape’ were sentenced to death.<sup>85</sup> Beyond this case, we were unable to locate aggregated sentencing practice for rape offences; however, one interviewee stated that courts generally prefer to sentence convicted rapists to terms of imprisonment, usually in the vicinity of 20-25 years, rather than imposing death sentences (I-4). The relative infrequency of executions of convicted rapists appears to corroborate this: of the 511 executions carried out between 2014 and 2018, six were of persons convicted of rape offences.<sup>86</sup> We have been unable to identify any further executions after this period.

## Sri Lanka

Under Sri Lankan law, rape is defined as an offence committed by a man against a woman without her consent,<sup>87</sup> or regardless of her consent if she is under the age of 16 (or 12 if she is his wife),<sup>88</sup> or with her consent in certain circumstances under which consent is deemed vitiated.<sup>89</sup>



<sup>78</sup> Penal Code (Pakistan) (n 25) s 375.

<sup>79</sup> *Anti-Rape (Investigation and Trial) Act 2021 (Pakistan)* s 2(k) (‘Anti-Rape (Investigation and Trial) Act 2021’).

<sup>80</sup> Ibid. The explanation accompanying s2(k) clarifies that victims other than women and children shall be subject to ‘procedure, rules of evidence and courts, functioning prior to this Act coming into effect (1 December 2021).

<sup>81</sup> Penal Code (Pakistan)(n 25) s 375.

<sup>82</sup> Ibid s 376.

<sup>83</sup> Ibid s 375A.

<sup>84</sup> ‘Pakistan: Thousands Protest over Gang Rape Investigation’, *Deutsche Welle* (online, 12 September 2020) <<https://www.dw.com/en/pakistan-thousands-protest-over-gang-rape-investigation/a-54907968>> (‘Pakistan: Thousands Protest over Gang Rape Investigation’).

<sup>85</sup> Ibid.

<sup>86</sup> ‘Death Row Population in Pakistan’, *Justice Project Pakistan* (Web Page) <<https://data.jpp.org.pk/page/9pa1cdfd4u>>.

<sup>87</sup> *Penal Code 1995 (Sri Lanka)* s 363(a) (‘*Penal Code (Sri Lanka)*’).

<sup>88</sup> Ibid s 363(e).

<sup>89</sup> Ibid ss 363(b), (c), (d).

Marital rape is only criminalised where a man has sexual intercourse with his wife without her consent and at a time when the couple are 'judicially separated';<sup>90</sup> in all other instances, marital rape is not recognised as a criminal offence.<sup>91</sup> Rape carries a punishment of 'rigorous imprisonment' (imprisonment with hard labour<sup>92</sup>) of between seven and 20 years, as well as a fine (payable to the state) and compensation (payable to the victim) of amounts determined by the court.<sup>93</sup> The minimum imprisonment term is raised to 10 years' rigorous imprisonment for gang rape,<sup>94</sup> as well as rape committed in certain aggravating circumstances, including where the victim is under 18 years of age,<sup>95</sup> is mentally or physically disabled,<sup>96</sup> or is known to be pregnant.<sup>97</sup>

In 1996, Sri Lanka amended<sup>98</sup> the *Firearms Ordinance 1917* to criminalise rape with the use of a firearm.<sup>99</sup> The penalty for this offence is death or imprisonment for life, as well as a fine not exceeding 20,000 rupees (approximately \$60 USD).

Although Sri Lanka has maintained a moratorium on executions since 1976,<sup>100</sup> courts continue sentencing individuals to death: as of 2020, there were 1,284 individuals on death row.<sup>101</sup> Death sentences have been imposed on individuals convicted of murder following a rape;<sup>102</sup> however, we were unable to obtain any information on whether, and if so the extent to which, courts have sentenced people to death under the firearms provision.

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<sup>90</sup> Ibid s 363(a).

<sup>91</sup> Isankhya Udani, 'Contesting The Consent: An Analysis of the Law Relating to Marital Rape Exception in Sri Lanka' (2017) 14(4) *International Journal of Business, Economics and Law* 43, 46-47.

<sup>92</sup> *Penal Code (Sri Lanka)* (n 87) s 52.

<sup>93</sup> Ibid s 364.

<sup>94</sup> Ibid s 364(2)(g).

<sup>95</sup> Ibid s 364(2)(e).

<sup>96</sup> Ibid s 364(2)(f).

<sup>97</sup> Ibid s 364(2)(d).

<sup>98</sup> *Firearms (Amendment) Act No 22 of 1996* (Sri Lanka) s 26.

<sup>99</sup> *Firearms Ordinance 1917* (Sri Lanka) s 44A.

<sup>100</sup> Human Rights Commission of Sri Lanka, *Prison Study by the Human Rights Commission of Sri Lanka* (Report, December 2020) 7.

<sup>101</sup> Ambika Satkunathan and Mai Sato, 'Who Wants the Death Penalty? Results of a Public Perception Twitter Survey on the Death Penalty in Sri Lanka', *Eleos Justice Blog* (Blog Post, 8 September 2021) <<https://www.monash.edu/law/research/eleos/blog/eleos-justice-blog-posts/who-wants-the-death-penalty-results-of-a-public-perception-twitter-survey-on-the-death-penalty-in-sri-lanka>>.

<sup>102</sup> 'Sri Lanka Rape Doctor to be Executed', BBC News (online, 3 September 2014) <<https://www.bbc.com/news/world-asia-29045560>>.

**Table: Capital rape laws in Bangladesh, India, Pakistan, and Sri Lanka**

	Offence	Penalty	Age of consent
Bangladesh	<b>Rape</b> <i>Women and Children Repression Prevention Act 2000 (amended 2020) (Bangladesh) s 9(1)</i>	Death penalty or 'rigorous imprisonment for life' and fine	<b>14 (or 13 if married*)</b> <i>Penal Code (Bangladesh) 1860 s375</i>
	<b>Rape of woman or child resulting in death</b> <i>Women and Children Repression Prevention Act 2000 (amended 2020) (Bangladesh) s 9(2)</i>	Death penalty or 'rigorous imprisonment for life' and fine of at least 100,000 BDT	<b>16 and over</b> <i>Women and Children Repression Prevention Act 2000 (amended 2020) s9 (s3 of this Act states that the provisions of this law overrides all other previous laws)</i>
	<b>Gang rape of a woman or child*; Gang rape of woman or child resulting in death or injury</b> <i>Women and Children Repression Prevention Act 2000 (amended 2020) (Bangladesh) s 9(3)</i>	Death penalty or 'rigorous imprisonment for life' and fine of at least 100,000 BDT	
	<b>Attempt to cause death or harm after rape of woman or child</b> <i>Women and Children Repression Prevention Act 2000 (amended 2020) (Bangladesh) s 9(4)(a)</i>	Death penalty or 'rigorous imprisonment for life' and fine	
India	<b>Rape of woman causing death or persistent vegetative state</b> <i>Penal Code 1860 (India) s 376A</i>	Death penalty or 'rigorous imprisonment' (i.e., imprisonment with hard labour) for a term of 20 years to remainder of natural life	<b>18</b> <i>Penal Code (India) 1860 s375; Independent Thought v. Union of India AIR 2017 SC 494</i>
	<b>Rape of woman under 12-years</b> <i>Penal Code 1860 (India) s 376AB</i>	Death penalty, or rigorous imprisonment for a term of 20 years to remainder of natural life and fine	
	<b>Gang rape of woman under 12-years</b> <i>Penal Code 1860 (India) s 376DB</i>	Death penalty, or imprisonment for remainder of natural life and fine	
	<b>Repeat offences of rape</b> <i>Penal Code 1860 (India) s 376E</i>	Death penalty or imprisonment for remainder of natural life	



<b>Pakistan</b>	<b>Rape</b> <i>Pakistan Penal Code 1860</i> (Pakistan) ss 375-6	Death penalty, or imprisonment for remainder of natural life and fine or imprisonment for 10-25 years and fine	<b>16</b> <i>Penal Code (Pakistan) 1860</i> s375 (d).
	<b>Gang rape</b> <i>Pakistan Penal Code 1860</i> (Pakistan) s 375A	Death penalty, or imprisonment for life, or imprisonment for remainder of natural life and fine	
<b>Sri Lanka</b>	<b>Rape with the use of a firearm</b> <i>Firearms Ordinance 1996</i> (Sri Lanka) s 44A	Death penalty, or imprisonment for life and fine	<b>16 (or 12 if married)</b> <i>Penal Code (Sri Lanka) 1995 s363</i>

\* Noting s9(3) of the Women and Children Repression Prevention Act 2000 (amended 2020) (Bangladesh) refers to the offence of 'gang rape resulting in death' - the authors have consulted with experts who have clarified that this section also includes the offence of 'gang rape'.

## Section II: Penal populism: unpacking the policy response to rape

Penal populism, or ‘populist punitiveness’,<sup>103</sup> is a term coined by Anthony Bottoms in 1995 to describe the increasingly punitive nature of criminal justice policy. Penal populism refers to:

[A] form of political discourse that, directly or by implication, denigrates the views of professional experts and liberal elites and claims instead the authority of ‘the people’ whose views about punishment it professes to express.<sup>104</sup>

The tone of penal policy formation under penal populism is emotional: ‘the cool detachment of professional decision-makers’ such as penological experts and practitioners is replaced with a more ‘expressive emotivism’ by politicians who claim to represent the angry and fearful public.<sup>105</sup> Examples include the introduction of harsh penal measures, such as the three-strikes laws in the US where repeat offenders with a violent felony conviction and two previous convictions serve a mandatory life sentence in prison.<sup>106</sup> In this report, we argue that the laws, newly introduced or amended, in Bangladesh, India, and Pakistan can be understood using the framework of penal populism—though unlike the US, the harsh penal measure introduced was not life imprisonment but the death penalty. As mentioned above, Sri Lanka appears to be an outlier amongst the countries examined in this report.

### The role of media

The mass media plays a key role in penal populism by presenting itself as the voice of the people. Crimes are reported to the public in ‘idiomatic, tabloid-friendly, image-conscious language.’<sup>107</sup> The media also plays an instrumental role in informing public attitudes towards rape and criminal justice across the four countries under examination. Speaking of Pakistan, one interviewee told us that public opinion is largely set by the media, which is ‘mostly pro-public execution’ (I-1). We received similar reports on Sri Lanka, with another interviewee saying that recent calls for the death penalty have been ‘mostly driven by the media’ (I-9). In India, public appetite for the ‘gory details’ of sexual violence means that media reporting often sensationalises rape to make headlines, meanwhile sacrificing important nuance (I-13).

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<sup>103</sup> Anthony Bottoms, ‘The Philosophy and Politics of Punishment and Sentencing’, in C. Clarkson and R. Morgan (eds), *The Politics of Sentencing Reform* (Oxford University Press, 1995) 17.

<sup>104</sup> David Garland, ‘What’s Wrong with Penal Populism? Politics, the Public, and Criminological Expertise’ (2012) 16 *Asian Journal of Criminology* 257, 258.

<sup>105</sup> Ibid 259.

<sup>106</sup> John Pratt, *Penal Populism* (Routledge, 1st ed, 2007) 19.

<sup>107</sup> Garland (n 104) 259.

Indeed, McDougal et al. remark that the brutal *Nirbhaya* gang rape in India spawned national and international outrage (see Introduction about the *Nirbhaya* case).<sup>108</sup> Media clamour surrounding the case included calls for the execution of the accused. According to Arya, ‘the issue of the death penalty had made its way into TV news debates and newspapers within two days of the [*Nirbhaya* case] being reported in the media’.<sup>109</sup> A study, examining coverage of sexual violence by India’s English-language press more than four years after the *Nirbhaya* case, found that although the topic of sexual assault has received more space in these publications in recent years, the press focused on explicit and sensational details: ‘the coverage is often problematic: sensationalist, dependent on social class and caste, and rife with stereotypes about the causes of sexual assault’.<sup>110</sup> It also found that a pervasive attitude of victim blaming often underpins Indian rape coverage. However, in the *Nirbhaya* case—the case that led to the amendment of the Indian Penal Code to introduce additional categories of rape offences punishable by death—the English-language press represented the victim as ‘a heroine—a “Braveheart”—without judgement’.<sup>111</sup>

## Reactive policy making and sidelined experts

Penal populism is characterised by populist politicians and lawmakers claiming to represent the views of the public.<sup>112</sup> For example, in Pakistan, the 2020 amendments described in the previous section were motivated by nationwide protests following the rape and robbery of a woman by two men in front of her two children on a highway near Lahore, Punjab, at night.<sup>113</sup> Protestors were particularly angered by statements made by the then-Lahore Police Chief Umar Shaikh, blaming the victim for travelling alone on a highway at night.<sup>114</sup> In response to the protests, then-Prime Minister of Pakistan Imran Khan said that rapists ‘should be given exemplary punishments’, and expressed his endorsement of public executions.<sup>115</sup> In December 2020, Khan’s government enacted legislation affecting the amendments set out above,<sup>116</sup> and in March 2021, the two offenders convicted of the highway rape were sentenced

<sup>108</sup> Lotus McDougal et al., *Releasing the Tide: How Has a Shock to the Acceptability of Gender-Based Sexual Violence Affected Rape Reporting to Police in India?* (2018) 36(11-12) *Journal of Interpersonal Violence* 5923.

<sup>109</sup> Divya Arya, ‘Reporting Sexual Violence in India: What Has Changed since the Delhi Gang Rape?’ (2015) 50 (44) *Economic and Political Weekly* 62.

<sup>110</sup> Joanna Jolly, *Rape Culture in India: The Role of the English-language Press* (Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy, 2016). See also Mark Phillips and colleagues who examined the coverage of violence against women in India after the high-profile *Nirbhaya* case (focusing on published professional media from December 16, 2012 to January 7, 2013). They found that although the spread of information through media is fast, and that media is an effective means to disseminate information and even to spark social movement, they can also present highly inconsistent depiction of the events: see, Mark Philips et al., ‘Media Coverage of Violence against Women in India: A Systematic Study of a High Profile Rape Case’ (2015) 15(2) *BMC Women’s Health* 1.

<sup>111</sup> Jolly (n 110).

<sup>112</sup> Garland (n 104).

<sup>113</sup> ‘Pakistan: Thousands Protest over Gang Rape Investigation’ (n 84).

<sup>114</sup> Xari Jalil, ‘Victim Blaming’: Civil Society, Rights Activists Demand Removal of Lahore CCPO’, *Dawn* (online, 11 September 2020) <<https://www.dawn.com/news/1579034>>.

<sup>115</sup> ‘Rapists Should be Publicly Hanged or Chemically Castrated: PM Imran’, *Dawn* (online, 14 September 2020) <<https://www.dawn.com/news/1579669>>.

<sup>116</sup> Hannah Ellis-Petersen, ‘Pakistan Approves Tough Anti-Rape Law Amid Outcry over Victim Blaming’, *The Guardian* (online, 17 December 2020) <<https://www.theguardian.com/world/2020/dec/16/pakistan-law-comes-into-effect-amid-outcry-over-victim-blaming-by-police>>.

to death.<sup>117</sup> Similarly, in Bangladesh, the government introduced the capital laws discussed above in response to popular demands for justice after a video emerged showing several men stripping and attacking a woman in the district of Noakhali.<sup>118</sup> One interviewee noted that popular support of the death penalty is so strong that calling for the abolition of the death penalty, whether for rape offences or others, is 'political suicide' (1-7).<sup>119</sup> In India, the *Nirbhaya* case is another clear example of politicians and lawmakers introducing capital laws in response to public outcry about rape. In Sri Lanka, although rapes of women and girls have attracted widespread public anger,<sup>120</sup> the consensus among our interviewees was that there is neither political nor legislative intent to expand the death penalty to rape or other sexual offences under the *Penal Code* (I-8, I-10, I-11), making Sri Lanka an outlier amongst the countries examined in this report.

Indeed, our research suggests that in Sri Lanka there has been an absence of political support for the expansion of the death penalty for rape offences beyond the existing *Firearms Ordinance* to cover broader instances of rape. A Sri Lankan expert we interviewed told us that the 'call for implementation of the death penalty' 'pops up every now and again'. According to this expert, most recent calls for the expansion of the death penalty have been generated by the media, including in relation to 'sexual violence against children, and very specifically against young girls and children', but rarely in relation to other instances of rape or sexual violence. This expert told us that this reflects a tension in Sri Lankan society, a 'tug of war between [Sri Lanka] being a Buddhist country and we shouldn't kill anyone, but these two menaces [rape and sexual violence, and rape and sexual violence against children] have gotten so out of control that it is the only way to control them' (I-9). Another Sri Lankan expert also reflected on the nature of Sri Lankan society and its interrelationship with Buddhism and its irreconcilability with the death penalty as a reason for the unlikely possibility of any further expansion of capital rape law in Sri Lanka (I-10). However, this does not mean that this resistance to expanding capital rape laws has meant that Sri Lanka has otherwise been effective in tackling the underlying causes and instances of rape, as examined further below.

In addition to politicians and lawmakers justifying the introduction of harsh penal laws based on (alleged) public calls for punitive measures, penal populism reduces the importance

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<sup>117</sup> 'Pakistan: Thousands Protest over Gang Rape Investigation' (n 84).

<sup>118</sup> Faisal Mahmud, 'Bangladesh mulls death penalty for rapists as protests rage' *Al Jazeera* (online, 11 October 2020) <<https://www.aljazeera.com/news/2020/10/11/protests-against-rape-erupt-in-bangladesh>>.

<sup>119</sup> One interviewee explained that 'thirst for avenging the crime [of rape] is embedded in the national imagery because ... genocidal rape was fundamental to the creation of our state' (I-7). Scholars have also argued that public support of the death penalty for rape offences is strong, reportedly as a result of rape being an instrumental tool of war during the country's fight for independence: Dorothy Q Thomas and Regan E Ralph, 'Rape in War: Challenging the Tradition of Impunity' (1994) 14(1) *SAIS Review of International Affairs* 81, 82; Elizabeth D Heineman, 'Introduction: The History of Sexual Violence in Conflict Zones' in Elizabeth D Heineman (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press, 2011) 1, 8, 14; Tasmin Saikia, 'War as History, Humanity in Violence: Men, Women, and Memories of 1971, East Pakistan/Bangladesh' in Elizabeth D Heineman (ed), *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* (University of Pennsylvania Press, 2011) 152, 152-172. See also, Nayanika Mookherjee, *The Spectral Wound: Sexual Violence, Public Memories, and the Bangladesh War of 1971* (Duke University Press, 2015).

<sup>120</sup> See e.g., 'Sri Lanka Gang-Rape Sparks Anger', *NDTV* (online, 25 January 2013) <<https://www.ndtv.com/world-news/now-sri-lanka-gang-rape-sparks-anger-511424>>; 'Gang-Rape Prompts Protests in Sri Lankas North', *Al Jazeera* (online, 20 May 2015) <<https://www.aljazeera.com/news/2015/5/20/gang-rape-prompts-protests-in-sri-lankas-north>>; 'Outrage in Sri Lanka Over Teenager's Rape and Murder', *BBC World News* (online, 20 May 2015) <<https://www.bbc.com/news/world-asia-32820033>>.

of penological experts and practitioners.<sup>121</sup> In India, the decision to introduce the death penalty for certain rape offences was made despite the Justice J S Verma Committee<sup>122</sup> recommending that sexual offences should not carry the death penalty.<sup>123</sup> The Committee was doubtful as to the capacity of the death penalty to deter would-be rapists,<sup>124</sup> and was of the opinion that introduction of the death penalty would be 'a regressive step'.<sup>125</sup> Many in civil society also spoke out against capital rape laws: finding that the media and public responses to the *Nirbhaya* case 'were shrill', and the clamour for stricter punishment for rapists was 'so fierce', women's groups and human rights activists organised a press conference to unequivocally condemn capital punishment.<sup>126</sup>

In Bangladesh, Umama Zillur, a member of the Feminists Across Generations alliance, has critiqued the government's decision to introduce the death penalty for rape and rape causing death or injury, as a 'kneejerk' response to public protests following a series of high-profile rapes:

Nowhere in our demand did we ask for death penalty ... because we know death penalty is going to reduce conviction rates, will increase murder after rape ... at the end of the day it's not going to help us in any way.<sup>127</sup>

In Pakistan, Sana Farrukh, a lawyer at Justice Project Pakistan (JPP)—an NGO that campaigns for the abolition of the death penalty—has similarly criticised the government's decision to introduce the death penalty as a solution to rape offences:

[I]t is faulty, if not fraudulent, to perpetuate the idea that a public hanging will make women feel safe. That won't be the case. We will not be waking up the next morning, feeling suddenly able to venture out in public spaces of the cities and towns we live in and know quite well.<sup>128</sup>

In sum, the consensus among the experts we interviewed was that the death penalty is 'a cosmetic legislative change' (I-4) used to pander to public sentiments.

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<sup>121</sup> Garland (n 104).

<sup>122</sup> Justice JS Verma Committee was established by the Indian government to look into the law relating to sexual offences in response to the *Nirbhaya* case referred to in the Introduction. Haripriya Suresh, 'Unprecedented Protests, Change in Laws: How the Nirbhaya Case Moved the Needle', *The News Minute* (online, 20 March 2020) <<https://www.thenewsminute.com/article/unprecedented-protests-change-laws-how-nirbhaya-case-moved-needle-120693>>.

<sup>123</sup> The Justice J S Verma Committee on Amendments to Criminal Law was established on 23 December 2012 following the 16 December 2012 gang rape of Jyoti Singh: Verma, J.S., Leila Seth and Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law* (Report, 23 January 2013) covering letter <<https://archive.nyu.edu/handle/2451/33614>> ('J S Verma Committee Report').

<sup>124</sup> Ibid 250 [37].

<sup>125</sup> Ibid.

<sup>126</sup> Arya (n 109).

<sup>127</sup> Arshad Zargar, 'Bangladesh Approves Death Penalty for Rape, But Activists Call it a Cop-Out', *CBS News* (online, 12 October 2020) <<https://www.cbsnews.com/news/bangladesh-approves-death-penalty-for-rape-but-activists-call-it-a-cop-out/>>.

<sup>128</sup> Sana Farrukh, 'Motorway Rape Case: Why Calls for Public Hangings are Part of the Problem', *Dawn* (online, 13 September 2020) <<https://www.dawn.com/news/1579450>>.



## Lack of evidence

With penological experts and practitioners side-lined, criminological knowledge backed by empirical evidence is ignored and replaced by ‘deference to the voice of “popular experience,” of “common sense,” of “what everyone knows”’.<sup>129</sup> Indeed, research shows that capital rape laws are not the solution to rape. While it may be intuitive to assume that the death penalty deters rapists for its harsh punishment, the deterrent effect of the death penalty is yet to be empirically proved.<sup>130</sup> A recent report from an Indian NGO echoed this point, reaffirming the futility of the death penalty and the extent to which it is underpinned by political, rather than empirical, motivations:

[W]henever a gruesome incident of child sexual abuse receives media attention and there is public outcry, more and more stringent measures are introduced in the laws on the assumption that these will act as a deterrent ... Such a move, despite being regressive in nature, has no basis in existing research and remains a populist measure.<sup>131</sup>

A review carried out on the impact of the death penalty on homicides in the US concluded the following:

The committee concludes that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment.<sup>132</sup>

While this study reviewed the impact of the death penalty on homicides in the US, the difficulty in proving causation (as opposed to correlation or association) between the death penalty and a reduction in homicides is applicable to any offence and in any jurisdiction. Moreover, we were unable to locate any research showing the deterrent effect of the death penalty for rape offences.

History tells us that harsher punishments are not necessarily the answer. For instance, in 1995, Sri Lanka increased the minimum punishment for rape from four to seven years’ imprisonment. Rather than deterring rapists, this appears to have deterred criminal justice actors (police, judges, lawyers)—predominantly men—from pursuing alleged offenders to the same degree as before, resulting in a downslide in convictions (I-8). Having observed a similar drop in conviction rates in India, a local NGO has stressed the importance of effective, rather than punitive, punishment:

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<sup>129</sup> Garland (n 104).

<sup>130</sup> Daniel Nagin and John Pepper, *Deterrence and the Death Penalty*, (Report, The National Academies Press, Washington, 2020) <<https://www.law.upenn.edu/live/files/1529-nagin-full-reportpdf>>.

<sup>131</sup> Bharti Ali and Urmi Chudgar, *#Data4Justice - Unpacking Judicial Data to Track Implementation of the POSCO Act in Assam, Delhi & Haryana (2012 to April 2020)* (HAQ: Centre for Child Rights & CivicDataLab, Report, November 2021) 46.

<sup>132</sup> Nagin and Pepper (n 130).

This [falling conviction rates] calls for further exploration as research and experience indicate that courts tend to acquit when sentences become harsher and there is an increase in victims and witnesses turning hostile in cases where the accused and the victim share close proximity.<sup>133</sup>

Capital rape laws ignore the reality that most rapists are known to the victim; rapists are often relatives, neighbours, friends, acquaintances, and in the case of children, teachers (I-8, I-14). The implications of this reality are immense: victims (and/or their families) may be reluctant to report instances of rape when there is a possibility that the perpetrator—somebody they know—may be sentenced to death and executed (I-8, I-12). Speaking of the situation in India, one interviewee shared:

People don't want to enter the criminal justice system and have someone they know being sent to the gallows. Ninety-five per cent of India's rape cases involve 'acquaintance rapes', not stranger rapes. (I-12)

This dilemma is particularly acute where rape victims are children, whose agency is already severely restricted (I-8). As one interviewee explained:

[By] fashioning a law based on an exception situation of stranger rape, [the State has] completely fail[ed] to take into account how difficult it is for young children to testify against those they know, or those who are in a part of their inner circle. (I-13)

Moreover, it has been suggested that such concealment of familial rape bolsters the false narrative that rape is committed by strangers (I-8), thus feeding public—and reciprocally political—support of the death penalty as capable of stemming sexual violence. Looking at the capital laws on rape, one interviewee expressed concern that the death penalty for rape 'may encourage rapists to kill their victim so as to avoid identification' (I-6).

In sum, criminal punishment marked by penal populism attempts to satisfy public calls for harsher punishment by ignoring criminological evidence. In practice, this means that penal populism achieves the political advantage of appearing to sympathise with and respond to the masses, at the expense of 'the long-term accumulation of penological results.'<sup>134</sup>

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<sup>133</sup> Ali and Chudgar (n 131) 108. See also Swagata Raha, 'Draconian and ineffective', *Indian Express* (online, 25 December 2015) <<https://indianexpress.com/article/opinion/columns/child-sexual-abuse-punishments-draconian-and-ineffective/>>.

<sup>134</sup> Garland (n 104) 259.

## Section III: Integrity of the criminal justice system

A functioning criminal justice system affords victims access to justice and holds perpetrators to account. In this section, we examine factors that inhibit the effective operation of the four criminal justice systems under review. However, focussing on improving flaws in the criminal justice system should not be a pretext for inferring that the death penalty is an appropriate punishment once these deficiencies are addressed. None of those we interviewed expressed this position; rather, the prevailing view was that the deficiencies in their respective criminal justice systems are so profound that often, neither a victim nor an accused can be guaranteed a just outcome, regardless of the death penalty.

### Reluctance to report: societal understandings of, and attitudes towards, sex and sexual violence

Before discussing how the four criminal justice systems deal with rape cases, this section provides an overview of how rape or being a victim of rape is generally perceived in these jurisdictions.

Interviewees noted that the issue of rape (and sexual violence in general) is intrinsically linked with patriarchal culture and issues of power and inequality, which is why a large proportion of rape cases are not reported (I-3, I-7, I-10). Preserving the family's 'honour' and displaying 'innocence' are what is expected of a woman in many Asian cultures.<sup>135</sup> Where a man regards a woman as his property, women are seen 'to embody the honour of the men to whom they 'belong'; as such they must guard their virginity and chastity'.<sup>136</sup> In a culture where a woman's chastity is of 'utmost importance', such as in Bangladesh, any allusion to being sexually harassed would seriously compromise a woman's reputation in society.<sup>137</sup> In a study focusing on India, Bhatnagar et al. lament that rape victims 'are faced with feelings of contamination, of having been defiled or desecrated—exacerbated by cultural judgments that treat raped women as dirty and impure'.<sup>138</sup>

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<sup>135</sup> Anushree Tripathi and Supriya Yadav, 'For the Sake of Honour: But Whose Honour? "Honour Crimes" Against Women' (2005) 2 *Asia-Pacific Journal on Human Rights and the Law* 73.

<sup>136</sup> Ibid 70.

<sup>137</sup> Sumaiya Khair, *Understanding Sexual Harassment in Bangladesh: Dynamics of Male Control and Female Subordination* (1998) IX(1) *The Dhaka University Studies* 88, 97.

<sup>138</sup> Akshay Bhatnagar et al., *Sparking the #MeToo Revolution in India: The "Nirbhaya" Case in Delhi* (American Enterprise Institute, 2019) 3-4.

Such stigmatisation ensues in two key issues—victim-blaming and the underreporting of rape—both of which fuel the impunity enjoyed by rapists. An interviewee from Sri Lanka explained victims’ reluctance to report sexual violence:

I think a lot of women just don’t report because of the social stigma around it. And secondly, [there] is the lack of support, they don’t want to tell their families. If the legal justice system or law enforcement system was much more supportive, then they might not have to tell their families. (I-9)

Interviewees identified strong cultures of victim-blaming in Bangladesh (I-7), India (I-14), and Pakistan (I-2, I-3). It was also noted that victim-blaming has been manifestly amplified by the advent of the internet, which serves as a platform by which victims may be publicly shamed by a wider audience (I-2). Interviewees recognised that victim-blaming is a counterpart of impunity for offenders; one noted that there is ‘no accountability expected of the offender, either from a familial perspective, from a societal perspective, [or] from the community’ (I-14), while another recognised that public outrage is only inflamed in heinous cases, with less egregious cases not being deemed ‘rape’ (I-7). Concurring, a third interviewee recognised the importance of shifting away from ‘selective outrage’ to a position where all acts of sexual violence are deemed reprehensible (I-12).

Research confirms our interviewees’ insights. Jolly argues that in India, reporters and news publications ‘have the ability to shape the way people think about rape’.<sup>139</sup> Where a woman makes sexual offence allegations, her story is scrutinised in a manner whereby her character becomes an issue and not that of the perpetrator.<sup>140</sup> Media coverage accentuates women’s vulnerability by producing material that obscures the real issue of the intent of the perpetrator.<sup>141</sup> In a study focused on sexual harassment in Bangladesh, Khair notes that women who make sexual offence allegations would ‘invite unwarranted attention that would be socially demeaning’, and often have their lifestyles ‘analysed to determine whether they qualify for protection or denigration’.<sup>142</sup> This is similar to the findings of Rati and Ferdush, who assert that:

Within an underdeveloped and biased socio-cultural structure of Bangladesh where the victim women have to bear the stigma of the crimes, they have to justify first that they were not somehow responsible for the crime that happened to them. Because the first question that people raise here is about the presence of any fault of the woman who has been raped. People question the dress code of the victim woman, why she was alone, what she was doing outside at night etc. ... The victim gets blamed by her friends, family, police, and the whole society. Thus, such victim-blaming culture creates and encourages the culture of violence against women to an extensive level.<sup>143</sup>

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<sup>139</sup> Jolly (n 110).

<sup>140</sup> Khair (n 137).

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Saifa Tazrin Rati and Kazi Tamanna Ferdush, ‘Evaluating the Social, Political and Economic Reasons Behind Gender-Based Violence in South Asia: A Case Study of Bangladesh’ (2021) 4(4) *International Journal of Law Management & Humanities* 3351, 3356 – 3357.

The pervasiveness of the culture of victim-blaming in Bangladesh was researched by Azam, who analysed comments from five Facebook news pages, and found that the highest number of comments in relation to sexual assault (513 out of 1350 negative comments) blame the victim, expressing opinions such as 'she was raped because she did not wear hijab' or 'she wore revealing clothes', or 'because she drank too much'.<sup>144</sup> In India, according to Bhatnagar et al., rape reporting is particularly problematic 'due to its [India's] culture of apathy and victim blaming'.<sup>145</sup>

There have been instances of prominent politicians blaming rape victims for inviting trouble by going to pubs, drinking and smoking, or generally claiming that 'boys will be boys', or that 'men are not robots'. In other cases, there have been attempts to marry off rape victims to their rapists, since the ultimate goal is for the victim to not remain unmarried.<sup>146</sup>

Reporting that one has been raped is dangerous for many women, who may face backlash and reprisals. An even more devastating effect is revealed in Tripathi and Yadav's study:

Women in Pakistan live in fear. They face death by shooting, burning or killing with axes if they are deemed to have brought shame on the family ... They are even murdered by their kin if they are raped, as they are thereby deemed to have brought shame on their family.<sup>147</sup>

It is not surprising, then, that many cases of rape are not reported.

Across all jurisdictions, the underreporting of rape was identified as a direct corollary of the stigma around sex and sexual violence (I-6, 1-7, 1-9, 1-12). The shame of being a victim of sexual violence extends beyond the victim themselves, tarnishing the honour and reputation of their entire family. 'Families wouldn't want their daughters to be known as rape survivors', said one interviewee from Bangladesh (I-7), with another concurring that rape brings shame to the whole family, 'especially the father' (I-6). An interviewee from Sri Lanka echoed this:

A lot of women just don't report ... If the legal justice system or law enforcement system was much more supportive, then they might not have to tell their families. But in this case, you can't go and report without someone going in with you. (I-9)

Whether willingly or at the behest of their family, victims often withhold information to protect themselves and their families from the stigma associated with sexual violence. Such hesitance is reportedly higher in regional and rural settings, where stigma may be exacerbated by more conservative attitudes (I-4, I-12). Unsurprisingly, silence perpetuates the cycle of impunity (I-6). As one interviewee summarised, 'there is a culture of impunity and those who want to rape know that they can do so and probably get away with it' (I-7).

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<sup>144</sup> MD Golam Azam, *Rape Culture: Blaming Rape Victims in Bangladesh Perspective* (monograph submitted to the Department of Peace and Conflict Studies, University of Dhaka, 2014) 60-61.

<[https://www.academia.edu/36485878/Rape\\_Culture\\_Blaming\\_Rape\\_Victims\\_in\\_Bangladesh\\_Perspective](https://www.academia.edu/36485878/Rape_Culture_Blaming_Rape_Victims_in_Bangladesh_Perspective)>.

<sup>145</sup> Bhatnagar (n 138) 3.

<sup>146</sup> Ibid 4.

<sup>147</sup> Tripathi and Yadav (n 135) 68.

The culture of silence not only results in victims not engaging with justice mechanisms, but also denies victims access to available support mechanisms to assist in overcoming trauma and healing (I-2).

“Even if cases are reported, the number of children turning hostile to protect someone from the gallows is likely to increase. This will create immense psychological conflict and pressure on children and hinder their healing in the long-term and nullify the objectives of creating a child-friendly reporting system”.<sup>148</sup>

Bhatnagar et al. note that ‘lack of reporting is the most fundamental and common obstruction in addressing crimes against women’, which is caused by factors such as ‘stigmatization, apathy and foot-dragging of the law enforcement authorities, and fear of retribution for the victims’.<sup>149</sup> A study by McDougal et al. states that reporting of sexual assault is low globally, but is ‘particularly depressed in South Asia, where limited legal protections and deep-rooted norms devaluing women further inhibit reporting’.<sup>150</sup> According to the study, recently available national data ‘indicate that 68% of women in India who experienced (non-spousal) sexual violence have not sought help from to anyone; fewer than 1.5% reported to the police’.<sup>151</sup> The same underreporting has been noted in Pakistan, where ‘many instances of rape are never reported, as a result of social pressures’.<sup>152</sup> Niaz states that in Pakistan, ‘incidents of abusive incest and rape within marriage are also said to be common although most occur in a hidden form in the society’.<sup>153</sup>

The introduction of capital rape laws could further reduce reporting of sexual violence, due to the ‘added burden’ on the victim of knowing that s/he would be sending someone to their death, especially since in the majority of cases the accused is known to the victim.<sup>154</sup> Dr Anup Surendranath, the executive director of Project 39A at National Law University, Delhi, has expressed the concerns of many Indian activists who oppose the death penalty for rape, saying that ‘under-reporting is a problem because the perpetrators are mostly known to the victims and there are all sorts of dynamics at play that cause victims and their guardians to not report the crime’.<sup>155</sup> Surendranath adds that death penalty could be a ‘further burden’ since victims will have to grapple with the possibility of ‘sending a person they know to the gallows’.<sup>156</sup>

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<sup>148</sup> Swagata Raha, ‘Implementation Woes’, *India Seminar* (online, 2018) <[https://www.india-seminar.com/2018/711/711\\_swagata\\_raha.htm#top](https://www.india-seminar.com/2018/711/711_swagata_raha.htm#top)>.

<sup>149</sup> Bhatnagar (n 138) 3.

<sup>150</sup> McDougal et al. (n 108) 5922.

<sup>151</sup> Ibid.

<sup>152</sup> U. Niaz, ‘Violence against women in South Asian countries’ (2003) 6 *Archives of Women’s Mental Health* 178.

<sup>153</sup> Ibid.

<sup>154</sup> Bansari Kamdar, ‘Death Penalty for Rape: An Ineffective Lethal Lottery in South Asia’, *The Diplomat* (online, 4 January 2021) <<https://thediplomat.com/2021/01/death-penalty-for-rape-an-ineffective-lethal-lottery-in-south-asia/>>; Swagata Raha, ‘Tough penalties will only punish the victims’ *The Hindu* (online, 30 October 2015) <<https://www.thehindu.com/opinion/columns/legal-eye-column-tough-penalties-will-only-punish-the-victims/article7819273.ece>>.

<sup>155</sup> Dr Anup Surendranath, quoted in Divya Arya, ‘India death penalty: Does it actually deter rape?’ *BBC News* (online, 31 July 2018) <https://www.bbc.com/news/world-asia-india-44922084>.

<sup>156</sup> Ibid.



There is also significant concern that the expansion of the death penalty for rape of child victims in particular means that the offender is more likely to murder the victim, so as to minimise the potential evidence against them to evade being sentenced to death (I-2, I-12); 'Death penalty will undoubtedly place children at risk of life'.<sup>157</sup>

Beyond cultural attitudes toward sexual violence, our research suggests that the four societies under examination remain largely ignorant to the realities of such violence. In particular, understandings of sexual violence remain gendered; that is, the majority are under the misconception that rape is an act by a man against a woman victim. The implication of this is that the victimisation of men and boys is rendered largely invisible, with such violence being either misconstrued or altogether disregarded. Speaking of sexual violence against young boys by adult men in Pakistan, one interviewee said:

We're not looking into the fact that this entire cycle of abuse, especially sexual abuse, is not being broken because we're not actually targeting or looking into the reasons behind it, or even acknowledging that men can be victims of rape. (I-4)

Indeed, it was only in 2020 that an amendment to Pakistan's *Penal Code 1860* redefined rape as an offence capable of being committed by, and against, 'male, female or transgender' persons (see Section I). This interviewee shared how sexual violence against boys relates back to the notion of honour and shame in Pakistan:

If a child—a boy or a child of any other gender—wants to share about being sexually violated or being abused, it's taken very lightly because family honour does not rest with the boy. Family honour rests with the girl. (I-4)

In essence, while sexual violence against women and girls is silenced to preserve family honour, sexual violence against boys is rendered invisible due to its perceived non-importance. Again, this invisibility feeds the cycle of violence by fostering impunity for perpetrators.

## Police handling of rape cases

As the initial phase of the criminal justice process, how police forces handle rape allegations is key. Our research identified three primary areas of concern with respect to police conduct in allegations of rape: reluctance of, or refusal by, police to take victim reports; the insensitivity of the reporting process; and the inadequacy of police investigation of rape allegations.

In Bangladesh, police stations have been criticised as 'not empathetic or equipped to deal with such issues' (I-6). One interviewee recounted an incident where a victim of gang rape visited three police stations before being allowed to file a complaint, ensuing in significant delay in the victim accessing medical treatment (I-7). The first two stations claimed that as the rape

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<sup>157</sup> Swagata Raha, 'Death penalty ordinance is a reactive and disproportionate response to child rape', *The Print* (online, 21 April 2018) <<https://theprint.in/opinion/death-penalty-ordinance-is-a-reactive-and-disproportionate-response-to-child-rape/51585/>>.

had not occurred in their jurisdictions, they could not accept the complaint (I-7). This case led to a constitutional challenge, resulting in the Supreme Court declaring that a police station cannot refuse to take the complaint of a victim on the basis that the crime occurred beyond its jurisdiction.<sup>158</sup>

Several interviewees spoke of police officers actively dissuading victims from lodging rape allegations in India (I-12) and Sri Lanka (I-9):

Some police officers are good and they will tell you straight up that this report is a waste of time, because especially where there is an incident where there is no physical marking on you or you don't look like you are violated, they will tell you that you are wasting your time. Some of them do it in a very brutal way, some do it in a very nice way, and just explain that it will be a very distressing process for you. (I-9)

Even where police are willing to register rape cases, the reporting process is characterised by a lack of sensitivity and regard for victims. In Sri Lanka, this process has been described as 'torturous', with one interviewee suggesting that the reporting process alone engenders a reluctance amongst victims to report rape (I-8). In Pakistan, despite the existence of victim-minded procedural regulations aimed at supporting victims through the reporting process, these are rarely observed:

Whilst there are provisions in the law to allow for the survivor to be supported by a family member, for their statements to be taken immediately and properly investigated, [and] for their statements to be taken by an officer of the same gender and for immediate access to a medical examination, these provisions are rarely met. For example, you can count in only a few big cities that there are [women] staff around, otherwise in rural areas where most of these offences are committed, there are rarely women in police stations. (I-1)

Upon rape allegations being registered, police are responsible for investigating these matters. Regrettably, such investigations have been identified as grossly inadequate in both India (I-12) and Pakistan (I-3). A separate but a related issue that speaks to the integrity of the police is the treatment of accused. A 2005 study of refugees from Bangladesh in Sweden found that police routinely used torture to extract confessions from accused persons; 80 of the 82 persons interviewed reported being tortured at least once whilst in police custody<sup>159</sup> with over 50 per cent of interviewees reporting that the torture took place during the interrogation process<sup>160</sup>. One interviewee from Pakistan claimed that 'the accused usually confessed before the police just because he is under a fear of being tortured, so they confess' (I-1).

Police have been reported to play an ineffective role in Bangladesh from filing the case and until its final settlement: they often display 'reluctance to file cases, harsh behaviour, and

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<sup>158</sup> *Naripokkho and ors vs Bangladesh and ors*. (2015) Supreme Court of Bangladesh, High Court Division <<https://blast.org.bd/content/judgement/Judgment-of-gange-rape-in-microbus-writ-5541-of-2015.pdf>>.

<sup>159</sup> Edston, Erik, 'Police torture in Bangladesh - allegations by refugees in Sweden' (2005) 15:1 *Torture* 16, 18 <<https://irct.org/assets/uploads/Police%20torture%20in%20Bangladesh.pdf>>.

<sup>160</sup> Ibid, 21. A 2020 study referred to torture still being used in Bangladesh by police during interrogations of persons in custody to extract confessional statements in Bangladesh - Muhammad Mahbubur Rahman (n 40) 38-39.

deliberate indifference' towards the complainants.<sup>161</sup> In 2018, a 23-year-old victim of gang rape in Bangladesh was denied medical attention until six days after reporting her assault to the police.<sup>162</sup> Two days after her assault, the victim reported the attack to police. She was then kept in police custody for two days before being taken to a victim support centre, where she spent another four days before being admitted to the One-Stop Crisis Centre at Dhaka Medical College Hospital. The two-day delay between reporting and being escorted by police to a medical facility put police in breach of a 2018 ruling of the High Court, whereby the Court ruled that failure to take a rape victim to the nearest hospital after a case is filed constitutes 'a punishable offence'.<sup>163</sup> Poor investigation snowballs into 'extremely inefficient' prosecution (1-12), and it has been identified as a factor in the low rates of rape convictions observed in India.<sup>164</sup>

The police's reluctance to file cases may also be compounded by misgivings related to the death penalty. According to Arya, in Pakistan and Bangladesh, there were accused who have walked free due to 'insufficient evidence' or because the police were hesitant to even register cases of gang rape, because of the severity of the punishments.<sup>165</sup>

In a positive development, Pakistan has started piloting victim support desks in some police stations<sup>166</sup>, as well as gender protection units to facilitate the reporting of such crimes.<sup>167</sup> Moreover, recently enacted anti-rape legislation in Pakistan provides for the establishment of Special Sexual Offences Investigation Units (SSOIs).<sup>168</sup> To date, however, there is insufficient evidence to assess the efficiency of those structures that are not present everywhere in the country.

## Forensic medical services

Across all four jurisdictions, two key issues pertaining to forensic medical services were identified: inadequate resourcing and insufficient training. In both cases, the inadequacy of forensic medical services feeds secondary trauma, exacerbating 'the already deeply traumatic

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<sup>161</sup> Rati and Ferdush (n 143).

<sup>162</sup> Bishakha Devnath and Shaheen Mollah, 'Medical Exam of Rape Victims: Police not following HC directives' *The Daily Star* (online, 26 January 2019) <<https://www.thedailystar.net/backpage/news/medical-exam-rape-victims-police-not-following-hc-directives-1693084>>.

<sup>163</sup> Ibid.

<sup>164</sup> Rakesh Chandra, 'The Heinous Crime of Child Rape: Whether Death Penalty is the Answer?' (2018) 4 *International Journal of Legal Developments and Allied Issues* 425, 430-3.

<sup>165</sup> Arya (n 155).

<sup>166</sup> Umer Farooq, 'K-P police dedicates officers for victim support' *The Express Tribune* (online, 25 January 2020) <<https://tribune.com.pk/story/2143784/k-p-police-dedicates-officers-victim-support>>.

<sup>167</sup> 'Gender protection unit' set up at RPO, police station in Sahiwal' *Dawn* (online, 28 February 2022) <<https://www.dawn.com/news/1677489/gender-protection-unit-set-up-at-rpo-police-station-in-sahiwal>>; 'Islamabad police launches gender protection unit' *Pakistan Observer* (online, 23 May 2021) <<https://pakobserver.net/islamabad-police-launches-gender-protection-unit/>>; 'Gender protection unit receives 500 complaints' *Pakistan Today* (online, 1 September 2021) <<https://www.pakistantoday.com.pk/2021/09/01/only-a-quarter-year-old-gender-protection-unit-receives-500-complaints/>>; 'Newly Inaugurated Gender Protection Unit, District West, Karachi for Women, Transgenders and Children', (Sindh Police, 23 March 2022) <<https://www.youtube.com/watch?v=N9OY1xkPI7o>> .

<sup>168</sup> *Anti-Rape (Investigation and Trial) Act 2021* (n 79) s 9.

experience that the survivor has had through their assault' (I-14). One interviewee described the direct impact of inadequate forensic medical services on the legal process in India:

We have very few forensic laboratories in India, and it is something that really delays trials. So what happens is that a provisional medical examination is submitted to the court and in many cases the final report is not available or submitted during the trial. You may have a case where was semen found in the underwear—but did it really belong to the accused? We don't know because that report has not come. (I-13)

Other interviewees corroborated this, suggesting that inadequacies in the provision of forensic medical services is a symptom of a broader underlying issue: India's inadequate resourcing of the criminal justice system. For instance, every district is supposed to have a centralised facility which combines forensic, mental health, legal, and police support; however, this is not the reality on the ground (I-14). This is particularly so in rural areas, where 'even something as basic as having access to a vehicle to take the survivor to the nearest police station is something that [the police] struggle with' (I-12).

Similar resourcing challenges were identified in Pakistan: a shortage of forensic labs ensued in existing facilities becoming overwhelmed, raising compounding issues of quality of, and delay in, forensic results (I-2). One interviewee reported that due to a lack of government funding, police have on occasion paid for DNA tests, before trying to recover the money from victims (I-3). In an attempt to overcome the lack of medical forensic evidence, Pakistan's latest anti-rape law provides for the establishment of anti-rape crisis cells in each district of the country<sup>169</sup>, with the Government undertaking to implement cells in every district in the country<sup>170</sup>. However as of 11 May 2022, only one has been established in Karachi, Sindh (I-2) and so far, no evidence is available to assess to which extent such structure contributes to increased reporting of rape cases and improved gender-sensitivity and quality of forensic medical evidence. Scarcity of judicial medical officers in Sri Lanka and rape crisis centres in Bangladesh, particularly in regional areas, has been identified as a barrier to accessing such services (I-7; I-10).<sup>171</sup> In Sri Lanka, victims may be redirected from local regional hospitals to larger hospitals—a near impossible feat for many (e.g., due to personal or familial commitments and time constraints on rape reporting) (I-8). Moreover, even where health services are available and free of charge, they may be slow, resulting in the loss of forensic evidence (I-8).

Saumya Uma uses the example of the 'two finger test' to highlight the issue of inadequate training of judicial medical officers and the judiciary's interpretation of the test.<sup>172</sup> The 'two finger test', a form of medical evidence for rape unique to South Asian countries, is a procedure where a forensic medical officer would insert two fingers into a woman's vagina to

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<sup>169</sup> Ibid s 4.

<sup>170</sup> Saqib Virk, 'Govt sets up anti-rape cells in every district' *The Express Tribune* (online, 26 March 2021) <<https://tribune.com.pk/story/2291679/govt-sets-up-anti-rape-cells-in-every-district>>.

<sup>171</sup> One interviewee expressed sympathy toward judicial medical officers in Sri Lanka stating that: 'they do not get any training, and they have an extreme backlog. Their lack of sympathy isn't about trying to punish [the victim], it's coming from a place of not having time.' (I-9)

<sup>172</sup> Saumya Uma, 'South Asian feminist engagements with law: Some explorations in the context of violence against women' (2019) 10 (2) *Jindal Global Law Review* 216 <<https://doi.org/10.1007/s41020-019-00097-y>>.

determine whether the hymen was intact, and would baselessly infer from this whether she was a virgin. Uma argues that that the test is archaic in practice, not scientifically sound, and serves little purpose during the trial, except to colour the judge's mind against the woman:

While the 'two finger test' is in itself unacceptable, as it is traumatic, humiliating and invades the privacy of the raped woman, its patriarchal interpretation by the judiciary to acquit perpetrators made it a further rallying point for women's movements in the region.<sup>173</sup>

A turning point came in 2021 when the Lahore High Court found the practice to be unconstitutional in the case of *Sadaf Aziz v Federation of Pakistan*<sup>174</sup>. The Supreme Court of Pakistan confirmed this position when it outlawed the practice in *Atif Zareef v the State*<sup>175</sup>. The Court was emphatic that a victim's sexual history has no bearing on the question of whether an accused person is guilty of rape.<sup>176</sup> In December 2021, the Pakistan Parliament strictly prohibited the practice of the 'two-finger test' in legislation<sup>177</sup>. Our interviewees commended this development (I-1, I-4) but highlighted the remaining need to improve the training of medical legal officers—a point stressed by the court itself:

Due to a combination of lack of training [and] inexperience[,] the medico-legal certificate's (MLC) casually report the two-finger test, to show that the vagina can admit phallus-like fingers to conclude that the survivor was sexually active at the time of the assault or a 'virgin' as perceived by the society ... Medical language of MLC is riddled with gender biases and immediately calls into question the character of the rape survivor. It is used to support the assumption that a sexually active woman would easily consent [to] sexual activity with anyone.<sup>178</sup>

The 'two-finger test' has also been banned in India, where the Supreme Court in 2013 held that the 'test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity'.<sup>179</sup> Similarly in Bangladesh, the High Court in 2018 ruled that the test has neither scientific nor legal merit.<sup>180</sup> Despite these rulings, however, interviewees in both countries intimated that the test may still be used in practice (I-8, I-12). Indeed, a study also found that despite landmark Supreme Court judgements<sup>181</sup> in India outlawing the use of the 'two-finger test', the test continues to be used by hospitals.<sup>182</sup> Women's rights organizations in India and Bangladesh continue to actively campaign to end the practice.

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<sup>173</sup> Ibid.

<sup>174</sup> *Sadaf Aziz v. Federation of Pakistan*, WP No. 13537 of 2020; Rana Bilal, 'LHC does away with archaic two-finger test for sexual assault survivors, terms them 'illegal'', *Dawn* (online, 4 January 2021) <<https://www.dawn.com/news/1599672>>.

<sup>175</sup> *Atif Zareef v State* PLD 2021 SC 550.

<sup>176</sup> Ibid.

<sup>177</sup> *Anti-Rape (Investigation and Trial) Act 2021* (n 79) s 13.

<sup>178</sup> *Atif Zareef v State* (n 175) [10].

<sup>179</sup> *Lillu @ Rajesh & Anr vs State of Haryana* (11 April 2013), Supreme Court of India, Criminal Appeal No. 1226 of 2011, 13 <<https://indiankanoon.org/doc/78844212/>>.

<sup>180</sup> 'HC bans degrading 'two-finger test' for rape victims', *The Daily Star* (12 April 2018) <<https://www.thedailystar.net/country/hc-bans-controversial-two-finger-test-1561813>>.

<sup>181</sup> *Nipun Saxena v Union of India* WP (C) 565 of 2012 (Supreme Court of India); *Lillu @ Rajesh & Anr vs State of Haryana* (n 179).

<sup>182</sup> Uma (n 172).

In Sri Lanka, victims are routinely referred to forensic medical services following a rape complaint, regardless of its particulars (I-9).<sup>183</sup> One interviewee recalled multiple cases where, despite no allegations of sexual penetration being made and weeks having passed since the alleged incidents, medical officers insisted on an invasive examination of the victim's vagina (I-11). Unnecessary or unwanted procedures—even where deemed necessary by police or medical personnel—infringe victims' rights to bodily integrity, privacy, and freedom from degrading treatment. Compulsory testing can only be considered a justifiable infringement of the individual's privacy and physical integrity when it threatens the rights and freedoms of others such as halting the spread of infectious disease.<sup>184</sup> A forced vaginal exam, as in Sri Lanka, is a clear infringement of the victim's rights.

One interviewee pointed out that while the legal definitions of rape have expanded in recent years in Pakistan and India (see Section I), this is yet to be reflected in the forensic science practiced in these countries, where emphasis is still placed on penile-vaginal penetration (I-12), clouded by patriarchal interpretation of what counts as rape.<sup>185</sup>

## Trial processes

Assuming that a victim manages to overcome the hurdles discussed above and succeeds in making a formal complaint to police, new barriers are encountered during the criminal trial process. An interviewee from Bangladesh described the pressures and threats received by victims whose cases proceed to trial:

These [threats] may, you know, eventually start off as offers to settle out of court. I'm going to pay you a sum of money as long as you stop appearing in court because they can't withdraw the case; since it's a police case, they're just witnesses in the proceeding. So, what they can do is stop showing up in court and then the case will just end up in acquittal anyway. But the point is, the lack of a witness protection system means that they are not ensuring their protection once they leave the police station. (I-7)

These threats may be exacerbated where measures to protect the identities of victims are not taken. For example, in India, it has also been observed that in many cases, various procedural rules for rape trials—including that such trials be held *in camera* ('in private')—are not followed by court.<sup>186</sup>

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<sup>183</sup> Bangladesh has laws compelling the administration of forensic medical examinations to all rape victims upon registration of a formal complaint, though we have been unable to confirm whether these tests have been implemented in unwanted or unnecessary circumstances. *Women and Children Repression Prevention Act 2000* (Bangladesh) (n 28) s 32.

<sup>184</sup> Aart Hendriks and Manfred Now, 'Western European case-study: The impact of advanced methods of medical treatment on human rights' in CG Weeramantry (ed), *The Impact of Technology on Human Rights: Global Case Studies* (United Nations University Press, Japan, 1993)

< <https://archive.unu.edu/unupress/unupbooks/uu08ie/uu08ie00.htm#Contents>>.

<sup>185</sup> Another emphasised that the resources used by forensic medical officers in Bangladesh are 'often riddled with a lot of outdated notions of what counts as evidence for rape', highlighting a need for updated and specialised trauma-sensitive training (I-7).

<sup>186</sup> Neetika Vishwanath, 'Ethnographic Study of Rape Adjudication in Lucknow's Trial Court' (2020) 16(1) *Socio-Legal Review* 55, 62.



Rape cases often hinge on the credibility of the main witness—usually the victim (complainant)—particularly in the absence of medical evidence. In light of this reality, all those we interviewed agreed that the questioning of victims in court has a tendency to be invasive, extending well beyond the circumstances of the alleged offending. Indian law forbids defence lawyers from asking victims about their prior sexual experiences during the trial.<sup>187</sup> However, such safeguards are frequently disregarded in court, where inappropriate questions are nonetheless asked and ‘no one questions it’ (I-12). We received similar reports from Bangladesh (I-7), Pakistan (I-4), and Sri Lanka (I-9), with interviewees confirming that defence lawyers often defend their client by attacking the character of the victim:

Oftentimes, they will have questions about their past sexual history, about their perceived immoral character, about their lifestyle ... This is also used in cases of statutory rape, [but] if a survivor is under the age of 16, their consent becomes immaterial in the eyes of the law. (I-7)

They [defence lawyers] make it [the rape] sound like an affair, or that there was consensual sex and it wasn't rape, and that she [the victim] gave her full consent and they were in a relationship, which they term as ‘affair’, or an ‘extramarital affair’ or whatever, if both parties are married. So, they would try to change the story and make it seem like consensual sex. (I-4)

Interviewees also noted that questioning tends to be aggressive, with one interviewee reporting that in India, hostile questioning is particularly noticeable in capital rape cases concerning child victims, with the child’s credibility being relentlessly attacked (I-13).

The misogynistic and victim-blaming rhetoric employed by defence lawyers is mirrored in the terminology employed by, and decisions of, courts. Research published by the Pakistan National Commission on the Status of Women (NCSW) in 2017 found that the majority of successful appeals against conviction for rape were decided on the basis of ‘infirmity or contradictions in the prosecution witnesses’.<sup>188</sup> NCSW notes that courts often ‘make comments about the pristine honour of a woman’ and readily consider allegations as to a victim’s sexuality.<sup>189</sup> An analysis of the language used by judges also points to a belief that women ‘invite’ rape through certain conduct,<sup>190</sup> as well as ‘a prejudice that continues to see rape as a crime of lust and passion rather than a crime of control’.<sup>191</sup> Similar observations have been made of judicial language and courts’ characterisation of sexual violence in Sri Lanka.<sup>192</sup> Misconceptions about the nature of rape also plague judicial processes in India. Empirical research has identified courts as carving a distinction between ‘real’ and ‘fake’ cases—the former being those involving a stranger perpetrator, the latter being those involving a

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<sup>187</sup> Questions concerning the complainants’ previous sexual experience is prohibited under Section 53A of the Evidence Act 1872 (India).

<sup>188</sup> Pakistan National Commission on the Status of Women, *Access to Justice for Survivors of Sexual Assault: A Pilot Study* (Report, June 2017) 13 (‘Pakistan National Commission on the Status of Women’).

<sup>189</sup> Ibid 22.

<sup>190</sup> ‘Justice with Children’, *Group Development Pakistan* (Web Page) < <https://gdpakistan.org/justice-with-children/> > (‘Justice with Children’). Pakistan National Commission on the Status of Women (n 188) 23.

<sup>191</sup> Justice with Children (n 190). Pakistan National Commission on the Status of Women (n 188) 24.

<sup>192</sup> See, Sandani Abeywardena, ‘Images, Myths and Stereotypes: A Critical Discourse Analysis of the Construction of the ‘Female’ in Judicial Pronouncements on Rape in Sri Lanka’ (2016) 28 *Law & Society Trust Review* 37.

perpetrator known to the victim.<sup>193</sup> Vishwanath found that cases involving rape of adult women by known perpetrators revealed the deep-rooted phallocentric notions that plague the rape discourse, which in turn informed the ways in which evidence is recorded and witnesses are cross-examined.<sup>194</sup>

Many interviewees concurred that the criminal justice process is particularly confrontational for child victims (I-2, I-9, I-10, I-12, I-14). Some jurisdictions have taken measures to alleviate the pressures of the criminal justice process on child victims; however, the effectiveness of these measures has been called into question. Child victims in India are afforded mandatory accommodations for a 'child-friendly' Special Court under the *Protection of Children from Sexual Offences Act 2012* (POSCO Act). These accommodations govern the giving of evidence; for example, the giving of evidence 'in-camera' and in the presence of the parents of the child or any other person in whom the child has trust or confidence.<sup>195</sup> While praising the POSCO Act in theory, some interviewees expressed concern as to its implementation (I-12; I-14). In Sri Lanka, child victims can deliver evidence remotely; however, with only four video evidence recording rooms across the entire country, child victims have been forced to wait upwards of two years to record their testimony (I-10). Similar resourcing issues have been identified in Pakistan: while a 13 pilot children's courts and several GBV courts have been established since 2017,<sup>196</sup> resourcing remains the key challenge to roll out these courts across the country (I-2). In December 2021, the new *Anti-Rape (Investigation and Trial) Act 2021* made provisions for in-camera trials to be made available to victims and witnesses in all rape trials in Pakistan, either at the direction of the Court or upon application of parties to the proceedings<sup>197</sup>; however, the accessibility of these facilities to rape victims in practice is yet to be assessed.

Navigation of the criminal justice process turns greatly on victims' capacities to access a lawyer. An interviewee from Pakistan told us that 'while the courts have power to provide court-appointed lawyers for victims ... such support has not yet been provided' (I-4). This was corroborated by an interviewee from Sri Lanka, who said that despite the existence of legal aid, they are constantly 'overwhelmed and overworked' (I-9). In both cases, interviewees stressed the importance of victims engaging a private lawyer, but acknowledged that this is contingent upon victims' abilities to fund such services (I-4, I-9). In India, it has been observed that victims with private lawyers have, on occasion, been afforded more expedient access to court, having their matters heard prior to those victims relying on public legal aid.<sup>198</sup>

Interviewees mentioned similar barriers encountered by accused persons in accessing fair trials. An interviewee from Bangladesh noted that accused persons who cannot afford a private lawyer are represented by pro bono or state-appointed lawyers who 'are not always competent in their defence' (I-6). An interviewee from Pakistan agreed, noting that the

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<sup>193</sup> Vishwanath (n 186) 67.

<sup>194</sup> Ibid.

<sup>195</sup> *Protection of Children from Sexual Offences Act 2012 (India)* s37.

<sup>196</sup> Justice with Children (n 190).

<sup>197</sup> *Anti-Rape (Investigation and Trial) Act 2021* (n 79) s 12.

<sup>198</sup> Vishwanath (n 186).

disadvantageous ramifications of low socioeconomic status become exacerbated when compounded with other marginalised identities: 'if you are poor, you are marginalised; if you are poor and from a minority religion, then you are even further marginalised' (I-1). This observation was echoed in the Indian context, one interviewee noting that legal aid lawyers representing someone who is 'visibly marginalised' do 'the bare minimum' (I-12). Indeed, it was suggested that, in India, judges 'get seriously involved' and the law is 'practiced in the best possible way' where both the victim and the accused are rich (I-12). The implications of an accused person's inability to access effective legal representation are grave: the overwhelming majority of people on death row in four countries under examination come from very poor backgrounds.<sup>199</sup>

Whereas accused persons without financial means may be denied fair trials, access to funds, it was suggested, enables accused persons to escape justice. Speaking of Pakistan, one interviewee told us that 'the rich, as with other justice systems, always have a way out' (I-3). A second interviewee illustrated how this occurs in practice, noting that accused persons with access to substantial funds may offer financial payouts to victims and their families, in exchange for the cessation of the prosecution (I-2).

Concerningly, courts have reportedly endorsed the out-of-court settlement of rape cases, criticised as 'enhancing the perpetuation of violence against women'.<sup>200</sup> An interviewee from Pakistan explained that 'there are quite a number of cases that are not reported intentionally - they don't have trust in the system, and they know that finally, the accused will go scot-free' (I-1). Instead, 'people try to settle all these cases out of court' and fill the vacuum of an inefficient legal system (I-1). Another activist we interviewed in Pakistan referred to the need to challenge the practice of such 'settlements' when there was evidence to proceed with even in the absence of a statement from the survivor: 'That's something you need to fight with the judges. That's where the social practice versus the legal framework comes into conflict, and that's what we're trying to tell them' (I-2).

Interviewees also raised concerns about the quality of public prosecutorial services, which are fundamental in the realisation of positive legal outcomes for victims. One interviewee shared that in India, public prosecutors are often manifestly unprepared for trial:

[Public prosecutors] open the file for the first time on the day of the listing, and just look at it briefly and get the evidence recorded in a very, very mechanical manner. There is no concept of preparation at all, which is so mind-baffling. How can you represent someone without knowing their story well in advance and preparing for it? (I-12)

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<sup>199</sup> Anup Surendranath et al, *Death Penalty India Report* (Report, National Law University, Delhi, May 2016)

<<https://www.project39a.com/dpir>>; Human Rights Commission of Sri Lanka (n 100); FIDH, *Punished for being vulnerable: How Pakistan Executes The Poorest and The Most Marginalized in Society* (Report No 740a, October 2019) <<https://www.scribd.com/document/429157313/PUNISHED-FOR-BEING-VULNERABLE-How-Pakistan-executes-the-poorest-and-the-most-marginalized-in-society>>; Rahman (n 40).

<sup>200</sup> Pakistan National Commission on the Status of Women (n 188) 31.

Empirical research corroborates this: observation of rape trials in Lucknow identified an ‘extremely poor’ level of preparation on the part of public prosecutors, attributed to ‘the enormous workload’ with which public prosecutors are burdened.<sup>201</sup> By way of contrast, where victims engaged private lawyers, they enjoyed ‘thorough preparation’.<sup>202</sup> Another interviewee echoed these concerns in the context of Sri Lanka, stating that prosecutors often only attend trials, meaning pre-trial hearings are routinely conducted by police; in some cases, police also conduct the trial (I-10). Doubt may be raised as to the fitness of police to engage in advocacy, despite their lack of legal qualification. In Bangladesh, poor communication between prosecutors and victims has reportedly compelled some victims to bribe officials to receive even the most basic legal information, such as the details of upcoming court dates<sup>203</sup>.

Lengthy trials have been criticised as feeding secondary trauma: one interviewee claimed that the average time for Sri Lankan courts to process in a rape case is 14 years, meaning victims are required to give evidence on, and therefore relive, violence that took place many years earlier (I-9)<sup>204</sup>. Particularly in cases involving child victims, such long trials can overshadow their entire childhood (I-9). Another interviewee from Sri Lanka, said that because trials are so long, they advise parents not to lodge formal complaints of child abuse. They deemed trials so traumatising to children that avoidance of this process is more important than holding an accused to account:

I will not advise them to complain because if we complain, the child will face a huge amount of trauma. We are unable to even reduce the re-traumatisation of children. (I-8)

On the flipside, rushed trials can undermine access to justice, lead to wrongful convictions, and foster impunity. For example, the 2018 amendments to the *Penal Code (India)* mandate that trials involving certain sexual offences must be concluded within two months from the alleged offence taking place.<sup>205</sup> This has resulted in some extremely short investigations and trials, such as a three-day trial in Jharkhand province where three men were sentenced to death,<sup>206</sup> a four-day trial in Bihar province where a man was imprisoned for life,<sup>207</sup> and a five-day trial in

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<sup>201</sup> Vishwanath (n 186) 63.

<sup>202</sup> Ibid.

<sup>203</sup> Equality Now and Dignity Alliance International (n 1) 31.

<sup>204</sup> Other sources estimate the average length of criminal trials in Sri Lanka from the point of initiation between 10-15 years or more than 10 years. See International Commission of Jurists, *Challenges to Accountability for Human Rights Violations in Sri Lanka: A Synopsis of Findings from a Meeting with Lawyers and Human Rights Defenders in Colombo* (Report, March 2017) 7 <<https://www.icj.org/wp-content/uploads/2017/03/Sri-Lanka-FCO-Accountability-1-Advocacy-Analysis-brief-2017-ENG.pdf>>; Centre for Policy Alternatives, *Legal Reform to Combat Sexual and Gender-Based Violence: Part 1 Reforming Existing Laws and Policies* (Report, November 2020) 19 <<https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-1-General-Centre-for-Policy-Alternatives.pdf>>.

<sup>205</sup> *Criminal Law (Amendment) Act (India)* (n 11) s 14.

<sup>206</sup> ‘In 4-Day Trial, 3 Convicts Get Death for Child’s Rape-Murder in Jharkhand’, *Hindustan Times* (online, 4 March 2020) <<https://www.hindustantimes.com/india-news/in-4-day-trial-3-convicts-get-death-for-child-s-rape-murder-in-jharkhand/story-TSq4SulGbqgBR5Z0dfneWM.html>>.

<sup>207</sup> ‘In India’s “Fastest” Rape Case Conviction, Bihar Man Gets Life Term in One Day’s Proceedings’, *The Times of India* (online, 28 November 2021) <<https://timesofindia.indiatimes.com/india/in-indias-fastest-rape-case-conviction-bihar-man-gets-life-term-in-one-days-proceedings/articleshow/87965327.cms>>.

Gujarat which culminated in the death penalty being awarded.<sup>208</sup> While provisions in the POCSO Act extend this time limit to one year, the effect of such stringent time constraints is detrimental to both the victim and the accused (I-13). A conviction is less likely in the absence of forensic evidence, the collection and processing of which is time-consuming. Likewise, time constraints undermine the comprehensiveness of police investigations (I-13). One interviewee recalls a case in which a defendant in a rape-murder was convicted and sentenced to death within 21 days of the alleged offending, raising serious concerns as to compliance with fair trial guarantees (I-12). Equally concerning is the fact that in some Indian states, there are programs that incentivise prosecutors to secure a conviction: prosecutors accumulate points depending on the sentences awarded in their cases (e.g., 1,000 points for a death sentence, 500 points for life imprisonment), with these points leading to promotions (I-13). Such programs cast doubt on the integrity of the criminal justice system. An incentive that prioritises securing convictions and harsh sentences demonstrates that the country's criminal justice system cares very little about preventing wrongful convictions, even though such an error may produce irreversible results given the capital laws on rape.

## Conviction rates

Conviction rates, calculated as the percentage of persons charged with rape offences who are subsequently convicted of those offences, range between 2 and 39 per cent in the four countries under examination: the conviction rate for rape has been estimated to be less than 3 per cent in Bangladesh;<sup>209</sup> 39 per cent in India;<sup>210</sup> 2 per cent in Pakistan;<sup>211</sup> and 4 per cent in Sri Lanka.<sup>212</sup>

In the four countries under examination, official conviction rates were not readily available, and no official data whatsoever exists for Bangladesh and Pakistan (I-7; I-2). Therefore, the conviction rates cited above need to be interpreted with caution. In the absence of reliable statistics, this report cannot offer any recommendations about rape conviction rates that are either desirable or realistic. To evaluate the appropriateness of conviction rates

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<sup>208</sup> 'Man Gets Death for Rape, Murder of 2-Year-Old Girls After Trial Ends in 5 Days', *The Indian Express* (online, 8 December 2021) <<https://indianexpress.com/article/cities/surat/man-gets-death-for-rape-murder-of-2-year-old-girl-after-trial-ends-in-5-days-7661588/>>.

<sup>209</sup> There is no official data available for Bangladesh (I-7). The conviction rate for Bangladesh was estimated based on a study of court cases concerning violence against women in Dhaka district during 2002-2016. Most cases included in the study were rape cases; however, some non-rape cases were included in the calculation of the conviction rate. Equality Now and Dignity Alliance International (n 1) 6.

<sup>210</sup> See Table 3A.7 'Conviction Rate -12 Rape' in Indian National Crime Records Bureau, *Crime in India 2020* (Report, September 2021) <<https://ncrb.gov.in/en/Crime-in-India-2020>>. Important to note concern regarding data collection of National Crime Records Bureau; Preeti Pratishruti Dash and Shreya Rastogi, 'The many gaps in NCRB data' *The Hindu* (online, 29 October 2019) <<https://www.thehindu.com/opinion/op-ed/the-many-gaps-in-ncrb-data/article29815998.ece>>.

<sup>211</sup> There is no official data available for Pakistan (I-2). According to Gishkori, the Law and Justice Commission released data on conviction rates; however, we were unable to locate the Commission's report. We used the figures referred to in Gishkori's article. Zahid Gishkori, 'Only 0.3pc rape suspects convicted in past 6 years', *The News International* (online, 13 November 2020) <<https://www.thenews.com.pk/print/743190-only-0-3pc-rape-suspects-convicted-in-past-6-years>>.

<sup>212</sup> Equality Now and Dignity Alliance International (n 1) 6 quoted 'Sri Lanka Police, Grave Crimes Abstract, 2019, <https://www.police.lk/index.php/item/138-crime-statistics>.' However, we were unable to access the source provided. We used figures referred to in the Equality Now and Dignity Alliance International report.



without context is detrimental to law reform advocacy. However, it is hard to avoid the conclusion that the estimates of conviction rates are low.

This section has so far examined the various barriers within the criminal justice system from reporting of rape to the police, to the problems with forensic medical services, to legal representation and trial. Conviction rates are the product of complex interactions between these factors. Poor police investigation and poor collection of evidence by forensic medical services depress conviction rates, as does poor legal support for victims and judicial misconceptions about the blameworthiness of victims. On the other hand, low reporting rates and low recording rates generally have the effect of inflating conviction rates, as does poor legal representation of defendants, with risks of wrongful convictions. At present, there is insufficient information for us to say what the rape conviction rates in these four countries could, or indeed *should*, be. What is evident, however, is that the capital laws on rape offences—whether newly introduced or amended—are ineffectual if the criminal justice processes in these jurisdictions are dysfunctional.

While it may be easy to dismiss the argument around conviction rates as unwarranted, it is a reality that the ‘low’ conviction rates for rape tend to dominate public discourse on rape within and beyond the four countries under examination.<sup>213</sup> For example, a news article headline published in Pakistan in 2020 reads ‘Only 0.3 [per cent] rape suspects convicted in past 6 years.’<sup>214</sup> Putting aside the issue that the 0.3 per cent figure includes attrition,<sup>215</sup> what this article and many others have in common is that the ‘low’ conviction rate argument is used as a campaigning tool to improve how rape cases are dealt with in the criminal justice system.<sup>216</sup>

While such campaigns may lead to actual improvement, when conviction rates are incorrectly cited or cited without context, it can also be ‘misleading and deeply unhelpful in building confidence in victims and increasing the number of cases reported to the police that could possibly go forward to a prosecution’.<sup>217</sup> Indeed, an interviewee confirmed that in India, it is these low conviction rates that deter victims from reporting their victimisation to police:

There are quite a number of cases that are not reported intentionally. They don’t have trust in the system, and they know that finally, the accused will go scot-free. (I-1)

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<sup>213</sup> E.g. Vivien Stern, *The Stern Review: A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales* (Report, Government Equalities Office, 2010) <<https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/europe/stern%20review%202010/stern%20review%20-%202010.pdf?vs=655>>; Liza Anderson, ‘Why are we so bad at prosecuting sexual assault’ *The Dallas Morning News* (online, 15 September 2019) <<https://www.dallasnews.com/opinion/commentary/2019/09/15/why-are-we-so-bad-at-prosecuting-sexual-assault/>>.

<sup>214</sup> Gishkori (n 211).

<sup>215</sup> Attrition refers to the loss of cases from the level of police to the level of conviction, such as the complainant deciding not to take the case any further, or the prosecution deciding that there is not enough evidence to prosecute. Jorg-Martin Jehle, ‘Attrition and Conviction Rates of Sexual Offences in Europe: Definition and Criminal Justice Responses’ (2012) 18 *European Journal on Criminal Policy and Research*, 145, 145.

<sup>216</sup> ‘6% rape conviction rate needs explanation and context’, *Fullfact.org* (Article, 18 May 2011) <<https://fullfact.org/news/6-rape-conviction-rate-needs-explanation-and-context/>>.

<sup>217</sup> Ibid.



The deep culture of impunity was also raised by interviewees in Bangladesh (I-7), Pakistan (I-1, I-3, I-5), and Sri Lanka (I-8, I-11)—the three countries with estimated conviction rates in single figures. If conviction rates—accurate or not—are a factor in the loss of trust towards the criminal justice system, advocacy needs to focus on challenging the simplistic narrative about rape conviction rates as indicators for justice and on improving public trust in the criminal justice system.

## Section IV: Existing efforts to counter pro-death penalty narratives

We asked all interviewees to share their knowledge of any strategies that civil society actors have used to challenge narratives of the efficacy of the death penalty for rape in their respective jurisdictions of expertise. Our findings suggest that, in fact, very little has been done to combat pro-death penalty narratives. Rather, efforts have been made to restore the integrity of the justice system as a whole and change attitudes towards sexual violence, including remedying those faults that inspired the introduction of, and are used by proponents of the death penalty to justify the retention of the death penalty for rape. We examine these strategies below.

### Campaigning for law reform

In December 2021, the Pakistan Parliament adopted the *Criminal Law (Amendment) Act 2021*, which included significant progressive aspects (see Section I). Just prior to being finalised, a section in relation to the forced chemical castration of those convicted of repeat rape offences or particular first offences was removed following pressure on politicians from human rights organisations.<sup>218</sup> An expert we interviewed praised the move to a gender-neutral definition of rape, stating that ‘the rapist and the victim can be any person now, which is a huge change in our legal framework’ (I-4). That said, they also noted that the legislation had significant shortcomings, observing that ‘when we talk about chemical castration or public hangings, we are missing the crucial point on why we are having these sexual offences in the first place’ (I-4).

Also in December 2021, the Parliament of Pakistan passed a key piece of legislation called the *Anti-Rape (Investigation and Trial) Act 2021*. The Act formally established specialist courts including into this framework existing gender-based violence and juvenile courts<sup>219</sup>. The Act also provided for the establishment of anti-rape crisis cells to in public hospitals throughout the country, for the purpose of conducting medico-legal examinations of rape victims and gathering medical evidence in an expedient manner<sup>220</sup>. The Act specifically noted that ‘at least one member of the anti-rape crisis cell shall preferably be a woman’. The Act also confirmed a number of positive steps around the process of giving evidence in criminal trials for victims.<sup>221</sup>

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<sup>218</sup> Ananya Upadhyaya, ‘Pakistan Amends Criminal Laws on Sexual Assault While Excluding Chemical Castration as a Punishment’, *Jurist* (online, 19 November 2021) <[jurist.org/news/2021/11/pakistan-amends-criminal-laws-on-sexual-assault-to-exclude-chemical-castration-as-a-possible-punishment](https://www.jurist.org/news/2021/11/pakistan-amends-criminal-laws-on-sexual-assault-to-exclude-chemical-castration-as-a-possible-punishment)>.

<sup>219</sup> *Anti-Rape (Investigation and Trial) Act 2021* (n 79) s 3.

<sup>220</sup> *Ibid* ss 4, 5.

<sup>221</sup> Including provision for legal assistance for victims (s 6), witness protection mechanisms for victims and witnesses (s 8) independent support advisors for victims during court process (s 11) and ability to give evidence in-camera (s 12).

Whilst this legislative development was seen as very welcome, the need to ensure it was adequately funded to ensure that resourcing—particularly around access to forensic labs to cater for more rural areas—was essential (I-2).

An expert we interviewed spoke about the important work that civil society organisations like Group Development Pakistan<sup>222</sup> have done in terms of sitting down with stakeholders and educating them on why the death penalty for convicted rapists is not an effective solution for reducing the scope of sexual offending. They emphasised the key role for civil society organizations to engage government, that ‘everyone needs to be educated about it and of course governments, civil society, this is where civil society comes in. But civil society can [only] do so much ... the government has to come in, but the government needs to be convinced by us and I don't think the government is convinced’ (I-3). An interviewee pointed out that the recent legislative reforms<sup>223</sup> in Pakistan were led by a feminist and gender rights champion lawmaker; this lawmaker faced considerable resistance to the proposed amendments due to prevailing patriarchal attitudes and conceptual misunderstandings of the issue and managed to overcome these challenges resulting in Pakistan having the strongest victim-centred legislation out of the four countries examined (I-2).

In 2019, 17 Bangladeshi organisations<sup>224</sup> came together to form the Rape Law Reform Coalition. An interviewee stated that ‘there really was a sense that to take the advocacy for rape law reform forward, we need to act as a collective rather than as individual organisations’ (I-7). In October 2020, when the Bangladesh government moved to expand the categories of capital offence punishable rape offences, the Rape Law Reform Coalition published a list of 10 demands for reform:

- 1. Reform rape laws in line with human rights standards:** Reform rape laws in conformity with constitutional guarantees of fundamental rights and international human rights law (including CEDAW, CRC and the ICCPR) to ensure protection and access to justice without discrimination for all rape victims/survivors (irrespective of sex, gender, gender identity, sexuality, religion, race, ethnicity, nationality, disability, age and nationality) and uphold safeguards on fair trial for those accused.
- 2. Broaden definition of rape to make it non-discriminatory:** Redefine rape to cover all forms of non-consensual penetration, irrespective of gender of the perpetrator or the victim/survivor.
- 3. Define penetration to cover all forms of rape:** Add a definition of ‘penetration’ for the purposes of determining rape, to include penetration by the use of objects or any other part of the perpetrator’s body.
- 4. Allow proportionality of punishment and introduce sentencing guidelines:** Amend laws to enable judges to exercise discretion in sentencing and formulate necessary sentencing guidelines which ensure proportionality of punishment and take into account both mitigating

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<sup>222</sup> ‘Who We Are’ *Group Development Pakistan* (Web Page) <<https://gdpakistan.org/who-we-are/>>.

<sup>223</sup> *Criminal Laws (Amendment) Act 2021* (n 25), *Anti-Rape (Investigation and Trial) Act 2021* (n 79).

<sup>224</sup> Acid Survivors Foundation, Action Aid, Ain O Salish Kendra, Bangladesh Mahila Parishad, Bangladesh Legal Aid and Services Trust (Secretariat) Bangladesh Women Lawyers’ Association, Bandhu Social Welfare Society, BRAC, Care Bangladesh, Justice for All Now (JANO), Bangladesh, ICDDR,B, Manusher Jonno Foundation, Naripokkho, Women with Disabilities Development Foundation, We Can, Women for Women and Young Women’s Christian Association. Rape Law Reform Coalition, ‘Rape Law Reform Now: 10-point demand’ *Blast.org* (online, undated) <[https://blast.org.bd/content/Rape%20Law%20Reform/RLRN\\_10-POINT-DEMANDS-ENG-FINAL.pdf](https://blast.org.bd/content/Rape%20Law%20Reform/RLRN_10-POINT-DEMANDS-ENG-FINAL.pdf)> (‘Rape Law Reform Coalition’).

circumstances (such as age or mental health of the accused) and aggravating circumstances (such as the use of weapon, force or violence and causing permanent physical or mental impairment of the victim/survivor).

5. **Ensure justice process is accessible to rape survivors with disabilities:** Modernise the Evidence Act 1872 to ensure persons with speech, hearing or intellectual disability are able to testify without facing any procedural barriers due to their disability during rape trials.
6. **Prohibit use of character evidence against rape survivors:** Amend Section 155(4) and other relevant sections of the Evidence Act to end admissibility of character evidence of complainants in rape trials. Such reform should also ensure judges are duty bound to ensure that defense lawyers do not ask humiliating or degrading questions during cross-examination of complainants.
7. **Exact Witness Protection Law:** Adopt a Victim and Witness Protection Act (building on the draft prepared by the Law Commission in 2006/2011), for institutional protection, emergency shelter, livelihood support, psycho-social support, and protection of identity or relocation, as required, of victims/witnesses and ensure protection is continued until the victim and witness's safety is no longer threatened and satisfactory alternative arrangements have been made.
8. **Establish a state compensation for rape survivors:** Establish a state-run compensation fund to enable rape victims/survivors to apply for compensation as of right, irrespective of whether the perpetrator can or has been identified and/or prosecuted for the offence.
9. **Holder gender-sensitisation training for justice sector actors:** Conduct trainings for police, lawyers (prosecutors and defense), judges and social workers so rape survivors are treated with gender responsiveness and sensitivity when reporting a rape, and during investigation and prosecution.
10. **Introduce consent classes in schools:** Introduce lessons on capacity and consent into education curricula, to change prevailing misogynistic social norms which undermine the right to choose.<sup>225</sup>

Notably, the demands do not refer to limiting the application of the death penalty. One interviewee explained that it would have been too hard to get agreement on this between the Coalition's member organisations (I-7). Even if such agreement were possible, another interviewee noted that there is almost no space for activists in Bangladesh to challenge capital rape laws, hinting at the futility of such a demand (I-6). In light of such difficulties, the 10 demands call for alternate reforms, in an attempt to circumvent the difficulties in challenging the death penalty directly:

We didn't specify abolition of the death penalty, but what we did ask for is proportionality of punishment, and sentencing discretion, which is basically an underhanded way of saying that, you know, let's give perpetrators a shot at fair trial and justice. (I-7)

The Coalition has been actively seeking legislative reform in relation to victim-blaming (6th demand). On 16 November 2021, three member organisations of the Rape Law Reform Coalition—Bangladesh Legal Aid and Services Trust (BLAST), Ain O Salish Kendra (ASK), and Narikkho—submitted a joint public interest writ to the High Court, seeking that sections

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<sup>225</sup> Ibid.

146(3)<sup>226</sup> and 155(4)<sup>227</sup> of the *Evidence Act 1872* be removed.<sup>228</sup> The following day, the Rape Law Reform Coalition presented the reform proposals to five members of Parliament including the Chair of the Parliamentary Standing Committee of the Ministry of Law, Justice and Parliamentary affairs who undertook to amend section 155(4)<sup>229</sup>. The Attorney-General had previously advised that the Government intended to repeal section 155(4), but not section 146(3), which could be used as a 'backdoor' alternative to the former, allowing the perpetuation of victim-blaming.<sup>230</sup> The writ was partially successful: the High Court ordered the government to report on steps to repeal section 155(4) by 4 January 2022 however made no orders in respect of s146(3). In February 2022, the Law Minister advised that a draft amendment repealing section 155(4) and amending s146(3) to prevent character examination of rape victims in court would be prepared with a view to passing the legislation in the next session of parliament<sup>231</sup>. As of 11 May 2022, this had not yet taken place.

In some situations, challenging certain laws outright may not be a viable advocacy strategy. Sri Lankan interviewees unanimously agreed that in the absence of any ostensible legislative intention to expand the death penalty to other sexual offences, and given that Sri Lanka has not executed anyone since 1976, they were hesitant to instigate any campaigns around legislative reforms lest it backfire (I-8; I-9; I-10).

## Sensitivity training and specialised fora

Interviewees emphasised the need for specialised sensitivity training for criminal justice actors. Educating police, lawyers, and judges on how to engage more appropriately with adult and child victims may increase trust amongst victims in the criminal justice system, leading to increased reporting of sexual violence. Moreover, the development of victim-centric fora (such as specialised courts and victim support services) may lead to more positive justice outcomes. An interviewee from India explained that while judicial academies at both national and state levels do provide subject-matter training for judges, the content and delivery varies dramatically (I-12). They also indicated that such training may be misdirected:

<sup>226</sup> Section 146(3) of the *Evidence Act 1872 (Bangladesh)* allows for the cross-examination of witnesses 'to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him'.

<sup>227</sup> Section 155(4) of the *Evidence Act 1872 (Bangladesh)* provides that 'when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character'.

<sup>228</sup> 'Questioning Rape Victim's Character: What has Been Done to Repeal Provision?' *The Daily Star* (online, 17 November 2021) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/questioning-rape-victims-character-what-has-been-done-repeal-provision-2231696>>.

<sup>229</sup> 'Morality of victims irrelevant in rape cases' *The Daily Star* (online, 18 November 2021) <<https://www.thedailystar.net/news/bangladesh/rights/news/morality-victims-irrelevant-rape-cases-2232931>>.

<sup>230</sup> Nilima Jahan, 'Evidence Act: Experts Laud Govt Move to Scrap Section', *The Daily Star* (online, 2 July 2021) <<https://www.thedailystar.net/news/bangladesh/news/evidence-act-experts-laud-govt-move-scrap-section-2121741>>.

<sup>231</sup> 'End to questioning rape victim's character in court: Govt to amend both sections of Evidence Act' *The Daily Star* (online, 21 February 2022) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/end-questioning-rape-victims-character-court-govt-amend-both-sections-evidence-act-2967266>>; Ashutosh Sarkar, 'Evidence Act: BLAST Gives Pointers to Stop Character Assassination' *The Daily Star* (online, 22 March 2022) <<https://www.thedailystar.net/news/bangladesh/news/evidence-act-blast-gives-pointers-stop-character-assassination-2987691>>; Mansura Hossain, 'What is and isn't in the draft Evidence Act (Amendment)' *Prothom Alo* (online, 6 April 2022) <<https://en.prothomalo.com/bangladesh/what-is-and-isnt-in-the-draft-evidence-act-amendment>>.

Training does happen, but I'm really unsure how much impact they have. Also, I think one problem with training is that some of this really fancy training will happen with people at the top level, but those are not the people who are sitting in the police station, who are doing the everyday affair. So I think that is a huge gap; that you really need to sort of strike at the bottom rung of the constables rather than sort of looking at heads of police in States, because those are not the people who are interacting with the public. (I-12)

Interviewees from Sri Lanka agreed as to the utility of training programs, but noted difficulties in civil society experts being given access to judges to provide such training (I-8, I-11). An expert interviewed in Sri Lanka spoke of the significant knowledge gap they had observed:

Somehow, the space for judges to learn from the experts in the field is very, very limited. So sometimes judges have talked to me in their private capacity—okay, doctor, you know, what is the problem with rape you know, what happens to the woman after, if she's not pregnant, what is the big issue? And the trauma—they don't know about PTSD. Their background is different, I understand. But the opportunity for them to learn about it, ask questions and understand; it's not there. And that is different from our neighbouring countries. (I-8)

Another Sri Lankan interviewee reported that attempts to deliver online violence and cyber safety training to police had been hampered by inconsistency in the leadership of the police force (I-9). Conversely, in Pakistan, a new 'Gender Protection Unit' pilot program has been established, which involves an entire specially trained police unit geared towards investigating complaints of gender-based violence from interviewing techniques onwards (I-2). In Pakistan, there have been effective models of judicial and police training in relation to the development of specialist courts to support adult and child survivors in Pakistan. In 2017, the Asian Development Bank was invited by the Chief Justice of the High Court of Lahore to assist with the development of a specialist gender-based violence court.<sup>232</sup> A training program focused on gender-based violence and gender-sensitised judicial practices was delivered to approximately 450 judges and 100 prosecutors over an 18-month period.<sup>233</sup> A physical court was established with provisions for separate waiting areas for survivors, women-only support staff, a screen to separate the victim from the accused while in Court, and facilities for the remote giving of evidence.<sup>234</sup> Approval was later given to extend the specialist training program to each of the 116 judicial districts in Pakistan.<sup>235</sup>

Since December 2017, children's rights organisation Group Development Pakistan worked with the judiciary to establish 13 pilot child courts across Pakistan.<sup>236</sup> Some of those courts are a one-stop shop for all jurisdictions involving children, and can include a child protection court, a juvenile court, and an anti-rape court.<sup>237</sup> Sensitivity training was provided to police, judges, prosecutors, defence lawyers, and court staff, with focus on ensuring that

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<sup>232</sup> Zariazana Aziz, 'Gender Based Violence Courts in Pakistan: A Gap in Gender Equality Remains, but a Promising Start', *Oxford Human Rights Hub* (Blog Post, 7 June 20) <<https://ohrh.law.ox.ac.uk/gender-based-violence-courts-in-pakistan-a-gap-in-gender-equality-remains-but-a-promising-start/>>.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> Khawaya Wajihuddin, 'We Have a Dream' *The Frontier Post* (online) <<https://thefrontierpost.com/we-have-a-dream/>>.

<sup>237</sup> Ibid.



child victims feel safe and heard, assessing a child's capacity to give evidence, and determining a child defendant's fitness to be tried.<sup>238</sup> One interviewee emphasised that whilst both the child court and gender-based violence court pilot projects have been largely successful, the challenge is to make these training programs and specialist courts available country-wide, and ensuring that all eligible cases are indeed referred to these courts (I-2). As Barrister Rida Tahir emphasises in a 2021 op-ed, 'the appropriate operationalisation of the already existing special courts with adequate technical and human resources along with strictly enforced standard operating procedures is what is needed'.<sup>239</sup> Pleasingly, in December 2021, the *Anti-Rape (Investigation and Trial) Act 2021* referred to above embedded these specialised courts into Pakistan's legislative framework<sup>240</sup>.

Similar concerns were raised in India. While interviewees celebrated the POCSO Act for mandating child-friendly courts, concerns were raised as to the Act's implementation (I-12, I-14).<sup>241</sup>

[The] POCSO Act mandates a child friendly court, which is in-camera—there has to be a screen between the survivor and the accused so that at no point is a child survivor exposed to the accused. But I've never seen a courtroom like that. But people who practice in Delhi have seen a courtroom like that. So it really depends on the States and their resources. (I-12)

Where specialised courts are not available, additional victim support may alleviate some of the pressures of the judicial process. Several jurisdictions allow victims to have their own advocates appear on their behalf in court, allowing victims to have continual support from the time of reporting up until the conclusion of the trial. One interviewee commented that in Pakistan, victims are 'doubly protected' by their private lawyer and the public prosecutor (I-4). A lawyer from India confirmed the existence of a similar model, but noted that access to private legal representation is only available to those who are 'well-resourced' or those working with support agencies (I-12). Lawyers may also assist the prosecutor in Sri Lanka:

Sometimes the police also allow us to conduct the trial...sometimes if we have that good relationship with them, the police would say okay this lawyer will appear on behalf of the victim and we can conduct the trial in certain instances. (I-10)

An interviewee from Sri Lanka spoke about the development by civil society organisations of gender-based violence desks (known as *Mithuru Piyasa*, meaning 'Friendly Haven') in major hospitals (I-8). The desks are private settings where victims can go to report violence to specially trained staff who can then provide support and direct victims to healthcare services, police, and legal aid.<sup>242</sup> The program, launched in 2005 with funding from the

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<sup>238</sup> Wajahat Ali Malik et al, 'Forensic Psychiatry in Pakistan: An Update' (2021) 4(2) *International Journal of Risk and Recovery* (2021) 42, 46.

<sup>239</sup> Rida Tahir, 'Special Courts and Sexual Violence' *The International News* (online, 12 September 2021) <<https://www.thenews.com.pk/print/891342-special-courts-and-sexual-violence>>.

<sup>240</sup> *Anti-Rape (Investigation and Trial) Act 2021* (n 79).

<sup>241</sup> See also Raha (n 133, 148, 157).

<sup>242</sup> See, Pathiraja Dasuni Yahanika, 'Gender-Based Violence: Experiences from Two Tertiary Care Settings in Sri Lanka' (2020) 9 *F1000 Research* 1, 18.

Canadian International Development Agency, has since been replicated to over 70 hospitals across Sri Lanka.<sup>243</sup> One interviewee explained the collaborative nature of gender-based violence desks:

The way they ran the gender-based violence desks was kind of a civil-state kind of partnership. They were also involving the police and whoever else whose help could benefit the woman. Look, health alone cannot solve this. They [victims] might come to [the gender-based violence desks], and they may be an entry point, but they can't solve all the woman's problems. So [the gender-based violence desks] have to work with other agencies. (I-8)

Whilst it remains unknown how these desks have impacted the reporting of rape and subsequent convictions (if at all), this program has been praised for its facilitating of medical and psychological support for victims.<sup>244</sup> Of course, this is only the case for victims with access to these desks, meaning victims who live in close proximity to a hospital with a desk (I-8).

In 2013, India directed extensive resourcing towards the establishment of holistic 'rape crisis centres' in response to the findings of the Justice J S Verma Committee.<sup>245</sup> Regrettably, a large majority of funding was not actually used (I-12)<sup>246</sup>. Indeed, in 2017, Human Rights Watch found that women and girls continue to struggle to access medical assistance, legal aid, and psychosocial counselling both before and after filing criminal complaints, despite the establishment of crisis centres.<sup>247</sup> The Maharashtra State Commission for Women has also found that these 'one-stop crisis centres' are poorly functioning, with nine out of the 11 centres studied not open 24 hours and having inadequately trained staff.<sup>248</sup> Multiple centres were also found to lack basic infrastructure, and had no independent oversight.<sup>249</sup> Only two of the centres studied functioned according to government guidelines.<sup>250</sup> An interviewee stressed the need to properly understand the causes of this dysfunction, and to evaluate existing advocacy programs before planning any new programs (I-12).

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<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Haripriya Suresh, 'Unprecedented Protests, Change in Laws: How the Nirbhaya Case Moved the Needle', *The News Minute* (online, 20 March 2020) <<https://www.thenewsminute.com/article/unprecedented-protests-change-laws-how-nirbhaya-case-moved-needle-120693>>.

<sup>246</sup> Up to November 2019, 88.88% of total funds allocated to States towards expenditure to enhance the safety and security of women was not utilised see Ministry of Women and Child Development, *Unstarred Question No 1903* (Parliamentary question, Government of India, 29 November 2019) <<http://164.100.24.220/loksabhaquestions/annex/172/AU1903.pdf>>.

<sup>247</sup> Human Rights Watch, "Everyone Blames Me": Barriers to Justice and Support Services for Sexual Assault Survivors in India (Report, 8 November 2017) <<https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>>; Jayshree Jajoria, 'One-Stop Centres for Rape Survivors in India Are Now Resolving Marital Disputes: Created in the Aftermath of the 2012 Delhi Gangrape, the Nirbhaya Fund Remains underused and the Centres Lack Resources', Human Rights Watch (Web Page, 10 November 2017) <<https://www.hrw.org/news/2017/11/10/one-stop-centres-rape-survivors-india-are-now-resolving-marital-disputes>>.

<sup>248</sup> Tabassum Barnagarwala, 'Lack of Funds, Infrastructure and Training in One Stop-Crisis Centres: Women Panel Report', *The Indian Express* (online, 11 January 2020) <<https://indianexpress.com/article/india/lack-of-funds-infrastructure-and-training-in-one-stop-crisis-centres-women-panel-report-6210728/>>.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

## Public campaigns

Our research uncovered various public-facing campaigns in relation to sexual violence and criminal justice responses to it. Speaking of the death penalty in particular, an interviewee from India shared their insight into the difficulties of challenging pro-death penalty narratives:

We [activists] are always in a space where we are reacting. We're not creating the narrative, and when you are in a place where you are responding to a narrative that is already built ... you're fighting a losing battle because you know the majority has already made up its mind that this [the death penalty] is the best thing to do. (I-13)

To overcome this, they suggested producing and disseminating information that is more easily accessible by the public, rather than material that is 'so intellectually couched' (I-13). Another interviewee from India spoke of the importance of 'put[ting] the voice of survivors, even if it's anonymous, into the public domain'. They told us that when the public narrative focuses on cases of rape resulting in death, 'it makes you really, really angry', leading people to view retributive justice as an appropriate avenue of recourse. In light of this, they suggested that the public discourse needs to be opened up, reflecting the true realities of sexual violence and identifying other modes of justice (I-12).

The suitability of social media as a tool for campaigning was the subject of mixed feedback from interviewees. An interviewee from Pakistan noted that younger people tend to engage in public discourse on social media and stressed the need to adopt a variety of campaign tools to address sexual violence through social campaigns, of which social media will play a part (I-5). Project 39A, a criminal justice research organisation based at the National Law University, Delhi, has conducted several such campaigns (including via Facebook, Twitter, and YouTube). A recent campaign video by Project 39A in collaboration with Vitamin Stree<sup>251</sup> highlights the language used by Indian courts in sexual assault cases.<sup>252</sup> The video features six women responding to and critiquing the gendered and outdated language used in the judgment.

Despite the potential benefits of social media campaigns, there are several barriers which must be overcome in order for such campaigns to be produced, to reach their target audiences, and to effect change. These issues include visibility of women from non-urban areas and diverse backgrounds, language barriers, and funding and time constraints. Despite these hurdles, one interviewee underscored the fundamental importance of public-facing campaigns, noting that sexual violence is a social, rather than legal, problem (I-12). Another interviewee disagreed, citing 'extreme backlash' as justifying their strong opposition to social media-based advocacy, expressing instead a preference for 'backdoor lobbying' (I-4). They explained that the debate around whether the death penalty is an appropriate response to sexual violence evokes such visceral emotional responses that social media becomes an inept tool for such discussions:

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<sup>251</sup> 'About Us', *Vitamin Stree* (Web Page) <<https://www.vitaminstree.com>>.

<sup>252</sup> Vitamin Stree, 'Women in India Respond to a Sexual Assault Verdict' (YouTube, 22 September 2021) <<https://www.youtube.com/watch?v=dwBIGHhQu8>>; *State v. Tarunjit Tejpal* [2021] District and Sessions Court at Panaji 6, 21 May 2021.

The idea [of sexual violence] is something so difficult for society to accept over here [in Pakistan] because there is a sort of blood lust ... where we just want to harm people and kill them and we feel that that's the solution, whereas we're not understanding the bigger picture issues, the missing links, and the things that we're not comfortable talking about that need to be talked about. Which is why for me, I have zero social media presence, I don't put up opinions on social media. (I-4)

Whereas civil society organisations have far greater autonomy and agency when using social media, campaigning via mainstream media may be hindered by the potential impartiality of media outlets. A Sri Lankan interviewee stated that engagement with mainstream media, while important, needs to be done carefully, particularly with respect to the reporting of sexual violence cases. They also noted that when mainstream media conversations focus on the death penalty:

[It] becomes parties and politics, then immediately the alliances come into play. So that is our challenge, because there is no independent media, and everyone is aligned with a political party. (I-9)

## Education programs

Almost all interviewees raised the need for education programs targeting children and young people, government officials, and the general public to shift attitudes towards sexual violence and the death penalty. Interestingly, beyond training programs targeting criminal justice actors (as discussed above), no interviewee was aware of any existing educational programs. The need for educational programs in schools focused on consent and other issues around sexual violence was emphasised by several experts we spoke to in Pakistan (I-3, I-4, I-5):

We're still trying to convince people that children under the age of 18 can't consent, and children under the age of 18, should not be married, and you should not be advocating that girl of the age of 15-16 should be married because they have just been through puberty .... [also] We do not socially acknowledge marital rape. (I-4)

An interviewee from Bangladesh shared similar sentiments, stressing the importance of education around consent as a mechanism to reduce offending (I-7).

A lawyer in India we interviewed spoke about the need for the government to properly resource consent and sex-positive education:

It is very, very rare. And I think it's very, very restricted to very few private schools in the bigger cities ... Probably the most expensive schools in Delhi and Bombay have this curriculum in place, because I've heard of some of these places. But I think, unless the government adopts it in their curriculum, because most people go to government schools as not everyone can afford private schools, I don't think we can make any change. The government would need to adopt this and show the path. (I-12)

The need for government resourcing of school-based educational programming was echoed in Pakistan: 'At the very basic level, and this is not only in elite private schools, but every state government school, even if it's a very small school that does not have a proper system. Everyone needs to be educated about it' (I-3). Another interviewee spoke of the implications of a lack of sex and sexuality education programs, noting a 'huge sexual frustration in Pakistan', being the consequences when men and women are not taught to interact in an equal, healthy, and respectful manner together:

Making an extreme taboo of sexualisation ends up hyper-sexualising everything. Then you have absolutely no healthy way to leave your sexuality outside wedlock, and that's problematic. (I-2)

Beyond schools, education programs can target children at other community loci. An interviewee from Sri Lanka spoke of a recently created program whereby community networks are created to inform children (particularly those in rural areas) on issues of sex and to protect children from sexual violence:

What we do here is we create village-based, community-based, safety networks for children. So they know how to report, who to talk to. They know the laws and they know what to do. So kind of that first response mechanism is community based. And they can always return back to us if they have major issues. If they have a need for a lawyer and so on. So, very simply creating that awareness amongst the village itself, amongst the communities itself. (I-10)

In addition to school- and community-based education programs targeting children, interviewees spoke of the importance of civil society organisations engaging the general public in education programs. An interviewee from Sri Lanka observed that education is the key to challenge the existing perceptions about sexual violence:

People actually believe it's right to rape a woman sometimes because ... 'they are women and they are there to be raped' kind of idea. But that comes from our education, our education has not countered it. No, that's the problem. (I-11)

Another interviewee emphasised the need to educate the public to be more critical of existing media narratives that routinely reinforced:

It is very important ... to look at the media ... because they also encourage violent behaviour and you know, or kind of, you know, fears of the men and, you know, at the end blaming women for whatever has happened. (I-5)

Acknowledging the utility of targeted educational programs, one interviewee emphasised the importance of recognising the broader societal environment within which sexual violence occurs. Any meaningful educational program must be tailored to the varying contexts of its participants, including differing urban and rural realities, and recognising gendered power imbalances. For example, in areas where there is low participation of women in the workforce resulting in a high level of economic disempowerment:

[W]omen will endure domestic abuse, or sexual violence within marriages, because they can't survive on their own or because they've been taught to believe that they can't survive on their

own. So I think that within the larger gender context in Pakistan, I think those gender disparities are something that we need to first try and close, in order for women to be empowered enough to actually think about affirmative consent. (I-4)

Another interviewee underscored the fact that while education is instrumental in combatting sexual violence and pro-death penalty narratives, challenging existing beliefs is a long-term, gradual endeavour:

I think [the challenge] for advocates is really making all these relevant stakeholders sit down, and they've done that. I know that's what JPP [Justice Project Pakistan] does; that's what GDP [Group Development Pakistan] also does. It's really just trying to make them understand why death penalty won't work, hasn't worked, and it's not working ... But the problem over here is the larger public opinion—that will take a lot of time to change, and that's not going to change if you and I sit down, or if, you know, three people sit down ... That will come through very focused education and talking about it. Firstly, talking about it, educating, spreading awareness, because this lacks a lot. (I-3)

While educating children and the public may inspire attitudinal change toward sexual violence and the death penalty, inform people how to respond if faced with sexual violence, and reduce the perpetration of future sexual violence, education programs may also target government officials. An interviewee from Pakistan emphasised the instrumental role of civil society organisations in the education of those in positions of influence and law-making authority, particularly with respect to countering pro-death penalty narratives (I-3).

## The difficulty in challenging the death penalty for rape

In India and Pakistan, advocacy challenging the death penalty has been effectively conducted by local civil society organisations such as Project 39A and Justice Project Pakistan. In recent years, their long-term advocacy has seen the application of the death penalty to individuals with mental illness significantly limited by the courts<sup>253</sup>. Recently, Project 39A also conducted successful litigation asking the Supreme Court to consider mitigation evidence of all persons charged with capital offences<sup>254</sup>. Such advocacies benefit all persons on death row in these countries, including those persons convicted of rape.

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<sup>253</sup> 'Safia Bano case judgement lauded', *The Express Tribune* (online, 18 March 2022)

<<https://tribune.com.pk/story/2348552/safia-bano-case-judgment-lauded>>; Zainab Mahboob, 'Defending the mentally ill' *Dawn* (online, 17 March 2022) <<https://www.dawn.com/news/1680408/defending-the-mentally-ill>>; Scott Walker, 'Meeting the 'ends of justice'? Execution of prisoners with mental illness: judgement of The Supreme Court of Pakistan' *Eleos Blog* (online, 10 May 2021) <<https://www.monash.edu/law/research/eleos/blog/eleos-justice-blog-posts/meeting-the-ends-of-justice-execution-of-prisoners-with-mental-illness-judgment-of-the-supreme-court-of-pakistan>>; Maitreyi Misra et al, *Deathworthy: A mental health perspective of the death penalty* (Report, Project 39A, October 2021) <<https://www.project39a.com/deathworthy>>; Devrupa Rakshit, 'More than 60% Death Row Prisoners Are Living with a Mental Health Disorder: Study' *The Swaddle* (online, 6 December 2021) <<https://theswaddle.com/more-than-60-death-row-prisoners-are-living-with-a-mental-health-disorder-study/>>.

<sup>254</sup> Utkarsh Anand, 'Supreme Court opens review into death penalty process' *Hindustan Times* (online, 30 March 2022)

<<https://www.hindustantimes.com/india-news/supreme-court-opens-review-into-death-penalty-process-101648577188276.html>>; Krishnadas Rajagopal, 'Supreme Court underscores need for holistic picture of convicts facing death penalty sentencing' *The Hindu* (online, 10 April 2022) <<https://www.thehindu.com/news/national/supreme-court-underscores-need-for-holistic-picture-of-convicts-facing-death-penalty-sentencing/article65306267.ece>>.



That said, when asked for their views on effective strategies to limit the use of the death penalty for rape, the experts from Pakistan, Bangladesh and India agreed that as public opinion in their respective countries was overwhelmingly in support of the death penalty, challenging it directly would be hard (I-1, I-2, I-3, I-4, I-5, I-6, I-7, I-12, I-13, I-14). This is not to say that when the issue of expanding the death penalty for rape has arisen in recent years, anti-death penalty advocates have been silent<sup>255</sup>; rather, there is a view that such advocacy would result in public backlash. An expert from Pakistan explained:

[Pakistan] is a very bloodlust sort of a society where we just want to harm people and kill them and we feel that that's the solution, whereas we're not understanding the larger picture, the bigger issues, the missing links, and the things that we're not comfortable talking about that need to be talked about. Which is why for me, I have zero social media presence, I don't put up opinions on social media. I just believe that you need to advocate with people who are the right people sitting at the right places. (I-4)

A Bangladeshi expert echoed this view, telling us that:

It is a general assumption that a law containing the death penalty is a good law ... General public opinion is that the death penalty is the most apt punishment for killers and rapists. This is because there is hardly any public dialogue on the negative impacts of the death penalty. It is as if retribution and deterrence are the only solutions right now. (I-6)

Another Bangladeshi expert told us that:

... it's very difficult to talk against the death penalty in our country where the criminal justice is, by and large, riddled with a lot of challenges. So people chant for the death penalty from a place of frustration, where they really think (a) that it has deterrent value and (b) that it's the only way to ensure that perpetrators won't just escape punishment. So whenever one calls for the abolishment of the death penalty [as part of the discourse on justice for rape], one runs the risk of being seen as a rape sympathiser. (I-7)

An expert from Sri Lanka told us that individuals who are 'sympathetic' about the rights of individuals facing the death penalty are attacked as supporting rape and sexual violence and

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<sup>255</sup> Surabhi Kanga, 'We villainise rapists to exonerate ourselves: Anup Surendrathath on the futility of the death penalty' *The Caravan* (online, 31 January 2020) <<https://caravanmagazine.in/law/death-penalty-execution-delhi-gang-rape-anup-surendranath>>; Krishna Das, 'Insight: Indore child killer sentenced to death 23 days after arrest, raises fears over trial fairness' *Reuters* (online, 23 May 2018); 'Pakistan: Zahir Jaffar conviction significant, but death penalty won't end violence against women' *Amnesty International* (online, 24 February 2022) <<https://www.amnesty.org/en/latest/news/2022/02/pakistan-zahir-jaffar-conviction-significant-but-death-penalty-wont-end-violence-against-women/>>; Taqbir Huda, 'Why I do not support the killing of 'rapists' by 'Hercules' *The Daily Star* (online, 14 February 2019) <<https://www.thedailystar.net/opinion/news/why-i-do-not-support-the-killing-rapists-hercules-1701610>>; Kamrul Hasan, 'No reform of rape definition in 160 years' *Dhaka Tribune* (online, 8 December 2018) <<https://archive.dhakatribune.com/bangladesh/law-rights/2018/12/08/no-reform-of-rape-definition-in-160-years>>. We have not located recent media reports from Sri Lanka which may reflect the absence of a public campaign for the death penalty and rape.

confront a more pervasive view that 'if you put their rights aside and go hard-line, then our problems will be solved' (1-9).

In this regard, anti-death penalty advocates are faced with a difficult task of reframing the current narrative so that death penalty abolition is seen as *part of* the criminal justice reform that delivers justice to victims. In the following section, we propose a victim-centred approach as a way of responding to the demands of the communities and of the victims to fix systemic flaws in the criminal justice system, and at the same time call for death penalty abolition for rape.

## Recommendations: a victim-centred approach to opposing the death penalty for rape

Interviews with experts revealed that little has been done to combat pro-death penalty narratives; rather, efforts have been made to restore the integrity of the justice system as a whole and change attitudes towards sexual violence (Section IV). As discussed, there are valid reasons for not engaging directly with arguments against the death penalty for rape offences. However, not addressing the use of the death penalty for rape may result in more death sentences and executions, including in cases of wrongful conviction. Moreover, if unchallenged, governments may expand the use of the death penalty further by applying it to other social problems that they are unwilling to address. We propose that a victim-centred approach may be a way to find common ground with organisations that currently endorse the capital rape laws. Existing campaigns and initiatives that tackle sexual violence already use this language to improve support for victims and to restore their dignity. Indeed, challenging the death penalty is both compatible with and required by a victim-centred approach to addressing sexual violence.

### Why the death penalty is not the answer to rape

In this section, we go beyond the debate surrounding deterrence (see Section II) to outline why the death penalty is not the answer for rape. It is hoped that these insights shared by anti-death penalty advocates offer a framework that can be employed in any of the jurisdictions in question to counter the pro-death penalty narrative for rape offences.

UN officials have called for victim-centred responses to crime and have stressed the need to prioritise the views of the victims in debates about death penalty. Ban Ki-moon, the former UN Secretary-General, asserted that '[v]ictims should always be at the centre of the debate on the death penalty.'<sup>256</sup> Speaking of the US, where the death penalty is mainly applied to murder, Helen Prejean remarks that an important lesson following the US' abolition of the death penalty 'will be the recognition that wounded, grieving families, after long years of waiting, can never be healed by watching as the government kills the perpetrator.'<sup>257</sup> This point is no less relevant in rape trials in South Asia, which are routinely marked by significant delays.

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<sup>256</sup> Ban Ki-moon, 'Preface', in Ivan Šimonović (ed) *Death Penalty and the Victims* (United Nations, 2016).

<sup>257</sup> Sister Helen Prejean, 'Death Penalty: Victims' Perspective' in Ivan Šimonović, *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (United Nations, 2015) 189.

Focusing on sexual offences, Michelle Bachelet, the United Nations High Commissioner for Human Rights since 2018, has stated that the death penalty is not the answer for rape, nor will it resolve any of the barriers concerning access to justice.<sup>258</sup> She remarked that:

I urge States to adopt a victim-centred approach to fighting the scourge of rape and other sexual violence. It is crucial that women are active participants in designing measures to prevent and address these crimes, and that law enforcement and judicial officials receive the requisite training in handling such cases.<sup>259</sup>

A 2021 report by Equality Now and Dignity Alliance International utilises a victim centred framework in examining problems that women and girls face while accessing the criminal justice system in Bangladesh, India, and Sri Lanka (along with Bhutan, Maldives, and Nepal).<sup>260</sup> The report includes an extensive discussion on victims' ideas of justice—and notably, the death penalty was not mentioned at all throughout the discussion. For survivors of sexual violence, 'justice' meant speedy trials, certainty of conviction, sensitivity and accountability from the criminal justice system, and wider change in attitudes toward sexual violence. The report notes:

Survivors across countries including Bangladesh, India and Nepal highlighted speedy trials as vital in dispensing justice. It is also key to note that the essence of this expectation is not necessarily limited to successful convictions, but it is linked to reclaiming their dignity and honour within a society where a 'raped woman' is looked down upon and further victimised by different actors. Lengthy trials undoubtedly contribute to the frustration and hopelessness that survivors face, often leading to them dropping the cases.<sup>261</sup>

Thus, harsher punishments including the death penalty are not part of victims' definitions of justice—a point further elaborated upon by feminists and women's organisations discussed below.

The Coalition against Sexual Violence and the Death Penalty in India takes the position that victims of sexual violence ought to receive support, compensation, and an acknowledgment of their violation, but warns that 'it is dangerous and counterproductive to perpetuate the myth that ... the death sentence will serve the cause of victims'.<sup>262</sup> The Coalition's statement concluded that execution is not the solution to the problem of sexual violence:

It is only a spectacle created to distract us. What we need to commit to as a nation is to do the hard work it takes to dismantle networks of power and privilege that perpetrate sexual violence on women, especially the most disadvantaged among us, as well as people of marginalised sexualities and genders. It is only in doing so, that we can hope to realise our vision of a society based on equality and justice, not revenge and retribution.<sup>263</sup>

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<sup>258</sup> Michelle Bachelet, quoted in 'Rape is wrong but death penalty, castration, not the answer: UN rights chief' *United Nations* (Web Page, 15 October 2020 ) < <https://news.un.org/en/story/2020/10/1075452>>.

<sup>259</sup> Ibid.

<sup>260</sup> Equality Now and Dignity Alliance International (n 1) 5.

<sup>261</sup> Ibid 58.

<sup>262</sup> Coalition Against Sexual Violence and the Death Penalty (n 2).

<sup>263</sup> Ibid.

Furthermore, Corey Rayburn, tracing the origins of the death penalty in Western legal systems, argues that most men in power, who did not understand the experiences of those who are raped, have implemented laws as though they understood rape. Thus, ‘vestiges of patriarchy and misogyny have shaped these statutory regimes from early times to the present, and the ‘imposition of masculine norms and a complete inability to comprehend the nature of rape have led men to apply the death penalty to the crime of rape’:<sup>264</sup>

The rationale behind these early laws was that rape was a property crime against a man's interest in preserving his wife's chastity. The patriarchal structure of these laws rested on the belief that preserving the ‘purity’ of women was a proper function of criminal justice. Death was an appropriate punishment because a husband's exclusive sexual access to his wife was threatened by rapists. Thus, the only way to guarantee exclusive control of women by husbands was to threaten the ultimate punishment: death ... In the context of all of the different child rape death penalty debates, a phrase that has been repeatedly bantered about is that ‘rape is a fate worse than death.’ Such rhetoric has become an essential linchpin in supporting capital punishment for rape. When the crime is worse than murder and murder justifies the death penalty, then, of course, rape should be punishable by death.<sup>265</sup>

In their submission to the Justice Verma Committee, several Indian organisations asserted that:

The logic of awarding death penalty to rapists is based on the belief that rape is a fate worse than death. Patriarchal notions of ‘honour’ lead us to believe that rape is the worst thing that can happen to a woman. There is a need to strongly challenge this stereotype of the ‘destroyed’ woman who loses her honour and who has no place in society after she’s been sexually assaulted. We believe that rape is tool of patriarchy, an act of violence, and has nothing to do with morality, character, or behaviour.<sup>266</sup>

As Psychiatrist Dr Jaydip Sarkar argues, ‘blaming and punishing the perpetrator alone will not address the underlying belief systems, based in a patriarchal culture that gives rise to various myths that trigger, promote and sustain sexual assaults and rape on women’.<sup>267</sup> The review of existing voices within the region demonstrates that experts in the region have already started using the victim-centred framework to argue the futility of capital rape laws.

## A victim-centred approach to opposing the death penalty

In this section, we have prioritised recommendations that may indirectly reduce the use of the death penalty for rape by addressing problems in the criminal justice system—namely, impunity and low levels of reporting—that underlie the calls for harsher penalties (including the death penalty). This section may be useful to CSOs that consider directly challenging the

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<sup>264</sup> Corey Rayburn, ‘Better Dead than R(ap)ed?: the Patriarchal Rhetoric Driving Capital Rape Statutes’ (2004) 78 (4) *St. John's Law Review* 1125.

<sup>265</sup> Ibid 1126-1127.

<sup>266</sup> Forum Against the Oppression of Women (FAOW), Aawaaz-e-Niswaan (voice of women) (AEN), Lesbians and Bisexuals in Action (LABIA), Mumbai, ‘Submissions to Justice Verma Committee’ para 5, available at <<http://feministlawarchives.pldindia.org/wp-content/uploads/submissions-by-forum-against-the-oppression-of-women.pdf>>.

<sup>267</sup> Jaydip Sarkar, ‘Hang Rapists, But Will it Reduce Rapes?’, *Alt News* (online, 10 May 2017) <<https://www.altnews.in/hang-rapists-will-reduce-rapes/>>.

death penalty for rape as ineffective, and potentially even dangerous, advocacy. Our recommendations are drawn from and grounded in the strategies that are already being adopted in South Asia (Section IV). Our research suggests that one of the biggest obstacles in delivering these strategies is funding their implementation, which in turn hampers an evaluation of these strategies' effectiveness. Relying on retentionist governments to fund such strategies is a considerable obstacle. Utilising regional networks like ADPAN and the SAME Network, joint funding proposals for regional advocacy may be a more effective way to pilot strategies that local experts feel may be regionally effective. Funders may find the potential impact of a larger scale program that allows the gathering of comparative data to be appealing:

[We need] comprehensive investment on advocacy because I've seen that whenever donors are taking any project[s] for advocacy [on] violence against women ... their communications budget is very low as compared to what it should be. (I-5)

The recommendations below focus on shifting the public conversation away from punishment and vengeance (I-12). In the short term, advocacy targeted at increasing public confidence in the capacity of the justice system to hold rapists to account may shift focus away from utilising harsher punishments for rape and instead toward effective ways to improve the criminal justice system for victims. Strategic advocacy should be couched in terms of the lived experiences of victims to promote reform. Criminal justice reform CSOs will need to be very careful in their communications when campaigning for criminal justice reform: they should not be seen to be legitimising the position that harsher penalties, including the death penalty, are appropriate for rape offences when implemented in the context of a fair trial system. The recommendations are an attempt to reframe the debate surrounding sexual violence in order to achieve—in the long run—death penalty abolition for rape as part of a victim-centred criminal justice reform.

### **1) Strengthening support for victims at every stage of the criminal trial process.**

- **Increasing legislative protections for victims** giving evidence, establishing specialist courts with remote witness facilities, funding training and resourcing for trauma-informed specialists, and training of forensic medical officers (particularly in rural areas) are key to improving the experiences of victims engaging with the criminal justice system. As discussed, CSOs have identified key areas for legislative reforms within each of the countries studied. The 10-point-plan developed by the Rape Law Reform Coalition in Bangladesh is one such example.
- Currently, access to victim advocates is limited, either by the resourcing available to CSOs or the funds available to victims to engage private representation. Given the under-resourcing of the criminal justice systems in question, **ensuring access to victim advocates** is a direct way to ensure that victims are supported by experts while navigating the very lengthy and difficult criminal justice process. CSOs may lobby governments to fund survivor advocates so that such services are more widely available. In the interim, programs like Sri Lanka's *Mithuru Piyasa* ('Friendly Haven' (discussed in the preceding section) may attract donations from international donors. Focusing on strategies to **improve the integrity of the criminal justice system** will address concerns of impunity among victims



and increase public confidence in the criminal justice system. By destabilising penal populist justifications of the death penalty, such advocacy may inspire a rhetorical shift away from such understandings of 'justice', in doing so opening space for more victim-centric understandings of 'justice' to prevail. While this is unlikely to reduce the use of the death penalty for rape in the short term, it may draw focus away from capital punishment by remedying systemic issues in the criminal justice system that are used by proponents of the death penalty to justify its retention. This also includes enhancing **fair trial guarantees** for those accused of rape.

- Understanding how criminal justice systems process rape cases is the first step toward improving their integrity. **Collecting reliable data** would give voices to victims and enable public discussion and policy action on basic processes within the criminal justice system, including the ease with which a first incident report may be lodged, the current state of forensic medical examinations, and the degree to which pre-trial processes are sensitive to victims' needs. Likewise, data on the people on death row for rape in the four focus countries are not made available by the state. Understanding the identities of those who have been charged with, and those who have been convicted of, capital rape offences would be useful in informing advocacy campaigns. Recognising that much of this data is not currently made available by the respective governments, local civil society organisations could continue to engage in applications through administrative and legal mechanisms for release of data to maintain the pressure for transparency.

## **2) Reframing the narrative on sexual violence and its response through training and education.**

- **Public education about sexual violence.** Our report found that, in the eyes of CSOs, educational programs in schools around the issues of consent and gender-based violence must address the deep stigma faced by victims of sexual violence. An evaluation of existing programs would identify which existing efforts could be used across the region. This area of advocacy would benefit from cross-jurisdictional consultations between CSOs specialising in such programs to develop 'best practice' approaches and share resourcing. By rewiring social understandings of rape, victim-centric education programs may erode the public support of the death penalty that inspired, and has since been used by states to justify, the introduction of the death penalty for rape.
- **Training programs targeting the judiciary.** The tendency for judges to operate under the patriarchal mindset of focusing on victims' morality, rather than the issue of consent, must be challenged. It would be useful to identify and engage with existing judicial regional training networks to deliver empirically based and victim-centric training on gender-sensitive, trauma-informed justice, knowing that judiciaries often look beyond their own jurisdictions for 'best practice' guides. Moreover, by placing the victim front and centre, such programs could encourage judges to exercise judicial discretion in sentencing (noting that in all cases, the death penalty for rape is discretionary) to promote a shift away from the

death penalty at the judiciary level—a temporary measure until the prospects of legislative reform of the death penalty (i.e., abolition) become an attainable reality.

- **Media training for CSOs.** CSOs would benefit from receiving media training. This would sharpen CSO media-based advocacy and enable the delivery of strategically focussed, consistent campaigns within their respective jurisdictions and across the region. CSOs could organise seminars and workshops for journalists to share best practices for the reporting of sexual violence, including the discouragement of sensationalised reporting on rape.

### **3) A holistic approach to victim support: thinking outside the existing criminal justice system.**

- Recognising that a criminal trial is not always the response that will bring the outcomes that victims or their families want, a study by the New Zealand Law Commission also explores alternatives to trial (e.g., victims may wish to meet with a perpetrator to seek redress in the form of reparation, apology, or undertaking to complete a treatment programme), or other mechanisms with the goal.<sup>268</sup> The United Nations Office of the High Commissioner for Human Rights, in a report stresses the need for a holistic approach to protection that goes beyond what the criminal justice system can offer. It calls for different service providers to ‘work together to address the physical, psychological, legal assistance and socio-economic needs of the victims and aim for a seamless support system for victims of sexual violence’.<sup>269</sup> This approach takes the attention away from viewing the criminal justice system, including the imposition of the death penalty, as *the* solution to deliver justice to victims.

### **4) Strategic mapping of civil society organisations and other key stakeholders working on the issue.**

- The 2018 advocacy campaigns protesting India’s expansion of the death penalty to child rape saw a range of CSOs—from those who work exclusively to support child survivors to those who act for persons incarcerated on death row for rape—come together and adopt a unified stance. Such an approach is, however, a relative rarity; indeed, there is a need for increased dialogue between CSOs working in this sector within countries and across South Asia. Bringing together a wide range of CSOs also allows for greater consistency and cohesion in advocacy strategies.
- At the regional level, it would be useful to conduct mapping to identify networks that may be sympathetic to anti-death penalty advocacy. Existing networks such as ADPAN, SAME

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<sup>268</sup> *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (Report 136, Law Commission Teo-aka-matua-o-te-ture, December 2015) 9 <<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf>>.

<sup>269</sup> United Nations Human Rights Office of the High Commissioner, *Protection of victims of sexual violence: Lessons learned* (Workshop Report, 2019) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf>>.

Participants to the workshop are from countries such as Bosnia and Herzegovina, Cambodia, Central African Republic, Democratic Republic of the Congo, Guatemala, Kosovo, Libya, Mali, Uganda, Ukraine, Somalia, South Sudan and Sri Lanka.

Network, and the World Coalition Against the Death Penalty may be useful starting points for the building of such connections. Likewise, the child rights' organisations that we've identified in this report would also be useful parallel starting points. In India, some women's rights organisations have been very vocal in their opposition to the expansion of the death penalty for rape offences; in other jurisdictions, organisations have kept lower profiles. Engaging in regional dialogues at a grassroots level between activists may help form a more consistent regional approach towards limiting the scope of the death penalty. As set out in the previous section, high quality pilot programs and training are already being implemented at some degree across the region; facilitating skill-sharing by organisers would be an efficient way to achieve a wider impact.

This report is intended to be a starting point for more co-ordinated regional advocacy against the use of the death penalty for rape. It is certainly not a new conversation for any of the experts and advocates that we interviewed; indeed, addressing sexual violence is an intractable problem across the globe. The most effective advocacy approaches will be developed and informed by local experts who understand community sentiment and local context. By forming a horizontal network of CSOs and activists from different fields (e.g., anti-death penalty, violence against women, children's rights, etc.), it is hoped that we can challenge the current narrative that legitimises the death penalty for rape and ultimately realising the abolition of the death penalty for rape in South Asia.

## Appendix: List of interviewees

Interviewee number	Country of expertise	Profession
I-1	Pakistan	Human Rights Activist
I-2	Pakistan	Human Rights Activist
I-3	Pakistan	Lawyer
I-4	Pakistan	Lawyer
I-5	Pakistan	Journalist
I-6	Bangladesh	Legal researcher
I-7	Bangladesh	Legal researcher
I-8	Sri Lanka	Anonymous
I-9	Sri Lanka	Anonymous
I-10	Sri Lanka	Lawyer
I-11	Sri Lanka	Lawyer
I-12	India	Lawyer
I-13	India	Legal researcher
I-14	India	Social worker

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