



SEXUAL VIOLENCE IN THE MALDIVES: LEGAL AND OTHER BARRIERS TO JUSTICE FOR SURVIVORS

A Country Factsheet

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INTRODUCTION

Though sexual violence had traditionally been considered as a private matter in Maldives, in recent years, there has been increasing public awareness of the issue and recognition of the need for the state to effectively prevent, address and respond to instances of sexual violence. A series of reported cases of child sexual abuse which drew widespread media attention¹ prompted the Maldivian President to create a Presidential Commission to Inquire into Child Rights Violations in February 2020.² The Commission has made some preliminary reports to the President, though no final reports have been made public to date.³ A high profile case of an attempted rape that took place on a safari boat in the harbour of Hulhumale in June 2020 resulted in public protests and increased calls for police accountability in rape cases, and even prompted lawmakers to propose amendments to the laws on sexual violence, including the deletion of certain discriminatory provisions from the Sexual Offences Act⁴ sub-sections (c), (d) and (e) of section 53 and the mandatory use of rape-evidence kits.⁵ The draft amendments are still pending before Parliament.

Another encouraging development was the first ever conviction for marital rape in Maldives, which was pronounced by the High Court on 1 October 2020. The conviction was given in a case involving the rape and physical assault of Ziyadha Naeem by her estranged husband, which resulted in her death in 2015. In a landmark decision, the accused was found guilty of marital rape by the High Court and sentenced to three years' imprisonment.⁶

One of the first studies to research the extent of sexual violence in Maldives was the Women's Health and Life Experiences (WHLE) study published in 2007, which found that "1 in 3 women (34.6%) aged 15-49 reported experiencing physical and/or sexual violence at some point in their lives, including childhood sexual abuse."⁷ The Maldives Demographic and Health Survey 2016-17 (MDHS) found that 11% of women and girls aged 15-49 in Maldives had experienced sexual violence.⁸ However, the MDHS survey is not a qualitative study as compared to the WHLE study which is considered to have employed more rigorous data collection methods.

LAWS RELATING TO SEXUAL VIOLENCE

The Maldives ratified the UN Convention on the Rights of the Child (CRC) in 1990 and is signatory to all the Optional Protocols of the CRC, having ratified the Third Optional Protocol to the CRC in 2019. Maldives also became party to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 and its Optional Protocol in 2006.

The historic Domestic Violence Prevention Act, 3/2012 (DVPA) criminalising domestic violence, including acts of sexual violence, was a direct result of advocacy and

research efforts to recognise the empirical reality of violence against women. The DVPA also established the Family Protection Authority (FPA) with the broad mandate to create public awareness to prevent domestic violence, facilitate services to survivors, and coordinate with relevant authorities to establish policy and implement measures.⁹ However, the DVPA is yet to be effectively implemented and obstacles in accessing justice have limited the efficacy of the remedy of protection orders available under the law.¹⁰

1 See Comprehensive NGO Shadow Report Responding to the 6th Periodic State Report of the Maldives, April 2019 to the CEDAW Committee; Uthema, Maldives, 20 April 2020, p. 64

2 President Solih establishes Presidential Commission to Inquire into Child Rights Violations, Press Release Ref.2020-090, The President's Office - Maldives, 20 February 2020, <https://presidency.gov.mv/Press/Article/23145>

3 Inquiry Commission probing institutional negligence in cases involving children, Raajje.mv, 9 October 2020, <https://raajje.mv/88132>.

4 Particularly sub-sections (c), (d) and (e) of section 53, which are highlighted in the section on "Gaps in the Law" below.

5 Safari rape case: Release of suspects sparks widespread outrage, Sun Online, 28 June 2020, <https://en.sun.mv/61362>; MP Meekail proposes to scrap parts of Sexual Offences Act, The Edition, 29 June 2020, <https://edition.mv/news/17537>

6 Shah sentenced to 3 years in landmark marital rape conviction, The Edition, 2 October 2020, <https://edition.mv/news/19491>

7 Maldives Study on Women's Health and Life Experiences, Ministry of Health, 2007 <https://maldivesindependent.com/files/2015/03/Maldives-Study-on-Womens-Health-and-Life-Experiences-2007.pdf>

8 Maldives - Demographic And Health Survey 2016-2017, <https://dhsprogram.com/publications/publication-fr349-dhs-final-reports.cfm>

9 Article 52(a), Domestic Violence Prevention Act 3/2012.

10 How can the DVPA 2012 strengthen its mandate to protect, using the PO as an effective tool to prevent DV?, Abdulghafoor H, Research paper presented at the National Domestic Violence Conference, 28-29 January 2018 (awaiting publication by FPA)

The first legislation specifically addressing child sexual offences was introduced in 2009, with the passage of the Special Provisions Act to Deal with Child Sex Abuse Offenders, 12/2009. As required by this law, a child sexual offenders registry has been established and maintained by the Ministry of Gender, Family and Social Protection Services.¹¹ Sexual offences against adults are addressed

under the Sexual Offences Act, 17/2014, and a new definition of rape has also been included in the overhauled Penal Code in 2015. The adoption of these laws significantly improved the legal framework for addressing sexual violence in Maldives, but problems remain for victims in accessing justice.

GAPS IN THE LAW

Despite the extensive revisions to the legal framework in the past decade, the laws relating to sexual violence still leave certain gaps which enable impunity for perpetrators:

1. Burdensome Evidence Requirements:

Both the Sexual Offences Act and the Special Provisions Act to Deal with Child Sex Abuse Offenders have prescribed burdensome evidence requirements to prove sexual violence offences, which could make it difficult to obtain convictions. Section 52 of the Sexual Offences Act states that when at least 5 types of the specified evidence are available, they are “sufficient” to prove the case beyond a reasonable doubt as provided by Article 51(h) of the Constitution.

The types of evidence specified include results of a scientific test; evidence of eyewitnesses; forensic results; statements given by third parties “as related to them by the victim within a short period of time from occurrence of the incident, where there are no probabilities of the victim fabricating the story”; victim’s statement; evidence of physical injuries and material evidence. Many of the types of evidence listed in this section are discriminatory and based on negative gender stereotypes/rape myths, for example, evidence of physical injuries and requiring there be “no probabilities of the victim fabricating the story”. Further, setting a legal standard which could potentially be interpreted to mean that at least five types of evidence are needed is an extremely burdensome requirement which significantly reduces the possibility of successful convictions. The CEDAW Committee has also expressed concern about the “stringent evidentiary provisions required for sexual violence offences” in the Maldives.

This burden is, however, reduced in cases of child sexual abuse, as the law specifies a greater variety of evidence which can be introduced, including the child’s narration of the incident itself in addition to corroborating statements by different parties.¹² The Supreme Court of Maldives in recent cases has interpreted this provision in a manner which gives more weight to the child’s testimony and supports the reduction of the evidentiary burden in such cases.¹³ The lack of jurisprudence from Maldivian courts applying these provisions in cases of sexual offences against adults makes it difficult to determine how exactly the evidence requirements for meeting the standard of proof for sexual offences are being interpreted and applied. However, based on a plain reading of the law, these burdensome evidence requirements could make it difficult to obtain convictions in rape cases, unless these provisions are interpreted liberally by the courts.

Comparison with other South Asian countries:

The law in the Maldives stands out among countries in the region for burdensome evidence requirements imposed for proving offences of rape against adult victims. Courts in a number of South Asian countries (including India, Bangladesh, Nepal and Sri Lanka) have held that convictions in rape cases can be based on the sole testimony of the victim.

¹¹ Child Sex Offenders Registry, website, <http://www.offenders.mv/>

¹² Section 47, Special Provisions Act to Deal with Child Sex Abuse Offenders, 2009. <https://www.familylegalclinic.org.mv/laws-regulations>

¹³ Prosecutor General’s Office v. Ahmed Muhktar 2019/SC-A/77, Supreme Court judgment of 9 March 2020; Attorney General’s Office v. Ali Shah 2017/SC-A/16, Supreme Court judgment of 26 November 2020.

2. Provisions which Enable Gender Stereotyping and Secondary Victimisation:

Section 53 of the Sexual Offences Act provides that the occurrence of certain circumstances can be used to deny the accusations of sexual violence, including a long delay between the occurrence of the incident and date of reporting if the incident was not narrated to other persons in the meantime [sub-section (b)]; the court finding that there is a possibility of false testimony being supplied by the victim having regard to facts relating to the “dignity and discipline of the victim” [sub-section (c)]; the court being of the opinion that the incident is likely to not have taken place, having reviewed both parties’ accounts [sub-section (d)]; and the court opining that the offence was improbable to have taken place having regard to “the relationship between the parties and the transactions between them prior to the offence” [sub-section (e)]. These provisions encourage courts to make adverse inferences for delays in reporting as well as allow the introduction of information relating to the past sexual history of the survivor unrelated to the case at hand as if it were valid evidence in the current case.¹⁴ These provisions pervert the course of justice and enable gender stereotyping and secondary victimisation of survivors during the legal proceedings.

Comparison with other South Asian countries:

Indian law specifically provides that the past sexual history of the victim is not relevant in rape cases.

3. Failure to Criminalise Marital Rape in All Circumstances:

The Sexual Offences Act in the Maldives only criminalises marital rape under certain circumstances, that is, when the marriage is in the process of dissolution, when one of the parties has applied for a divorce, if the husband knowingly transmits a dangerous sexually transmitted disease to the wife, or if the couple is living separately under a mutual agreement.¹⁵ Further, the penalties prescribed even for this narrow offence of marital rape (1-3 years imprisonment) are far lower than those prescribed for rape cases when the parties are not married (15 - 20 years imprisonment). In addition, Section 14 of the Special Provisions Act to Deal with Child Sex Abuse Offenders provides that sex offences under this law shall not be deemed an offence when carried out with a child with whom a person has entered into marital relations, thereby not only condoning child marriage but also legally permitting the marital rape of children. The law also needs to be aligned with the Maldives’ Child Rights Protection Act (19/2019) which sets the minimum age of marriage at 18, without exception.

Comparison with other South Asian countries:

Nepal and Bhutan have criminalised marital rape in all circumstances.

¹⁴ A notable recent case in point is the reference made to the character/good behaviour of a minor who was sexually assaulted by her stepfather. Prosecutor General’s Office v. Ahmed Muhktar 2019/SC-A/77, Supreme Court judgment of 9 March 2020

¹⁵ Section 20, Sexual Offences Act, 2014.

RESPONSE OF THE CRIMINAL JUSTICE SYSTEM

Some of the barriers to accessing justice in the Maldives are as follows:

Low Rates of Reporting:

Maldives has very low levels of reporting of rape cases to the criminal justice system. Data from the Maldives police indicates that only 10 cases of rape were reported in 2019 and 9 in 2018. This is in contrast to data from the MDHS and WHLE surveys which show high levels of prevalence of sexual violence within the country.

Stigma, Victim Blaming and Pressure Faced by Survivors:

Disbelief in the testimonies of survivors, blaming survivors for having “provoked” the rape and discriminatory attitudes towards survivors of sexual violence from family and community members as well as criminal justice system officials result in cases not being reported or being dropped. Survivors also face pressure from family and community members to withdraw the criminal case or “settle” it outside the formal justice system.

Inadequacies in Law Enforcement:

There are reports of failure of the police to file rape complaints in some cases or misreporting information provided by the survivor in the official police complaint, particularly if the alleged perpetrator is from a powerful family/community.

Issues Related to the Medical Examination:

Lack of facilities, particularly in the outer atolls, can result in delays in medical examinations which need to be referred to bigger hospitals. There are also reported delays in obtaining results of forensic examinations and DNA testing due to lack of availability of technical expertise and facilities within the country, as well as instances of failures to maintain confidentiality by healthcare professionals which affect survivor confidence in the system.

Long Delays:

The lengthy criminal justice processes and delays in investigation, prosecution and adjudication of rape cases create barriers to justice for survivors. Such delays can increase the likelihood of survivors being pressured into extra-legal settlements, result in increased contradictions between the statement given to the police and testimony given in court (due to passage of time) and, above all, cause more trauma and emotional stress to the survivor. Lawyers interviewed have noted that trials in some rape cases have been pending for over ten years.¹⁶

Low Conviction Rate:

Data submitted by the Maldives Government to the CEDAW Committee shows that out of 364 cases of sexual abuse reported between 2015-2019, there have been convictions only in 49 cases to date, i.e. only around 13.5% of cases.¹⁷

Lack of Support Services:

Lack of adequate protection of survivors from threats and violence is still one of the major gaps in the criminal justice system in the Maldives. In particular, there is a lack of available shelter homes to house survivors, as most shelter homes are not functional in practice. The staff members and budget for operating these homes are also inadequate. Further, survivors need to be provided with holistic care funded by the government, including psychosocial care.

¹⁶ See Also Mihaaru.com, 22 March 2021, Insaafu hoadhan 10 aharu, mihaaru dhen beynumeh ves noon [Headline translation : 10 years to seek justice—we don't even want it now]

¹⁷ Replies of Maldives to the list of issues and questions in relation to its sixth periodic report, CEDAW/C/MDV/RQ/6, 20 August 2020, pp. 22 - 26.

KEY RECOMMENDATIONS

1

Address Protection Gaps in the Law

- Remove discriminatory or burdensome evidence requirements applicable in law, particularly through amending Sections 52 and 53 of the Sexual Offences Act.
- Explicitly criminalise marital rape, in all circumstances.
- Expedite the proposed amendments to the Sexual Offences Act to strengthen the first responder (police and healthcare services) protocols to ensure improved evidence collection and investigative processes for criminal prosecution.

2

Improve Police Responses to Cases of Sexual Violence

- Hold accountable police officers who refuse to register complaints, tamper with evidence, pressure survivors or their families to compromise or in any way obstruct justice in sexual violence cases.
- Increase training and capacity building for gender sensitisation of police officials to prevent secondary victimisation of survivors.
- Improve effective implementation of existing laws and policies on victim and witness protection to ensure that rape survivors are safe while pursuing the criminal justice process.

3

Ensure Survivor-Friendly Medical Examinations in Rape Cases

- Train medical professionals on the appropriate protocols for conduct of medical examinations in rape cases, ensure they are aware of the *Health Sector Response to GBV: National Guideline on providing care and prevention for Health Care Providers, 2014*.
- Impart training and skills to practitioners to specialise in gender-based violence.

4

Improve Prosecution Procedures and Trials of Sexual Offences

- Ensure that all forms of sexual violence offences are investigated and prosecuted as a priority.
- Ensure that survivors of sexual violence are sufficiently supported throughout the legal proceedings, including through ensuring that they are informed about the criminal justice process and their rights under the law and are updated regularly on progress throughout the proceedings. Engage survivor advocates to serve as a consistent link between the system and survivor.
- Proactively address delays in the trial process and ensure that trials are completed speedily in rape cases.

5

Design and Fund Holistic Interventions to Improve Access to Justice for Survivors

- Increase allocation of resources towards sexual violence prevention and response programmes.
- Improve data collection on rates of reporting, prosecution and convictions in sexual violence cases.
- Ensure an efficient multi-sectoral response to provide holistic support services to survivors.
- Empower the public, particularly women and girls, to understand their rights, improve awareness of laws related to sexual violence, available remedies and methods to preserve evidence prior to reporting.

Note: The information in this factsheet is largely derived from the report titled [‘Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors’](#), jointly published by Equality Now and Dignity Alliance International in April 2021.

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