

# A SHARED JOURNEY TO JUSTICE

THE LEGAL FELLOWSHIP



Women's Fund Asia

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# ABOUT WOMEN'S FUND ASIA

Women's Fund Asia is a feminist donor organisation that supports the realisation of the human rights of women, girls, trans, and intersex people in Asia.

We were first established in 2004 under the name South Asia Women's Fund (SAWF), with the core mandate of supporting women's rights groups and activists in Bangladesh, India, Pakistan, Nepal, and Sri Lanka.

We have since grown and expanded. We now work in 18 countries across South, East, and Southeast Asia, and we officially became Women's Fund Asia (WFA) in 2018. WFA's understanding of women has also grown over the years, and our constituency now includes girls, trans, and intersex people.<sup>1</sup>

WFA supports feminist movements led by women, girls, trans, and intersex people in three primary ways: by providing grants and funding opportunities; by bringing people together for learning and exchange; and by working with stakeholders to build critical resources for women's, girls', trans, and intersex rights work, in order to nurture and lead feminist philanthropy in the region.

As of 2020, WFA has disbursed more than USD10 million to support more than 500 initiatives for women, girls, trans, and intersex people across Asia by providing opportunities for learning and networking, technical and fiscal support, and leadership in changemaking.

Our grantees are activists, groups, and organisations working for gender equality and the human rights of women, girls, trans, and intersex people across a range of approaches and perspectives: from grassroots to sub-national, national, and regional movements.

Initiatives supported by WFA fall into five broad thematic areas: Access to Justice; Autonomy, Decisions, and Sexual Rights; Environmental Justice; Movement and Labour; and Strengthening Feminist Voices.

## OUR VISION

is to realise the human rights of women, girls<sup>2</sup>, trans<sup>3</sup>, and intersex people in Asia.

## OUR MISSION

is to nurture and lead feminist philanthropy in the region; to effectively mobilise resources to support individuals, groups, and networks enabling their sustainability; and to strengthen partner capacities, leadership, advocacy, and networks in the field.

## WHERE WE WORK

### South Asia

Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Sri Lanka, Pakistan

### Southeast Asia

Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand, Timor-Leste, Vietnam

### East Asia

Mongolia

1 These constituencies were added to our vision in 2017 (trans people) and 2020–2021 (girls and intersex people).

2 WFA acknowledges that there is no consistent and agreed upon definition of "girls." WFA supports girls at two levels: through directly funding girl-led groups between the ages of 18 to 24 and through supporting work on rights of young women and girls aged 13 and above.

3 "Trans" is used by WFA as a placeholder to cover a diversity of gender identities and forms of gender expressions claimed by people across the region and the world. WFA supports trans rights, including that of transfeminine, transmasculine, non-binary, and gender non-conforming people, amongst other identities.

# ABOUT THE LEGAL FELLOWSHIP

## WHERE'S THE JUSTICE?

She is known as Nirbhaya—“the fearless one”.

In December 2012, the gang rape and murder of a young woman in New Delhi shocked a nation. The victim was a 23-year-old student who had moved to the city for her education. She was brutally attacked after boarding a bus one evening with a friend, and later died of her injuries.

Nirbhaya's story was a tipping point. As news of her attack emerged, protestors took to the streets in New Delhi and other cities. For several days, thousands raised their voices to decry the country's systemic failures to protect women from violence.

In response to these unprecedented protests, the Indian government set up a committee to review and reform laws relating to sexual violence.<sup>4</sup>

Since Nirbhaya's case, stories of sexual violence have continued to make headlines: not only in India, but across South Asia. These high profile stories are just the tip of the iceberg.

In South Asia, it is estimated that one in every two women experience violence in their day-to-day lives. However, cases of violence against women are underreported, and conviction rates in most countries remain low.<sup>5</sup>

At WFA, we have seen too many instances of injustice. We know that women are not guaranteed justice in the legal system, and are often deterred from seeking it.

For the survivors, the legal process presents physical, logistical, and financial barriers that may result in further trauma. Indeed, many women who have reported violence have experienced the criminal justice system “as a second assault.”<sup>6</sup>

In the shadow of Nirbhaya's case, we at WFA (then known as South Asia Women's Fund) wanted to channel our collective anguish into action. This is how the Legal Fellowship began.

The Legal Fellowship was our response to justice systems that are hostile and indifferent to victims and survivors of violence. Too often, these systems result in impunity for the perpetrators as well as victim blaming for the survivors.

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4 Soutik Biswas, “Explaining India's New Anti-rape Laws”, BBC News, March 28, 2013, <https://www.bbc.com/news/world-asia-india-21950197>.

5 Equality Now and Dignity Alliance International, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021), 3-6.

6 Thailand Institute of Justice, *Towards Gender-Responsive Criminal Justice: From Good Practices in Southeast Asia in Responding to Violence Against Women* (Bangkok, 2018), 33.

Access to justice is both a basic human right and a means of implementation of other human rights.<sup>7</sup> However, according to the United Nations, women throughout the world “continue to experience discrimination in the exercise of their rights through official bias, corruption, impunity, stigma, indifference and systemic failures.”<sup>8</sup>

These failures are particularly acute for the most marginalised: women, trans, and intersex people who experience intersectional forms of discrimination due to their class, caste, ethnicity, sexuality, gender identity, or religion, among other factors.



## OUR STORY

In 2013, WFA (then South Asia Women’s Fund) initiated the Access to Justice thematic area in our grantmaking. The Legal Fellowship was the first strand of our work under this thematic area. In 2015–16, we followed this with a second strand, under which grantmaking is conducted, to support interventions which address critical gaps and needs in terms of access to justice for women.

The Legal Fellowship was set up to support women lawyers working in the primary courts, and in doing so, to support a cross-section of women in accessing justice.

As WFA’s understanding and constituency expanded over the years, the Legal Fellows’ work also began to take on a wider scope. While the fellows initially focussed on supporting women, some began to take on LGBT clients after WFA’s constituency expanded to trans people in 2017.

Over the past eight years, we have identified and funded women lawyers in five countries: Bangladesh, India, Nepal, Pakistan, and Sri Lanka. We have also organised capacity building and networking spaces for them.

In particular, we have aimed to empower women lawyers who are themselves from rural, marginalised communities and bring local sensitivity to their roles.

Through the Legal Fellowship, more than a thousand women and gender non-binary persons have been supported to seek legal advice and representation from local feminist lawyers.

The first stream of the fellowship supported women lawyers to undertake cases related to violence against women, domestic violence, and family law matters. Since then, the cases have expanded to issues of discrimination and/or violence based on intersections of caste, class, ethnicity, citizenship, and sexual orientation and gender identity.

In 2013, we started with a cohort of ten lawyers. As of 2021, the Legal Fellowship Programme has supported 30 lawyers in total and distributed more than USD 299,000 in funds.

7 UN Women, UNDP, UNODC, OHCHR, A Practitioner’s Toolkit on Women’s Access to Justice Programming, (New York: United Nations, 2018), 17.

8 Ibid. 14.

# “ I AM THE FIRST FEMALE LAWYER IN MY DISTRICT.

I belong to an area where girls and women are not encouraged to step out of the house and education for women and girls is not appreciated. I completed my LLB in these circumstances. Now I am working as a senior lawyer in the High Courts of Jacobabad. With WFA’s funds, I get to help women on issues of sexual abuse, domestic violence and honour killings, work on their cases pro bono, and actually extend support beyond just filing their cases.”

**- Asia Agha, Fellow, Pakistan**



# A FEMINIST PRAXIS OF THE LAW

Across South Asia and beyond, the criminal justice chain is shaped by privileged, powerful cis men. The law itself can be seen, in several instances, to uphold patriarchal views of women's rights and autonomy.

But even where there are laws specifically written to protect women's rights—and the rights of trans and intersex people—the interpretation is dependent on the judges and lawyers who practice it on a daily basis.

As Tulika Srivastava, Executive Director of WFA, notes, “We need to recognise law both as a tool and as a site for change. And in doing so, we need to examine the broader understanding of law—not only as in the content of the law, but also the culture that informs it and interprets it, and the structure which implements it.”<sup>9</sup>

Studies on women's access to justice highlight the need for more women officers in official roles throughout the justice system, from police officers to lawyers, judges, and policymakers.<sup>10</sup>

The Legal Fellowship was established in 2013 to address, among others, a particularly critical gender gap in the system: the lack of women lawyers in South Asia.

However, having women in these roles is not enough. In order for lawyers to approach cases with an awareness of discrimination and power imbalances in the legal system, and in order to place survivors and claimants at the centre of the process, it is necessary to adopt a feminist praxis of the law.

The Legal Fellowship is built on feminist and human rights principles. Together with Fellows, we have developed a feminist code of conduct which informs the approach taken by our Fellows under this programme. This code is rooted in non-discrimination and equality, and ensures that clients participate in decision-making.

As well as preparing women for the legal process, Fellows consider their clients' personal safety and emotional wellbeing. They may advise on counselling before taking legal steps, or suggest alternative resolutions where there are gaps in the law.

## A FOCUS ON PRIMARY COURTS

From its inception, the Legal Fellowship has focused on cases at the primary courts.

Across the region, significant work on human rights has been undertaken at the higher courts of judicature. However, primary (or district) courts are where the majority of cases are heard: cases on sexual and domestic violence, as well as divorce, custody, and property claims. In some jurisdictions, up to 80% of cases are heard and completed at this level.<sup>11</sup>

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9 Tulika Srivastava, “Feminist Legal Praxis: Reimagining Justice, Law and Access” (Working paper for Women's Fund Asia, Sri Lanka, 2021). We wish to acknowledge the work and influence of the International Women's Rights Action Watch Asia Pacific (IWRAP-Asia Pacific)'s Building Capacity for Change programme in this document.

10 Thailand Institute of Justice, *Towards Gender-Responsive Criminal Justice: From Good Practices in Southeast Asia in Responding to Violence Against Women* (Bangkok, 2018), 196.

11 Tulika Srivastava, “Feminist Legal Praxis: Reimagining Justice, Law and Access” (Working paper for Women's Fund Asia, Sri Lanka, 2021).

These courts determine crucial outcomes. But they are out of reach for many women, who do not have access to legal aid, cannot afford a lawyer, and cannot navigate the process of initiating a claim. The culture of police stations and courtrooms is often hostile, and survivors of violence may be unable even to register an initial report with the police.

The Legal Fellowship has funded and built the capacity of women lawyers across South Asia to take on pro bono cases for women and trans people. This has enabled more survivors of gender-based violence and gender discrimination to seek formal justice and bring their cases to court.

In the long term, our Fellows have a significant impact on their communities. The more active they are locally, the more local women and trans people become aware of their legal rights.

At the same time, Fellows have effected change in the courtrooms, by applying international human rights law and feminist praxis to their cases.

## A COMMUNITY OF FEMINIST LAWYERS

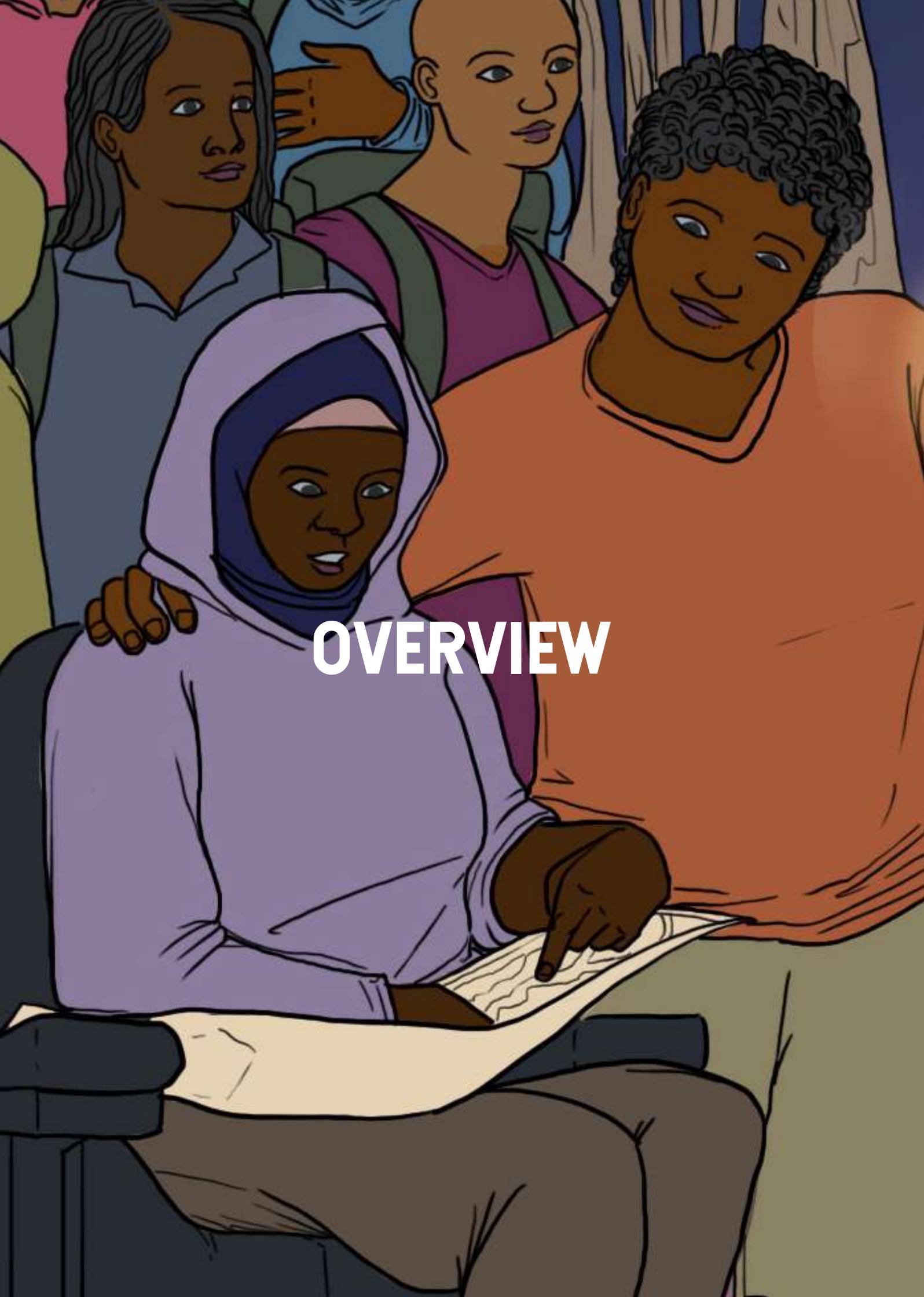
The Legal Fellowship programme has grown into a small but tight-knit community.

We listened to our Fellows and learned of specific challenges that they faced, and we heeded requests for capacity building in addition to funding. WFA organised training sessions for Fellows, so they could grow their understanding of the law from a feminist and human rights perspective.

Fellows have also undertaken research projects to identify crucial barriers to justice in their national legal system. They have gone on to share their work at conferences, both national and regional, convened by WFA and other organisations.

The Legal Fellowship has created a shared space for women lawyers from across South Asia. In a challenging and often lonely field of work, especially as women lawyers working at the primary courts level in remote or challenging districts in South Asia, they have found a supportive network of colleagues. To this day, many Fellows keep in touch to share views and advice.





# OVERVIEW

## OBJECTIVES

- 1) Advance feminist lawyering at primary courts, by identifying and supporting feminist lawyers practicing in primary courts.
- 2) Strengthen the capacity of feminist lawyers to litigate based on human rights principles.
- 3) Facilitate access to justice for women, girls, and gender non-binary communities within the legal system, through the support of feminist lawyers.

## KEY NUMBERS

30 lawyers supported in the Legal Fellowship Programme since 2013

11 lawyers supported 2021 - 2022

8 years of the programme

USD 299,000 in grants between 2013 - 2021

USD 55,000 in grants 2021 - 2022

Between 200 - 400 cases per year

## ISSUES ADDRESSED

- Family law
- Domestic Violence
- Sexual Violence
- Sexual Rights and Bodily Autonomy
- Caste Discrimination
- Citizenship and Statelessness

## CONSTITUENCIES SUPPORTED

- Dalit women
- Indigenous women
- Lesbian, bisexual, and trans people
- Sex workers and entertainment workers
- Women seeking divorce, maintenance, and child custody
- Women survivors of sexual and domestic violence
- Women in court for citizenship issues
- Women from minority ethnic and religious groups

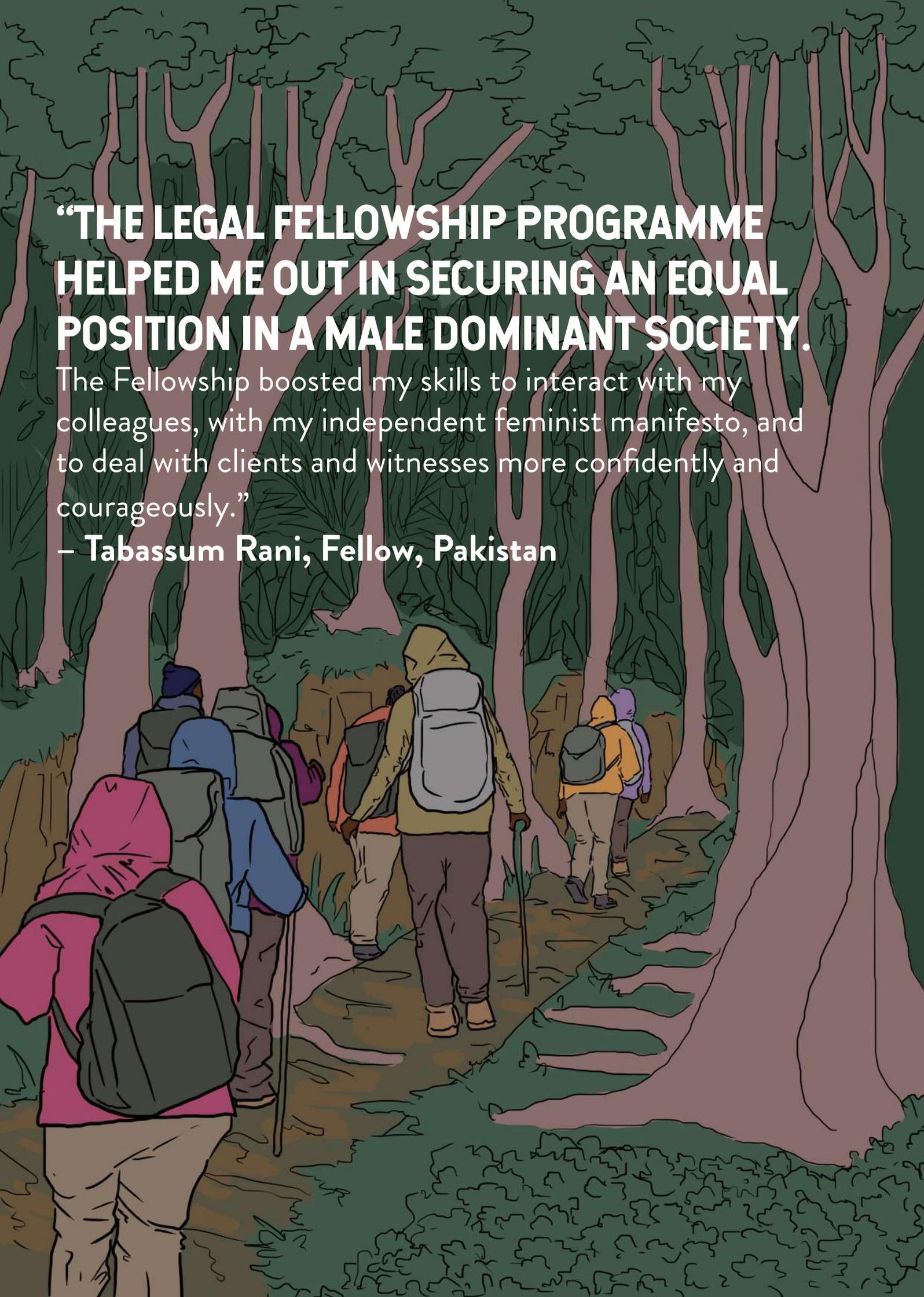
## WHAT IS FEMINIST LAWYERING?

Feminist lawyering recognises that the law is neither neutral nor objective, and that it is shaped by unequal power dynamics, including historical discrimination against women, trans, non-binary, and intersex people.

Feminist legal praxis places the experiences of these claimants centre and first; empowers them with knowledge of the laws affecting them; and understands the impact of gender inequality and discrimination in the making and use of laws.

Feminist lawyering also means recognising the intersectional aspects of gender discrimination, which may be exacerbated by ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, sexual orientation, and gender identity.

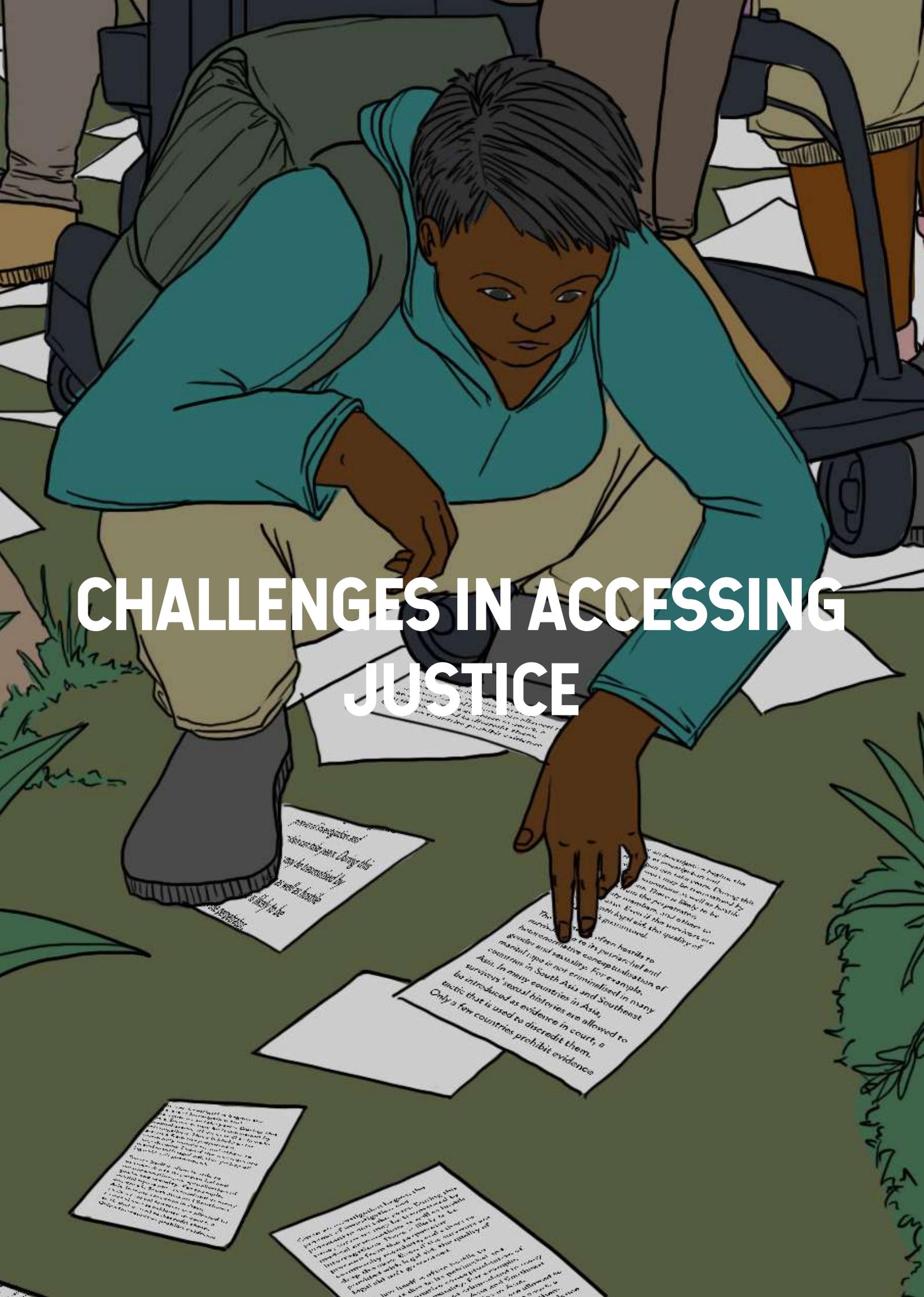
Feminist lawyers work towards realising human rights in obtaining redress for survivors of gender based violence and discrimination.

An illustration of a group of hikers walking away from the viewer on a dirt path through a forest. The hikers are wearing various colored jackets and backpacks. The trees are tall and thin, with green foliage. The overall style is a flat, graphic illustration with bold outlines and a muted color palette.

**“THE LEGAL FELLOWSHIP PROGRAMME HELPED ME OUT IN SECURING AN EQUAL POSITION IN A MALE DOMINANT SOCIETY.**

The Fellowship boosted my skills to interact with my colleagues, with my independent feminist manifesto, and to deal with clients and witnesses more confidently and courageously.”

– **Tabassum Rani, Fellow, Pakistan**



# CHALLENGES IN ACCESSING JUSTICE

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Across the South Asia region<sup>12</sup>, there is endemic violence against women, girls, trans, and intersex people. This can include sexual assault, rape, harassment, stalking, acid attacks, attacks based on sexual orientation, and violence based on dowry claims.

In India and Pakistan, murders in the name of “honour” continue to be prevalent. In Sri Lanka, women have suffered from sexual violence at the hands of militia, and have also been displaced due to war. In Nepal, domestic violence, child marriage, and human trafficking persist, with women becoming more vulnerable following the earthquake disaster of 2015.<sup>13</sup>

Beyond cases of sexual and gender-based violence, women and girls also face challenges in accessing justice in economic and family matters, such as property ownership upon the dissolution of marriage, inheritance, child custody, and divorce. These issues are, too, key to women’s agency and participation in civic life.

UN Women highlights the importance of family law in women’s rights, noting that unequal power relationships tend to be more acute at the family level. Furthermore, strengthening women’s legal position in family law, and matters of inheritance and property, helps to reduce poverty for women and their families.<sup>14</sup>

For trans and intersex people, their challenges in the legal system are compounded by non-recognition of their identities. Their citizenry rights are precarious, and their right to representation remains mired in stigma.<sup>15</sup>

## BARRIERS TO JUSTICE WITHIN FORMAL AND INFORMAL JUSTICE SYSTEMS

For women, girls, trans, and intersex people in South Asia, there are multiple hurdles to accessing legal justice. These challenges often begin at home. Among many communities, there is a social stigma against reporting crimes or seeking redress, especially when it involves sexual violence and violence within families.

In rural areas, the first recourse for justice may be within the community itself, for example through a village council such as a *Caste Panchayat* (India and Nepal) or *Shalish* (Bangladesh). These traditional systems, however, often perpetuate discrimination and reinforce patriarchal approaches to justice. Community leaders may dissuade survivors from making official reports, while encouraging or coercing them into extra-legal resolutions. These systems are prone to corruption and discrimination against women and the poor.<sup>16</sup>

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12 This section focuses on the work of the current Legal Fellows, who are all based in South Asia.

13 Shikha Silliman Bhattacharjee, SAWF: The Legal Fellowship Programme: Securing Access to Justice for Women in South Asia (Sri Lanka: South Asia Women’s Fund, 2015), 14-33.

14 UN Women, “Fact Sheet on the Importance of Women’s Access to Justice and Family Law”, accessed August 31, 2021. <https://www.unssc.org/sites/unssc.org/files/UNWomenFactSheet.pdf>

15 Tulika Srivastava, “Feminist Legal Praxis: Reimagining Justice, Law and Access” (Working paper for Women’s Fund Asia, Sri Lanka, 2021).

16 Mohammad Tarikul Islam, “Access to Justice for Marginalised Rural Victims Across South Asia: Issues and Challenges”, South Asia @ LSE, London School of Economics, June 8, 2020, <https://blogs.lse.ac.uk/southasia/2020/06/08/access-to-justice-for-the-marginalised-rural-people-across-south-asia-issues-and-challenges/>.

For those who do wish to lodge an official complaint, their first point of contact is with the police. But for some, the nearest police station may be far out of reach, and the cost of travelling there is prohibitive. Discriminatory attitudes based on patriarchy and prevailing interpretations of moral norms and culture also affects how the law or system of justice operates. A report by the UN Special Rapporteur on Violence Against Women found that across the world, women report that the police are insensitive and inept at investigating gender-based crimes. Such entrenched attitudes are likely to prevent equal access to police services.<sup>17</sup>

Once an investigation begins, the process of investigation and prosecution can take years. During this time, survivors may be traumatised by medical examinations as well as hostile interrogations. There is likely to be pressure from the perpetrator, community members, and others to drop the case. Even if the survivors are provided with legal aid, the quality of legal aid isn't guaranteed.

The law itself is often hostile to survivors due to its patriarchal and heteronormative conceptualisation of gender and sexuality. For example, marital rape is not criminalised in many countries in South Asia and Southeast Asia. In many countries in Asia, survivors' sexual histories are allowed to be introduced as evidence in court, a tactic that is used to discredit them.<sup>18</sup> Only a few countries prohibit evidence of sexual history or limit evidence of sexual history.<sup>19</sup>

Definitions of rape and sexual assault across the region are narrow and many countries continue to criminalise consensual same sex relationships.<sup>20</sup> Crucially, lack of legal recognition of trans and intersex identities, and lack of measures to address violence and discrimination faced by trans and intersex people, mean that such violations happen with impunity.<sup>21</sup>

Even where there are laws in place to protect the rights of survivors and victims, implementation is often flawed or inconsistent, because of discrimination, corruption, and indifference, amongst other reasons. For example, Bangladesh and India have laws to guarantee a faster trial for cases of sexual violence, yet cases continue to drag on beyond these time limits.<sup>22</sup>

Together, these systemic issues lead to a culture of impunity for perpetrators of violence against women, girls, trans, and intersex people. They also make it difficult for survivors to access justice on family matters, such as divorce, maintenance, and inheritance.

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17 Thailand Institute of Justice, *Towards Gender-Responsive Criminal Justice: From Good Practices in Southeast Asia in Responding to Violence Against Women* (Bangkok, 2018), 196.

18 Equality Now and Dignity Alliance International, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021), 24-27.

19 Thailand Institute of Justice, *Towards Gender-Responsive Criminal Justice: From Good Practices in Southeast Asia in Responding to Violence Against Women* (Bangkok, 2018), 171.

20 Office of the High Commissioner for Human Rights, *Living Free and Equal: What States are Doing to Tackle Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People* (New York: United Nations, 2016), 11.

21 Ibid.

22 Equality Now and Dignity Alliance International, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021), 37-38.

# INTERSECTIONAL DISCRIMINATION

Women and girls from socially marginalised communities face even more challenges in the legal system, especially if perpetrators are from dominant classes, ethnic groups, and religions.

In South Asia, Dalit women are particularly vulnerable to sexual violence and exploitation. Recent research in the state of Haryana, India, found that the majority of sexual crimes against Dalit women in this state are perpetrated by men from dominant castes, with a widespread culture of “violence, silence, and impunity”. The research also found that Dalit women and girls are specifically targeted for rape by men from dominant castes.<sup>23</sup>

Ethnic minority and indigenous groups also face discrimination, as well as potential language barriers within the legal system. In South Asia, these groups include the Adivasis in India, Terai or Madhesi communities in Nepal, indigenous tribes based in the Chittagong Hill Tracts in Bangladesh, and the Tamil community in Sri Lanka.<sup>24</sup>

For trans and intersex people, while there have been pockets of positive developments in specific countries in South Asia and Southeast Asia, most countries do not recognise trans and/or intersex identities. Even where there are laws and policies to address human rights violations against trans people, they continue to face challenges in the legal system due to discriminatory attitudes, stigma, absence of complaints mechanisms, lack of data, lack of trust in law enforcement officials, and insufficient awareness by judicial operators, among other reasons. This results in impunity for perpetrators.<sup>25</sup>

## COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW), GENERAL RECOMMENDATION NO. 33 ON WOMEN'S ACCESS TO JUSTICE, PARAGRAPHS 8 AND 13.

8. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice.

13. The Committee has observed that the concentration of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to gain access to them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to high-quality, gender-competent legal advice, including legal aid, as well as the often-noted deficiencies in the quality of justice systems (e.g., gender-insensitive judgements or decisions owing to a lack of training, delays and excessive length of proceedings, corruption) all prevent women from gaining access to justice.

23 Swabhiman Society and Equality Now, Justice Denied: Sexual Violence & Intersectional Discrimination: Barriers to Accessing Justice for Dalit Women and Girls in Haryana, India (2020), 4-5.

24 Equality Now and Dignity Alliance International, Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors (2021), 8.

25 Office of the High Commissioner for Human Rights, Living Free and Equal: What States are Doing to Tackle Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People (New York: United Nations, 2016), 11.

# CHALLENGES IN ACCESSING JUSTICE FOR SURVIVORS

- Patriarchal and heteronormative assumptions in the law
- Flawed, inadequate investigations
- Failure to properly implement laws
- Hostile, victim blaming culture in police and courtrooms
- Social stigma
- Lack of awareness of legal rights
- Cost of travel and legal fees
- Lack of good quality legal aid
- Long, complex court proceedings
- Corruption
- Extra-legal settlements
- Lack of victim support services such as safe houses, counselling and compensation
- Intersectional discrimination
- Criminalisation, especially of same-sex consensual relationships
- Non-recognition of diversity of sexual orientation and gender identities and expressions

## CHALLENGES RAISED BY THE LEGAL FELLOWS

Lawyers who represent survivors of gender-based violence and discrimination also face their own unique challenges. Our fellows are among the minority of women working in these roles in South Asia. Many of them have come from rural districts and are also from marginalised communities. As such, they must navigate the complex flaws and failings of their legal systems, while also confronting professional barriers, patriarchal assumptions and in many cases, intersectional discrimination based on their identities.

**“It is quite hard to work for women in this highly male dominated area, also very difficult to articulate one’s voice,” says Savita Ali, Fellow, India.**

Here are a few of the challenges that fellows have reported to WFA<sup>26</sup>:

### • PERSONAL ATTACKS

Fellows face personal pressure, as well as harassment from peers, because of their work.

In Sri Lanka, where there are separate courts for Muslims and non-Muslims, lawyers navigate different justice systems. One Fellow faced opposition and hostility when she took her cases to the Magistrates court rather than the Muslim Qazi courts.

**“They criticised me, and said I am doing this against Islam.” – Nadhiha Abbas, Fellow, Sri Lanka**

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26 Feedback from Fellows is drawn from interviews, and an internal review report for WFA, authored by Sara Hossain in 2020. The Fellows interviewed are from the 2018-2019 cohort, who are part of WFAa’s Legal Fellowship, as well some who are under South Asia Women Foundation India ([www.sawfindia.org](http://www.sawfindia.org)), a partner under this programme.

A Fellow in Pakistan reported being physically threatened with her life by the defendant in a case where she represented a victim of domestic violence. Her client was also threatened.

Another Fellow reported that she was warned by her peers against taking on a client who was not a citizen of her country. However, she persevered with representing her client in the divorce case.

### • PATRIARCHAL CULTURE IN POLICE STATIONS AND COURTROOMS

By following a feminist code of conduct, fellows are often in conflict with mainstream attitudes and practices. They are likely to lack mentorship and solidarity among colleagues, and face patriarchal assumptions from peers, clients as well as seniors and judges.

**“There are judges who speak against women and also against survivors—and I used to get very angry about that—and I thought then that if I could speak up strongly that would help to change this behaviour from judges.” – Savita Ali, Fellow, India**

One Fellow from a tribal community in India reported that she initially worked under a senior lawyer. Because he was a non-tribal person, she felt that there was a cultural barrier, and she did not feel supported.

Several fellows have reported that when they accompanied clients to register a First Information Report at police stations, they were met with resistance and dismissal. They had to persist in order to lodge these official reports.

### • UNEVEN UNDERSTANDING OF THE LAW AMONG JUDGES

Fellows have reported instances where judges were not up to date with laws relating to women’s rights, with Supreme Court rulings that related to human rights, or international conventions ratified by their country. Fellows have to fight hard on behalf of their clients to implement human rights in court rooms.

**“Some judges in 2015 didn’t even know about the 2012 Domestic Violence Act—these were district judges. They said they never received any cases under that Act.” – Tabassum Rani, Fellow, Pakistan**

In India, one Fellow advocated on behalf of transgender clients. Following a Supreme Court judgement to recognize a third gender, she found that judges in her state were still not ready to implement these directions by the Supreme Court.

### • ACCESSIBILITY OF COURTS

Some of the fellows are from remote, rural areas. For people in their communities, going through the formal process of court proceedings is sometimes unrealistic—it would involve travelling hundreds of kilometres. In these cases, fellows also advocate for people within community justice systems, which tend to be male dominated.

**“I work in a very remote area, rural, and tribal area. The town is quite big but we still have blocks where there are no hospitals. It’s not realistic for anyone to come to court miles away.” – Priti Murmu, Fellow, India**

There are also language barriers for claimants. Courts are often not equipped to help people who speak minority languages. Officials may be less sympathetic to those who cannot speak the language of the majority, and legal records and archives may be restricted to majority languages.

In Sri Lanka, the official language of the court is Sinhala. One Fellow, representing a Tamil woman, advocated for a Tamil counsellor to be appointed on behalf of her client. This advocacy led to a positive change. Since then, Tamil counsellors have continued to be appointed.

### • POVERTY AND LACK OF SUPPORT SERVICES FOR VICTIMS

Under the Legal Fellowship Programme, fellows have worked on cases pro bono, which enables them to represent people who otherwise cannot afford legal fees. Legal fees deter many of the most vulnerable from coming forward. Government legal aid is not always available.

**“Women survivors of domestic violence, sexual and gender-based violence, or statelessness do not approach courts because of monetary issues. I could at least assist and provide justice in these cases.” – Binita Hazarika, Fellow, India**

However, with cases drawing out over several years, pro bono cases remain challenging. Fellows may need to cover travel fees for their clients, especially if they live in remote areas. One Fellow also reported the need to help purchase clothes for her client to appear in court.

There is also a lack of holistic support services for victims. In one case, a Fellow had to find a place for a 16 year old victim to live.

**“I did everything possible, but the girl had nowhere to go. I asked a friend to take care of her but can’t always count on that kind of help from others.” - Nadhiha Abbas, Fellow, Sri Lanka**

### • EXTRA-LEGAL SETTLEMENTS

The process of investigation and trial can span several years. This protracted process makes litigants more vulnerable, because many of them are pressured to drop their case during this time. They might be persuaded or threatened by community pressure, or offered a settlement by the defendant for dropping the case.

**“Many of these cases used to get compromised in court, especially given the process was so lengthy, many clients would step back. I wanted to be able to fight the cases and to persist for as long as needed.” – Savita Ali, Fellow, India**

**“Sometimes, we face threats from the [defendant] in our work. Women who have been victims of domestic violence find it easier to file for divorce rather than reporting for violence.” – Kaushila Yogi, Fellow, Nepal**



# IMPACT

The progress of lawyers under the Legal Fellowship Programme is documented in their annual reports, in which they report the number and types of cases they have worked on.

In 2020, WFA commissioned an internal review of the Legal Fellowship, which included interviews with 16 fellows. The data on the impact of the Legal Fellowship comes from this review, as well as fellows' own reports.

The Legal Fellows have supported a range of women claimants and survivors. Some Fellows later expanded the scope of their work to include LGBT people.

## IMPROVING ACCESS TO JUSTICE FOR WOMEN AND MARGINALISED COMMUNITIES

From 2013 to 2022, the Legal Fellowship Programme has provided fellows with the funds to cover the cost of pro bono cases. This has enabled fellows to take on cases for women and marginalised communities without charging fees.

For many clients, this is their only chance to access legal advice and representation.

Since many women and gender non-binary people are hesitant to come forward to lodge official reports, or may face resistance and hostility from the police when they do so, the support of a lawyer is invaluable from the very beginning of the process.

By advocating in cases of sexual violence, domestic violence, economic rights and more, lawyers also build awareness of legal rights in their communities. This in turn encourages more women to come forward to seek legal justice.

### **BINITA NEPALI**

#### **A Dalit lawyer fighting caste discrimination in Nepal**

“The police complaint was very difficult to file because [my client] is Dalit and would no-one would listen to her at the police station. This is where I stepped in and took her to lodge her complaint.”

Binita is a Dalit lawyer from Pokhara, Nepal. She is one of the few women lawyers who works pro bono in her region. She joined the Legal Fellowship in 2014.

In Nepal, where Dalit people are an estimated 14% of the population, caste-based discrimination is outlawed. However, in practice, stigma against Dalit people persists and discrimination often goes unaddressed. Dalit people are often prevented from entering the homes of “higher caste” people. They also have problems renting places to live, and marrying people from other castes.<sup>27</sup>

Before joining the Legal Fellowship Programme, Binita was a trainee lawyer and paralegal. But she did not take on criminal cases. Since becoming a fellow, she has gone on to fight cases of caste discrimination, women's property rights, and domestic violence.



“I have done so many things in my professional career with the support of the fellowship. I now get a chance to speak at many national level meetings because of the confidence and skills I’ve gained,” says Binita.



During her years as a fellow, Binita has fought on behalf of many Dalit women. One of her clients, a Dalit nurse, is fighting a case of workplace harassment with Binita’s help.



“The government agencies are not Dalit-friendly, so most caste-discrimination cases cannot be registered,” said Binita. However, with her advocacy, cases are moving forward.



“Because of the fellowship, I met with many women lawyers and got a real chance to share experiences with them. I’ve also been able to keep in touch with people I’ve met and through that I’ve learned many new ideas.”



Binita is also chairperson of the Oppressed Women’s Society, Kaski, an NGO that works on the rights of women, particularly Dalit and other marginalised women, and seeks to respond to issues of legal and social justice. They conduct skill development, awareness on gender-based violence, advocacy for women’s rights, and scholarships for Dalit students.



## STRENGTHENING A FEMINIST PRAXIS AMONG LAWYERS



As part of their training, fellows adhere to a code of conduct that promotes a feminist praxis of the law. This includes using respectful and non-derogatory terms throughout the legal process.



Fellows work to create a safe environment for clients, recognising that women and trans people seeking justice can face backlash from their family and community. Clients participate in the decision making throughout, and are made aware of the reach and limitations of the law.



With women’s rights and human rights at the centre of their ethical code, fellows identify potential barriers to justice due to discrimination. They advocate for people who are likely to fall through the gaps of the law, due to the intersection of their gender, class, sexual orientation, religion, caste, and other factors.



By advancing a feminist praxis of the law, fellows can also influence the culture of court rooms in the long-term, among peers and judges.



### **BINITA HAZARIKA**



#### **Fighting for gender and citizenship rights in India**

Binita is a young lawyer from Assam, India. She joined the WFA Legal Fellowship Programme in 2015 and has been a fellow for five years, specialising in cases on violence against women, as well as LGBTQI, and citizenship rights.



In 2014, a landmark case in India’s Supreme Court gave transgender people legal rights and protections under the Constitution, upholding the right to self-determine gender and recognising a “third gender” for those who do not define as male or female. However, Binita found that judges in the state she is based have been slow to implement these rights and protections.

“Those who seek sex reassignment surgery face many problems, so we advocated with the state social welfare department,” says Binita. In court, she has approached judges to help trans people legally change their names. “I have heard from some clients who are now going through medical counselling and hormone replacement therapy.”

“The legal awareness among judges is not there, and this process is helping to change awareness,” she says.

“With the help of [the Legal Fellowship Programme] I have acquired knowledge on women’s human rights, international treaties and agreements and its application in pleading and drafting cases of violence against women.”

“I also learned more about how the law works in practice—domestic violence laws, family laws, and laws affecting LGBTQI communities.”

Binita has also kept in touch with several other fellows, and has maintained links with human rights organisations in other parts of India.

## CAPACITY BUILDING THROUGH TRAINING, CONVENINGS, AND NETWORKS

The Legal Fellowship Programme supports lawyers with personal and career development, as well as financial resources.

Through training sessions, as well as national and regional conferences, the programme has created a supportive network for fellows. Fellows have shared case studies and experiences with one another, and some keep in contact throughout the year.

### TABASSUM RANI

#### Seeking justice for survivors of domestic violence in Pakistan

Tabassum has been in litigation for more than ten years. Based in Hyderabad, she takes up cases on sexual violence, divorce, maintenance, and domestic violence. She joined the Legal Fellowship Programme in 2015.

One of Tabassum’s clients is Saira\*. Three months after giving birth to her son, Saira’s husband started to beat her. He then evicted Saira and her son from the house. One week later, he and some of his relatives forcibly removed her baby from her.

With Tabassum’s legal counsel, Saira filed for dissolution of marriage and a return of her dowry articles. Throughout the process, Saira’s husband tried to persuade her to drop the case by playing on her sympathies. However, Saira remained steadfast and the court granted her dissolution of marriage, although she could not reclaim her dowry.

“It was a challenging case for me in the sense that I had to motivate my client to remain steadfast,” says Tabassum.



Many women, like Saira\*, are pressured to withdraw their cases or accept a settlement out of court. In another domestic violence case, Tabassum's client was harassed by her husband during the legal process, which included threats of murder unless she withdrew her claim for maintenance.

Tabassum could not lodge a report with the police, so she secured a protection order for her client from the judge. As the lawyer, Tabassum was threatened by the defendant too.



Tabassum also says that female lawyers in Pakistan are less respected than male lawyers. However, the Legal Fellowship has helped her overcome some of these challenges: "The fellowship gave me the skills and expertise to carry out my work independently and courageously."

On top of her case work, Tabassum conducts community awareness sessions and human rights training. She has also carried out her own research on domestic violence laws in Pakistan.



For Tabassum, the annual fellowship meetings have been a highlight of the programme. The training has exposed her to case studies and different human rights issues.

"Women's Fund Asia helped me to actualise my learning goals through conducting training workshops, where they provided the best and learned trainers. Previously, I didn't have much knowledge on international treaties and other international laws."



She is proud to see growing awareness among women in her community on their legal rights. Now, she says, "they are ready to knock on the doors of court for justice."

\*Client's name has been changed.

## IMPLEMENTING HUMAN RIGHTS LAWS



Many fellows have found the programme's training on international human rights law to be invaluable.

Through their legal arguments, fellows have brought more awareness of human rights to primary and district courts, and have gone on to win cases based on international human rights standards.

### NADHIHA ABBAS

#### Advocating for legal reform in Sri Lanka



Nadhiha is one of the first women lawyers in Puttalam, Sri Lanka. She has become well known for representing Muslim women in divorce, domestic violence and maintenance cases. She is also one of the public faces advocating for reform in Qazi courts.

In Sri Lanka, there is a dual justice system: Muslim family cases are heard in Qazi courts, and Qazi laws differ from national laws. For example, under the Muslim Marriage and Divorce Act there is no minimum age for marriage; whereas national family law states the minimum age is 18.<sup>28</sup>



Because of her work and advocacy, Nadhiha has become a target for conservative elements within the Muslim community.

She has faced considerable backlash, especially for winning cases for her clients in Magistrates courts rather than Qazi courts. However, with her advocacy, several clients have secured maintenance from their cases.

“The area I’m in is a Muslim area, and the Bar is a mostly Muslim area, so lawyers do not encourage Muslim people to come [to the Magistrates Court]. First of all, they criticised me, and said I am doing this against Islam. But those who condemned me didn’t have much understanding of Islam themselves.”

In one case, she supported a woman whose ex-boyfriend was blackmailing her with private photos. Initially, the police refused to take the matter seriously and blamed the woman. Nadhiha advocated for her client by arguing that her rights should be protected under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is ratified by Sri Lanka.

“In court, the issue of the quality and moral behaviour of the woman was raised. I was able to share the ideas that I learned from Women’s Fund Asia about CEDAW, and made the argument that women have freedom to decide and their morals should not be questioned.”

In the end, the judge held in favour of the victim.

Nadhiha joined the Legal Fellowship five years ago. She now has her own law practice.

“When I received the very first assistance [from the Legal Fellowship Programme] I was a junior lawyer who depended on many male lawyers. Now I have established my own law firm where three law students work under me as my assistants. My law firm has won people’s trust.”

While Nadhiha feels that many male lawyers resent her success, she is not dissuaded. She has become well-known to national and regional NGOs and is often invited to speak at online sessions. She also has a YouTube channel with over 2,000 subscribers where she gives updates on legal reform issues.

Nadhiha is currently advocating for reforms under the Muslim Marriage and Divorce Act, which include raising the minimum age for marriage and allowing for women Qazis.

## ADVANCING LEGAL RESEARCH ON BARRIERS TO JUSTICE

During the programme, fellows designed their own research projects on barriers to justice. Their research illuminates discrimination within existing laws and the implementation of laws, as well as practical obstacles that victims face.

This action-research aims to improve transparency and accountability in the law. Fellows have gone on to present their research findings to their cohort, as well as at other forums.

At past national meetings, for example, fellows have shared their research on India’s Protection of Woman from Domestic Violence Act, Nepal’s rape reform laws, and Sri Lanka’s sexual minorities.

Some fellows also develop policy recommendations for other NGOs, bar council associations, and policy makers.



## MANJU MARASINI

### Supporting survivors of rape and human trafficking in Nepal

Manju Marasini is a lawyer based in Kathmandu, Nepal. With 12 years in legal practice, she is an expert in sexual abuse cases and human trafficking, and has provided legal aid to many women and children. Manju joined the Legal Fellowship programme in 2015.



Manju represents a cross section of women, and in particular, Dalit and indigenous women and girls. Some of her clients work in the Adult Entertainment Sector. Many of these women and girls come from rural towns to look for work in Kathmandu's hospitality industry, which includes a range of formal and informal venues such as massage parlours, dance bars, restaurants, and hotels. Some of her clients are victims of trafficking.

One of Manju's clients is Suhana\*, a 19-year-old Adult Entertainment Sector worker who was taken hostage and raped by her customer. Suhana wanted to lodge a police report, but it was very difficult.



“In the registration process [for the First Information Report], it took a long time to convince the police because she was an Adult Entertainment Sector worker. The police were biased against her.”

With Manju's legal counsel, the police finally registered the report, and Manju worked with a government attorney to prosecute the perpetrator. He was sentenced to a prison term, and Suhana received compensation.



Manju reports that one major obstacle to justice in Nepal is flawed and failed implementation of laws, such as the Crime Victim Protection Act. There is a culture of insensitivity toward victims in the legal system. Moreover, the amount of compensation for victims is inadequate, and the trial process is often very long.

Manju has advocated for better services for victims, and has demanded in camera court hearings for victims in sexual offence cases. She also conducts training and awareness sessions, and works with the Centre for Legal Research and Resource Development on issues of access to justice.



Joining the Legal Fellowship has enabled Manju to learn more about international human rights law, as well as case studies from different countries in the region. “I found the networks with the other South Asian countries very helpful,” she says.

Manju has researched the reform of laws on sexual violence in Nepal. She was also a co-researcher on the issue of child sexual abuse and judicial trends. This research was disseminated to the Attorney General and Law Ministry.



\*Client's name has been changed.



# THE FUTURE

# LOOKING BACK

WFA's Legal Fellowship programme has been a first in the region, and unique in its focus on funding and empowering local women lawyers in primary courts while developing a feminist legal praxis.

There are very few grassroots organisations, and fewer national or regional organisations, that support or undertake legal interventions to support feminist objectives, particularly with a feminist perspective.<sup>29</sup>

Between them, fellows have undertaken more than a thousand pro bono cases. This has had a direct impact on improving access to justice for vulnerable women, girls, trans, and intersex people at the grassroots level.

All fellows reported that they gained new knowledge and skills, and several reported that they have also gained more confidence in themselves.

Fellows have also identified a series of important advocacy issues. Through their work in the community—such as local talks and workshops—they have raised their own profiles as well as raising awareness of women's rights and human rights. All Fellows have become more involved with local organisations since joining the programme.

The Legal Fellowship has created a network of feminist lawyers across the region, which is particularly important given that South Asia has very few working relations between feminist groups and human rights groups across different countries.

# LESSONS LEARNED

As we review the achievements of the past eight years, we also look at the ways that the Legal Fellowship format is set to change from 2022 onwards.

The Legal Fellowship demands considerable time and resources, due to the mentorship, training, and capacity building involved.

There is no dedicated coordinator for the fellowship, as the programme is subsumed into existing grantmaking work within the Access to Justice portfolio, and this has affected the depth of communications with the fellows.

Fellows have voiced requests for more engagement with and support from WFA, including more frequent check-ins, convenings, training programmes, and country visits.

At the same time, WFA has a mandate to work on access to justice across 18 countries in Asia. Until now, the Legal Fellowship has only focused on South Asia.

One of the original visions for the Legal Fellowship was to create a wider network of feminist lawyers. But because of the intensive nature of the fellowship programme, and the focus on defraying pro bono litigation costs, this has remained out of reach: our cohorts have remained as small groups each year.

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29 Tulika Srivastava, "Feminist Legal Praxis: Reimagining Justice, Law and Access" (Working paper for Women's Fund Asia, Sri Lanka, 2021).

The Legal Fellowship, to date, has resulted in ongoing support and development for some very impactful lawyers. We are immensely proud of their work. However, if we are to expand the Legal Fellowship Programme beyond South Asia, the current programme must evolve.

## LOOKING FORWARD

The current format of the Legal Fellowship Programme will come to an end in 2022. From 2021 to 2022, the current cohort of fellows received transition grants to conclude their work.

From 2022 onwards, the Legal Fellowship Programme will be recast with a significant focus on strengthening the capacity of the Legal Fellows, rather than their litigation work.

We will also be expanding the programme's geographical and constituency mandate, to bring it in line with WFA's mandate. This means the programme will expand beyond the initial focus of five South Asian countries to WFA's 18 mandated countries. Future fellowships will include a wider scope of lawyers: beyond women lawyers, we will include girls, trans, and intersex lawyers.

Our objectives remain in the spirit of the existing programme. We aim to advance a feminist legal praxis at the district and primary court level, by supporting women, girls, trans, and intersex litigants.

We also aim to identify and build a cadre of feminist lawyers, from a diverse range of gender identities from across Asia, who are practicing in primary courts, and strengthen their capacity to litigate based on principles of human rights.

The future Legal Fellowship Programme will focus on capacity building for lawyers who work in primary courts, rather than on directly funding pro bono litigation work.

Instead, funding will be given to support various forms of capacity building and professional development for feminist lawyers.

For example, grants may be used to cover the costs of travel to conferences, attending courses and workshops, interning with an organisation, study visits, and research projects, among others.

These grants will be distributed based on an open call for proposals, as well as recommendations through networks and partners. Fellows will take a more independent approach to planning their own training and development, though WFA will continue to facilitate regional workshops to bring the Legal Fellows together for ongoing learning and networking purposes.

Separately, WFA will continue to support pro bono litigation work as a strategy under the Access to Justice thematic, through the Strengthening Feminist Movements grants programme.

# FINDING ALLIES, BUILDING ALLIANCES

As we build the future of the Legal Fellowship Programme, WFA will form an advisory committee of experts in law, ideally from every country under our mandate. This advisory committee can provide further support to grantees of the Legal Fellowship Programme.

WFA will continue to play a role in convening and connecting feminist lawyers in the region.

Under the Legal Fellowship Programme, fellows will have the chance to network and share their experiences and learnings. We will link fellows to other resources and organisations that can help their work and career development, potentially forming new partnerships with existing programmes in the field of human rights law.

“We believe that our coming together as a collective of feminists engaged with Access to Justice work—as funders, as experts, academicians, practitioners—is a critical step in building a shared vision,” says Tulika Srivastava.

In thinking together, we can share resources in building a comprehensive and cohesive map of feminist interventions, and legal interventions that require feminist grounding.

We hope to engage in larger dialogues with friends, allies, and potential allies, in order to build a clear understanding of the challenges faced by the most vulnerable in seeking justice through court processes and the challenges faced by feminist lawyers who represent them; while promoting feminist lawyering in the region and applying a feminist lens to legal support and legal activism.

Seeking justice is a long and ongoing journey. We also believe that it must be a shared journey.



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The report draws on data from an earlier report on the Legal Fellowship, published by WFA in 2015, and written by Shikha Silliman Bhattacharjee. The report is also guided by research and interviews by Sara Hossain, carried out in 2020; as well as a working paper on Feminist Legal Praxis by Tulika Srivastava, Executive Director of WFA.

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