**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

The Criminal Code, Criminal Procedure Code and Sentencing and Execution act link is provided below:

1. <Criminal-procedure-code-Revised.pdf>
2. [Sentencing-and-Execution-Act-1 (1).pdf](Sentencing-and-Execution-Act-1%20%281%29.pdf)
3. <Penal-Code-English-Revised-1.pdf>
4. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only YES/NO : Yes
	2. Gender neutral, covering  all persons   YES/NO : No
	3. Based on the lack of consent of victim YES/ NO : Yes
	4. Based on the use of force or threat  YES/ NO: Yes
	5. Some combination of the above.  YES / NO : Yes
	6. Does it cover only vaginal rape?  YES /NO: No
	7. Does it cover all forms of penetration? YES/NO. If yes, please specify.

Section 219 (2)(c) provides that: The penetration of penis into anus or mouth, penetration of penis, to any extent, into anus, mouth or vagina,

insertion of any object other than penis into vagina shall also be considered to be rape.

* 1. Is marital rape in this provision explicitly included? YES / NO : Yes
	2. Is the law silent on marital rape? YES/NO: No
	3. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO : Yes it is covered in legal provision while there is also existence of legal precedence too.
	4. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO : No
1. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No

What is the legal age for sexual consent?

18 years age of girl child.

1. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No

1. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

If a person who commits rape shall be liable to the sentence of imprisonment as follows, having regard to the circumstances of such sexual intercourse and the age of woman:

(a) Imprisonment for a term of sixteen to twenty years, if she is a girl child below ten years of age,

(b) Imprisonment for a term of fourteen to sixteen years, if she is a girl child who is ten years or above ten years of age but below fourteen years of age,

(c) Imprisonment for a term of twelve to fourteen years, if she is a girl child who is fourteen or above fourteen years of age but below sixteen years of age,

(d) Imprisonment for a term of ten to twelve years, if the woman is sixteen or above sixteen years of age but below eighteen years of age,

(e) Imprisonment for a term of seven to ten years, if the woman is eighteen or above eighteen years of age.

**Additional punishment:**

If a man who commits rape in spite of knowing that he has human immune deficiency virus (HIV positive) or a sexually transmitted disease shall be liable to the following additional sentence:

(a) The sentence referred to in Section 105 in the event of the commission of rape in spite of knowing that he has human immune deficiency virus (HIV positive),

(b) A sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees in the event of the commission of rape in spite of knowing that he has any other sexually transmitted disease.

If a man who commits rape on a woman in a gang or on a woman having pregnancy of more than six months or on a woman who is infirm or disabled or suffering from physical or mental illness, or commits rape showing arms shall be liable to an additional sentence of imprisonment for a term not exceeding five years, in addition.

(8) A person who commits rape on a woman within the prohibited degree of relationship by consanguinity or affinity shall be liable to the sentence referred to in this Chapter, in addition to the sentence imposable for incest if he is liable to such sentence for incest.

1. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Section 228 provides that Compensation is to be paid: A reasonable compensation shall be ordered to be paid to the victim of any offence referred to in this Chapter other than the offences under Sections 220 i.e. Incest and 226, i.e. unnatural sexual intercourse.

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
	1. Is rape by more than one perpetrator an aggravating circumstance?  YES/NO : Yes
	2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO  : Yes
	3. Is rape by spouse or intimate partner an aggravating circumstance? : No
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

No

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO  If so, at what stage and what are the consequences?
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

In law reconciliation is not permitted however in practice, there are few cases of reconciliation or we can find the case of victim hostile. If we go deep into the cause, it is occurred due to the informal negotiation between the parties of victim and perpetrator.

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
	1. if the perpetrator marries the victim of rape? YES/NO :

No

* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

No

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

Yes

1. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

Yes

1. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO

No

1. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO

No

1. Please provide information on the statute of limitations for prosecuting rape.

1 year

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES/NO

Criminal Code: No

Children's Act: Yes

1. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify.

No

1. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO

No

1. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

There is provision of close hearing, maintenance of confidentiality and the Victims of Crime Protection Act to protect the rights of victims and prevent from revictimization during the prosecution and court hearings.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO : Yes

1. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

The law is same but the precedence of Supreme Court provides that there is no time period of limitation for prosecuting rape in war.

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

No.

1. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

No

**Data**

1. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Details of the cases reported to police in the last five year

|  |  |  |  |
| --- | --- | --- | --- |
| **Fiscal Year** | **Rape** | **Attempt to Rape** | **Child Sexual Abuse** |
|  071/072 |  981 |  562 |   |
|  072/073 |  1089 |  452 |   |
|  073/074 |  1131 |  536 |   |
|  074/075 |  1480 |  727 |   |
| 075/076 | 2230 | 786 | 211 |

**Other**

1. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

The current laws against rape under the Nepali Criminal Code are specified under a broad umbrella of ‘karani sambandhi kasur’ or ‘crimes related to sex/ sexual penetration’. Rape is specifically defined in Section 219 under ‘Jabarjasti karani’. The term, jabarjasti karani, doesn’t exactly translate to rape as it doesn’t wholly encompass the lived experience of rape. ‘Jabarjasti’ means forcible while ‘karani’ means sexual penetration. For one, rape is not necessarily forcible, and secondly rape doesn’t need to involve the act of penetration. While the Section goes on to elaborate that force is not a necessary precedent of rape and elaborates on other behaviors other than penetration that can be prosecuted as rape, the term ‘Jabarjasti karani’ itself is misleading and can result in inconsistent interpretations.

Section 219, Sub Section 2 defines rape as “sex with a woman without her consent or with the consent of a child under 18”. Rape is specified as an act that is imposed by men upon women. It fails to account for rape and sexual violence against men, and trans individuals. Such a rigid definition also overlooks male on male sexual violence and female on female sexual violence

Furthermore, Section 226 stipulates that “nobody should have unnatural sex with another person without consent”, that protects male child victims of rape. However, the use of the term ‘unnatural sex’ is extremely problematic. The exclusion of boys, men, and gender and sexual minorities from Section 219 is exclusionary, archaic, and is a violation of the constitutional right to equal treatment for all persons.

Section 219 goes on to explain that “consent by the way of coercion, fear, lying, kidnapping, or bondage shall not be considered consent and consent given when unconscious shall not be considered consent”. The section on rape has certainly broadened its definition of consent in comparison to the previous Muluki Ain. However, it still defines consent in the negative and does not adequately address consent. Criminal laws in various countries require proof of “unequivocal and voluntary affirmative agreement” to engage in sexual activity.

Section 219 on rape has also moved away from the traditional view of rape as penile-vaginal insertion to include a wider range of sexual behaviors. It also stipulates that “the insertion of the penis into the mouth, anal, partial insertion of the penis into the mouth or vagina, and insertion of other objects into the vagina shall be considered rape”. However, it still does not meet international standards, which include a broader range of behaviors that constitute rape.

Section 219 Sub Section 4 stipulates that “Regardless of what is written in Sub section 3, if the married woman is raped by her husband, he will be imprisoned for 5 years”. Marital rape is clearly inadequately penalized in the Criminal Code. This inadequate punishment reinforces the idea of ownership in marriages.

Despite the social and psychological challenges that victims have to go through in order to report rape, Section 229 only grants a one-year period within which a complaint has to be filed. Although this is an improvement from the 35-day period and six-month period granted in the previous national code, it is still inconsistent with Nepal’s commitment to protect both women and children. It overlooks child victims of rape who may not understand what happened to them for years to come, let alone know how to access the legal system. The limitations period also effectively prevents women who were victims of sexual violence during the civil war from filing complaints; unless transitional justice mechanisms address this, these women will be denied justice.

Response Provided by

Advocate Binita Pandey

Program Officer-Legal Support

Women's Rehabilitation Center (WOREC)

email :binita@worecnepal.org