**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 Penal**

***Answer: The provision of interest is Section 375, 377 of Penal Code 1860 which states:***

***375.*** *A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:*

* *Firstly. Against her will.*
* *Secondly. Without her consent.*
* *Thirdly.* *With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.*
* *Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*
* *Fifthly. With or without her consent, when she is under fourteen years of age.*

*Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*

*Exception.* *Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape*

***377.****Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment] for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*

***Assault or criminal force to woman with intent to outage her modesty***

***354****. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

*Another provision is often misused by respondents in complaints is* *Section 155 of the* *Evidence Act, 1872. Section 155(4) 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*

 **The Evidence Act, 1872**

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only ***YES* [A man is said to commit rape who […] has sexual intercourse with a woman - Section 375]**
	2. Gender neutral, covering all persons ***NO* [See above]**
	3. Based on the lack of consent of victim ***YES* [without her consent]**
	4. Based on the use of force or threat ***YES*** [With her consent………. fear of death, or of hurt.]
	5. Some combination of the above*.* ***YES***
	6. Does it cover only vaginal rape? ***YES\**** [However Section 377 states “*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment] for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”*]
	7. Does it cover all forms of penetration? ***NO\****[see above]
	8. Is marital rape in this provision explicitly included? ***YES\**** [ Section 375 *Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape]*
	9. Is the law silent on marital rape? ***NO*** [ see above]
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? ***YES***
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? ***YES\**** [only if the age of the victim is below 13 then it is considered marital rape]
2. 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.

***Answer****:* ***NO****\**

*Section 155 of the Evidence Act, 1872. Section 155(4) 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***.**

***155.*** *The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-*

*(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;*

*(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;*

*(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;*

*(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.*

1. What is the legal age for sexual consent?

***Answer: 14\* [Section 375 of Penal Code 1860- does not recognize rape as offences against men or other gender types]***

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

***Answer: NO***

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

***Answer:* *Punishment for rape has been described both in The Prevention of Oppression against Women and Children Special Act 2000 (Nari O Shishu Nirjatan Daman Ain 2000) and The Bangladeshi Penal Code 1860.***

***Punishment for rape under Women and Children Repression Prevention Act, 2000:***

1. *Whoever commits rape of a woman or a child shall be punished with rigorous imprisonment for life and with fine.*

*Explanation: Whoever has sexual intercourse without lawful marriage with a woman not being under fourteen years of age, against her will or with her consent obtained, by putting her in fear or by fraud, or with a woman not being above fourteen years of age with or without her consent, he shall be said to commit rape.*

1. *If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life and also with fine not exceeding one lac taka.*
2. *If more than one man rapes a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka.*
3. *Whoever attempts on a woman or a child to cause death or hurt after rape, he shall be punished with rigorous imprisonment for life and also with fine.*

*b) To commit rape, he shall be punished with imprisonment for either description, which may extend to ten years but not less than five years rigorous imprisonment and also with fine.*

1. *If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.*

***Punishment for rape under Penal Code:***

***According to section 376******of this Code -***

*Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age[[1]](#footnote-1), in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

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?

***Answer: \*Punishment for rape under*** ***Women and Children Repression Prevention Act, 2000 states that in circumstances the defendant would need to pay fine up to 1 lac taka, however it does not state if the fine is to be received by the victim. Under normal rules, the state retains the fine.***

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

***Answer: Normal death penalty is not given for offences of rape, it is only given when death is subsequently caused. Section 9(2) of Women and Children Repression Prevention Act, 2000 states that “If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life and also with fine not exceeding one lac taka.”***

* 1. Is rape by more than one perpetrator an aggravating circumstance?

***YES****,* ***there is a provision in Women and Children Repression Prevention Act, 2000 that deals with multiple perpetrators: “iii. If more than one man rapes a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka.”***

* 1. 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)

***NO in general sense, but there is provision in Women and Children Repression Prevention Act, 2000 that makes custodial rape particularly aggravating: “If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.”***

* 1. Is rape by spouse or intimate partner an aggravating circumstance?

**By spouse only if the wife is under 13 years of age according to *Section 375 of Penal code 1860.***

***“Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.”***

1. Does the law foresee mitigating circumstances for the purposes of punishment? **YES.** ***For example, as stated above, ‘Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.’***
2. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? ***NO (not as part of legal response, but often encouraged as social custom)***
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

***Answer: YES. There is a social custom of having the rapist marry the victim through arbitration or informal dispute resolution (village hearings). There are allegations that the rapist almost always avoids justice through such compromised marriages as the family of the victim often withdraws the charge following these marriages.***

 ***The following links can be used for examples:***

***<https://www.bbc.com/bengali/news-42237546>***

[***https://www.dw.com/bn/%E0%A6%93%E0%A6%B8%E0%A6%BF%E0%A6%B0-%E0%A6%AE%E0%A6%A7%E0%A7%8D%E0%A6%AF%E0%A6%B8%E0%A7%8D%E0%A6%A5%E0%A6%A4%E0%A6%BE%E0%A7%9F-%E0%A6%A7%E0%A6%B0%E0%A7%8D%E0%A6%B7%E0%A6%95%E0%A7%87%E0%A6%B0-%E0%A6%B8%E0%A6%99%E0%A7%8D%E0%A6%97%E0%A7%87-%E0%A6%AC%E0%A6%BF%E0%A7%9F%E0%A7%87/a-50371154***](https://www.dw.com/bn/%E0%A6%93%E0%A6%B8%E0%A6%BF%E0%A6%B0-%E0%A6%AE%E0%A6%A7%E0%A7%8D%E0%A6%AF%E0%A6%B8%E0%A7%8D%E0%A6%A5%E0%A6%A4%E0%A6%BE%E0%A7%9F-%E0%A6%A7%E0%A6%B0%E0%A7%8D%E0%A6%B7%E0%A6%95%E0%A7%87%E0%A6%B0-%E0%A6%B8%E0%A6%99%E0%A7%8D%E0%A6%97%E0%A7%87-%E0%A6%AC%E0%A6%BF%E0%A7%9F%E0%A7%87/a-50371154)

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? ***NO***
	1. if the perpetrator marries the victim of rape?

***Answer: YES. There is a strong social compulsion in the urban areas to marry the victim off with the perpetrator through village dispute resolutions. Parties are often forced to accept this deal out of fear for their safety, to save themselves from further humiliation which they incur as a result of adverse, time consuming and archaic court proceedings. If they withdraw the charge, the case would not proceed further. (the above links would take you to reports of such marriages)***

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

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? ***YES\****

***The Code of Criminal Procedure, 1898***

***352****. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:*

*Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.*

1. Is rape reported to the police prosecuted ex parte (private prosecution)? ***NO*.**
2. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? ***NO.***
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? ***NO.***
4. Please provide information on the statute of limitations for prosecuting rape. ***NONE; statute of limitation does not apply in cases of criminal offence.***
5. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? ***NO.***

***There is no specific provision that allows such reporting per se, but as statute of limitation does not apply, victim might still be able to report the offence.***

1. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? ***YES\****

***Section 32 of the Women and Children Repression Prevention Act, 2000 provides that medical examinations of victims of offences are to be conducted either in government hospitals or any ‘private hospital, recognized by the Government for the purpose’.***

***On the issue of convictions based on the sole testimonies, the Evidence Act, under Section 134, provides that there is no particular number of witnesses required for the proof of any fact. The courts are, therefore, concerned with the merit of a particular witness’s statement.***

*It might be helpful to look at the case of Al Amin v State* which states:

“*Law does not require any particular number of witnesses to prove a case and conviction may be well-founded even on the testimony of a solitary witness provided that his credibility is not shaken.”*

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

***As a matter of fact, complainant’s sexual history might be specifically highlighted through the usage of Evidence Act, 1872. Section 155(4).***

1. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? ***NO***

***There are no provisions to avoid re-victimisation of complainants per se; however, there are provisions for taking cognizance of electronic evidences in certain Acts that are independent of the Evidence Act, which can allow the complainant to give evidence without undergoing further distress during trials such as -- Speedy Trial Tribunal Ain, 2002, Offences to disrupt law and order Act 2002, Pornography Control Act 2012 etc..***

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? ***YES***

***As a Member State to the United Nations, Bangladesh has acceded to UN Security Council resolution 1820, which noted that "rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide".***

***Article 27 of the Fourth Geneva Convention of 1949, related to the protection of civilian persons in times of war, explicitly prohibits wartime rape and enforced prostitution.***

***Section 3(2)(a) of the International Crimes (Tribunals) Act of 1973, Bangladesh lists rape, enslavement, torture and other inhumane acts (which might be considered as sexual violence crimes too) as "crime against humanity." The 1973 Act does not, however, mention rape or sexual violences in its list of "war crimes" contained in section 3(2)(d), but does leave room for the crime to be so included.***

***Further, since the definition of genocide as provided under the 1973 Act is similar to Article 2 of the Genocide Convention and Article 6 of the Rome Statute, rape and other sexual violence crimes may well constitute as genocide under the 1973 Act too.***

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

***Statute of limitation does not apply***

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? ***NO***
2. Has the Rome Statute of the International Criminal Court (ICC) been ratified? ***YES***

***Answer: The Rome Statute of the International Criminal Court, 1998 gives the International Criminal Court jurisdiction over genocide, crimes against humanity and war crimes. Articles 7 and 8 of the Rome Statute have included rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence both as a crime against humanity and a war crime***

***On 23 March 2010, the Government of Bangladesh ratified the Rome Statute of the International Criminal Court. The Statute entered into force for Bangladesh on 1 June 2010, bringing the total number of States Parties to the Rome Statute to 111.***

[***https://www.icc-cpi.int/Pages/item.aspx?name=bangladesh+ratifies+the+rome+statute+of+the+international+criminal+court&ln=en***](https://www.icc-cpi.int/Pages/item.aspx?name=bangladesh+ratifies+the+rome+statute+of+the+international+criminal+court&ln=en)

**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.

***Answer: 20,835 cases have been filed on charge of rape since 2014. Of the rape cases, 1,538 were filed between January 1 and April 30 in 2019 taking to 12.81 the number of rape incidents reported on an average in a day. On an average, 10.57 rape cases were filed in a day in five years between 2014 and 2018 as the number of the filing of rape cases was 3,949 in 2018, 3,995 in 2017, 3,728 in 2016, 3,930 in 2015 and 3,695 in 2014.***

***In the Human Rights Council Working Group on the Universal Periodic Review held in Geneva in May 2018, the Bangladesh delegation stated that the government established 54 special tribunals for speedy disposal of cases of violence against women.***

 ***The delegation told the meeting that 7,343 rape cases were filed, and 1,194 cases were disposed of with conviction in 140 cases in 2013-2017.***

[***http://odhikar.org/wp-content/uploads/2020/02/Statistics\_Rape\_2001-2019.pdf***](http://odhikar.org/wp-content/uploads/2020/02/Statistics_Rape_2001-2019.pdf)

**Other**

1. Please explain any 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.

***Answer: Challenges and gaps include the lack of support services or provision of protection for victims and witnesses, social stigma associated with rape and prevailing patriarchal attitudes, protracted court proceedings, inadequate investigations by the police, lacunae in the law, particularly the absence of rape shield provisions, etc. There are also provisions that instead penalise the complainant if it turns out that the case was falsely filed; complainants hence often do not seek regress least their complaint be turned on against themselves. [Section 17 of Women and Children Repression Prevention Act, 2000).***

1. Inconsistency between section 375 and 376 [↑](#footnote-ref-1)