Thematic paper on SV for SRVAW-NEPAL

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.

Penal Code, 2017 section 219 defines Rape as “Where a man has sexual intercourse with a woman without her consent or with a girl child below the age of eighteen years even with her consent, the man shall be considered to committing rape on such woman or girl child.” If the crime is committed against a male victim, it is not considered rape and is considered as “unnatural sexual” intercourse, punished according to Section 226: ***No person shall have, or cause to be had, unnatural sexual intercourse with another person without his or her consent. However, consent given by a child shall not be consent. Such person shall be liable to a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees. A person who commits such offence against a child shall be liable to a sentence under Section 219. (i.e., as rape)***

However, the most serious consequence of this unjustified distinction between rape and ‘unnatural sexual intercourse’ is that it also foresees an incongruent punishment for equally harmful crimes: if a man rapes an adult woman, he will receive a sentence of imprisonment for a term of 7 to 10 years, while if he rapes another man, the punishment will be 3 years and a fine.

 Based on the wording of those provisions, is the provided definition of rape:

Gender specific, covering women only YES/NO- No

Gender neutral, covering all persons   YES/NO -No

Based on the lack of consent of victim YES/ NO -Only in case of minor

Based on the use of force or threat YES/ NO -Yes

Some combination of the above.  YES / NO-Yes

Does it cover only vaginal rape?  YES /NO -No

Does it cover all forms of penetration? YES/NO. If yes, please specify.The penetration of penis into the anus or mouth, penetration of penis, to any extent, into the anus, mouth or vagina, insertion of any object other than the penis into the vagina shall also be considered to be rape.

Is marital rape in this provision explicitly included? YES / NO -Yes

Is the law silent on marital rape? YES/NO -No

Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO

Yes. Marital Rape has been covered by the general provision. Section 219(4) explicitly mentions that if the husband commits rape on his wife during the existence of the marital relationship between them, he shall be liable to a sentence of imprisonment for a term not exceeding five years. The fact of reducing the punishment in cases of marital rape has been questioned by diverse human rights treaty bodies. The only cases in which the husband will not benefit from the reduced punishment for raping his wife are if (a) a case of partition has been instituted upon making separation of board and bread, (b) the wife has lived separate upon taking her partition share from the husband, or (c) a case of divorce with the husband has been instituted. These exceptions, however, confirm that husbands are more excused if committing rape against their own wives, than against anyone else.

Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO

Marital Rape is considered as a Crime.

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 but in case of minor, it constitutes rape even though there is a presence of the consent of the victim.

What is the legal age for sexual consent?

Eighteen years (***but the age of marriage is 20. This has created a social conflict where the boys are often reported as committing a crime and are charged under kidnapping and rape. Various stakeholders argue that this could be one issue in the increase in the number of rape cases in Nepal, however this is yet to be researched and validated)***

Are there provisions that differentiate for sexual activity between peers? If so, please provide them. No

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

Chapter 18, Section 219 of Penal Code, 2017, introduces a scale of punishment for rape, according to the age of victims, and if the victim is married to the perpetrator. In cases of death caused by rape, the punishment will be imprisonment for life (Section 41 (f)).:

|  |  |
| --- | --- |
| Victim | Max. imprisonment |
| Below 10 years old | 16 – 20 years |
| Between 10 and below 14 years old  | 14 – 16 years |
| Between 14 and below 16 years old | 12 – 14 years |
| Between 16 and below 18 years old | 10 – 12 years |
| 18 years old or older | 7 – 10 years |
| Married to the perpetrator | 5 years |

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?

The Penal Code contains as a general principle, in Section 32 (2), stating that ‘the victim of crime shall have the right to justice with social rehabilitation and compensation. Also, the Penal Code has some singular provisions regarding to compensation to victims of specific crimes, such as **acid throwing**. In these cases, **the fine collected shall be paid in whole to the victim as compensation**. Moreover, there is a provision to provide **interim compensation** in certain cases, according to Section 48 of the Penal Code:

i.e. where it is necessary to immediately provide medical treatment or compensation or any type of relief amount to a person who has become victim of an offence in consequence of its commission or a person who is dependent on him or her, the court may order the accused of such offence to provide medical treatment or pay an interim compensation or relief amount to such person, where the **accused is unable to provide the compensation** or amount, the court shall order that the compensation or amount be provided to the victim or person dependent on him or her. Section 228 of the Penal Code contemplates that ‘a reasonable compensation shall be ordered to be paid to the victim of any offence under this Chapter other than the offences under Sections 220 (incest) and 227 (bestality)’. Court would order to pay the compensation to the victim immediately through the fund allocated under Ministry of women, Children and Senior Citizen.

Also, section 48 of Sentencing Act, 2074 calls for the establishment of the Victim Relief Fund. Section 41, 42, 43 states that the determination of the amount of compensation must be based on, among other factors, the mental, physical and emotional injuries suffered by the victim and the condition of the victim of any dependent person and that it should be borne from the perpetrators. If the perpetrator is not able to pay the fined amount, State must pay the compensation to the victim through the Victim Relief Fund.

**Aggravating and mitigating circumstances**

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

 Is rape by more than one perpetrator an aggravating circumstance?  YES/NO -Yes

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

Is rape by spouse or intimate partner an aggravating circumstance? No

Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify. **Yes. Aggravated forms of rape** are criminalised in section 219 (7) of Penal Code includinggang rape, the rape of ‘a woman having pregnancy of more than six months or on a woman who is disabled or handicapped or on a woman who is suffering from physical or mental illness or commits rape showing arms’. All these cases shall be liable to an additional sentence of imprisonment for a term not exceeding **five years, in addition** to the sentence provided according to the general rules already examined.

 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?

Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

No, Rape is a Criminal Offence and thus reconciliation between the victim and the perpetrator is not allowed. However, in terms of providing compensation to the victim, if the victim and perpetrators agree on certain amount and if it is deemed reasonable by the court, the reconciliation is permitted.

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

if the perpetrator marries the victim of rape? YES/NO -No

if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO -No

**Prosecution**

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

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

Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO -Yes. Section 33 of Criminal Procedure Code provides the following circumstances where the government attorney may file it praying for the remission of sentence as follows:

* If the accused admits in whole that he or she has committed the offence before the investigating authority or prosecuting authority and makes such confession, remission of up to twenty five percent of the sentence that can be imposed on the accused,
* If accused confesses the offence in which he or she has also been involved and has assisted in revealing detailed facts as to the offence and the other offenders or gang or the principal, if any, giving direction to commit the offence or in arresting such other offender, gang or principal or, in the case of an organized offence, in locating the place where criminal conspiracy of such offence has been made, in seizing or forfeiting any vehicle, machine, equipment or other object used for the commission of such offence, remission of up to fifty percent of the sentence that can be imposed on the accused. In order for making a claim or pray for the remission of sentence, the documents contained in the case file should clearly show that such accused has made such assistance.

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

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

The statute of limitation is one year from the date of commission of the offences. However, a complaint shall lie at any time in relation to the case of the Incest Rape as provides under Section 220 of Penal Code, 2017.

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

Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify. Yes…medical evidence, statement of victim and witnesses are required.

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

 Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify. Yes. The law maintains the confidentiality of the victim. The Crime Victim Protection Act places the protection of victim and witness from threats, intimidation, coercion. There is also the provision of In-camera proceedings to hear such cases. Also, section 23 of the District Court regulation points out that the cases of rape should be continuously heard without any delay and such cases should be prioritized.

**War and/or conflict**

Is rape criminalized as a war crime or crime against humanity? YES/NO

Its not clear in the context of Nepal. However, some precedents made by the Supreme Court has regarded Rape as a crime against humanity.

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

YES, there is no time limitations for cases of rape occurred during conflict time. Supreme Court has made this decision.

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

There is no time limitations for cases of rape occurred during conflict time.

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

**Data**

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

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| --- | --- | --- | --- | --- |
| **Year** | **Rape** | **Attempt to Rape** | **Unnatural Sex** | **Total** |
| 15/16 | 1159 | 545 | 39 | 1743 |
| 16/17 | 1089 | 452 | 20 | 1561 |
| 17/18 | 1139 | 531 | 20 | 1690 |
| 18/19 | 1480 | 727 | 24 | 2231 |

Source: Office of the Attorney General, Annual Progress Report.

**Other**

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 main reasons for non-reporting and prosecution of rape cases are : fear, intimidation , lack of trust in the legal/justice system and stigma resulting in culture of silence. Inadequate and the poor victim protection services including rehabilitation, lack of sensitivity in viewing this crime by the police resulting in re-victimization, Lack of proper evidence gathering and insensitivity of judges while dispensing justice.

 Accountability of the perpetrators: one who possess power and money gets the justice. Most of the victims get hostile due to the threats and intimidation at all stages by the perpetrators and in some high profile cases (political, economical) by the community/general public. Corruption at each stage of justice delivery system and the culture of impunity is prevalent.