



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

A Country Factsheet

2021

INTRODUCTION

There has been a sharp increase in reported cases of rape in Nepal in recent years, with 2230 rape cases reported to the police in the fiscal year 2018-19, and 2144 cases of rape recorded in the fiscal year 2019-20.¹ This is more than double the number of rape cases which were reported in 2014-15 (981 cases), with each year since 2014 seeing a steady increase in the number of reported cases. Even the latest figures are likely to be lower than the true number, as data from the Nepal Demographic and Health Survey demonstrates that 7% of all women and girls aged 15-49 across the country have reported facing sexual violence in their lifetime.²

The critical issue of sexual violence has received more attention from the public and policy makers in Nepal in recent times, with widespread protests overtaking the country in 2018 after the rape and murder of 13-year-old Nirmala Panta. Despite the growing awareness of the issue however, sufficient attention has not yet been given to the intersectional forms of discrimination faced by survivors of sexual violence from communities marginalised based on caste, ethnicity or religion, including Dalits, Terai, Madhesi and Muslim communities in Nepal. Though there is a lack of caste-disaggregated data on rape, reports from independent organisations show that the scale of violence against Dalit women and girls remains significantly high in Nepal.³

LAWS RELATING TO SEXUAL VIOLENCE

Nepal is a signatory to all the major international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol.

Commendably, Nepal's Constitution passed in 2015 specifically includes the right of women to not be subjected to violence, including sexual violence, as a fundamental right.⁴ The new National Penal Code introduced in 2017 expanded the definition of rape, increased the limitation period for reporting cases and, together with changes

in procedural laws, improved the overall legislative framework applicable to sexual violence cases.

In late 2020, the President of Nepal also authenticated an "Ordinance made to amend few sections on Sexual Violence", which imposes a three-year jail term and a fine upto NPR 30,000 for those who force mediation or reconciliation between rape victims and perpetrators or their families. This is a welcome measure and an official recognition by the government of the widespread nature of such mediation practices in rape cases.

1 <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

2 Nepal Demographic and Health Survey, 2016, <https://dhsprogram.com/publications/publication-sr243-summary-reports-key-findings.cfm>

3 Feminist Dalit Organization, Increasing Violence against Dalit Women and Girls and their Access to Justice, 2019, <http://fedonepal.org/wp-content/uploads/2019/04/Issue-38.pdf>; The Record, Killing in the Name of Caste, 26 May 2020, <https://www.recordnepal.com/wire/news-the-wire/killing-in-the-name-of-caste/>

4 Constitution of Nepal, 2015. Article 38 (3) "No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law

GAPS IN THE LAW

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

1. Limited Definitions of Rape:

The definition of rape under the National Penal Code includes penile penetration of the vagina, mouth and anus. However, when the means of penetration are fingers or other objects, only penetration of the vagina is included within the definition of rape and not penetration of other bodily orifices. Thus non-consensual sexual acts such as insertion of objects or fingers into the anus or mouth are not included within the definition of rape.⁵

Comparison with other South Asian countries:

All forms of sexual penetration are covered within the definition of rape or an equivalent offence in Bhutan, India, Nepal and the Maldives.

2. Short Limitation Period for Filing Complaints:

Another provision of the law which impedes access to justice for survivors of sexual violence is the short limitation period which is applicable in such cases. Nepali law requires complaints in rape cases to be filed within one year of the date of the incident (this period was earlier 35 days).⁶ Short limitation periods for rape cases impedes access to justice for survivors, particularly in relation to child victims who may find it difficult to raise a complaint before they reach the age of majority. The stigma, shame, intimidation and trauma associated with rape keeps victims from coming forward and even with the increased period for reporting, many victims will not be in a position to lodge a complaint in time and perpetrators will continue to evade punishment.

Comparison with other South Asian countries:

Nepal has the shortest limitation period for filing rape cases. A number of countries have done away with the statute of limitation for rape cases all together.

3. No Prohibition on Evidence Relating to Past Sexual History of the Victim:

Nepali law does not contain any specific provisions prohibiting the introduction of evidence as to the past sexual history of victim during the trial process in rape cases. In practice, this has left victims vulnerable to the defence raising irrelevant questions or accusations affecting the dignity of the victim during the rape trial and judges often do not intervene to prohibit such questions.⁷ This facilitates the secondary victimisation of survivors during the legal proceedings, as well as enabling impunity for the perpetrator since it looks to judge the general character of the victim rather than focus on the evidence in the case and the actions of the alleged perpetrator.

Comparison with other South Asian countries:

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

4. Low Penalties for Marital Rape:

Marital rape was criminalised under Nepali law after a landmark Supreme Court decision declared that the earlier penal provision which did not criminalise marital rape was unconstitutional.⁸ However, the applicable penalty is imprisonment with a maximum term of five years, which is lower than the penalty applicable in other cases of rape (imprisonment of 7-10 years in cases of rape of adult women over the age of 18, with the penalty increasing in cases of child rape depending of the age of the child). This disproportionately low penalty for marital rape promotes the impression that sexual violence in intimate partner settings is not as serious a crime as so-called “stranger rape”.

Comparison with other South Asian countries:

Nepal, along with Bhutan, is leading the way for other South Asian countries through criminalising marital rape. It should further improve its law by applying commensurate penalties for marital rape, or even consider it an aggravating circumstance due to the breach of trust within an intimate relationship.

⁵ Section 219, National Penal Code, 2017.

⁶ Section 229, National Penal Code, 2017.

⁷ Forum for Women Law and Development, IWRAW-AP, Court Watch Monitoring on Sexual and Gender Based Violence Cases in Trial in Selected District Courts, December 2018, <http://fwld.org/wp-content/uploads/2019/01/Case-monitoring-final.pdf>

⁸ Ms. Meera Dhungana v. His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs and Others [Nepal Supreme Court, 2000].

RESPONSE OF THE CRIMINAL JUSTICE SYSTEM

Some of the barriers to accessing justice which were highlighted in Nepal are as follows:

Stigma and Victim Blaming:

Disbelief in the testimonies of survivors, blaming survivors for having “provoked” the rape and discriminatory attitudes towards survivors of sexual violence from family and community members as well as criminal justice system officials results in cases not being reported or being dropped.

Inadequacies in Law Enforcement:

In some cases, the police fails to promptly register complaints of rape, particularly when the survivor is from a marginalised community. Lack of accountability of police officers, even when they are found to be complicit in illegal acts such as destroying evidence,⁹ and difficulties in accessing police stations also create obstacles to justice.¹⁰ Further, survivors have reported that police officers and public prosecutors fail to keep them informed of the progress of the case. There are also reports of both police and public prosecutors being susceptible to corruption and receiving bribes from the perpetrator or his family, which impedes access to justice for the survivor.

Issues Relating to the Medical Examination:

Activists in Nepal have highlighted procedural issues with the medical examination of rape survivors. Further, it is reported that the two-finger test is still being conducted in Nepal. The two-finger test involves a medical practitioner inserting two fingers into the vagina of a rape survivor in an attempt to determine if the hymen is broken, as well as to test laxity of the vagina. The test is intended to indicate whether the victim is habituated to sex and is thereby used to judge her status as a true victim or not. It is unjust, inappropriate, traumatic for survivors and violates human rights norms.

Low Conviction Rate:

The conviction rate for rape cases in Nepal was 34.8% in 2016-17.¹¹

Extra-legal Settlements/Compromises:

Another major obstacle to justice is community intervention resulting in mediation or “compromises” amongst perpetrators and the victim, whereby the victim is coerced into agreeing not to cooperate during the criminal process.¹² Though such mediation is not permitted under law for rape cases, the police is also often complicit in facilitating mediation between perpetrators and victims.¹³ Such mediation is often carried out by the family without even consulting the victim and can sometimes result in forced marriage between the perpetrator and the victim, resulting in further trauma.¹⁴

Lack of Support Services:

The UN Special Rapporteur on violence against women has also highlighted the “dire shortage of adequate shelters across the country offering a safe house for women and girls who have been victims of violence, within indigenous communities in particular and in rural and remote areas”.¹⁵ The Government is also yet to frame rules for implementation of the Crime Victim Protection Act. There is also a need to improve easy access to and implementation of Crime Victim Relief Fund Regulations for the holistic support of the victims.

9 Forum for Women Law and Development, IWRRAW-AP, Court Watch Monitoring on Sexual and Gender Based Violence Cases in Trial in Selected District Courts, December 2018, <http://fwld.org/wp-content/uploads/2019/01/Case-monitoring-final.pdf>

10 WOREC Nepal and Isis-WICCE, Unveiling Justice: Rape Survivors Speak out A Research Report on Access to Justice for Rape Survivors in Nepal 2007-2010, 2011, <https://worecnepal.org/uploads/publication/document/205613797Unveiling%20Justice-Rape%20Survivors%20Speak.pdf>

11 As per data filed by the Nepal government with the United Nations Special Rapporteur on Violence against Women. Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, Visit to Nepal, A/HRC/41/42/Add.2, 19 June 2019.

12 CREHPA, UCL, Tracking Cases of Gender-Based Violence in Nepal: Individual, institutional, legal and policy analyses, 2013, <https://nepal.unfpa.org/sites/default/files/pub-pdf/TrackingCasesofGBV.pdf>

13 https://www.nhrcnepal.org/nhrc_new/doc/newsletter/GPV_Report.pdf

14 WOREC Nepal and Isis-WICCE, Unveiling Justice: Rape Survivors Speak out A Research Report on Access to Justice for Rape Survivors in Nepal 2007-2010, 2011, <https://worecnepal.org/uploads/publication/document/205613797Unveiling%20Justice-Rape%20Survivors%20Speak.pdf>

15 Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, ‘Visit to Nepal’, A/HRC/41/42/Add.2, 19 June 2019, para 72.

KEY RECOMMENDATIONS

1

Address Protection Gaps in the Law

- Ensure that all forms of sexual penetration are covered within the definition of rape.
- Explicitly prohibit introduction of evidence relating to the past sexual history of the survivor.
- Ensure that the penalties for marital rape are at least commensurate with applicable penalties for other forms of rape.
- Increase the limitation period applicable for filing rape complaints.
- Amend the Nepali Penal Code to make permanent the provisions included in the “Ordinance made to amend few sections on Sexual Violence”, particularly the provision prohibiting forced mediation or reconciliation between rape victims and perpetrators of their families.

2

Improve Police Responses to Cases of Sexual Violence

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

3

Ensure Survivor-Friendly Medical Examinations in Rape Cases

- Implement and enforce a nation-wide ban against the two-finger test.
- Train medical professionals on the appropriate protocols for conduct of medical examinations in rape cases.

4

Improve Prosecution Procedures and Trials of Sexual Offences

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

5

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

- Increase allocation of resources towards sexual violence prevention and response programmes.
- Improve data collection on rates of reporting, prosecution and convictions in sexual violence cases.
- Ensure efficient multi-sectoral response to provide holistic support services to survivors.

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

CONTACT

EQUALITY NOW

Email: info@equalitynow.org

Website: equalitynow.org

WOMEN FOR HUMAN RIGHTS

Email: mail@whr.org.np

Website: whr.org.np

WWW.EQUALITYNOW.ORG/SEXUALVIOLENCESOUTHASIA