

Re-defining Rape Law: Need of Gender Responsive Justice in Nepal

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Abstract

Rape is a persuasive problem in all societies around the world. Non-consensual sexual relationship has been categorized as one of the most heinous crimes in Nepal. Nepali Criminal law has classified gravity of the offence of rape as per the age of the victim and relationship status of perpetrator and victim. Although a landmark leap had been initiated in Nepali laws in the avenues of gender justice and gender equality, Nepali legislations still lack gender responsive justice mechanisms to victims of rape. Law has yet not thought that victim of sexual offence could be beyond females. Nepal is one of the pioneer countries to provide equal rights to the gender and sexual minority community, yet it still classifies their sexual relationships as unnatural sex, and a non-consensual relationship between them is considered an unnatural sexual offence, not rape. In the same way, statutory rape is considered a strict liability, and the legal provisions mandate punishments to underaged boy when both the perpetrator and victim are minors and were in a consensual romantic relationship. This research, based on secondary sources of data, locates that there is an ardent need of redefining rape laws and the need to include gender neutral provisions. Legislatures need to enact laws in such a way that males and sexual/gender minority as victims of rape, marital rape, child sexual offence and rape in conflict be incorporated and designated within the status of victims of rape.

Keywords: Rape, Gender Neutrality, Justice

I. Introduction

Rape is a persuasive problem in societies around the world.¹ Non-consensual sexual relationship has been categorized as one of the heinous crimes. Rape has been considered an offence in Nepal from the very inception of its criminal legal history. Rape once used to be categorized as *Panchakhat*.² Among many provisions, the *Muluki Ain 1910* criminalized sexual offenses under two broad categories:

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¹ Rana Indrajit Singh, 'Critical Analysis of the Legal Definition of Rape', *Quest Journals Journal of Research in Humanities and Social Science* p. 103, volume 4:12, 2016, p. 103, available at, <https://www.questjournals.org/jrhss/papers/vol4-issue12/S0412103104.pdf>, accessed on 18 July 2025.

² Gajendra Keshari Bastola, 'Judicial System of Lichhavi's' (Nepali Version), *Nepal Law Review*, volume 9:4, p. 59.

offenses against individuals below the age of 11 years³ and those above the age of 11 years⁴. The legal provisions specifically addressing forced sexual assault (rape) of underage girls, widows, or unmarried women were outlined in Chapter 132. These provisions detailed the nature of punishments based on the age and caste of the victim, as well as the severity of the crime. Criminalizing the offense of rape was continued in *Muluki Ain 2020*, and the provisions have also been incorporated in *Muluki Criminal Code 2074*. A deeper scrutiny of the historical development of rape law in Nepal depicts that rape has always been categorized with higher punishment and has always been female centric. Therefore, rape laws in Nepal have developed the narration of “female being victim of rape and male being perpetrator of rape”. To some extent, this narration has been supported by prevailing data as well.⁵ But, it would be a misnomer to assert that merely female are victims of rape. Male, female and sexual/gender minority communities could equally be the victim of this offence.

In this context, the researcher endeavors to examine the definition of rape in Nepali legal system and intends to dissect it from the perspective of gender neutrality and gender responsive justice. This study is completely based on desk study. The researcher has gathered data and information from relevant literature including articles, books, reports, laws and case laws. Researchers tend to address need of gender responsive legal provision to address gender justice. This study is limited to the concept of “rape” and deals only with Nepali context; however, the researcher has also presented relevant international context for reference.

II. Defining the offence of Rape

Non-consensual sexual relationship that violates women’s rights and dignity is defined as the offence of rape.⁶ Any non-consensual sexual act, including in the absence of physical resistance by the victim is defined as rape.⁷ Rape was historically viewed as the result of uncontrolled sexual urges, but it is now recognized as a pathological expression of dominance over a victim.⁸ For the crime of rape to occur, three basic elements must be present: intent to rape, the act of rape, and the victim's lack of consent to rape. When these basic elements are present, the crime of rape is said to have established.⁹ In order for consent to be legitimate, it must be provided without coercion, and the individual granting consent must have a complete understanding of the situation and must be fully cognizant of the implications of the action. Agreeing with an action means providing consent willingly, employing one's judgment and discernment.¹⁰

Rape is not only an offense against the law but also against humanity, personal dignity, and social morality. Rape is a heinous crime that affects a person's body and self-respect. An unexpected and

³ *Muluki Ain 1910* (Muluki Ain 1854), Chapter 132.

⁴ *Ibid*, Chapter 133.

⁵ Data have been dealt in separate section in this article.

⁶ *Rape of women, including marital rape*, 2 October 2009, Council of Europe, Parliamentary Assembly, Resolution 1691.

⁷ *M.C. v. Bulgaria*, European Court of Human Rights, Judgment, 2003, 40 European Court of Human Rights: Reports of Judgement and Decisions, Application no. 39272/98, para 101-105.

⁸ Definition: Rape, *Encyclopedia Britannica*, available at <https://www.britannica.com/topic/rape-crime>, accessed on 18 July 2025.

⁹ *Suman Pahari vs. NG*, NKP 2074 (2017), volume 4, Decision no. 9801; *Devlal Shrestha vs. NG*, NKP 2076 (2019), volume 12, Decision no. 10400.

¹⁰ *Devlal Shrestha vs. NG* (n. 9).

non-consensual violation of a woman's body and dignity can result in severe psychological trauma, potentially leading to a state of mental instability. In such circumstances, it may be difficult for the victim to immediately recall and express the incident of sexual violence, and the memory of the incident may surface gradually over time. Such a situation is called Rape Trauma Syndrome.¹¹ It is imperative for judges to assess such situations seriously. The nature of sexual offence fundamentally differs from that of other offenses. In other types of crimes, a consistent account is necessary to determine the veracity of the claim, while in cases of rape, the survivor's testimony may have inconsistencies due to the intense trauma experienced.¹²

For consent to be considered valid, it needs to be provided willingly and under a complete understanding of the situation, with the individual granting consent fully aware of the repercussions of the act.¹³ Agreeing to an action signifies that consent is given freely, utilizing one's judgment and discernment. Consequently, the question of a person's ability to give consent is closely tied to their mental capacity, and when assessing their capability to consent to an action, it is crucial to evaluate whether they are in a mental state that enables rational thought.¹⁴ Various international legal standards have provided the following definition for constituting the offence of rape:

The European Institute for Crime Prevention and Control¹⁵ has defined rape in two senses, viz. the 'operational' and the 'statistical' definition. The standard 'operational' definition of rape amounts to 'sexual intercourse with a person against her/his will (per vagina or other)'. In contrast, the statistical definition incorporates broader elements including non-vaginal penetration, violent intra-marital sexual intercourse, sexual intercourse without the use of force with a helpless person, sexual intercourse with force with a child and attempted acts of such nature. The European Institute for Crime Prevention and Control excludes sexual intercourse with a child without force and other forms of sexual assault. This implies that sexual intercourse with children with their consent would not be regarded as rape.¹⁶ Similarly, CEDAW Committee defines rape as 'a violation of women's right to personal security and bodily integrity, and that its essential element was lack of consent.'¹⁷ Likewise, the UN statistical guidelines on Violence Against Women defines rape as an act of 'using any part of the body or object to penetrate another person's body sexually without their consent, whether through the vagina, anal, or oral route; using physical force; or placing the victim in a position where she is afraid to refuse or comply.'¹⁸

III. Types of Rape

UNODC has classified offence of rape as rape with force, rape without force, statutory rape and

¹¹ NG vs. Sagar Bhatta, NKP 2076 (2019), volume 12, Decision no. 10408.

¹² Ibid.

¹³ *Denlal Shrestha vs. NG* (n. 9).

¹⁴ Ibid.

¹⁵ Marcelo F. Aebi et. al., *European Sourcebook of Crime and Criminal Justice Statistics*, HEUNI, Finland, 5th edition, 2014, p. 385.

¹⁶ Ibid.

¹⁷ See *Glossary of definitions of rape, femicide and intimate partner violence*, European Institute for Gender Equality, EIGE, Lithuania, 2017, p. 2, available at https://eige.europa.eu/sites/default/files/documents/ti_pubpdf_mh0417297enn_pdfweb_20170602161141.pdf, accessed on 18 July 2025.

¹⁸ United Nations (UN), Department of Economic and Social Affairs, *Guidelines for producing statistics on violence against women-statistical surveys*, Statistics Division of the United Nations, United Nations Publication, New York, 2014, p. 16, available at https://eige.europa.eu/sites/default/files/documents/ti_pubpdf_mh0417297enn_pdfweb_20170602161141.pdf, accessed on 18 July 2025.

other rape.¹⁹ The act of sexual penetration committed without valid consent through infliction of force is considered rape with force. If sexual intercourse is committed without valid consent and without the use of force but through deceptions, intoxication, abuse of power or coercion then such rape is regarded as rape without force. Statutory rape is sexual intercourse or act with sexual intent with a person below the age of consent or with person incapable of providing consent. Apart from these categories, UNDOC's ICCS has classified other forms of rape under broader category of 'other rape'²⁰. Other rape can be marital rape, custodial rape, etc. Under the existing criminal law legislation in Nepal, the offense of rape is classified as follows:

A. Statutory Rape

Sexual intercourse with minor below the age of 18 with or without consent of minor is statutory rape.²¹

B. Marital Rape

Marital rape is rape committed by husband against wife. If they are no more in marital status or are in legal proceeding of divorce, partition and living separately or already lived separately with partition/ alimony then it will not amount to be marital rape rather it will be adult rape as marriageable age is 20.²²

C. Incest Rape

Rape within incest relationship amounts to incest rape. Relationships of incest are derived from parental or maternal or martial relationships. Punishment varies as per the generational gap between the perpetrator and victim.²³

D. Custodial Rape

If a person rapes a person under own custody²⁴ or guardianship²⁵ or one with professional relationship either as clients or co-worker,²⁶ then it is considered custodial rape. Custodial sex is an offense and if there in non-consensual sex under custodial sex then it amounts to additional punishment.²⁷

E. Rape of adult

Non-consensual sexual relationship with an adult woman above the age of 18 is rape of adult.²⁸ Consent derived with force, undue influence²⁹, threat, misrepresentation, abduction or hostage

¹⁹ Jonathan Gibbons (ed), *International classification of crimes for statistical purposes*, United Nations Office on Drugs and Crime (UNODC), Vienna, 2014, p. 25.

²⁰ Ibid.

²¹ *Muluki Apararadh Sambhita 2074* (National Criminal Code 2017), s. 219(2).

²² Ibid, s. 219(4)

²³ Ibid, s. 219(8) & 220.

²⁴ Ibid, s. 221.

²⁵ Ibid, s. 222.

²⁶ Ibid, s. 223.

²⁷ Ibid, s. 221(2), 222(2), 223(2).

²⁸ Ibid, s. 219(2).

²⁹ *Bhupendra Khadka vs. Nepal Army et. al.*, NKP 2076 (2020), volume 8, Decision no. 10342.

taking will not amount to consent.³⁰ “Yes” only means “Yes”, silence or submissive behavior will not amount to be consent.

F. Rape of senior citizen

The Senior Citizen Act 2063 of Nepal defines a senior citizen as a person who is above the age of 60.³¹ In case of rape involving senior citizen, there is punishment of life imprisonment if victim is above the age of 70.³² Correspondingly, sec. 26(ka) of Senior Citizen Act 2063 stipulates that committing crime against person above the age of 75 will amount to aggravated punishment.

G. Attempt to Rape

Attempt is an inchoate offence. If a person, with the intent to commit rape, fails to complete the act, such conduct shall constitute the offence of attempt to rape.

H. Unnatural sexual offence

Unnatural sex is not a crime but if the act is non-consensual then it amounts to unnatural sexual offence. If such act is committed against minor with or without consent, then perpetrator will be charged as per offence of rape.³³

IV. Elements to establish offence of rape

The three fundamental components of rape include the act of rape, victim's lack of consent, and the intent to commit rape. Rape is proven to be a crime when these fundamental components are present.³⁴ In order for consent to be legitimate, it must be provided without coercion and with a complete understanding of the situation, and the individual granting consent must be fully cognizant of the implications of the action. Agreeing to an action means providing consent willingly, employing one's judgment and discernment.³⁵

The core element of sexual offence remains sexual intercourse without consent. The term consent has itself been subjected to numerous interpretations.³⁶ “Any non-consensual contact of sexual nature of another person's body through the vagina, anal, or oral region using any part of the body or an object, as well as any other non-consensual sexual acts carried out by coercion, violence, threats, duress, ruse, surprise, or other means, regardless of the victim's relationship to the perpetrator is rape. Rape is additionally described as “causing another person to engage in non-consensual sexual acts with a third party.” Voluntary agreement that arises from an individual's free will is referred to as consent. Sexual relations with a child who is younger than the age specified by national law as the age of consent is considered rape.³⁷ As stated under the Rome Statute, the elements of offence of rape

³⁰ *Muluki Apararadh Sambhita 2074* (National Criminal Code 2017), s. 219(2), explanation.

³¹ *Jyestha Nagarik Ain 2063* (Senior Citizen Act 2006), s. 2(ka).

³² *Muluki Apararadh Sambhita 2074* (National Criminal Code 2017), s. 219(3)(ka).

³³ *Ibid.*, s. 226.

³⁴ *Suman Pahari vs. NG* (n 9); *Devlal Shrestha vs. NG* (n 9).

³⁵ *Ibid.*

³⁶ Rana Indrajit Singh (n. 1), p. 1.

³⁷ *Glossary of definitions of rape, femicide and intimate partner violence* (n 18).

constitutes the following:³⁸

- A. The perpetrator invaded the victim's body by engaging in actions that resulted in any part of victim's body or the perpetrator's sexual organ to penetrate, even slightly, or the victim's genital or anal opening to be penetrated by object or other parts of the body.
- B. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁹

Part V.A., Article 2 of Model Rape Law³⁹ stipulates that consent must be given voluntarily and must be genuine and must result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. Consent cannot be inferred from silence, nor non-resistance amounts to consent. Similarly, the victim's past sexual behavior, status, occupation, or relationship with the accused does not constitute consent. Thus, it can be stated that lack of consent of victim and sexual act with victim with the intent of accused are essential elements to establish the offence of rape.

V. Current situation of offence of rape in Nepal

Offence of rape is a traditional crime. At present, newer forms of rape have been categorized and criminalized. Data reveals that reported sexual offences are increasing. A research article written by Alok Atreya et.al⁴⁰ also highlights the alarming increase in the number of registered cases of rape and attempt to rape. Likewise, the recent data of Nepal police and Supreme Court of Nepal also shows the increasing number of registered sexual offence.

Table 1 Data of sexual offences as per data of report of Nepal Police

S. No.	Sexual offence	2080/81 ⁴¹	2079/80 ⁴²	2078/79 ⁴³
1.	Rape	2507	2387	2380
2.	Attempt to Rape	460	518	655
3.	Child Sexual abuse	363	343	314
4.	Unnatural sexual offence	19	35	31
5.	Kidnapping and Rape	54	59	72
6.	Human Trafficking and Rape	19	10	0
7.	Rape and Homicide	5	5	9

³⁸ International Criminal Court, *Elements of crimes*, ICC, 2013, Hague, pp. 8, 28 & 36. https://eige.europa.eu/sites/default/files/documents/ti_pubpdf_mh0417297enn_pdfweb_20170602161141.pdf

³⁹ *A framework for legislation on rape (Model rape law)*, 15 June 2021, A/HRC/47/26/Add.1, part V.A., article 2.

⁴⁰ Alok Atreya et. al., 'An alarming rise in rape in Nepal: A 20-year review', *Medico-Legal Journal* p. 125, volume 89:2, 2021, pp. 125-127, available at <https://journals.sagepub.com/doi/10.1177/00258172211992630>, accessed on 18 July 2025.

⁴¹ 'Gender-Based Violence Annual Fact Sheet From Shrawan 2080 to Ashadh 2081 (Nepali Version)', *Nepal Police Headquarters, Crime Investigation Department*, 2024, Naxal, p. 1, available at https://www.nepalpolice.gov.np/media/filer_public/1e/7c/1e7ccd75-4f92-4937-a15a-5dd7c2d4061d/fy_2080-81_annual_infographics_-_ne.pdf, accessed on 18 July 2025.

⁴² Ibid

⁴³ Ibid

As per data of F/Y 2080/81 there were 3489 victims and amongst them 777 victims were of age group 11-14 years. Out of 3489 victims, 1 victim was of gender and sexual minority and all other were female victims. There were 3805 alleged perpetrators and out of them 1281 were of age group 19-25. Further the report shows that there were 2078 such cases where victims were threatened and coerced, whereas 1359 cases were those in which victims were allured and manipulated and in 52 cases victims were made to consume intoxicated substances to make them unconscious.

As per data of F/Y 2079/80 there were 3403 victims and amongst them 1393 victims were of age group 11-16 years. Out of 3403 victims, 1 was of gender and sexual minority and all other were female victims. There were 3678 alleged perpetrators and out of them 1248 were of age group 19-25 years. Further it shows that 1829 cases were those in which victims were threatened and coerced, whereas 1492 cases were those in which victims were allured and manipulated and in 36 cases victims were made to consume intoxicated substances to make them unconscious. As per data of F/Y 2078/79 there were 3510 victims and among them 1386 victims were of the age group 11-16 years. All of them were female victims. There were 3829 alleged perpetrators and out of them 1382 were males of age group 19-25 years.

Accordingly, data of three fiscal years from annual report of Supreme Court of Nepal also shows that number of total cases of sexual offences to be decided each year are raising. The following table shows the number of cases of sexual offences which are pending at all tiers of court, along with those that have been decided this year.

Table 2 Data of sexual offence cases as per data of Supreme Court

S.no	Cases	Total cases	Decided	Remaining cases
F/Y 2080/81 ⁴⁴				
1.	Rape	9956	5410	4546
2.	Incest Rape	810	449	361
3.	Attempt to Rape	1688	1059	629
4.	Child sexual abuse	728	469	259
5.	Unnatural Sexual offence	162	89	73
6.	Others	329	210	119
	Total	13673	7686	5987
F/Y 2079/80 ⁴⁵				
1.	Rape	9761	4959	4802
2.	Incest Rape	746	351	395
3.	Attempt to Rape	1783	1138	645
4.	Child sexual abuse	812	563	249
5.	Unnatural Sexual offence	142	66	76

⁴⁴ 'Annual Report of Supreme Court 2080/81', *Supreme Court of Nepal*, Ramshahpath, 2024, p. ta, available at <http://supremecourt.gov.np/web/yearlyreps>, accessed on 18 July 2025.

⁴⁵ Ibid

6.	Others	938	470	468
	Total	14182	7547	6635
F/Y 2078/79 ⁴⁶				
1.	Rape	9169	4296	4873
2.	Incest Rape	651	317	334
3.	Attempt to Rape	2110	1207	903
4.	Child sexual abuse	763	439	324
5.	Unnatural Sexual offence	138	69	69
6.	Others	412	227	185
	Total	13243	6555	6688

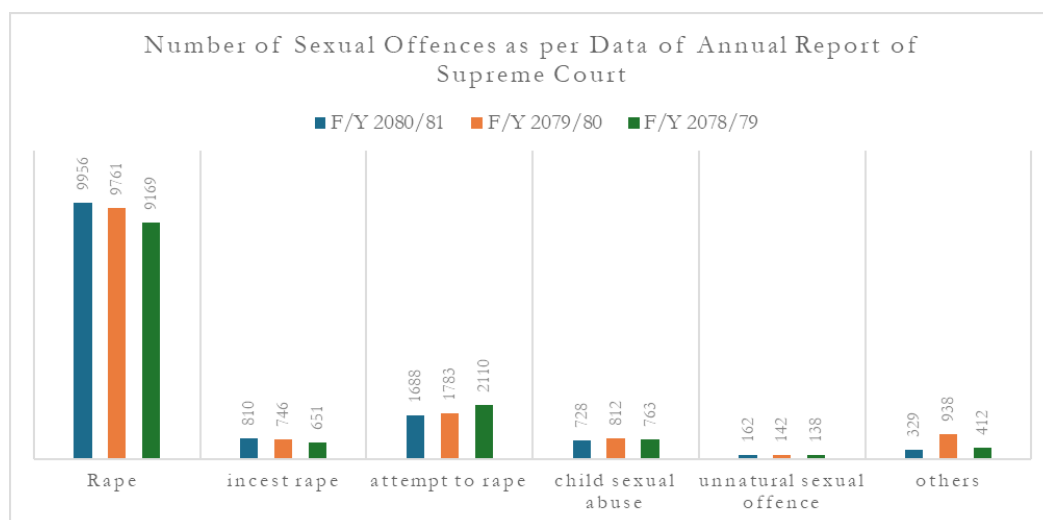


Figure 1 Number of sexual offences as per data of Annual report of Supreme Court of Nepal

Above mentioned table and chart also reveal that offence of rape, incest rape, unnatural sexual offence is in increasing trend whereas cases of attempt to rape, child sexual offences and others are comparatively decreasing in number.

VI. Issues to be concerned: Gender Neutrality and Gender Responsive Justice (GRJ)

Rape is a criminal act; thus, punishments must be correlated with the nature and gravity of the offence. However, there are still some areas that must be addressed in order to make rape law gender neutral and provide gender responsive justice to victim. There is of course no “one size fits all” solution to justice. Impact of sexual offence against female is different than the impact on minors,

⁴⁶ Ibid

whereas male survivors of sexual offence also face different consequences and challenges. Similarly, there are also numerous problems faced by LGBTIQ+ (SOGIESC) individuals, which differ from those faced by people of other genders. The concept of gender-neutral rape laws aim to eliminate any form of differences between different genders in the codified laws. Sexual offences are often narrated as crime committed by male against female, but this narration no longer covers every facet of this offence. Rape may be committed by anyone against anyone irrespective of gender. Rape has been symbol of crime committed by powerful against powerless people.

In this regard, General Comment No. 20 of the ICESCR clarifies that the term “other status” in Article 2, paragraph 2 of the Covenant includes sexual orientation. It emphasizes that State parties must ensure that a person’s sexual orientation is not a barrier to realizing the rights enshrined in the ICESCR. Similarly, General Comment No. 33 of CEDAW outlines the elements of Gender-Responsive Justice (GRJ), which places the justice needs of women and individuals with diverse SOGIESC identities at the center of the justice system. Part II, paragraph A.14 of GC 33 identifies six interrelated and essential components of GRJ. They are justiciability, availability, accessibility, good quality, provision of remedies for victims, and accountability of the justice system.

In context of Nepal, rape is listed as a heinous crime, and Nepali laws are in gradual process of development. In this backdrop, the following are the issues that are supposed to be considered in the rape laws:

A. Marital rape

Although not every country has criminalized all forms of non-consensual sexual relationships, Nepal has taken a progressive leap upon criminalizing marital rape⁴⁷. Rape laws around the world vary significantly and is evident when examined through the lens of the relationship between the perpetrator and the victim. Thus, there is no uniform global standard regarding the criminalization of non-consensual sexual relations. For instance, while marital rape is recognized as a criminal offense in several jurisdictions, in many countries, non-consensual or forceful sexual relations within marriage are still not considered a crime.⁴⁸ As of recent data, only 77 out of 185 countries have criminalized marital rape.⁴⁹ Countries including Pakistan, China, Bangladesh, Myanmar, Sri Lanka, Haiti, Laos, Mali, Senegal, Tajikistan, Botswana, India, Gambia, Seychelles, Equatorial Guinea, Ethiopia, South Sudan⁵⁰ have not yet criminalized marital rape.

In Nepal’s context, the data published by Nepal Police indicate a notable prevalence of marital sexual offences. For instance, the “Annual Fact Sheet on Gender Based Violence F/Y 2080/81”⁵¹ reports that out of 3465 accused of sexual violence, 73 accused were husbands. Similarly, the

⁴⁷ See *Muluki Aparadh Sambhita 2074* (National Criminal Code 2074), sec. 219(4); It was also criminalized under *Muluki Ain 2020* (National Code 1963), Chapter on Rape

⁴⁸ ‘India among 30 odd countries that have not criminalized marital rape’, *Deccan Herald*, India, 12 May 2022, available at <https://www.deccanherald.com/india/india-among-30-odd-countries-that-have-not-criminalised-marital-rape-1108551.html>, accessed on 18 July 2025.

⁴⁹ ‘Facts and Figures: Ending Violence against Women and Girls’, *UN Women: Asia and the Pacific*, 2022, available at <https://asiapacific.unwomen.org/en/focus-areas/end-violence-against-women/evaw-facts-and-figures>, accessed on 18 July 2025.

⁵⁰ Kerry Cullinan, ‘Inadequate Laws Allow Rapists to Avoid Punishment in Many African Countries’, *Health Policy Watch*, 4 December 2024, available at <https://healthpolicy-watch.news/rapists-avoid-punishment-in-many-african-countries/>, accessed on 18 July 2025.

⁵¹ Gender-Based Violence Annual Fact Sheet from Shrawan 2080 to Ashadh 2081 (Nepali Version) (n. 41).

“Annual Fact Sheet F/Y 2079/80”⁵² states that out of 3243 accused, 62 were husbands and the “Annual Fact Sheet F/Y 2078/79”⁵³ notes that out of 3184 accused, 31 were husbands. Likewise, the data of “Annual Fact Sheet F/Y 2077/78”⁵⁴ states that out of 3294 accused, 47 were husbands. Furthermore, according to the “Three years Fact Sheet F/Y 2074/075 to F/Y 2076/077”⁵⁵ out of 7625 accused, 69 were identified as husbands.

In this regard, the Council of Europe, Parliamentary Assembly, Resolution 1691 (2009) on rape of women, including marital rape, 2 October 2009 mentions that marital rape is to be stated as separate offence and penalize sexual violence and rape between spouses, cohabitant partners and ex-partners, and consider whether the attacker’s current or former close relationship with the victim should be an aggravating circumstances. Likewise, the report of the Special Rapporteur on Violence against Women, Its Causes and Consequences⁵⁶ states that criminal provisions on rape should apply to rape between spouses and intimate partners, whether current or former.

“Marital Rape” is defined as rape committed by husband against his wife. Parallely, this raises the question: “Can a wife rape her husband?” Furthermore, Nepal has legally registered same sex marriage. On November 29, 2023, for the first time, same sex marriage was registered between Maya Gurung, a transgender woman and Surendra Pandey, who was born and identified as male.⁵⁷

Although Section 67 of the *Muluki Civil Code, 2074 (2017)* still provisions marriage as a heterosexual marriage; Supreme Court of Nepal has already recognized same sex marriage through landmark judgements in the cases of *Prem Kumari Nepali vs. National Women Commission et.al*⁵⁸, *Suman Panta Vs. NG*⁵⁹ and *Adhip Pokheral and Tobias Volz vs. NG*⁶⁰. Moreover, according to the Chapter on Private International Law of the existing *Muluki Civil Code, 2074*⁶¹, marriages registered outside Nepal shall have equal legal standing as those registered within Nepal.

Thus, what legal recourse exists for homosexual couples in matrimonial relationships if a nonconsensual sexual act occurs? Can they file a case of marital rape? These questions remain largely unheard and unaddressed. In this context, the definition of marital rape needs to be amended to explicitly incorporate same-sex marriages as well.

⁵² Gender-Based Violence Annual Fact Sheet from Shrawan 2079 to Ashadh 2080 (Nepali Version) (n. 42).

⁵³ Gender-Based Violence Annual Fact Sheet from Shrawan 2078 to Ashadh 2079 (Nepali Version) (n. 43).

⁵⁴ Gender-Based Violence Annual Fact Sheet from Shrawan 2077 to Ashadh 2078 (Nepali Version), *Nepal Police Headquarters, Crime Investigation Department*, 2019, Naxal, p. 1, available at, https://www.nepalpolice.gov.np/media/filer_public/bf/ef/bfef77fd-ceed-453e-ac17-20e901b35024/final_-_fy_2077-78_annual_infographics.pdf, accessed on 18 July 2025.

⁵⁵ Three-Year Fact Sheet on Gender-Based Violence (GBV) from 2074/075 to 2076/077 (Nepali Version), *Nepal Police Headquarters, Crime Investigation Department*, Women, Children, and Senior Citizens Service Directorate, Naxal, available at, https://www.nepalpolice.gov.np/media/filer_public/07/ba/07ba41a7-7e0c-49e0-8273-6029c15d0cce/final_infographics_for_printing_-_nepali_version.pdf, accessed on 18 July 2025.

⁵⁶ Dubravka Šimonović, , *A Framework for Legislation on Rape (Model Rape Law): Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, 2021, U.N. Doc. A/HRC/47/26, p. 6, available at <https://digitallibrary.un.org/record/3929055?ln=en&v=pdf>, accessed on 22 July 2025.

⁵⁷ Aarati Ray, ‘Rise of the queer rights movement’, *The Kathmandu Post*, Kathmandu, 1 January 2025, available at <https://kathmandupost.com/national/2025/01/01/rise-of-the-queer-rights-movement>, accessed on 22 July 2025.

⁵⁸ *Prem Kumari Nepali vs. NG*, NKP 2070 (2013), volume 1, Decision no. 8945.

⁵⁹ *Suman Panta vs. Immigration Department et. al.*, NKP 2074 (2017), volume 12, Decision no. 9921.

⁶⁰ *Adip Pokheral et. al. vs. Immigration Department et. al.*, NKP 2080 (2023), volume 5, Decision no. 11097.

⁶¹ *Muluki Devani Sambhita 2074* (National Civil Code 2017), s. 699.

B. Homosexual rape

While studies have revealed the existence of same-sex sexuality throughout history, very little is known about same-sex sexuality in Nepal.⁶² Nepal is one of pioneering country to ensure equal status to sexual and gender minorities community (LGBTIQ+), as the Constitution of Nepal ensures the right to equality as a fundamental right. Prevailing criminal law also recognizes homosexual sexual relationships and criminalizes unnatural sexual offence⁶³. The question may arise as to whether unnatural sexual offence and homosexual rape have the same meaning or not? The case of *Lakpa Sherpa vs. NG*⁶⁴ has set a landmark decision stating that a girl can be raped by a woman. In this case, Lakpa Sherpa who was biological female had misrepresented herself as a male and had sexual relationship with a minor girl. However, a critical point that was largely ignored was that Lakpa identified as male and belonged to the SOGIESC⁶⁵ (Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics) community. Despite this, the judiciary recognized the act as rape committed by a female on another female, overlooking the gender identity aspect.

In this scenario, section 226 of the *Muluki* Criminal Code states that if an unnatural sexual offence is committed against a minor boy, it will be prosecuted as rape under Section 219 of the Code. However, if the offence is committed against an adult male by another male, it is considered an unnatural sexual offence, not rape. Since unnatural sexual offences can also be committed by heterosexual individuals⁶⁶, this provision does not explicitly address homosexual rape.

C. Male rape

If a man has sexual intercourse with a woman without consent, it comes under the ambit of definition of rape in the simplest terms.⁶⁷ But if a man says no, the legal position is different. Isely and Gehrenbeck-Shim have defined male sexual assault as ‘as any non-consensual sexual acts perpetrated against a man, 16 years or older, by a male or female’⁶⁸. In generic sense, women are typically regarded as victims of rape and men as perpetrators. Under Nepali law, females and children are explicitly recognized as potential victims of rape, whereas in cases of homosexual offences, anyone, regardless of gender, can be a victim.

Many studies have noted the difficulty of obtaining reliable and accurate statistics on adult male victimization⁶⁹ but there are instances where male have been raped. Instances of a Florida

⁶² Seira Tamang, ‘Patriarchy and the production of homo-erotic behavior in Nepal’, *Studies in Nepali History and Society* p. 225, volume 8:2, 2003, pp. 225-226, available at <https://www.martinchautari.org.np/storage/files/sinhas-vol8-no2-seira-tamang.pdf>, accessed on 20 July 2025.

⁶³ *Muluki Aparadh Sambhita 2074* (Muluki Criminal Code 2017), s. 226.

⁶⁴ *Lakpa Sherpa vs. NG*, NKP 2073 (2016), volume 9, Decision no. 9684.

⁶⁵ ‘What is SOGIESC? Key Concepts Explained’, *Sexual Orientation, gender identity, gender expression and sex characteristics* 20 January 2025, available at <https://rainbowpridefoundation.org/2025/01/20/what-is-sogiesc-key-concepts-explained/>, accessed on 20 July 2025.

⁶⁶ Cases of pedophile

⁶⁷ Alok Atreya et. al., ‘An alarming rise in rape in Nepal: A 20-year review’. *Medico-Legal Journal* p.125, volume 89:2, 2021, pp. 125-127, available at <https://journals.sagepub.com/doi/10.1177/0025817221992630>, accessed on 18 July 2025.

⁶⁸ Paul J. Isely & Debra Gehrenbeck-Shim, ‘Sexual assault of men in the community’, *Journal of Community Psychology* p. 159, volume 25:2, 1997, p. 160, available at [https://psycnet.apa.org/doi/10.1002/\(SICI\)1520-6629\(199703\)25:2%3C159::AID-JCOP5%3E3.0.CO;2-T](https://psycnet.apa.org/doi/10.1002/(SICI)1520-6629(199703)25:2%3C159::AID-JCOP5%3E3.0.CO;2-T), accessed on 18 July 2025.

⁶⁹ John C. Thomas & Jonathan Kopel, ‘Male Victims of Sexual Assault: A Review of the Literature’, *Behavioral Sciences*

prisoner trying to commit suicide after being harshly assaulted by fellow inmates upon his refusal to agree anal sex⁷⁰ can be taken as an example. Statistics from the United Kingdom (UK) shows that an estimated 1.1 million adults aged 16 and above have experienced sexual assault and 275,000 out of 1.1 million were male.⁷¹ Patriarchal society perceive men as dominant and sexually impenetrable beings. As such, the rape of a male transgress gender norms, carrying emasculating, stigmatizing connotations.⁷² Further male victims generally don't reach to legal proceeding because of the perceived belief they would not be believed, they felt shame, they are in fear of offender, lack of evidence, lack of confidence in Criminal justice system,⁷³ accusations of homosexuality, toxic masculinity, the effect of medical and support staff, female perpetrators of adult male sexual violence (AMSVo).⁷⁴ Narratives that describe men as exclusively perpetrators and women as victims and notion of 'real men cannot be raped', 'only gay men can be raped' can be traced as the major reasons which closes their pathway to seek legal remedy.⁷⁵

In context of Nepal, report submitted by HRJC provides that the definition of rape is insufficient as it does not cover male child, adult male and transgender person. It also eliminates the possibility of a woman being the perpetrator of crime of male rape.⁷⁶ Similarly, the 2079 annual report presented by Law, Justice and Human Rights Committee has also recommended the need of extending the periphery of victims of rape including female, male and sexual and gender minorities.⁷⁷ Therefore, it is a high time to revisit the definition of rape and incorporate male as victim of offence of rape in context of Nepal.

D. Conflict related sexual violence (CRSV)

Conflict related sexual violence is defined as 'any non-consensual sexual act committed during an armed conflict (internal or international), and which can therefore, depending on the circumstances, amount to a war crime, a crime against humanity, an act of genocide or other serious violations of international criminal law, human rights law or humanitarian law'.⁷⁸

p. 304, volume 13:4, 2023, available at <https://doi.org/10.3390/bs13040304>, accessed on 18 July 2025.

⁷⁰ 'No Escape: Male Rape in U.S. Prisons', *Human Rights Watch*, available at <https://www.hrw.org/reports/2001/prison/report1.html>, accessed on 18 July 2025.

⁷¹ 'Male Rape Statistics in the UK and The Implications', *Criminal Injuries Helpline*, 8 December 2023, available at <https://criminalinjurieshelpline.co.uk/blog/male-rape-statistics-in-the-uk-and-the-implications/>, accessed on 18 July 2025.

⁷² 'Sexual violence against males: still taboo', *Trial International*, 20 April 2018, available at <https://trialinternational.org/latest-post/sexual-violence-against-males-still-taboo/>, accessed on 18 July 2025.

⁷³ Susan McDonald & Adamira Tijerino, 'Male Survivors of sexual abuse and assault: their experiences', *Research and Statistics Division, Department of Justice Canada*, 2013, Canada, p. 16, available at https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_8/rr13_8.pdf, accessed on 18 July 2025.

⁷⁴ John C. Thomas & Jonathan Kopel (n. 69), pp. 310-315.

⁷⁵ B. Kennath Widanaralage et. al., "I Didn't Feel I Was a Victim": A Phenomenological Analysis of the Experiences of Male-on-male Survivors of Rape and Sexual Abuse', *Victims & Offenders* p. 1147, volume 17:8, 2022, p. 1149, available at <https://doi.org/10.1080/15564886.2022.2069898>, accessed on 18 July 2025.

⁷⁶ 'Submission for the Thematic Report of the Special Rapporteur on Violence against Women on Rape as a Grave and Systematic Human Rights Violation and Gender-based Violence against Women', *Human Rights and Justice Centre and TRIAL International*, 2020, p. 7, available at https://trialinternational.org/wp-content/uploads/2020/05/Reports-and-publications_Nepal_submission-to-SRSV_202004.pdf, accessed on 18 July 2025.

⁷⁷ 'Annual Report 2079 (Nepali Version)', *Law, Justice and Human Rights Committee*, House of Representatives Secretariat, Singhadurbar, Kathmandu, 2023, p. 5, available at <https://hr.parliament.gov.np/uploads/attachments/dt0ksen78eyrtvbs.pdf>, accessed on 18 July 2025.

⁷⁸ 'Fact Sheet on Conflict Related Sexual Violence', *Human Rights and Justice Centre*, Kupandole, Nepal, available at <https://hrjc.org.np/wp-content/uploads/2024/02/crsv-fact-sheet-2024-english-version.pdf>, accessed on 18 July 2025.

The Secretary General of the United Nations defines CRSV as ‘rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys’.⁷⁹ CRSV can also be perpetrated against members of the LGBTIQ+ community because of their sexual orientation and gender identity, however its occurrence is extremely under-documented.⁸⁰ The scenario is particularly relevant in Nepal as many women were not able to communicate the incident of rape and it’s suffering even to their family members during the conflict period.⁸¹

The case of a Tharu woman, Fulmati Nyaya⁸² stands out as an exemplary case in Nepal pertaining to CRSV. The Human Right Committee in Fulmati case had declared Nepal to be under obligation to provide effective remedy to Fulmati. Amongst several recommendations made to Nepal, the most prominent recommendation made by HRC in this case was “to adopt international standard definition of rape and other forms of sexual violence”. The Rome Statute of the International Criminal Court (ICC) provides that, under certain circumstances, rape and other forms of sexual violence, including sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, and other acts of comparable gravity, may constitute genocide, crimes against humanity, or war crimes.⁸³ However, Nepali law in this regard remains unclear. As criminal law has no retrospective effect and given that during Nepal’s internal conflict the time limitation for filing cases of sexual offences was only 35 days, cases of conflict-related sexual violence (CRSV) have largely gone unheard.

Out of the 308 CRSV complaints filed with the Truth and Reconciliation Commission (TRC), none of the victims have received any relief.⁸⁴ In this regard, the Interim Relief Program of 2008 had neither included any provisions of CRSV nor constituted a comprehensive reparations program. Among the numerous recommendations made in the Country Briefing⁸⁵, the major proposals included amending the TRC Act to remove blanket amnesties for gross human rights violations; accepting statements by CRSV survivors as sufficient to file a case with the TRC; removing the time limitations on filing CRSV-related cases; amending the definitions of rape and other forms of sexual violence in line with international standards; codifying rape as a crime against humanity; reopening the application process for filing complaints with the TRC to allow new victims to come forward; and enabling CRSV victims who have already filed complaints to amend them if CRSV violations were not previously included.

⁷⁹ ‘Report of the Secretary-General on Conflict-Related Sexual Violence’, *Office of the Special Representative of the Secretary-General (S/2023/413)*, 2023, para. 5.

⁸⁰ Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict - Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, UK Foreign & Commonwealth Office, UK, 2nd Edition, 2017, p. 20.

⁸¹ ‘Silenced and forgotten, Survivors of Nepal’s Conflict-Era Sexual Violence’, *Human Rights Watch*, 2014, USA, p. 6, available at https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf, accessed on 18 June 2025.

⁸² See ‘Guaranteeing the Rights of Survivors of Conflict-related Sexual Violence in Nepal, with special reference to the Human Rights Committee’s Decision on the Case Fulmati Nyaya v. Nepal’, *Human Rights and Justice Centre and Trail Centre*, 2021, available at https://trialinternational.org/wp-content/uploads/2016/02/ReporttoNHRCothers_Case-of-Fulmati.pdf, accessed on 18 June 2025.

⁸³ *Ibid*, pp. 15-16.

⁸⁴ ‘Reparations for Survivors of Conflict-Related Sexual Violence: Country Briefing Nepal’, *Global Survivors Fund*, 2022, available at https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global-Reparation_Studies/GSF_Country_Sheet_Nepal_EN_June2022_WEB.pdf, accessed on 18 June 2025.

⁸⁵ *Ibid*.

E. Aggravating factors of Rape

Rape committed by person in incest relation, gang rape, rape of pregnant woman with gestation period more than 6 months, committing rape against physical and psychologically disabled person, rape by showing weapon and rape committed by person having HIV Positive and sexually transmitted diseases have been enlisted as aggravating factor for increasing the gravity of offence of rape.⁸⁶ Likewise, the range of punishment increases in accordance with the lower age of the victim, and also if the victim is older than 70 years.⁸⁷

Stealthing and Grey Rape are slang words not recognized by criminal law, but they refer to acts committed by sexual abusers. Stealthing is described as when a male partner removes the condom before or during sex without the other partner's consent. It is also called "nonconsensual condom removal"⁸⁸. It also includes purposefully damaging condoms. The State of California has codified stealthing as an offence, and the Australian Capital Territory similarly criminalized it in October 2021⁸⁹. Grey rape, also known as date rape, refers to situations where perpetrators justify sexual assault by claiming that the victim created a "grey area" in which consent was vague. While Nepali law explicitly requires clear "consent" for engaging in sexual relations, it does not contain specific provisions addressing stealthing or grey rape. Such forms of rape could be recognized as factors aggravating the gravity of the offence.

F. Rape in live-in relationship

"Model rape law"⁹⁰ provisions that criminal provisions on rape should apply to rape between spouses and intimate partners, whether current or former. Along with the increasing trend of live in Nepal⁹¹, different problems associated to it are also emerging. For instance, news published in Republica⁹² exemplifies how victims of live-in relationship lament/grief lack of law. A bench of Justice Vikram Nath and Sandeep Mehta of Supreme Court of India⁹³ have dismissed the charge of rape against a banker who was in long term relationship with a lecturer. Court observed that even if a false promise of marriage was assumed, the duration of the relationship (16 years) weakened the complainant's claim that her consent was based on the belief that the accused would marry her. Court ruled such a claim to be implausible.

Annual Report 2079 of Law, Justice and Human Right Committee (Nepal) has also reported the challenges faced in regulation of criminal law due to live-in together relationship.⁹⁴ Further it has

⁸⁶ *Muluki Aparadh Sambhita 2074* (National Criminal Code 2017), s. 219 (6), (7), (8).

⁸⁷ *Ibid*, s. 219(3).

⁸⁸ 'What is stealthing', *Rape Crisis: England and Wales*, available at <https://rapecrisis.org.uk/get-informed/types-of-sexual-violence/what-is-stealthing/>, accessed on 18 July 2025.

⁸⁹ *Ibid*.

⁹⁰ Model rape law (n. 39).

⁹¹ 'Should live-in relationship be legalized in Nepal?', *Nepal News*, available at <https://nepalnews.com/s/issues/should-live-in-relationships-be-legalized-in-nepal/>, accessed on May 19, 2025

⁹² Pooja Chauhan, 'Live-in relationship 'victims' lament lack of law', *Republica*, Kathmandu, 25 February 2017, available at <https://myrepublica.nagariknetwork.com/index.php/news/live-in-relationship-victims-lament-lack-of-law>, accessed on 18 July 2025.

⁹³ 'Woman in long-term live-in relationship can't claim rape: Supreme Court', *The Economic Times*, 5 March 2025, available at <http://economictimes.indiatimes.com/news/india/woman-in-long-term-live-in-relationship-cant-claim-rape-supreme-court/articleshow/118734185.cms>, accessed on 18 July 2025.

⁹⁴ Annual Report 2079 (Nepali Version) (n. 77).

also reported the increasing trend of filing case of rape against the live-in partner upon denial of marriage.⁹⁵ But, there is no law to address the validity and legality of live-in relationship. The Chapter on Marriage in the existing *Muluki Civil Code 2074*, provides that if a couple gives birth to a child, they will be regarded as husband and wife; however, such marriage must be legally valid in accordance with the law. It means procreation of baby due to rape, incest sex, polygamy, child marriage will not amount to valid marriage.⁹⁶ Current law related to ‘rape’ has no clear demarcation of rape of partner in live-in relationship whereas there is separate provision on marital rape. Till date rape in live-in together will amount to ‘rape’ in context of Nepal. Thus, this situation requires the formulation of appropriate legislation to address the current increasing trend of live-in relationship.

G. Context of sexual relationship between minors with romantic relations

One of the major concerns regarding sexual offence is often hit with the consensual sexual relation between minors who were in romantic relationships. Sexual relationships with minors is regarded strict liability, thus the accused will be punished disregarding the fact of consent given by minors as minors are not legally capable of giving consent for sexual relationships. Punishing an adult perpetrator of statutory rape is unapologetic and is punished as per the protective law, but the question arises when both parties entering into sexual relationship were minors under law.

In *Santosh Kumar Yadav vs. NG*⁹⁷, Santosh was charged with offence of rape, kidnapping and homicide. The fact of the case reveals that 15-year-old Triyuga (Pseudo name), eloped with Santosh Kumar Yadav with consent and had been living with her in-laws while the case was *sub judice* in the trial court. Triyuga had testified that her parents were against their inter-caste marriage, hence they filed a case against her husband. Though the medical report of Triyuga reported Hymen Rupture in 2 o’ clock position, 3, 9, 11 o’ clock position, court did not count it as conclusive evidence. Supreme Court held Santosh innocent from the charge of rape and abduction and was held liable for the offence of child marriage and was thereby punished with 6 months imprisonment and 10,000/- fine.

Further, in the case of *Chetan Lamati vs. NG*⁹⁸, Selina (Pseudo name, aged 14) and Chetan (Pseudo name aged 16) were in love affair and got married as per the cultural norms of the Limbus. They got married on 2066/12/22 without permission from Selina’s parents. After a week, on 2066/12/28, Selina returned to her parental home with her sister, and a charge of rape was filed against Chetan. The major issue before the Supreme Court⁹⁹ was whether having sexual relations with a minor spouse is legally different from having sexual relations with a minor who is not a spouse. The Court noted that, although the law prescribes certain minimum age for marriage and consensual sexual relations, various factors, such as dietary habits and exposure to technology can influence the psychological and physical development of children. These factors, in turn, can affect sexual desire. The Court emphasized that deciding cases solely on the basis

⁹⁵ Ibid.

⁹⁶ See *Muluki Dewani Sambita 2074* (Muluki Civil Code 2017), s. 74.

⁹⁷ *Santosh Kumar Yadav vs. NG*, NKP 2080 (2024), volume 1, Decision no. 11015.

⁹⁸ *Chetan Lamati v. NG*, NKP 2081 (2025), volume 9, Decision no. 11348.

⁹⁹ Ibid, para 49.

of the technical definitions in law would not be justice oriented. The Court held that situations where two minors of a small age gap engage in consensual sexual relations within a romantic relationship should be treated differently, as otherwise the outcome would not be fair or just. It also observed that several countries recognize an “affirmative defense” for such circumstances, often referred to as the “Romeo and Juliet Law.” The Supreme Court referred to the Texas Penal Code’s provision on this law¹⁰⁰.

In paragraph 51, the Court also pointed out that the prevailing legal provision at the time classified “child marriage” as a voidable marriage rather than a void marriage. In the present case, both parties were minors at the time of marriage, and they had subsequently divorced. Therefore, sexual relations during their married life would not amount to the offence of rape under No. 3(3) of the Chapter on Rape. However, it was found that Chetan Lawati had engaged in non-consensual sexual relations with his wife, Selina, and was thus convicted of marital rape under No. 3(6) of the Chapter on Rape. He was sentenced to three months’ imprisonment and ordered to pay NPR 25,000 as compensation.

The above two cases clearly demonstrate that the judiciary has been lenient in punishing offenders by altering the nature of the offence. Different countries¹⁰¹ in the world have already adopted the concept of Romeo Juliet law and it could be better if Nepali laws could also incorporate this notion and bring change in the offence pertaining to statutory rape.

VII. Need of Re-defining Rape Law

Criminal provision on rape should cover and protect all persons, without any discrimination, including men, boys and gender diverse persons.¹⁰² Re-defining rape law is the need of present. Gender neutral laws are prerequisites for gender responsive justice. Annual report 2079 presented by Law, justice and Human Rights Committee to Parliament of Nepal has also recommended the need of redefining the offence of rape.¹⁰³ This report also suggested to incorporate women, children and gender minority as probable victim of offence of rape. Offence of rape has been related to social values and morals

¹⁰⁰ Texas Penal Code, Texas, United States of America, s. 22.011(e) states about the Romeo Juliet Law-
(e) It is an affirmative defense to prosecution under subsection (a)(2):
1. that the actor was the spouse of the child at the time of the offence; or
2. that:
(a) the actor was not more than three years older than the victim and at the time of the offense:
i. was not required under chapter 62, code of criminal procedure, to register for life as a sex offence
ii. was not a person who under chapter 62, code of criminal procedure, had a reportable conviction or adjudication for an offense under this section; and
(b) the victim:
i. was a child of 14 years of age or older; and
ii. was not:
(a) A person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under section 25.01.

¹⁰¹ The countries that have recognized Romeo Juliet Laws are Antigua and Barbuda, Austria, Belgium, Bolivia, Canada, Croatia, Greece, Israel, Italy, Latvia, Lithuania, Malta, Montenegro, Panama, Romania, Russia, Sweden, Switzerland, Taiwan, Trinidad and Tobago, United Kingdom. See Age of Consent by Country 2025, *World Population Review*, 2025, available at <https://worldpopulationreview.com/country-rankings/age-of-consent-by-country>, accessed on 18 July 2025.

¹⁰² Model rape law (n. 39).

¹⁰³ Annual Report 2079 (Nepali Version) (n. 77).

but the model rape law¹⁰⁴ has stated that rape is crime against the right to bodily integrity and sexual autonomy thus it should not be defined as crime against morality, public decency, family, honor.

While making gender neutral laws, laws makers also need to keep the reality of rape in mind that data reveals women and children as prone victim of sexual offence.¹⁰⁵ It is an act of violence that must be seen in the context of deeply entrenched power inequalities between male and female in society like ours.¹⁰⁶ It is evident that gender-neutral provisions may backfire, potentially empowering those who are already in positions of power and silencing the real victims. Complaints filed by women could be met with counter-complaints intended to pressure them into withdrawing their cases.¹⁰⁷ Rape against children of any gender has already been criminalized, thus proper research is preferable in enacting gender-neutral laws. Otherwise, instead of pursuing gender neutrality in principle alone, it is preferable to enact gender-responsive laws that effectively address the needs of all survivors of rape, regardless of their gender.

VIII. Conclusion

While the intention behind gender-neutral rape laws is to promote equality, such laws must be grounded in the realities of sexual violence, particularly in patriarchal societies like Nepal, where women and children remain the most affected. The redefinition of rape should shift from traditional notions of morality and must honor a framework that emphasizes bodily integrity and sexual autonomy, as recommended by major international human rights standards.

However, creating laws that are entirely gender-neutral without adequate research and safeguards could unintentionally undermine protections for the most vulnerable survivors and may be misused to silence genuine complaints. Therefore, instead of solely focusing on gender neutrality, Nepal should prioritize gender-responsive legislation and legal provisions that are inclusive of all genders but also attuned to existing power imbalances and social dynamics. In conclusion, any reform of rape laws must be inclusive, evidence-based, and rights-oriented, ensuring justice for all survivors, while protecting those who are disproportionately impacted by sexual violence.



¹⁰⁴ Model rape law (n. 39).

¹⁰⁵ Data has been presented above in this article

¹⁰⁶ 'Gender Just, Gender Sensitive and NOT Gender Neutral Rape Laws Parliamentary Committee ignores Verma Committee', *Feminist Law Archives*, 2013, available at, <https://feministlawarchives.pldindia.org/wp-content/uploads/press-release-urging-government-to-make-gender-just-laws.pdf>, accessed on 18 July 2025.

¹⁰⁷ Ibid.